

Sudan Accountability and Divestment Act of 2007

Section by Section

Section (1) Title

Section (2) Definitions

Section 3. State Divestment. Authorizes states and localities to divest from companies involved in key Sudan business sectors and sets standards for them to do so.

Section 4. Asset Manager Divestment. Allows mutual fund managers to cut ties with companies involved in key Sudan business sectors; it would maintain that managers abide by their fiduciary responsibilities and comply with all relevant laws and regulations in performing this task.

Section 5. Pension Fund Divestment. Allows pension managers to cut ties with companies involved in key Sudan business sectors; it would maintain that managers abide by their fiduciary responsibilities and comply with all relevant laws and regulations in performing this task.

Section 6. Federal Contract Prohibition. Requires federal government contractors to certify that they are not involved in business in key sectors of Sudan's economy. The President may waive the federal procurement certification requirement if it is in the national interest to do so.

Section 7. Sense of Congress encouraging other countries to adopt similar measures.

Section 8. Sense of Congress of Peacekeeping Efforts in Sudan.

Section 9. Sense of Congress of the International Obligations of the United States

Section 10. Reports on Sanctions in support of Peace in Darfur. Requires the Secretaries of State and Treasury report from on the effectiveness of sanctions imposed on Sudan in lieu of previously required report repealed under section 11.

Section 11. Repeal of Reporting Requirement.

Section 12. Termination. Sets forth conditions under which the authorities provided under this act sunset—when the President certifies to congress that the government of Sudan has honored critical international and humanitarian commitments.

110TH CONGRESS
1ST SESSION

S. _____

To authorize State and local governments to divest assets in companies conduct business operations in Sudan, to prohibit United States Government contracts with such companies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

introduced the following bill; which was read twice
and referred to the Committee on

A BILL

To authorize State and local governments to divest assets in companies conduct business operations in Sudan, to prohibit United States Government contracts with such companies, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Sudan Accountability
5 and Divestment Act of 2007”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) APPROPRIATE CONGRESSIONAL COMMIT-
2 TEES.—The term “appropriate congressional com-
3 mittees” means—

4 (A) the Committee on Banking, Housing,
5 and Urban Affairs, the Committee on Foreign
6 Relations, and the Select Committee on Intel-
7 ligence of the Senate; and

8 (B) the Committee on Financial Services,
9 the Committee on Foreign Affairs, and the Per-
10 manent Select Committee on Intelligence of the
11 House of Representatives.

12 (2) BUSINESS OPERATIONS.—The term “busi-
13 ness operations” means engaging in commerce in
14 any form in Sudan, including by acquiring, devel-
15 oping, maintaining, owning, selling, possessing, leas-
16 ing, or operating equipment, facilities, personnel,
17 products, services, personal property, real property,
18 or any other apparatus of business or commerce.

19 (3) EXECUTIVE AGENCY.—The term “executive
20 agency” has the meaning given the term in section
21 4 of the Office of Federal Procurement Policy Act
22 (41 U.S.C. 403).

23 (4) GOVERNMENT OF SUDAN.—The term “Gov-
24 ernment of Sudan”—

1 (A) means the government in Khartoum,
2 Sudan, which is led by the National Congress
3 Party (formerly known as the National Islamic
4 Front) or any successor government formed on
5 or after October 13, 2006 (including the coali-
6 tion National Unity Government agreed upon in
7 the Comprehensive Peace Agreement for
8 Sudan); and

9 (B) does not include the regional govern-
10 ment of southern Sudan.

11 (5) MARGINALIZED POPULATIONS OF SUDAN.—

12 The term “marginalized populations of Sudan” re-
13 fers to adversely affected groups in regions author-
14 ized to receive assistance under section 8(c) of the
15 Darfur Peace and Accountability Act (Public Law
16 109–344; 50 U.S.C. 1701 note).

