



# **Bank of South Sudan (BSS)**

## **GUIDELINE ON PROMPT CORRECTIVE ACTION**

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## PART I

## PRELIMINARY

### 1.1 Title

Guideline on Prompt Corrective Action (*hereafter referred to as PCA*)

### 1.2 Application

All Financial institutions licensed under the Banking Act, 2012.

### 1.3 Authorization

This Guideline is issued under Section 154 of the Banking Act, 2012 which empowers the Bank of South Sudan (BSS) to issue Guidelines/Regulations to be adhered to by Financial Institutions in order to maintain a stable and an efficient banking and financial system.

### 1.4 Definitions

Terms used in this Guideline are as defined hereunder:

**“Banking Act”** means the Banking Act, 2012

**“CAMELS”** refers to an acronym for Capital Adequacy, Asset Quality, Management, Earnings, Liquidity and Sensitivity.

**“Capital Restoration Plan”** means a plan to restore an institution to capital adequacy pursuant to Sections 113 and 114 of the Banking Act, or in the case of issues unrelated to capital such as violations of law or regulations, a plan to resolve all deficiencies to the satisfaction of the Bank of South Sudan. A capital restoration plan can be implemented voluntarily by an institution under the oversight of its Board of Directors, or its implementation can be mandated by the BSS.

**“Capital Compliant”** An institution shall be considered capital compliant if it fully meets its capital requirements as stipulated under Section 17 of the Banking Act.

**“Certificate of Directors”** means a Certificate of Directors’ awareness confirming that the Board has read and understood the transmittal letter and the on-site examination report

**“Commitment Letter”** means a formal, legal and binding document that is issued to a loan applicant by a lender.

“**Final Agreement**” means an agreement made between the Bank of South Sudan, and the Board of Directors of a *significantly undercapitalized* institution for the purpose of recapitalizing the institution in a timely manner.

“**Financial Institution**” means a deposit taking banking institution (hereafter referred to as ‘institution’ or ‘bank’).

“**Memorandum of Understanding**” means an expression of intention which is not binding on the parties and does not hinder the parties from bargaining with third party.

“**PCA Order**” is a written Order by the Bank of South Sudan to an institution stipulating the actions and violations from which the institution must cease. The remedial actions that the institution shall take include:

- (a) Adoption of a Capital Restoration Plan; and
- (b) Strengthening the Board of Directors, and Management.

“**Resolution Specialist**” means a specialist who is responsible for assisting with the resolution of an institution’s inquiries that require professional consideration.

“**Rating 1: Strong**” means a bank is sound in every respect.

“**Rating 2: Satisfactory**” means a bank is fundamentally sound but with moderate weaknesses.

“**Rating 3: Fair**” means a bank shows financial, operational or compliance weaknesses that give cause for supervisory concern.

“**Rating 4: Marginal**” means a bank shows some serious financial, operational and managerial weaknesses that could impair its future viability.

“**Rating 5: Unsatisfactory**” means a bank shows critical financial weaknesses and there is high possibility of failure in the near future.



**“Significant Participant”** means a person having a significant participation in an enterprise.

**“Significant Undercapitalized”** means a bank having a capital level, in any category, of less than two-thirds of the level required by this Banking Act and /or Regulations, but not “critically undercapitalized”.

**“Undercapitalized bank”** means a failure by a bank to meet any required minimum capital level, in any category, pursuant to this Banking Act and /or Regulations.

**“Viable”** - For purposes of implementing this Guideline, an institution is considered “viable” if, in the sole opinion of the Bank of South Sudan, it meets all of the following criteria:

- (a) The business of the institution is being conducted in a lawful manner.
- (b) The institution is not significantly undercapitalized; that is, its solvency is not threatened, or if the institution is undercapitalized (but not significantly undercapitalized), then it is projected to meet its minimum capital requirement within a reasonable period of time, based upon an approved Capital Restoration Plan.
- (c) The institution is able to meet its financial obligations when they fall due; that is, it neither has suspended payment nor is expected to miss a payment.
- (d) There is no evidence of reckless or fraudulent conduct, other malpractices, or public pronouncements that clearly adversely impact the financial standing of the institution.
- (e) The business of the institution is being conducted in compliance with the Banking Act and/or Regulations, and in a manner which is in the best interest of its depositors and members of the public.

