



California Public Employees' Retirement System

**California Public Divest from Sudan Act
Legislative Report For the Year Ended**

December 31, 2015



**California Public Employees' Retirement System
Sudan-Related Investments – Annual Legislative Report
December 31, 2015**

Table of Contents

Executive Summary.....	3
Requirements of the Act.....	4
Identification.....	4
Notification.....	5
Determination of Substantial Action.....	5
CalPERS Policies Relating to Divestment.....	5
CalPERS Decision to Divest.....	5
Liquidation.....	5
Additional Reporting Requirements Under the Act.....	6
Background & Recent Sudan-Related Events.....	6
Progress on Company Withdrawal from Sudan.....	7
Conclusion.....	7
Table 1 – 2 Companies Under Engagement by CalPERS.....	8
Table 2 – 7 Companies Being Monitored by CalPERS.....	8
Table 3 – 3 Companies Divested by CalPERS Pursuant to the Act.....	11
Appendix A – Definitions.....	13
Appendix B – Requirements of the Act.....	14

Executive Summary

1. This Legislative Report is provided by the California Public Employees' Retirement System (CalPERS)¹ pursuant to requirements promulgated by Government Code 7513.6, also known as the California Public Divest from Sudan Act (Act), and summarizes related implementation activities undertaken by CalPERS during 2015 (Reporting Period).
2. The Act prohibits the Board from investing public employee retirement funds in companies having specified ties to Sudan. The Act requires the Board to identify the companies that fit the specified criteria, notify them that they have been so identified, and enter into a 90-day period of engagement to encourage such companies to sever their ties with Sudan. If a company fails to make sufficient progress in this regard, then, to the extent consistent with the Board's fiduciary duties, CalPERS (a) must cease all future investments with such companies and (b) has 18 months in which to divest any existing holdings. The above criteria, *excluding* the fiduciary duty consideration, are referred to herein as the "threshold criteria" for divestment.
3. Any determination that a company has made sufficient progress in severing ties with Sudan must be supported by findings adopted by a roll call vote of the Board following a presentation and discussion of the findings in open session. The Board is required, on an annual basis, (a) to review the CalPERS investment portfolio to determine which companies are subject to divestment, and (b) to file a report with the Legislature, to include the findings made in support of any determination that a particular divestment action would be inconsistent with the Board's fiduciary duties.
4. CalPERS did not identify additional companies that met the threshold criteria for divestment during the Reporting Period.
5. CalPERS continues to identify companies potentially subject to the Act, to notify them of the law's provisions, and call for their withdrawal from Sudan.
6. Since the enactment of the Act, CalPERS has divested from three companies operating in Sudan that failed to take substantial action as defined by the Act: Dongfeng Motor Group, El Sewedy Cables, Mangalore Refinery & Petrochemicals Ltd. New investments in these companies have been blocked as well.

¹ CalPERS is the largest public pension plan in the United States, responsible for approximately \$300 billion in global assets, which are invested to provide retirement and health benefits for over 1.7 million Californians. The CalPERS Board has sole and exclusive responsibility to administer the System in a manner that will assure prompt delivery of benefits to its participants and their beneficiaries. The assets of the System are trust funds that must be held for the exclusive purpose of providing benefits to participants in the System and their beneficiaries and defraying the reasonable expenses of administering the System.

Requirements of the Act

The Act sets out a number of requirements, as follows:

• Identification

CalPERS must annually identify companies with “business operations” in Sudan and identify those that meet both of the following criteria:

1. The company is engaged in active business operations in Sudan, and, for any company not engaged in oil-related activities, that company also lacks significant business operations in the eastern, southern, or western regions of Sudan, **and**
2. Either of the following apply: (a) The company is engaged in oil-related activities or energy or power-related operations, or contracts with another company with business operations in the oil, energy, and power sectors of Sudan and the company failed to take substantial action related to the government of Sudan because of the Darfur genocide, or (b) the company has demonstrated complicity in the Darfur genocide.

CalPERS reviews a variety of information sources to identify potential companies in its portfolio that may meet the threshold criteria for divestment (Subject Companies). CalPERS coordinates in this regard with the California State Teachers’ Retirement System (CalSTRS). There may be instances in which CalPERS has not engaged a company that was identified by CalSTRS as potentially satisfying the threshold criteria for divestment. Reasons for this may include, but are not limited to:

- a. Timing: CalPERS frequently coordinates its engagement efforts with CalSTRS; however differences may occur due to the timing of each respective organization’s engagement with individual companies.
- b. CalPERS Portfolio Holdings: The companies identified by CalSTRS might not be held in the CalPERS portfolio.