17 (6) MILITARY EQUIPMENT.—

18 (A) IN GENERAL.—The term “military
19 equipment” means—

20 (i) weapons, arms, military supplies,
21 and equipment that readily may be used
22 for military purposes, including radar sys-
23 tems or military-grade transport vehicles;
24 or

1 (ii) supplies or services sold or pro-
2 vided directly or indirectly to any force ac-
3 tively participating in armed conflict in
4 Sudan.

5 [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]

9 (7) MINERAL EXTRACTION ACTIVITIES.—The
10 term “mineral extraction activities” means explor-
11 ing, extracting, processing, transporting, or whole-
12 sale selling or trading of elemental minerals or asso-
13 ciated metal alloys or oxides (ore), including gold,
14 copper, chromium, chromite, diamonds, iron, iron
15 ore, silver, tungsten, uranium, and zinc.

16 (8) OIL-RELATED ACTIVITIES.—

17 (A) IN GENERAL.—Except as provided in
18 subparagraph (B), the term “oil-related activi-
19 ties” means—

20 (i) exporting, extracting, producing,
21 refining, processing, exploring for, trans-
22 porting, selling, or trading oil; and

23 (ii) constructing, maintaining, or op-
24 erating a pipeline, refinery, or other oilfield
25 infrastructure.

1 (B) EXCLUSIONS.—A person shall not be
2 considered to be involved in an oil-related activ-
3 ity if—

4 (i) the person is involved in the retail
5 sale of gasoline or related consumer prod-
6 ucts in Sudan but is not involved in any
7 other activity described in subparagraph
8 (A); or

9 (ii) the person is involved in leasing,
10 or owns, rights to an oil block in Sudan
11 but is not involved in any other activity de-
12 scribed in subparagraph (A).

13 (9) PERSON.—The term “person” means—

14 (A) a natural person, corporation, com-
15 pany, business association, partnership, society,
16 trust, any other nongovernmental entity, orga-
17 nization, or group;

18 (B) any governmental entity or instrumen-
19 tality of a government, including a multilateral
20 development institution (as defined in section
21 1701(c)(3) of the International Financial Insti-
22 tutions Act (22 U.S.C. 262r(e)(3))); and

23 (C) any successor, subunit, or subsidiary of
24 any entity described in subparagraph (A) or
25 (B).

1 (10) POWER PRODUCTION ACTIVITIES.—The
2 term “power production activities” means any busi-
3 ness operation that involves a project commissioned
4 by the National Electricity Corporation of Sudan or
5 other similar entity of the Government of Sudan
6 whose purpose is to facilitate power generation and
7 delivery, including establishing power-generating
8 plants or hydroelectric dams, selling or installing
9 components for the project, or providing service con-
10 tracts related to the installation or maintenance of
11 the project.

12 (11) STATE.—The term “State” means each of
13 the several States, the District of Columbia, the
14 Commonwealth of Puerto Rico, the United States
15 Virgin Islands, Guam, American Samoa, and the
16 Commonwealth of the Northern Mariana Islands.

17 (12) STATE OR LOCAL GOVERNMENT.—The
18 term “State or local government” includes—

19 (A) any State and any agency or instru-
20 mentality thereof;

21 (B) any local government within a State,
22 and any agency or instrumentality thereof;

23 (C) any other governmental instrumen-
24 tality; and

1 (D) any public institution of higher edu-
2 cation within the meaning of the Higher Edu-
3 cation Act of 1965 (20 U.S.C. 1001 et seq.).

4 (13) SIGNIFICANT HUMANITARIAN EFFORTS.—
5 The term “significant humanitarian efforts”
6 means—

7 (A) efforts—

8 (i) undertaken in conjunction with an
9 international development or humanitarian
10 organization, the regional government of
11 southern Sudan, or a nonprofit entity;

12 (ii) that are substantial in relationship
13 to the size and scope of the business oper-
14 ations with respect to Sudan; and

15 (iii) that benefit 1 or more
16 marginalized populations of Sudan; or

17 (B) materially improving conditions for the
18 marginalized population in Darfur.