## **PART II                      STATEMENT OF POLICY**

### **2.1 Purpose**

This Guideline has been prepared pursuant to Sections 113, 114 and 115 of the Banking Act, to assist financial institutions that are facing difficulties to take Prompt Corrective Action, so as to avoid failure or instability in the banking sector.

## **2.2 Scope**

This Guideline shall apply to all financial institutions licensed to transact business under the Banking Act. It highlights the corrective actions that can be taken, depending on the extent of the difficulties an institution is experiencing. This is meant to restore financial conditions of an institution, and to protect the interest of depositors from systemic risks.

## **2.3 Responsibility**

It is the responsibility of the Board of Directors and Senior Management of an institution to ensure that the provisions of this Guideline are adhered to by the institution, and to ascertain that the affected institution improves its capital position, management, and /or business methods.

# **PART III BACKGROUND**

## **3.1 Prompt Corrective Action**

Prompt Corrective Action (PCA) is a framework of supervisory actions, of increasingly severe enforcements that are applied to financial institutions that regularly violate laws and regulations, as well as fail to meet prudential guidelines, or in other ways operate in an unsafe and unsound manner. These actions consequently become increasingly severe as an institution falls within the lower capital categories. Some supervisory actions associated with PCA are mandatory; that is, the actions immediately apply to an institution that is classified within a particular category. Other supervisory actions associated with PCA that are not mandatory are imposed by the Bank of South Sudan, through a series of remedial actions to be undertaken by an institution to address problems while these are still small enough to be manageable. And, an institution shall be subject to PCA whenever any or all of the following occur when:

- (1) It fails to meet the capital requirements prescribed under Section 65 of the Banking Act;
- (2) The CAMELS composite rating is less than “3”, and Management component rating of less than “3”;
- (3) A serious supervisory concern has been identified that places the institution at more than normal risk of failure, in the opinion of the BSS. Such concerns could include, but not limited to, any one or a combination of the following:
  - (a) Finding of unsafe and unsound activities that could adversely affect the interest of depositors and/or creditors;



- (b) Finding of repeated violations of law, regulations or the continuing failure to comply with BSS the Directives;
- (c) Reporting significant errors that materially misrepresent the institution's financial conditions.
- (d) Rating high of the institution's overall composite risk, while the quality of risk management is weak.

### **3.2 The Purpose of Prompt Corrective Action**

The purpose of enforcing Prompt Corrective Action is to ensure that financial institutions under the purview of the BSS shall:

- (1) Comply with the Banking Act, Regulations and Guidelines issued.
- (2) Conduct business in a safe, sound and authorized manner; thus, enhancing the efficiency of the financial sector.
- (3) Maintain a sound financial condition.
- (4) Protect the reputation and solvency of the institution, and the interest of depositors, banking system, and the public.
- (5) Reduce dependence on the regulator for bailouts.
- (6) Provide effective supervisory remedies that minimize losses to the Deposit Insurance Fund.

### **3.3 Supervision of Financial Institutions**

As a regulator the Bank of South Sudan shall undertake the following:

- (1) Supervise all financial institutions, using both off-site and on-site supervisory methods, meetings with management, and its powers of enforcement.
- (2) Conduct off-site supervision which entails applying financial monitoring and analysis techniques, including indicators of financial soundness which are based on the CAMELS rating system.
- (3) Conduct an on-site examination of a financial institution in order to appraise the quality and competence of the institution's management, so as to attain an in-depth understanding of the institution's risk profile and operations.



- (4) Hold meetings with the Management and /or the Board of Directors as may be deemed necessary, based on the results of off-site financial monitoring, or at the conclusion of on-site examination, or for any supervisory reason.

## **PART IV                      SPECIFIC REQUIREMENTS**

The Board of Directors of an institution shall ensure that the management of an institution shall, at all times adhere to the prescribed requirements for capital adequacy, as set out in Section 101 of the Banking Act and the relevant prudential and risk management guidelines issued thereunder. Thus, a Prompt Corrective Action to be undertaken by a financial institution shall be dependent upon Capital Adequacy, CAMELS risk rating as explained underneath:

### **4.1      Financial Institution rated “Strong” or “Satisfactory”**

For a financial institution rated “Strong” or “Satisfactory”, with CAMELS Composite Rating “1”, or CAMELS Composite Rating “2”, and is Capital Compliant, the BSS may take the following actions:

- (1) An Extra-Ordinary Meeting of the Board of Directors shall be held within 30 days, or such other time that the BSS may approve from the date of the report of on-site examination is released.
- (2) Within 15 days from the date of the Board Meeting, the institution shall take the following actions:
  - (a) Respond to the on-site examination report.
  - (b) Furnish the BSS with a signed a copy of Certificate of Directors’ awareness, confirming that the Board has read and understood the transmittal letter and the on-site examination report.
  - (c) Commit to ensuring that all required actions stipulated in the on-site examination report shall be taken in a timely manner.