CalPERS did not identify any additional companies that met the threshold criteria for divestment during the Reporting Period.

• **Notification**

Once identified, CalPERS provides prompt notification to each Subject Company, setting out the provisions of the Act, and seeks a response that can be properly assessed. Such notifications are sent via courier to the most senior board member of each company and in many cases to the Chairman, CEO, or President. When necessary, CalPERS will engage with the Subject Company's parent directly and use translating services to ensure clear communication.

• **Determination of Substantial Action**

Following the communication with identified companies, staff analyzes each company's response, if any, to assess whether the company is taking "substantial action" (or making progress thereon) as defined by the Act.

• **CalPERS Policies Relating to Divestment**

In February 2009, the Investment Committee (Committee) adopted the Statement of Investment Policy for Divestment. In March 2015, the Committee approved the CalPERS Total Fund Investment Policy, which incorporated the Statement of Investment Policy for Divestment (Policy). The Policy provides that CalPERS will undertake constructive engagement in support of Divestment Initiatives (as defined in the Policy) to the extent the Committee determines such engagement to be constructive or as required by law, and will divest where (a) retaining the investment is imprudent and inconsistent with fiduciary duties, or (b) to the extent divestment is both required by law and consistent with fiduciary duties.

• **CalPERS Decision to Divest**

If a company fails to make sufficient progress as determined by statute, then, to the extent consistent with the Board's fiduciary duties,² CalPERS (a) must cease all future investments with such companies and (b) has 18 months in which to divest any existing holdings.

• **Liquidation**

The Act requires the sale of any investments in companies subject to divestment within an 18-month time period from the point of such determination.

² The Act does not "require the board to take action as described...unless the board determines, in good faith, that the action...is consistent with the fiduciary responsibilities of the board as described in Section 17 of Article XVI of the California Constitution." (Gov. Code §7513.7(k).)

• **Additional Reporting Requirements Under the Act**

Section 7513.6(i)(3) – Whether the Board has Reduced its Investments in any Companies Described in Section 7513.6(b) or (c)

As of December 31, 2015, CalPERS has divested from three companies that continue to have business activities in Sudan or have been unresponsive to attempts at engagement by CalPERS staff: Dongfeng Motor Group, El Sewedy Cables, and Mangalore Refinery & Petrochemicals Ltd. No new investments in these companies have occurred.

Section 7513.6(i)(6) – Detailed Summary of Investments Transferred to Funds or Accounts Devoid of Companies with Business Operations in Sudan as Described in Section 7513.6(f)

No such transfers have been identified by CalPERS.

• **Background & Recent Sudan-Related Events**

The 2005 Sudanese Comprehensive Peace Agreement (CPA) provided Southern Sudan a choice to continue within one country or to separate. In January 2011, the people of Sudan overwhelmingly voted for separation. On July 9, 2011, with the recognition of the Government of Sudan, the Republic of South Sudan was declared independent. This year marks the fourth year since South Sudan was declared an independent country.

Since South Sudan became independent, conflict has continued. In 2015, the United States continued to support the Intergovernmental Authority on Development (IGAD) as it leads mediation efforts between the conflicting parties. In August, a tentative mediated peace agreement³ was signed by South Sudan President Salva Kiir and rebel leader Riek Machar. At the United Nations General Assembly in October, Ambassador Donald E. Booth, Special Envoy to Sudan and South Sudan, expressed the continued support of the United States for peace in Sudan and South Sudan. Ambassador Booth stated, “From the U.S. perspective, the key message remains that Sudan needs to stop fighting its people, stop the wars in Darfur and the Two Areas and find a way to move forward toward a political accommodation that will enable Sudan, which is a diverse country, to live at peace with itself. So that is the message we continue to press on that. We, again, will be engaging the Sudanese here on that, trying to advance that agenda.”⁴

³ Intergovernmental Authority on Development (IGAD) Agreement on the Resolution of the Conflict in the Republic of South Sudan: <https://unmiss.unmissions.org/>

⁴ The Agreement on the Resolution of the Conflict in South Sudan: <http://fpc.state.gov/247697.htm>

The Act contains sunset provisions that are triggered when either the government of Sudan halts the genocide in Darfur for 12 months, or the United States revokes its current sanctions against Sudan. A review of public sources revealed that neither condition has been met. Thus, CalPERS continues to diligently implement the requirements of the Act.

• Progress on Company Withdrawal from Sudan

Tables 1 and 2 below set forth CalPERS current holdings in the non-US companies that have been identified as potentially having business operations in Sudan, as defined by the legislation.