19 **SEC. 3. AUTHORITY OF STATE AND LOCAL GOVERNMENTS**
20 **TO DIVEST FROM CERTAIN COMPANIES DI-**
21 **RECTLY INVESTED IN CERTAIN SUDANESE**
22 **SECTORS.**

23 (a) STATEMENT OF POLICY.—It is the policy of the
24 United States to support the decision of any State or local
25 government to divest from, and to prohibit the investment

1 of assets of the State or local government in, a person
2 that the State or local government determines poses a
3 long-term financial risk to the State or local government
4 as a result of the person's conduct of or direct investment
5 in business operations in Sudan, a country that is subject
6 to broad international sanctions and presents a severe
7 reputational risk to persons that invest in the country.

8 (b) **AUTHORITY TO DIVEST.**—Notwithstanding any
9 other provision of law, a State or local government may
10 adopt and enforce measures that meet the requirements
11 of subsection (d) to divest the assets of the State or local
12 government from, or prohibit investment of the assets of
13 the State or local government in, persons that the State
14 or local government determines, using credible information
15 available to the public, are conducting or have direct in-
16 vestments in business operations described in subsection
17 (c).

18 (c) **BUSINESS OPERATIONS DESCRIBED.**—

19 (1) **IN GENERAL.**—Business operations de-
20 scribed in this subsection are business operations in
21 Sudan that include power production activities, min-
22 eral extraction activities, oil-related activities, or the
23 production of military equipment.

1 (2) EXCEPTIONS.—Business operations de-
2 scribed in this subsection do not include business op-
3 erations that—

4 (A) are conducted under contract directly
5 and exclusively with the regional government of
6 southern Sudan;

7 (B) are conducted under a license from the
8 Office of Foreign Assets Control, or are ex-
9 pressly exempted under Federal law from the
10 requirement to be conducted under such a li-
11 cense;

12 (C) consist of providing goods or services
13 to marginalized populations of Sudan;

14 (D) consist of providing goods or services
15 to an internationally recognized peacekeeping
16 force or humanitarian organization;

17 (E) consist of providing goods or services
18 that are used only to promote health or edu-
19 cation;

20 (F) are conducted by a person that has
21 also undertaken significant humanitarian ef-
22 forts; or

23 (G) have been voluntarily suspended.

1 (d) REQUIREMENTS.—Any measure taken by a State
2 or local government under subsection (b) shall meet the
3 following requirements:

4 (1) NOTICE.—

5 (A) IN GENERAL.—The State or local gov-
6 ernment shall provide written notice and an op-
7 portunity to comment in writing to each person
8 to whom a measure is to be applied.

9 (B) CONTENTS OF NOTICE.—The written
10 notice required by subparagraph (A) shall in-
11 clude a description of the financial or
12 reputational risk to the State or local govern-
13 ment posed by the investment of assets of the
14 State or local government in the person to
15 whom the measure is to be applied.

16 (2) TIMING.—The measure shall apply to a per-
17 son not earlier than the date that is 90 days after
18 the date on which written notice is provided to the
19 person under paragraph (1).

20 (e) DEFINITIONS.—In this section:

21 (1) INVESTMENT.—The “investment” of assets,
22 with respect to a State or local government, in-
23 cludes—

24 (A) a commitment or contribution of as-
25 sets;

1 (B) a loan or other extension of credit of
2 assets; and

3 (C) the entry into or renewal of a contract
4 for goods or services.

5 (2) ASSETS.—The term “assets” refers to pub-
6 lic monies and includes any pension, retirement, an-
7 nuity, or endowment fund, or similar instrument,
8 that is controlled, directly or indirectly, by a State
9 or local government.

10 (f) NONPREEMPTION.—A measure of a State or local
11 government authorized under subsection (b) is not pre-
12 empted by any Federal law or regulation.

13 (g) EFFECTIVE DATE.—This subsection applies to
14 measures adopted by a State or local government before,
15 on, or after the date of the enactment of this Act.