#### **4.1.1    The Commitment Letter**

If the Board of Directors of an otherwise *strong* or *satisfactorily* rated institution delays in complying with the BSS directive for corrective action, the BSS may, in addition to the Board

Resolution, direct the institution to provide a Commitment Letter. In this case, the response from the institution is to include a certified copy of an official Board Resolution stating that:

- (1) The Board of Directors has read the report of on-site examination, the transmittal letter from the Bank of South Sudan, response from the Chief Executive Officer (CEO)/Managing Director (MD), and the proposed Commitment Letter;
- (2) The Board approves the CEO's/ MD's response and the proposed Commitment Letter;
- (3) The Board agrees to and has adopted and signed the Commitment Letter;
- (4) The Board Resolution, together with the Certificate of Awareness and Commitment Letter, be signed by each Director and the CEO's / MD's response must be sent to the BSS within 15 days from the date of the Board Meeting.
- (5) The Board commits to ensuring that all required action shall be taken in a timely manner.

#### **4.2 Financial Institution rated "Fair"**

For a financial institution with CAMELS Composite Rating of "3"; and Capital Compliant, the following shall be undertaken:

##### **4.2.1 Memorandum of Understanding**

- (1) The institution's Board of Directors and Senior Management shall be required to enter into a Memorandum of Understanding with the Bank of South Sudan, wherein the Board gives a commitment to undertake to developing, adopting and implementing prompt corrective measures to improve the management, business methods, compliance and financial conditions of the institution.
- (2) The Memorandum of Understanding shall be presented to the Board of Directors within 30 days of the inspection report being released, and that a special Board Meeting shall be called, if necessary, for the Board to respond to the Bank of South Sudan, within 15 days from the date of the Board Meeting.

##### **4.2.2 The Board Resolution**

After the Board Meeting, the Board of Directors is to issue to the BSS a certified copy of an official Board Resolution stating that:

- (1) The Board of Directors has read the report of the on-site examination, the transmittal letter from the Bank of South Sudan, the CEO's/MD's response, and the Memorandum of Understanding.



- (2) The Board approves the CEO's/MD's response.
- (3) The Board agrees to and has adopted and signed the Memorandum of Understanding.
- (4) The Board has directed the institution's officers to implement the provisions of the Memorandum of Understanding, and commits to ensuring that the institution shall comply with all provisions in the established prompt timeframes.
- (5) The Board Resolution, a Certificate of Awareness, and the Memorandum of Understanding shall be signed by each Director and the CEO's/MD's response must be submitted to the Bank of South Sudan, within 15 days from the date of the Board Meeting.

#### **4.2.3 Supervisory Actions**

- (1) Once the Memorandum of Understanding has been signed, throughout the period that it is in effect, the Bank of South Sudan shall continue to monitor the institution, using specialized reporting and off-site surveillance. The regular annual on-site examinations shall be supplemented with periodic interim examinations that target the institution's specific problem areas, aimed at verifying the institution's adherence to the provisions of the Memorandum of Understanding.
- (2) If the institution's financial conditions continue to deteriorate in spite of the increased supervisory attention, then additional action may be taken as the Bank of South Sudan may deem fit. Either the Memorandum of Understanding could be amended to strengthen its provisions, or a PCA Order be issued to the institution.
- (3) On a consecutive on-site examinations, an institution shall be assigned a Composite Rating of "4", instead of a "3", when:
  - (a) A Memorandum of Understanding has not been adopted as requested by the BSS;
  - (b) A Memorandum of Understanding has been adopted but not complied with, including the failure of the institution to meet any target, adopt any measure, or report any result in the time frame required; and/or
  - (c) The institution's capital or other measures of its financial condition has significantly deteriorated since the previous examination.

