

THE LAWS OF SOUTH SUDAN

BANK OF SOUTH SUDAN ACT, 2011

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Bank of South Sudan Act, 2011

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Bank of South Sudan Act, 2011

In accordance with the provisions of Article 55(3)(b) read together with Article 85(1) of the Transitional Constitution of the Republic of South Sudan, 2011, the National Legislature, with the assent of the President of the Republic of South Sudan hereby enacts the following:

CHAPTER I

Preliminary Provisions

1. Title and Commencement

This Act shall be cited as “Bank of South Sudan Act, 2011” and shall come into force on the date of its signature by the President.

2. Repeal and Saving

Any existing legislation in South Sudan, that governs the same matters as set forth in this Act, are hereby repealed or cease to operate in South Sudan; *provided that*, all proceedings, orders and regulations taken or made there under, except to the extent they are cancelled by or are otherwise inconsistent with the provisions of this Act, shall remain in force or effect, until they are repealed or amended in accordance with the provisions of this Act.

3. Purpose

The purpose of this Act is to provide for the establishment and governance of the Bank of South Sudan and any matters or issues related thereto.

4. Authority and Application

This Act is drafted in accordance with the provisions of Article 182(1) of the Transitional Constitution of the Republic of South Sudan, 2011 which provides for the establishment of a central bank in the Republic of South Sudan to be known as the Bank of South Sudan.

Interpretation

In this Act unless the context otherwise requires, the following words and expression shall carry the meaning assigned to them respectively—

“**National Legislature**” means the National Legislative Assembly and Council of States;

“**Auditor General**” means the Auditor General of South Sudan;

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“bank” means a legal entity engaging in the business and receiving of money deposits or other repayable funds from the public and making credits for its own account, and licensed to do business in South Sudan;

“Bank” means Bank of South Sudan;

“banknote” includes any instrument used, or intended to be used as money or as the equivalent of money, issued under lawful authority in South Sudan or elsewhere;

“Board” means the Board of Directors of the Bank;

“capital” of the Bank means the excess of the value of the Bank’s assets over its liabilities;

“cheque cashing” means receiving compensation for taking payment instruments or stored value, other than traveller’s cheques, in exchange for money, payment instruments, or stored value delivered to the person delivering the payment instrument or stored value, including, but not limited to:

- (a) the presentation to a money service provider by a customer of a cheque payable to the order of the customer, in exchange for cash of equivalent or lesser amount;
- (b) the presentation to a money service provider by a customer of a cheque payable to the order of the money service provider, in exchange for cash of equivalent or lesser amount; or
- (c) the presentation by a money service provider to a customer of a cheque payable to the order of the customer, to be exchanged for cash of equivalent or lesser amount at a credit institution or any other institution where the money service provider maintains a current account the provision by a money service provider to a customer of a reference number, the presentation of which number and personal identification at a credit institution or any other institution where the money service provider maintains a current account entitles the customer to receive cash of a predetermined amount;

“counterfeit money” includes:

- (a) a false coin or false paper money that resembles or is taken for a current coin or current paper money;
- (b) a forged banknote or forged blank banknote, whether complete or incomplete;
- (c) a genuine coin or genuine paper money that is prepared or altered to resemble or pass for a current coin or current paper money of a higher denomination;
- (d) a current coin from which the milling is removed by filing or cutting the edges and on which new milling is made to restore its appearance;
- (e) a coin cased with gold, silver or nickel, that is intended to resemble or pass for a current gold, silver or nickel coin; and
- (f) a coin or a piece of metal or mixed metals that is washed or coloured by any means with a wash or material capable of producing the appearance of gold, silver or nickel and that is intended to resemble or pass for a current gold, silver or nickel coin;

“currency exchange” means receipt of revenues from the exchange of money of one country for money of another country;

“debt security” means any bond, debenture, or functionally equivalent instrument of indebtedness, and any instrument which gives the right to receive another debt security through subscription or exchange debt securities may also be in book-entry form. The term “debt security” does not include promissory notes, bill of exchange, or cheques as defined in the Negotiable Instruments Law.