16 **SEC. 4. SAFE HARBOR FOR CHANGES OF INVESTMENT**
17 **POLICIES BY ASSET MANAGERS.**

18 (a) IN GENERAL.—Section 13 of the Investment
19 Company Act of 1940 (15 U.S.C. 80a-13) is amended by
20 adding at the end the following:

21 “(c) LIMITATION ON ACTIONS.—

22 “(1) IN GENERAL.—Notwithstanding any other
23 provision of Federal or State law, no person may
24 bring any civil, criminal, or administrative action
25 against any registered investment company, or any

1 employee, officer, director, or investment adviser
2 thereof, based solely upon the investment company
3 divesting from, or avoiding investing in, securities
4 issued by persons that the investment company de-
5 termines, using credible information that is available
6 to the public, conduct or have direct investments in
7 business operations in Sudan described in section
8 3(c) of the Sudan Accountability and Divestment
9 Act of 2007.

10 “(2) APPLICABILITY.—

11 “(A) ACTIONS FOR BREACHES OF FIDU-
12 CIARY DUTIES.—Paragraph (1) does not pre-
13 vent a person from bringing an action based on
14 a breach of a fiduciary duty owed to that per-
15 son with respect to a divestment or non-invest-
16 ment decision, other than as described in para-
17 graph (1).

18 “(B) DISCLOSURES.—Paragraph (1) shall
19 not apply to a registered investment company,
20 or any employee, officer, director, or investment
21 adviser thereof, unless the investment adviser of
22 such investment company makes such disclo-
23 sures concerning a divestment decision as the
24 Commission may require.

1 “(3) PERSON DEFINED.—For purposes of this
2 subsection the term ‘person’ includes the Federal
3 Government and any State or political subdivision of
4 a State.”.

5 (b) SEC REGULATIONS.—Not later than 180 days
6 after the date of the enactment of this Act, the Securities
7 and Exchange Commission shall issue proposed rules, in
8 the public interest and for the protection of investors, to
9 require disclosure by each registered investment company,
10 or any employee, officer, director, or investment adviser
11 thereof, that divests itself of securities in accordance with
12 section 13(c) of the Investment Company Act of 1940.
13 Such rules shall require the disclosure to be included in
14 the next periodic report filed with the Commission under
15 section 30 of such Act (15 U.S.C. 80a–29) following such
16 divestiture.

17 (c) EFFECTIVE DATE.—This section shall take effect
18 on the date that is 120 days after the date of the enact-
19 ment of this Act.

20 **SEC. 5. SAFE HARBOR FOR CHANGES OF INVESTMENT**
21 **POLICIES BY EMPLOYEE BENEFIT PLANS.**

22 Section 404 of the Employee Retirement Income Se-
23 curity Act of 1974 (29 U.S.C. 1104) is amended by adding
24 at the end the following:

1 “(e)(1) Notwithstanding any other provision of this
2 Act, it shall not be a breach of any of the responsibilities,
3 obligations, or duties imposed upon fiduciaries by this title
4 if a fiduciary with respect to a plan divests plan assets
5 from, or avoids investing plan assets in, persons that the
6 fiduciary determines, using credible information that is
7 available to the public, conduct or have direct investments
8 in business operations in Sudan described in section 3(c)
9 of the Sudan Accountability and Divestment Act of 2007.

10 “(2) Paragraph (1) does not prevent a person from
11 bringing an action based on a breach of a fiduciary duty
12 owed to that person with respect to the manner of a divest-
13 ment or non-investment decision described in paragraph
14 (1).”.

15 **SEC. 6. PROHIBITION ON UNITED STATES GOVERNMENT**
16 **CONTRACTS.**

17 (a) **CERTIFICATION REQUIREMENT.**—The head of
18 each executive agency shall ensure that each contract en-
19 tered into by such executive agency for the procurement
20 of goods or services includes a clause that requires the
21 contractor to certify to the contracting officer that the
22 contractor does not conduct business operations in Sudan
23 described in section 3(c).