#### **4.3 Financial Institution rated "Marginal"**

For a financial institution with CAMELS Composite Rating "4" and/or Undercapitalized the following shall be undertaken:

#### **4.3.1 Assign a Resolution Specialist**

The Bank of South Sudan shall assign to an institution a Resolution Specialist, an official of the BSS, who is designated to supervise the *Marginal* and *Unsatisfactory* (Section 4.4 of this Guide) financial institution.

#### **4.3.2 Determine Whether an Institution is Viable**

To whether or not an institution is “viable”, the Resolution Specialist shall make the following initial determinations:

- (1) An institution shall be deemed “viable” if it meets all of the prescribed criteria outlined in Section 4.1, and if it is non-viable the institution shall be rated “Unsatisfactory” or “5” for purposes of using the Bank of South Sudan’s powers of enforcement, as outlined in Section 4.4 of this Guideline.
- (2) An institution that does not meet the prescribed criteria as outlined in Section 4.1 is deemed non-viable and shall be rated “Unsatisfactory” or “5”, for purposes of using the Bank of South Sudan’s powers of enforcement, as outlined in Section 4.4 of this Guideline.

#### **4.3.3 Develop a Supervisory Strategy**

As soon as an institution receives a rating of “4” or “5”, it shall be deemed to be “non-viable”, and the BSS will develop a supervisory strategy, which shall require the institution to:

- (1) Resolve its problems;
- (2) Restore the institution’s viability to financial and managerial health through prompt corrective actions; and
- (3) Enforce compliance with the Banking Act, Regulations, and Directives of the BSS.

#### **4.3.4 Issue a PCA Order**

- (1) In accordance with the provisions stipulated in Sections 113 and 114 of the Banking Act, the BSS shall issue a PCA Order to an institution and/or one or more individual persons, including a Director, Officer, Employee, Significant Participant, Associate, or other person(s), and the Order shall specify the target(s) that can be an institution, and/or one or more individual persons, including a Director, Officer, Employee, Significant Participant, or Associate.
- (2) The legal ground(s) on which the Bank of South Sudan is enforcing compliance shall include:



- (a) An institution or person who conducts its business in a manner contrary to the provisions of the Banking Act, or any Regulations made there under, or any other Act.
  - (b) The institution or person who conducts its business in a manner detrimental to, or not in the best interests of, its depositors or members of the public.
  - (c) The institution which is undercapitalized or significantly undercapitalized.
- (3) The actions and violations from which an institution or person should cease.
- (4) State affirmative actions which the institution or person shall take to correct conditions at the institution. At a minimum, this could include:
- (a) The Board of Directors submitting a Capital Restoration Plan to the Bank of South Sudan for approval within 45 days of the effective date of the Order.
  - (b) After the Capital Restoration Plan is approved by the Bank of South Sudan, the Board of Directors shall adopt the plan and take all necessary actions, to ensure that the institution's Senior Officers promptly and completely implement the Capital Restoration Plan.
  - (c) New provisions should be incorporated in order to address the purpose of strengthening the Board of Directors and Management of the institution, including requirements to reconstitute the Board in accordance with the First Schedule of the Banking Act.
  - (d) All requirements should be accompanied by:
    - (i) Appropriate break-down of the Capital Restoration work plan;
    - (ii) Names of person/ persons responsible for implementation and compliance;
    - (iii) Specific allocation of adequate resources; and,
    - (iv) Specific measurable outcomes.
- (5) As part of the supervisory strategy developed for an institution, if deemed necessary, the institution shall order the suspension or removal from office any person who has engaged in, or is about to engage in, or is otherwise responsible for actions or violations that are the basis of the Order, or for violations of or non-compliance with a Memorandum of Understanding, or directive from the Bank of South Sudan, the Bank of South Sudan (BSS) shall appoint a Management Advisor in a manner set out in Section 4.3.5 of this



Guideline, to advise the institution on the actions it needs to take to address the identified deficiencies. Besides, the Banking Act requires the Bank of South Sudan to impose on an “Undercapitalized” institution some of the following additional provisions:

- (a) Restrict, suspend or prohibit the payment of dividends by the institution.
  - (b) Prohibit the conversion of any profits of the institution into capital.
  - (c) Direct the suspension or removal of any Officer, involved in such conducts, from the service of the institution.
  - (d) Require the institution to reconstitute its Board of Directors, in accordance with the criteria set out in the First Schedule of the Banking Act.
  - (e) Withhold branch or other corporate approvals with respect to such institution.
  - (f) Undertake more frequent inspections of the institution.
  - (g) Order the institution to submit to the Bank of South Sudan, within forty-five (45) days, a Capital Restoration Plan to capital adequacy as prescribed in Sections 113 and 114 or, in the case of issues unrelated to capital, a plan to resolve all deficiencies to the satisfaction of the Bank of South Sudan.
  - (h) Prohibit the institution from awarding any bonuses, or increments in salary, emoluments, and other benefits to Directors and Officers of the institution.
  - (i) At the expense of the institution, appoint a person suitably qualified and competent, in the opinion of the Bank of South Sudan, to advise and assist the institution in designing and implementing a Capital Restoration Plan, or other corrective action plan under paragraph (g) above, and the person thus appointed shall regularly report to the Bank of South Sudan on the progress of the plan.
  - (j) Impose restrictions on growth of assets or liabilities of the institution as it deems fit.
  - (k) Restrict the rate of interest on savings and time deposits payable by the institution to such rates as the Bank of South Sudan shall determine; or
  - (l) Order the institution to take such other actions that may be deemed necessary to rectify a capital deficiency, or other weakness.
- (6) If an institution is a member of a group, and if another member of that group (other than the institution) is a cause (in whole or in part) of the actions or violations that are the basis of the Order, or for violations of or non-compliance with a Memorandum of



Understanding or order from the Bank of South Sudan, then consideration should be given for including one or more of the following provisions into the order:

- (a) Suspend any further investment by the institution in the affected company or entity;
  - (b) Suspend the exercise of a non-operating holding company's control of the institution; and/or
  - (c) Suspend transactions between any associated entity and the institution.
- (7) Set forth an institution's reporting obligations to the Bank of South Sudan regarding compliance with the Order, and the Capital Restoration Plan. A program of meetings shall be planned with the Board of Directors, Senior and/or other Officers, and the institution's independent Auditors (as deemed necessary through the supervisory strategy process) for the purpose of facilitating the Bank of South Sudan's supervisory follow-up with the Capital Restoration Plan.
- (8) The BSS Administrative and Financial Penalties, 2011.
- (9) State any other obligations of the institution or person (specify please).

#### **4.3.5 Require a Capital Restoration Plan**

The Capital Restoration Plan is a written document, which shall outline the steps that the institution shall take to become adequately capitalized. In order for the Plan to be considered adequate for purposes of receiving the Bank of South Sudan approval, it must cover each of the following elements:

- (1) Apply risk-containment policies to reduce and limit the institution's overall risk;
- (2) Specify targeted actions, which the institution is required to address and rectify identified problems and other irregularities in its capital position, management and /or business methods, in compliance with the Banking Act and Regulations, to the satisfaction of the Bank of South Sudan;
- (3) Identify Senior Officers and departments within the institution that are responsible for the implementation of each specific action;
- (4) Establish reasonable but prompt time-frames for the implementation based upon realistic assumptions likely to succeed in the bank's capital restoration plan;
- (5) Establish the level of capital to be attained, during each year in which the plan is in effect;

- (6) Disclose the methods that shall be used by the institution's Board Of Directors in overseeing the implementation of the plan by Senior Management; and,
- (7) Require regular reporting to the Board of Directors and the Bank of South Sudan, on the progress made by the institution.

#### **4.3.6 Appoint a Management Advisor**

For undercapitalized financial institution, with a composite CAMELS rating of "4" (or "5"), and for reasons other than undercapitalization:

- (1) The Bank of South Sudan shall appoint a Management Advisor to advise and assist the institution in designing and implementing the Capital Restoration Plan, and other plans for corrective action.
- (2) Financial institutions should note that, the actual role of a Management Advisor shall vary from one institution to the other, depending upon particular needs and problems of each financial institution. That is, the terms-of-reference for the position of the Management Advisor would be customized on a case-by-case basis.
- (3) In a situation where an institution's problems are isolated, and its underlying financial soundness is not threatened, the terms-of-reference for the Management Advisor may be quite short and include only a few responsibilities.