“electronic money” means electronically (including magnetically) stored monetary value as represented by a claim on the issuer that is issued on receipt of funds for the purpose of making payment transactions as defined in this Law, and accepted by a natural or legal person other than the electronic money issuer.

“electronic money institution” means any legal entity that has been granted a license by the Bank to issue electronic money.

“electronic money issuer” means any entity authorized by law or regulation of the Bank to issue electronic money.

“foreign currency” or **“foreign exchange”** means the money of a country or intergovernmental organization other than South Sudan.

“foreign exchange dealer” means any person who engages in the business of buying and selling foreign currencies, forward exchange contracts, options, payment in foreign currencies, swaps or other derivative contracts involving a foreign currency transaction.

“Government” means the Government of South Sudan;

“Governor” means the Governor of the Bank;

“investment fund” means a company that invests in securities by receiving funds from the public;

“International Financial Reporting Standards” means the most recent international financial reporting standards issued by the International Accounting Standards Board;

“loan” means empowering ownership of money and/or thing provided that is equivalent in value, quality or descriptions, to pay or to be repaid to whoever may pass the loan by the expiration of the period designed for the loan;

“Minister” means the Minister of Finance and Economic Planning, unless indicated otherwise;

“money” means a medium of exchange that is authorized and adopted by South Sudan or another country, or by an intergovernmental organization;

“money service” means any service conducted in relation to money including safekeeping, money transmission, cheque cashing, or currency exchange;

“money service provider” means any person who engages in the business of providing a money service;

“money transmission” means selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission; the term does not include the provision solely of physical delivery, online or telecommunications services, or network access;

“negotiable” with respect to a financial instrument means that the title to that instrument may be transferred by delivery of the instrument or by signed endorsement written on the instrument or by entry in a register of owners of such instrument;

“order” means an obligatory directive, issued by the Bank to one or more regulated entities or other persons in implementation of this Act;

“payment instrument” means a cheque, draft, money order, traveller’s cheque, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable; a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services shall be an exception from this rule;

“payment system” means any procedures, including communication networks, agreed between three or more money service providers for the processing of payments, the clearing or settlement of payment transactions, and for the exchange of payments against other payments, financial obligations or securities, in any currency;

“payment transaction” means an act, initiated by the payer or by the payee, of placing, transferring or withdrawing funds, irrespective of any underlying obligations between the payer and the payee.

“person” includes any natural person or legal entity;

“President” means the President of South Sudan;

“record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

“regulated entity” means a bank, foreign exchange dealer, money service provider, electronic money institution, payment system operator, and any other person subject to regulation or supervision by the Bank in accordance with this Act or other relevant legislation;

“regulation” means an obligatory directive applicable to one or more classes of regulated entities, other legal entities and/or individuals, having the force of law, approved by the Board to implement any provision of this Act or other legislation administered by the Bank;

“required capital” of the Bank means the amount referred to in section 33(1) below;

“security” means a negotiable financial instrument (whether in the form of a certificate or in book-entry form) of one of the following categories:

- (a) shares, or certificates or receipts in respect of shares;
- (b) debt securities, whether or not convertible into shares;
- (c) derivatives;
- (d) shares or participation units in investment funds; or,
- (e) any other negotiable financial instrument declared to be a security by regulation of the Bank;

“share” means any share of capital stock or other equity security issued by a corporation;

“Government agency” means any administrative or political subdivision, agency or any enterprise owned or controlled by the Government of South Sudan or by any Government agency;

“stored value” means monetary value that is evidenced by an electronic record;

“unfit currency” means banknotes or coins that, in the opinion of the Bank, are:

- (a) mutilated, defaced, excessively aged or damaged;
- (b) in the case of banknotes, illegible, misshapen or perforated, have been significantly altered in their external appearance, including in particular banknotes that have been written on, painted on, overprinted, stamped or perforated, or to which adhesive matter has been applied;
- (c) in the case of coins, bent, mutilated or defaced or that have been reduced in weight otherwise than by abrasion through ordinary use; to the point of being unrecognizable or unusable for purposes of this Act.