24 (b) **REMEDIES.**—

1 (1) IN GENERAL.—The head of an executive
2 agency may impose remedies as provided in this sub-
3 section if the head of the executive agency deter-
4 mines that the contractor has submitted a false cer-
5 tification under subsection (a) after the date the
6 Federal Acquisition Regulation is amended under
7 subsection (e) to implement the requirements of this
8 section.

9 (2) TERMINATION.—The head of an executive
10 agency may terminate a covered contract upon the
11 determination of a false certification under para-
12 graph (1).

13 (3) SUSPENSION AND DEBARMENT.—The head
14 of an executive agency may debar or suspend a con-
15 tractor from eligibility for Federal contracts upon
16 the determination of a false certification under para-
17 graph (1). The debarment period may not exceed 3
18 years.

19 (4) INCLUSION ON LIST OF PARTIES EXCLUDED
20 FROM FEDERAL PROCUREMENT AND NONPROCURE-
21 MENT PROGRAMS.—The Administrator of General
22 Services shall include on the List of Parties Ex-
23 cluded from Federal Procurement and Nonprocure-
24 ment Programs maintained by the Administrator
25 under part 9 of the Federal Acquisition Regulation

1 issued under section 25 of the Office of Federal Pro-
2 curement Policy Act (41 U.S.C. 421) each con-
3 tractor that is debarred, suspended, proposed for de-
4 barment or suspension, or declared ineligible by the
5 head of an executive agency on the basis of a deter-
6 mination of a false certification under paragraph
7 (1).

8 (5) RULE OF CONSTRUCTION.—This subsection
9 shall not be construed to limit the use of other rem-
10 edies available to the head of an executive agency or
11 any other official of the Federal Government on the
12 basis of a determination of a false certification
13 under paragraph (1).

14 (c) EXCEPTION FOR PROCUREMENT OF CERTAIN
15 PRODUCTS.—The certification requirement under sub-
16 section (a) does not apply to contracts for the procurement
17 of eligible products (as that term is defined in section
18 308(4) of the Trade Agreements Act of 1979 (19 U.S.C.
19 2518(4)) of any foreign country or instrumentality des-
20 ignated under section 301(b)(1) of such Act (19 U.S.C.
21 2511(b)(1)).

22 (d) WAIVER.—

23 (1) IN GENERAL.—The President may waive
24 the requirement of subsection (a) on a case-by-case
25 basis if the President determines and certifies in

1 writing to the appropriate congressional committees
2 that it is in the national interest to do so.

3 (2) REPORTING REQUIREMENT.—Not later than
4 April 15, 2008, and semi-annually thereafter, the
5 Administrator for Federal Procurement Policy shall
6 submit to the appropriate congressional committees
7 a report on waivers granted under paragraph (1).

8 (e) IMPLEMENTATION THROUGH THE FEDERAL AC-
9 QUISSION REGULATION.—Not later than 120 days after
10 the date of the enactment of this Act, the Federal Acquisi-
11 tion Regulatory Council shall amend the Federal Acquisi-
12 tion Regulation issued pursuant to section 25 of the Office
13 of Federal Procurement Policy Act (41 U.S.C. 421) to
14 provide for the implementation of the requirements of this
15 section.

16 (f) REPORT.—Not later than one year after the date
17 the Federal Acquisition Regulation is amended under sub-
18 section (e) to implement the requirements of this section,
19 the Administrator of General Services, with the assistance
20 of other executive agencies, shall submit to the Office of
21 Management and Budget and the appropriate congres-
22 sional committees a report on the actions taken under this
23 section.

1 **SEC. 7. SENSE OF CONGRESS ON EFFORTS BY OTHER**
2 **COUNTRIES.**

3 It is the sense of Congress that the governments of
4 all other countries should adopt measures, similar to those
5 contained in this Act, to publicize the activities of all per-
6 sons that, through their financial dealings, knowingly or
7 unknowingly enable the Government of Sudan to continue
8 to oppress and commit genocide against people in the
9 Darfur region and other regions of Sudan, and to author-
10 ize divestment from, and the avoidance of further invest-
11 ment in, such persons.