The progress on company withdrawal from Sudan or exemption from the Sudan Act is as follows:

1. (Table 1) 2 Companies Under Engagement by CalPERS.
2. (Table 2) 7 Companies Being Monitored by CalPERS.
3. (Table 3) 3 Companies Divested by CalPERS Pursuant to the Act.

• Conclusion

CalPERS has diligently and comprehensively implemented the requirements of the Act during the Reporting Period. CalPERS has monitored significant progress in company withdrawal and reduction of activity in Sudan. CalPERS will continue to identify, notify, and divest itself of investments in companies engaged in specified business operations in Sudan, subject to the CalPERS Board's overarching fiduciary duty.

The CalPERS Board, senior management, and staff continue to devote significant time and attention to ensuring that the provisions of the Act are fully implemented. CalPERS will continue to ensure that it remains in compliance with the Act, that the Board is apprised of developments, and that staff is positioned to review the appropriate response by CalPERS as required.

TABLE 1: 2 Companies Under Engagement by CalPERS				
<i>Company Name (Domicile)</i>	<i>Summary of Ties to Sudan</i>	<i>Summary of Changes From 2014</i>	<i>Shares Held by CalPERS 10/31/2015</i>	<i>Market Value (\$) of Shares Held by CalPERS 10/31/2015</i>
MISC Berhad (Malaysia)	MISC Berhad is the leading international shipping line of Malaysia. MISC Berhad operates a fleet of over 100 vessels, specializing in the shipping of energy products such as liquefied natural gas and petroleum (Company Website). MISC has a joint venture which provides shipping services to Sudan.	In 2015, CalPERS established a position in MISC and has re-engaged the Company to determine its business operations status in Sudan.	1,487,000	\$3,125,607.54
Shanghai Electric Group (China)	Shanghai Electric Group has been identified as potentially having several contracts relating to power transmission in Sudan.	CalPERS has initiated engagement with Shanghai Electric Group.	7,598,391	\$4,715,843.75
		Category Total:		\$7,841,451.29

TABLE 2: 7 Companies Being Monitored by CalPERS				
<i>Company Name (Domicile)</i>	<i>Summary of Ties to Sudan</i>	<i>Summary of Changes From 2014</i>	<i>Shares Held by CalPERS 10/31/2015</i>	<i>Market Value (\$) of Shares Held by CalPERS 10/31/2015</i>
Bharat Heavy Electrical Limited (India)	Bharat Heavy Electricals Limited (BHEL) is an India-based power and energy company, 67.7 percent owned by the Indian government. The company's first businesses in Sudan were in the transport industry, providing Sudan Railways with eight mainland locomotives in 2005 and exporting locomotive parts in 2006. The company's subsequent and current operations in Sudan have been power-related. BHEL confirmed for MSCI Group in December 2007 that it was developing a 500-megawatt power plant in Kotsi, Sudan, which is scheduled to supply power to the whole of Sudan. It declined to provide further details on its activities in Sudan. However, Africa Energy Intelligence reported on April 2, 2008, that the cost of the project will be USD \$457 million.	There are no changes since 2014. CalPERS has no current investment position in Bharat Heavy Electrical Ltd.	0	\$0
KunLun Energy Company (Formerly CNPC Hong Kong)	According to its website and public filings, Kunlun Energy (formerly CNPC (Hong Kong) Ltd.) is a publicly traded subsidiary of the state-owned China National Petroleum Corp. (CNPC), which holds a 52.7 percent interest in Kunlun Energy. The Associated	There are no changes since 2014. CalPERS has no current investment position in KunLun Energy Company.	0	\$0