CHAPTER II

ESTABLISHMENT OF THE BANK

5. Establishment

- (1) There is hereby established a central bank for South Sudan, to be known as the Bank of South Sudan.
- (2) The Bank shall be an autonomous body corporate, with perpetual succession and a common seal and logo, subject to the provisions of this Act, be capable in its corporate name of:
 - (a) suing and being sued;
 - (b) taking, purchasing or otherwise acquiring, holding, changing and disposing of property, movable or immovable;
 - (c) borrowing and lending money;
 - (d) concluding relevant contracts;
 - (e) issuing relevant securities and otherwise borrow; and
 - (f) doing or performing all such other things or acts for the proper performance of its functions under this Act that may lawfully be done or performed by a body corporate
- (3) The Bank shall have its head office in Juba. It may establish operational units, including branch offices, representative offices and liaison offices, and may appoint agents and correspondents, at such locations in South Sudan or abroad and with such functions and duties as the Board shall determine. These operational units shall not have legal status or authority independent from the Bank.
- (4) The Bank shall have a seal consisting of the image of the coat of arms of South Sudan and bearing the words "The Bank of South Sudan."
- (5) No act relating to the insolvency, bankruptcy or winding-up of any legal entity other than the Bank shall apply to the Bank. In no case shall the affairs of the Bank be wound up except pursuant to an act of the Assembly, with the consent of the President.

6. Objectives

- (1) The primary objective of the Bank shall be to maintain monetary and domestic price stability.
- (2) The other objectives of the Bank, which shall be subordinated to the primary objective of the Bank, shall be to foster the liquidity, solvency and effective functioning of a stable market based financial system, and to promote a safe, sound and efficient national payment system which aims to maintain the stability of the financial system as a whole.

- (3) Without prejudice to its primary objectives, the Bank shall support the general economic policies of the Government, and promote sustainable economic growth.
- (4) Basically the Bank shall:
- (a) adopt and implement policies designed to maintain monetary stability;
 - (b) determine the features of banknotes and coins in consultation with the Minister and approval of the Council of Ministers, and the terms and conditions of any currency recall in accordance with this Act;
 - (c) hold and manage the official foreign exchange reserves of the State;
 - (d) oversee the development and sound functioning of the payment systems and systems for transfers of securities issued by the Government or the Bank, and for the clearing and settlement of payment transactions and transactions in such securities;
 - (e) establish and enforce minimum bank reserve requirements;
 - (f) act as Banker and adviser to, and as fiscal agent of, the Government, and to such public agencies as may be determined by law, provided, however, that any transaction carried out by the Bank that may serve to extend financial assistance to or for the benefit of the Government or any such public agency, may be undertaken only pursuant to section 65 of this Act;
 - (g) regulate and supervise banks and such other regulated entities as shall be submitted to its oversight in accordance with relevant legislation;
 - (h) receive deposits from, and maintain accounts on its books for, regulated entities, units of government, foreign central banks and international financial institutions on such terms and conditions as may be prescribed by account agreement or regulation of the Bank;
 - (i) undertake foreign exchange operations at the request of the Government and on the Bank's own behalf;
 - (j) issue debt securities in accordance with policies approved by the Board;
 - (k) collect economic and financial data related to its objectives and tasks under this Act;
 - (l) open and maintain on its books accounts for the administration of funds provided by foreign parties to the Government or to a Government Agency in accordance with the terms and conditions set out in trust account agreements, provided that:
 - (i) the assets and liabilities of any such account shall be segregated from the other assets and liabilities of the Bank;
 - (ii) the assets of each such account shall be available only to meet liabilities of that account;
 - (iii) no other assets of the Bank shall be available to meet liabilities of such account; and
 - (iv) the Bank shall charge fees for the administration of such accounts to cover its costs; and
 - (m) represent South Sudan in international affairs in accordance with this Act.