12 **SEC. 8. SENSE OF CONGRESS ON PEACEKEEPING EFFORTS**
13 **IN SUDAN.**

14 It is the sense of Congress that the President
15 should—

16 (1) continue to work with other members of the
17 international community, including the Permanent
18 Members of the United Nations Security Council,
19 the African Union, the European Union, the Arab
20 League, and the Government of Sudan to facilitate
21 the urgent deployment of a peacekeeping force to
22 Sudan; and

23 (2) bring before the United Nations Security
24 Council, and call for a vote on, a resolution requir-
25 ing meaningful multilateral sanctions against the
26 Government of Sudan in response to its acts of

1 genocide against the people of Darfur and its contin-
2 ued refusal to allow the implementation of a peace-
3 keeping force in Sudan.

4 **SEC. 9. SENSE OF CONGRESS ON THE INTERNATIONAL OB-**
5 **LIGATIONS OF THE UNITED STATES.**

6 It is the sense of Congress that nothing in this Act—

7 (1) conflicts with the international obligations
8 or commitments of the United States; or

9 (2) affects article VI, clause 2, of the Constitu-
10 tion of the United States.

11 **SEC. 10. REPORTS ON SANCTIONS IN SUPPORT OF PEACE**
12 **IN DARFUR.**

13 (a) IN GENERAL.—The Secretary of State and the
14 Secretary of the Treasury shall submit to the appropriate
15 congressional committees a report assessing the effective-
16 ness of sanctions imposed with respect to Sudan at the
17 time the Secretary of State and the Secretary of the
18 Treasury submits reports required under—

19 (1) the Sudan Peace Act (Public Law 107–245;
20 50 U.S.C. 1701 note);

21 (2) the Comprehensive Peace in Sudan Act of
22 2004 (Public Law 108–497; 50 U.S.C. 1701 note);
23 and

24 (3) the Darfur Peace and Accountability Act of
25 2006 (Public Law 109–344; 50 U.S.C. 1701 note).

1 (b) ADDITIONAL REPORT BY THE SECRETARY OF
2 THE TREASURY.—The Secretary of the Treasury shall
3 submit to the appropriate congressional committees a re-
4 port assessing the effectiveness of sanctions imposed with
5 respect to Sudan under the International Emergency Eco-
6 nomic Powers Act (50 U.S.C. 1701 et seq.) at the time
7 the President submits the reports required by section
8 204(c) of such Act (50 U.S.C. 1703(c)) with respect to
9 Executive Order 13,400 (50 U.S.C. 1701 note; relating
10 to blocking property of persons in connections with the
11 conflict in Sudan’s region of Darfur).

12 (c) CONTENTS.—The reports required by subsections
13 (a) and (b) shall include—

14 (1) a description of each sanction imposed
15 under a law or executive order described in sub-
16 section (a) or (b);

17 (2) the name of the person subject to the sanc-
18 tion, if any; and

19 (3) whether or not the person subject to the
20 sanction is also subject to sanctions imposed by the
21 United Nations.

22 **SEC. 11. REPEAL OF REPORTING REQUIREMENT.**

23 Section 6305 of the U.S. Troop Readiness, Veterans’
24 Care, Katrina Recovery, and Iraq Accountability Appro-

1 priations Act, 2007 (Public Law 110–28; 121 Stat. 172)
2 is repealed.

3 **SEC. 12. TERMINATION.**

4 The provisions of sections 3, 4, 5, and 6, shall termi-
5 nate 30 days after the date on which the President has
6 certified to Congress that the Government of Sudan has
7 honored its commitments to—

8 (1) abide by United Nations Security Council
9 Resolution 1769 (2007);

10 (2) cease attacks on civilians;

11 (3) demobilize and demilitarize the Janjaweed
12 and associated militias;

13 (4) grant free and unfettered access for delivery
14 of humanitarian assistance; and

15 (5) allow for the safe and voluntary return of
16 refugees and internally displaced persons.