#### **4.3.7 Strengthen the Board of Directors and Senior Management of an Institution**

- (1) The Board of Directors and Senior Management of an institution should be strengthened by adding new persons, with relevant experiences deemed relevant or who are experts in specific problems confronted by the institution. All persons so appointed should be deemed professionally suitable and morally bound to hold such positions, and their appointment should be subject to the approval of the BSS.
- (2) In very urgent and serious cases when the Board of Directors of an institution is unwilling, unable, or slow to act, the Bank of South Sudan may suspend, remove or replace the person /persons who:
  - (a) Caused, contributed to, participated in, assented to, did not correct, or caused to worsen the institution's undercapitalization (or significant undercapitalization), violations of law, or other problems for which the institution was assigned the rating of "4" (or "5").
  - (b) Is not considered competent to implement the Capital Restoration Plan;



- (c) Obstructed an Auditor in the proper performance of his/her duties;
- (d) Obstructed a duly-authorized examiner of the Bank of South Sudan in a lawful examination of the institution.
- (e) With intent to deceive, made a false or misleading statement or entry, or omitted a statement or entry that should have been made in a book, account, report or statement of the institution.
- (f) Committed gross negligence or intentional wrong in the course of his/her duties.
- (g) Failed to take all reasonable steps to secure compliance by the institution with any requirement of the Banking Act, regulations, order, or Capital Restoration Plan.
- (h) Engaged in an act of, or convicted of an offense involving dishonesty, fraud, or money-laundering.
- (i) In cases where an institution is rated "4" for the first time when it previously was rated "3" therefore, it shall be subject to new terms of a Memorandum of Understanding. In such a case, the order issued by the Bank of South Sudan to the institution should retain and bring forward the provisions of the previous Memorandum of Understanding that remain relevant (including those with which the institution has only a short-term record of compliance to date).

#### **4.3.8 Supervisory Follow-up**

- (1) A financial institution's adherence to the required time-frames and reporting requirements shall be carefully monitored and enforced, and through follow-up if necessary, by a Resolution Specialist, who shall regularly monitor the financial institution's:
  - (a) Capital and financial condition;
  - (b) Compliance with the PCA Order; and
  - (c) Implementation of, and adherence to, the Capital Restoration Plan.
- (2) More frequent on-site examinations shall be undertaken, either comprehensive or targeted in scope, in order to:
  - (a) Assess compliance with the PCA Order and Capital Restoration Plan;
  - (b) Ensure that the Bank of South Sudan can rely upon the institution's special compliance reports; and
  - (c) Assess the current conditions of the institution.



- (3) During the period of time that an institution is operating under an Order, the Bank of South Sudan shall not accept from the institution:
  - (a) Applications to open a new branch;
  - (b) Engage in new activities;
  - (c) Assume new risks; or
  - (d) Make capital distributions (including the payment of dividends).
- (4) In certain instances, an Order may require an institution to receive the Bank of South Sudan's approval prior to making certain investments, including those above a certain amount, or enter into some other transactions.
- (5) When the results obtained from the Resolution Specialist's off-site monitoring, and from subsequent on-site examinations of the institution warrant, the Bank of South Sudan shall recommend updates, revisions, and more stringent enforcement measures to the supervisory strategy and Order.
- (6) When there is reasonable cause to believe that:
  - (a) The Board of Directors and/or Officers of an institution are unwilling and unable to effect compliance with, or to continue to operate pursuant to, the provisions of the order and/or Capital Restoration Plan; or
  - (b) The institution has become, or is expected to become within six months, significantly undercapitalized, then the institution shall be rated "5" ("Unsatisfactory") and be subject to the provisions of Section 34 of the Banking Act, "Powers of the Bank of South Sudan to Intervene in Management."

#### **4.4 Financial institutions Rated "Unsatisfactory"**

For financial institutions rated "Unsatisfactory": With CAMELS Composite Rating of "5" and "Undercapitalized", or "Significantly Undercapitalized"; and CAMELS Composite Rating of "4" and Deemed "Not Viable", the BSS may take the following action:

##### **4.4.1 Assign an Institution to a Resolution Specialist**

- (1) An institution which receives a Rating of "5" without having previously exhibited warning signs of serious problems (for example, when criminal or fraudulent acts are first exposed), and has not yet been assigned to a Resolution Specialist shall be assigned one at this time.