7. Independence of the Bank

- (1) When exercising the powers and carrying out the tasks and duties conferred upon them by this Act, neither the Bank nor any member of the Board, or other Bank officials shall seek or take instructions from any ministry, public institution, office, agency, or other entity or their members or officials. Government of South Sudan ministries, public institutions, agencies, offices, and other entities operating in South Sudan, their members and officials must not improperly seek to influence the Bank or any member of the Board or other Bank officials in the performance of their tasks, or interfere with the proper execution of such tasks.
- (2) Members of the Board, and all officials, employees and agents of the Bank shall have the duty to promote the reputation of the Bank as a completely independent central bank serving all people of South Sudan with impartiality, and shall refrain from any activity that is incompatible with that duty.
- (3) While serving in their positions in the Bank, members of the Board and the Internal Auditor shall not engage in partisan political activities.

8. Legal Protection for the Bank, its officials, Employees and Agents

Neither the Bank, nor any member of the Board, official, employee, or agent of the Bank, shall be liable for any loss or damage:

- (a) suffered by the Bank unless that loss or damage was caused by his or her own default or willful act;
- (b) in any legal proceedings for anything done in good faith under this Act.

9. Taxation Provisions Applicable to the Bank

The Bank shall be exempted from all taxes and duties.

10. Prohibited Activities

- (1) Except as otherwise specifically authorized by this Act, the Bank shall not:
 - (a) grant any financial assistance or guarantee, whether in the form of a direct loan or grant or a contingent commitment, or by purchasing a loan, loan participation or another instrument of indebtedness, or through the assumption of a debt or a contingent liability, or in any other form;
 - (b) engage in commercial activity, or in any other banking activity defined as such by the applicable banking law;
 - (c) purchase the shares of any corporation, including the shares of any financial institution, or otherwise have an ownership interest in any financial, commercial, agricultural, industrial, or other undertaking;
 - (d) accept any shares as collateral security; or
 - (e) acquire by purchase, lease, or otherwise any ownership rights in or to immovable property, except as it shall consider necessary or expedient

for the provision of premises for the conduct of its functions under the provisions of this Act.

- (2) Notwithstanding subsection (1) above, the Bank may acquire, in the course of satisfaction of debts due to it, any interests or rights; provided that all such interests or rights so acquired can be promptly disposed of.
- (3) By way of an exception to subsection (1) above, the Bank may issue guarantees on behalf of the Government, subject to creditworthiness standards and under terms and conditions determined by the Bank.

11. Authority to issue Regulations and Circulars

- (1) The Bank shall have the authority to issue regulations and circulars to enable it to fulfil its responsibilities under this Act and other relevant legislation.
- (2) The Bank shall publish the text of each proposed regulation, together with a concise general statement of the regulation's basis and purpose, at least 30 days before the proposed effective date thereof. Any interested person may submit comments on the proposed regulation to the Bank within a time specified by the Bank.
- (3) In preparing the final text of a regulation, the Bank shall take into consideration the comments made in accordance with subsection (2) above. If the regulation is issued, the Bank shall publish its response to such comments. If the final text of the regulation differs significantly from the proposed text published under subsection (1) above the Bank shall also publish a general explanation for the difference.
- (4) The provisions of subsections (2) and (3) above shall not apply to a proposed regulation if the Bank determines that the delay involved in complying with these requirements would be a serious threat to the interests of the banking system. Such a determination shall be explained in the preamble to the Regulation.
- (5) The Bank may at any time publish circulars not inconsistent with this Act:
 - (a) indicating the manner in which it proposes to exercise any of its functions under this Act or other relevant laws, or regulations issued hereunder;
 - (b) explaining or clarifying any provision of this Act, or any other relevant law or regulation, for the guidance of regulated entities in complying with the requirements of such laws;
 - (c) indicating how the Bank expects regulated entities to conduct their business in order to meet the requirements of this Act or other relevant laws or regulations; or
 - (d) specifying business practices that should not be engaged in by regulated entities because, in the judgment of the Bank, such business practices could be detrimental to the soundness or financial stability of such regulated entities, or the financial system as a whole.