**TABLE 2:
7 Companies Being Monitored by CalPERS**

<i>Company Name (Domicile)</i>	<i>Summary of Ties to Sudan</i>	<i>Summary of Changes From 2014</i>	<i>Shares Held by CalPERS 10/31/2015</i>	<i>Market Value (\$) of Shares Held by CalPERS 10/31/2015</i>
(Hong Kong)	<p>Press reported on July 2, 2007 that CNPC signed a 20-year contract in June 2007 for Block 13 in northern Sudan under which it entered into a six-year phase for offshore oil drilling exploration and a 20-year concession for shared oil production.</p> <p>China Energy Weekly reported on July 14, 2006, that CNPC had completed an upgrade of the largest oil refinery in Khartoum. The article also reported that CNPC holds a 40 percent stake in the Greater Nile Consortium, which produces 330,000 barrels of oil per day from three oil blocks in Sudan. CNPC also owns a 42 percent stake in two blocks in Malut. In addition, CNPC is investing in an oil terminal on Sudan's Red Sea coast and runs a pipeline connecting the Khartoum refinery with the Fula Oilfield, according to the article.</p>			
Oil & Natural Gas Company (India)	As of January 2011, it is reported that Oil & Natural Gas Company (ONGC) has assets in both North and South Sudan.	<p>There are no changes since 2014.</p> <p>CalPERS has no current investment position in ONGC.</p>	0	\$0
PECD Bhd. (Malaysia)	As of August 2011, PECD Berhad, an investment holding company, provides engineering, procurement, construction, and commissioning (EPCC) services. The company has operations in Malaysia, the United Arab Emirates, the Islamic Republic of Iran, the Republic of Indonesia, the Sultanate of Oman, and the Republic of Sudan.	<p>There are no changes since 2014.</p> <p>CalPERS has no current investment position in PECD Berhad.</p>	0	\$0
PetroChina (China)	PetroChina is reported to have no operations in Sudan. However, the relationship between PetroChina and CNPC has resulted in significant scrutiny being placed on the role PetroChina could play in CNPC's operations in Sudan.. Management at CNPC and PetroChina almost completely overlap and frequent asset transfers between the two entities, which often take place at subsidized rates, have made CNPC completely reliant on PetroChina for its financial health.	<p>There are no changes since 2014.</p> <p>CalPERS has no current investment position in PetroChina.</p>	0	\$0
Petronas (Malaysia)	According to the company's 2010 annual report, Petronas operates in Sudan through its wholly owned subsidiary, Petronas Marketing Sudan Limited (PMSL). The	<p>There are no changes since 2014.</p> <p>CalPERS has no current</p>	0	\$0

**TABLE 2:
7 Companies Being Monitored by CalPERS**

<i>Company Name (Domicile)</i>	<i>Summary of Ties to Sudan</i>	<i>Summary of Changes From 2014</i>	<i>Shares Held by CalPERS 10/31/2015</i>	<i>Market Value (\$) of Shares Held by CalPERS 10/31/2015</i>
	<p>company is involved in marketing and retailing petroleum products and lubricants in Sudan.</p> <p>Petronas through its subsidiary PMSL operates retail stores in Sudan. According to the 2010 annual report, the company expanded its retail network to 78 service stations. Furthermore, the company is engaged in marketing and retailing lubricants. PSML also provides into-plane fueling service at the Khartoum International Airport and the El-Obeid International Airport.</p> <p>In 2010, the company disclosed that it has started production in Sudan's block 3 & 7 of Nahal Base oil field. Reuters also reported in September 2010 that Petronas is working with Sudan's state owned company National Petroleum Company to boost oil recovery in 2020 by one billion barrels. Reuters also added that Petronas holds a 77 percent stake in block 8 of Northern Sudan, which has a potential gas reserves of a trillion cubic feet.</p>	investment position in Petronas.		
Sudan Telecom (Sudan)	Sudatel is a telecommunications and Internet service provider in the Sudan. The company is responsible for the construction and maintenance of Sudan's telecom infrastructure. Sudatel is more than 60% owned by the Sudanese government; the remainder being owned by private interests.	<p>There are no changes since 2014.</p> <p>CalPERS has no current investment position in Sudan Telecom.</p>	0	\$0
		Category Total:		\$0