- (2) For an institution that was previously rated “3” and is now rated “5” shall, subject to a Memorandum of Understanding, be assigned to a Resolution Specialist, who shall revise the supervisory strategy for the institution, which shall now include much more stringent features due to the institution’s significant drop in rating (from “3” to “5”), and the institution shall now be subject to an Order by the Bank of South Sudan.

#### **4.4.2 Issue a PCA Order to, or Strengthen the PCA Order of, the Institution**

- (1) In the case of an undercapitalized institution that has remained stable with a “5” rating while registering no significant improvement in its capital position, or in the case of a “5”-rated institution which has been downgraded from a previous “4” rating, the Bank of South Sudan shall re-assess both the supervisory strategy (including the order), and the abilities and attitude of the institution’s Board of Directors and Officers. Some of the factors to be considered in carrying out this assessment shall include whether or not:
  - (a) The provisions of the Order should be strengthened or new provisions added.
  - (b) The provisions of the Capital Restoration Plan should be amended.
  - (c) Any Officer should be removed or suspended from office.
  - (d) Any other employee should be terminated.
  - (e) Any new competent person(s), familiar with the business of the financial institution should be appointed to its Board of Directors.
  - (f) The responsibilities of the Management Advisor should be revised or expanded.

#### **4.4.3 Supervisory Follow-up**

- (1) When a “5”-rated institution that is “Undercapitalized” shows progress in implementing its Capital Restoration Plan, specifically showing improvement in its capital position, and compliance with the Order of the Bank of South Sudan, then the Bank of South Sudan shall continue to closely monitor the institution through off-site and on-site supervision, in accordance with established procedures for a “Marginal” and “Unsatisfactory” financial institution.
- (2) A “5”-rated institution shall be presented with a Final Agreement by the Bank of South Sudan if it fails to comply, for whatever reason, with either a Capital



Restoration Plan, or an Order of the Bank of South Sudan and/or its capital declines to a level where it becomes “Significantly Undercapitalized.”

- (3) Other circumstances that may lead to a Final Agreement between the Bank of South Sudan and an institution being drawn up is when one, or more of the following additional criteria contained in the Banking Act obtained:
- (a) The institution failed to meet a financial obligation when it fell due, including an obligation to pay any depositor;
  - (b) A petition has been filed, or a resolution proposed, for the winding-up of the institution;
  - (c) If the Auditor of an institution makes a report to the Bank of South Sudan under the provision of Section 24, Subsection 4 of the Banking Act, which is required when:
    - (i) There has been a serious breach of or non-compliance with the Banking Act, the Bank of South Sudan Act or the Regulations, Guidelines or other matters prescribed by the Bank of South Sudan;
    - (ii) A criminal offence involving fraud or other dishonesty has been committed by the institution or any of its Officers or employees;
    - (iii) Losses have been incurred which reduce the core capital of the institution by fifty percent (50%) or more;  
Serious irregularities have occurred which may jeopardize the security of depositors or creditors of the institution; or
    - (iv) The Auditor is unable to confirm that the claims of depositors and creditors of the institution are capable of being met out of the assets of the institution.
  - (d) There is evidence of reckless or fraudulent conduct, or other malpractices, or public pronouncements that clearly adversely impact the financial standing of the institution, or the BSS has become aware of another fact or circumstance which warrants making the institution subject to the provision of Section 34 of the Banking Act.
  - (e) There is evidence that the institution knowingly engaged in serious criminal or fraudulent acts that are likely to cause insolvency, substantial dissipation of assets or earnings, or may otherwise weaken the institution’s condition or seriously prejudice the interests of depositors.





- (f) The institution is part of a group, the complex structure of which prevents the receipt of information necessary for supervision on a consolidated basis.
- (g) The institution ceases to do business in South Sudan.
- (h) If the institution is significantly undercapitalized; or
- (i) If the institution fails to:
  - Submit a capital restoration plan or a plan to resolve all deficiencies as directed under Section 113; or
  - Add more capital, neglects or refuses to comply with an Order or to implement a plan of action.

#### **4.4.4 The Final Agreement**

- (1) Entering into a Final Agreement represents an institution's last chance to voluntarily recapitalize and to rectify its other deficiencies.
- (2) The Final Agreement gives the institution a three-month period in which to finalize the plans to consummate its recapitalization, and to rectify its other deficiencies.
- (3) Entering into the Final Agreement represents the institution's last chance to voluntarily:
  - (a) Raise new capital;
  - (b) Merge with another institution;
  - (c) Agree to be acquired by another institution or investor;
  - (d) Conclude another tangible, reasonable, and timely solution to its problems; or
  - (e) Demonstrate efforts of good faith to do so.