- (6) If a regulated entity or other person subject to the jurisdiction of the Bank engages in business practices inconsistent with the provisions of a circular issued by the Bank, the Bank may deem the regulated entity or person not to be in compliance with the provisions of the relevant law or regulation, and may exercise any of the authorities given under relevant legislation with respect to such non compliance.
- (7) The Bank shall maintain a public register of all regulations and circulars issued pursuant to this Act and other relevant laws.

13. International Cooperation

- (1) The Bank shall represent South Sudan in all intergovernmental meetings, councils and organizations concerning monetary policy, regulation and supervision of banks and other persons subjected by law to its oversight, and the other matters that are within its competence.
- (2) The Bank may provide banking services for the benefit of foreign governments, foreign central banks and monetary authorities, and for the benefit of international organizations in which it or South Sudan participates.
- (3) The Bank may obtain membership in international organizations that pursue financial and economic stability.
- (4) The Bank may undertake responsibilities and perform transactions concerning the participation of South Sudan in international organizations.
- (5) Without prejudice to the national interests of South Sudan, the Bank shall closely cooperate with any foreign financial supervisory authorities on the basis of reciprocity with respect to the supervision of regulated entities that operate in both their respective jurisdictions. Such cooperation may be formalized in an agreement between the Bank and the foreign financial supervisory authority, and may include exchange with such foreign financial supervisory authority of information concerning any regulated entity that operates in both their respective jurisdictions, provided that the principle of confidentiality is complied with.

CHAPTER III

ORGANIZATION AND ADMINISTRATION

14. Organization

The Bank shall have:

- (a) a Board of Directors as its highest policy and decision making body;
- (b) a Governor, two Deputy Governors, and three Directors General charged with implementing policies approved by the Board and with the management of the Bank;

- (c) an Internal Auditor responsible for assessing the internal control system approved by the Board and performing the internal audit of the operations of the Bank; and
- (d) a Chief Financial Officer;
- (e) a Head of Financial Supervision; and
- (f) other staff as set forth in this Act or approved by policies enacted by the Board.

15. Composition of the Board

- (1) The Board shall be composed of nine (9) voting members, as follows:
 - (a) the Governor as Chairman of the Board;
 - (b) the two Deputy Governors, who shall be designated by the Governor as 1st Deputy and 2nd Deputy Governor respectively of the Board;
 - (c) six non-executive members, who shall not be employees of the Bank.
 - (d) The Governor and Deputy Governors shall be appointed by the President.
 - (e) The Board shall be proposed by the Governor and appointed by the President.
- (2). The Board members referred to in this subsection shall be eligible for reappointment, unless a ground for removal under section 19 of this Act would apply to them.
- (3) The terms of the Governor and Deputy Governors shall be five years, except that the term of the first appointed Deputy Governors shall be four years and three years, respectively, in order to establish staggered terms.
- (4) The terms of the non-executive voting members of the Board shall be 7 years, except that the first 3 such members shall be appointed for 7, 4, and 2 years, respectively, so as to ensure that all non-executive members' terms do not expire simultaneously.
- (5) Upon taking office, each member of the Board shall, before assuming their duties, take the following oath or affirmation before the relevant appointing authority:

"I....., do hereby swear by the Almighty God/solemnly affirm that as Board Member of the Bank, I shall be faithful, and shall diligently and honestly discharge my functions and duties and shall strive to exercise the powers vested upon me by this Act, with integrity and dignity in the best interest of the people of South Sudan; and that I shall respect and abide by all the rules, regulations and instructions there under; and that I shall not without due authority disclose or make known any information, matter or thing that comes to my knowledge by reason of my employment in the Authority so help me God"