**TABLE 3:
3 Companies Divested by CalPERS Pursuant to the Act**

<i>Company Name (Domicile)</i>	<i>Summary of Ties to Sudan</i>	<i>Summary of Changes From 2014</i>	<i>Shares Held by CalPERS 10/31/2015</i>	<i>Market Value (\$) of Shares Held by CalPERS 10/31/2015</i>
<p>Dongfeng Motor Group Company Ltd. (Hong Kong)</p>	<p>Dongfeng Motor Group includes DongFeng Automobile Co., an automobile manufacturer, whose military division is under investigation for violating the United Nations arms embargo against Sudan. In 2006, the United Nations Panel of Experts monitoring the Darfur arms embargo reported that it saw a shipment of green military trucks at Port Sudan in August 2005. It said that similar trucks were later seen on the grounds of the Sudanese Air Force in Darfur in October 2006. The panel commenced an investigation, which found that the Ministry of Finance and National Economy of Sudan had purchased 222 vehicles-212 military trucks of model EQ2100E6D and 10 chassis of model EQ1093F6D-from Dongfeng on behalf of the Ministry of Defense. Following the release of the report, Dongfeng failed to answer directly any inquiries regarding its sale of military vehicles to Sudan.</p> <p>In December 2007, Dongfeng Motor Group confirmed for MSCI that it sells products to customers in Sudan, but it said that it does not have any equity interest in companies there. It added that it supplied trucks to the Khartoum government under a contract approved by the Chinese government. On July 14, 2008, a BBC investigative program found Dongfeng Automobile Co's (a DongFeng Motor's subsidiary) military vehicles, whose plates and markings showed a post-embargo manufacture date, in the possession of a Darfur rebel group that had reportedly captured them from the Sudanese Armed Forces. Its markings, captured on film, show the truck was exported by China to Sudan in 2005, after the United Nations banned the transfer of military goods to Darfur. Aside from documenting the presence of these vehicles, witnesses confirmed that they had seen them used during a December 2007 attack on Sirba town in West Darfur.</p> <p>In a press release issued on November 18, 2008, the UN panel of experts denounced that the Sudanese government and rebel groups in Darfur have continuously and flagrantly violated the arms embargo from September 2007 to September 2008. The</p>	<p>There are no changes since 2014.</p> <p>In May 2011, the CalPERS Investment Committee approved divestment of shares in companies which continued to have activities in Sudan and was unresponsive to our engagement.</p>	<p>0</p>	<p>\$0</p>

TABLE 3: 3 Companies Divested by CalPERS Pursuant to the Act				
<i>Company Name (Domicile)</i>	<i>Summary of Ties to Sudan</i>	<i>Summary of Changes From 2014</i>	<i>Shares Held by CalPERS 10/31/2015</i>	<i>Market Value (\$) of Shares Held by CalPERS 10/31/2015</i>
	panel's report included photos of equipment reportedly from the Sudanese government that was manufactured after the 2005 embargo, including a Dongfeng Automobile military truck and 120 mm mortars and post-embargo ammunition found in the hands of the rebel Justice and Equality Movement.			
El-Sewedy Electric Co. (Egypt)	El-Sewedy Cables provides significant support to Sudan's electricity generating infrastructure. The company owns and operates a plant in Sudan that produces power transmission cables.	There are no changes since 2014. In May 2011, the CalPERS Investment Committee approved divestment of shares in companies which continued to have activities in Sudan and was unresponsive to our engagement.	0	\$0
Mangalore Refinery & Petrochemical Ltd. (India)	Mangalore Refinery is a majority-owned publicly traded subsidiary of the Indian Oil & Natural Gas Corporation Ltd (ONGC). According to international news sources, Mangalore Refinery itself is involved in oil-related projects in Sudan. According to Reuters in 2007, and the United News of India reported on Oct. 28, 2008, the company refined crude oil from Sudan that is exported to India. In total, the oil processed by Mangalore Refining makes up 15 percent of the total oil produced by ONGC in Sudan.	There are no changes since 2014. In May 2011, the CalPERS Investment Committee approved divestment of shares in companies which continued to have activities in Sudan and was unresponsive to our engagement.	0	\$0
		Category Total:		\$0

Appendix A:

Definitions

“Board” – The Board of Administration of the California Public Employees’ Retirement System.

“Business operations” – Maintaining, selling, or leasing equipment, facilities, personnel, or any other apparatus of business or commerce in Sudan, including the ownership or possession of real or personal property located in Sudan.

“Substantial action” – A boycott of the government of Sudan, curtailing business in Sudan (until such time that the government of Sudan halts the genocide in Darfur for 12 months as determined by both the Department of State and the Congress of the United States or the United States revokes its current sanctions against Sudan) or selling company assets, equipment or real and personal property located in Sudan, or undertaking significant humanitarian efforts in the eastern, southern, or western regions of Sudan.

Appendix B:

Requirements of the Sudan Act

The implementation steps and requirements specified within the Act are:

1. Identification of companies, through the use of a research firm, with activities in the specified areas.
2. Notification to such companies that their activities may make them subject to divestment unless they take “substantial action” within 90 days.
3. Quarterly determination of which companies may be subject to “divestment” due to lack of “substantial action” or progress toward it.
4. Monitoring and reviewing at 90-day intervals the extent to which companies are making sufficient progress toward “substantial action.”
5. Upon determination that a company is subject to “divestment”, making no further investments in such company.
6. Determination that actions to be taken are consistent with the Board’s fiduciary responsibilities as established in the California Constitution, article 16, section 17.
7. Liquidation within 18 months of investments determined to be subject to “divestment.”
8. Report annually to the California Legislature regarding the status of CalPERS compliance with the Act.