#### **4.4.5 Appoint a Manager to Assume Control of an Institution**

- (1) In the event that an institution's Board of Directors refuses to sign the Final Agreement, delays in signing it, or makes changes to it that are unacceptable to the Bank of South Sudan, then the Bank of South Sudan shall, without delay, start the process of revoking the institution's license in accordance with Section 21 of the Banking Act, and the BSS shall appoint a receiver for the bank pursuant to Section 128 of the Banking Act.
- (2) At the expiration of the three-month period covered by the Final Agreement (or sooner, if there is an emergency as per Section 115 of the Banking Act, if the capital of the institution has not been restored to a legally-compliant level, then the Bank of South

Sudan shall appoint a Manager to assume the management, control, and conduct of the affairs and business of the institution. The term of the Manager shall last for a three month period, unless the appointment is extended by the High Court for a good cause shown by the Bank of South Sudan.

- (3) A person appointed as Manager of an institution, on behalf of the BSS, must be highly competent, experienced and reputable, and must have been deemed to meet the Bank of South Sudan's "fit and proper" standards of the First Schedule to the Banking Act.

#### **4.4.6 Plan for the Take-over of the Institution**

The Bank of South Sudan shall issue an order that states:

- (1) The effective date and time of the Order;
- (2) The appointment of a Manager, the term of such an appointment, and the powers and responsibilities of the Manager;
- (3) The removal and suspension of identified Officers, employees, and/or other persons;
- (4) The appointment of any persons to the Board of Directors;
- (5) A restriction on engaging in new foreign exchange business;
- (6) A prohibition on the institution engaging in new off-balance sheet transactions;
- (7) The unfulfilled requirements of the Bank of South Sudan's existing Order to the institution, and of the Capital Restoration Plan.
- (8) Any other information that the BSS deems appropriate, or necessary, to fulfil the purpose of the Banking Act.

#### **4.4.7 Terminate the Appointment of a Manager**

- (1) By the end of the three-month period after assuming control of an institution, the Manager shall be in a position to make a report to the Bank of South Sudan, regarding the prospects for recapitalizing or restructuring the institution. If there are such prospects for recapitalization and/or restructuring (including through sale of the institution) available, then the Manager should also report to the Bank of South Sudan on the feasibility and timeliness of those prospects as compared to the estimated cost of liquidation. The Manager may recommend, which of the options best protects the interest of depositors, creditors and the public from the following:





- (a) The institution should be recapitalized or restructured and its other problems eliminated or rectified in a transaction that;
    - (i) Is equitable
    - (ii) Involves new funds to ensure capital-compliance and adequate liquidity
    - (iii) Guarantees that ratios shall be achieved
    - (iv) Provides for the removal of persons responsible for the circumstances which necessitated the appointment of the Manager
    - (v) Include such other conditions as are necessary to prevent a recurrence of the conditions that gave rise to the appointment of the Manager.
  - (b) The institution is in such a condition (capital or otherwise) that its continuance in the business would involve probable loss to its depositors and other creditors; therefore, the Board of the Deposit Insurance Fund should be appointed as the liquidator of the institution; or
  - (c) There is no feasible prospect for the recapitalization or restructuring of the institution; therefore, the Board of the Deposit Insurance Fund should be appointed as the liquidator of the institution.
- (2) If a recapitalization plan is recommended, and if the Bank of South Sudan concurs, then an application shall be prepared and presented to the High Court, showing good cause as to why the period of the appointment of the Manager should be extended beyond the original three-month period, and reasonable estimate of time should be provided for the extension.
- (3) If, instead, the Manager recommends that the institution be liquidated, then the Bank of South Sudan shall appoint a liquidator of the institution.

## **PART V                      REMEDIAL MEASURES**

The Bank of South Sudan may pursue any or all remedial actions provided for under Sections 115, 116 of the Banking Act.



**PART VI**

**EFFECTIVE DATE**

Issued Under my Hand on this 20 day of 8 in the Year 2018.

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**Hon. Dier Tong Ngor**  
**Governor and Chairman Board of Directors**  
**Bank of South Sudan**