16. Functions and Powers of the Board

- (1) The Board shall be charged with the adoption of the principal policies of the Bank and the supervision of the administration and operations of the Bank.
- (2) In carrying out its functions, the Board shall periodically assess the monetary and economic situation in South Sudan, and shall require the Governor and other senior officials of the Bank to provide reports to enable the Board to make such assessments.
- (3) The Board shall have the following powers:
 - (a) to adopt all applicable regulations and orders that are to be issued by the Bank, and to determine the procedures for the issuance of circulars by the Bank, pursuant to this Act or any other applicable law;
 - (b) to approve all reports and recommendations that the Bank is to make to the Government or the Assembly;
 - (c) to decide on the participation by the Bank in international organizations;
 - (d) in consultation with the Minister and the approval of the President, to determine the face value and design of banknotes and coins, and the conditions of any currency recall;
 - (e) to decide on debt securities of the Bank and the terms and conditions of such securities;
 - (f) to determine the categories of assets that shall be suitable for investment of the foreign exchange reserves and other resources of the Bank;
 - (g) to determine the reserves that the Bank shall keep from time to time in accordance with the provisions of this Act;
 - (h) to adopt the operational policies of the Bank and the regulations applicable to the administration and operations of the Bank;
 - (i) to determine the organization of the Bank;
 - (j) to appoint the Internal Auditor of the Bank;
 - (k) to approve the appointment of the Directors General and other senior professional staff members of the Bank;
 - (l) to approve subsequent service at another financial institution by the Governor, Deputy Governors, and other senior professional staff members upon completion of their service in the Bank, in accordance with section 31(2) of this Act;
 - (m) to establish and close subsidiaries, branch offices and agencies of the Bank;
 - (n) to decide on the purchase, construction, utilization and sale of buildings and other property by the Bank;
 - (o) to approve the budget of the Bank and the terms and conditions of employment, work, pensions of the employees, and agents of the Bank other than the members of the Board;
 - (p) to determine the accounting policies of the Bank, provided these are consistent with International Financial Reporting Standards, as well as the internal controls and the risk management policies of the Bank;
 - (r) to adopt the annual reports and financial statements of the Bank;

- (s) to establish special reserves on the books of the Bank, to approve the net profit and loss of the Bank, and to decide what amount of any such net profit shall be transferred to any reserve; and
 - (t) to exercise such other powers as shall be granted to the Board by this Act.
- (4) The Board shall be consulted on any proposals with respect to matters that relate to its objectives or that otherwise are within its fields of competence, before they are submitted to the Assembly.

17. Conditions for Membership on the Board

Members of the Board shall fulfill the following eligibility requirements for the appointment:

- (a) be a person of recognized integrity;
- (b) have a degree of higher education or extensive work experience in economics, banking, finance, accounting or law;
- (c) not be subject to any grounds for removal pursuant to paragraphs (b) through (e) of subsection 19(1);
- (d) not be an employee of the Bank other than the executive members specified by this Act;
- (e) not be a shareholder, member of the board of directors, or member of senior management, or any similar body, of any regulated entity subject to the supervision of the Bank by law;
- (f) not be a member of the Council of Ministers or a Member of the National Legislature; and
- (g) not be an employee of the Government if that employment relationship could compromise his ability to carry out his duties under this Act.

18. Remuneration of Members of the Board

- (1) Remuneration for non-executive members of the Board shall be determined by the Governor in consultation with the Minister and approved by the Council of Ministers.
- (2) Remuneration of the Governor, the Deputy Governors, and the Director General for Supervision, Research, and Statistics shall consist of the amount paid to non-executive members in subsection (1) above, plus an additional amount determined by a resolution of the Board. The executive members of the Board shall not take part in the discussion or voting on the question of their remuneration. The Board may adopt additional procedures designed to avoid conflicts of interest on the part of the executive members when determining the remuneration.
- (3) Once members of the Board have been appointed or reappointed to a term, their compensation and other emoluments may not be reduced during the term of appointment.
- (4) Members of the Board may, with approval of the Governor, be paid a sitting allowance and reasonable travel expenses.

19. Removal of Board Members

- (1) A member of the Board may be removed from office by the President of South Sudan only if:
 - (a) the conditions of section 17 of this Act are no longer satisfied;
 - (b) he has been convicted of an offense for which he was or could have been sentenced to imprisonment, unless such offense was motivated by his religious or political views or activities;
 - (c) he has been declared bankrupt or unable to pay his debts by a court decision;
 - (d) during the immediately preceding five years, his actions, job performance, or breach of fiduciary duty as a member of the board of directors, senior management or in any similar capacity, contributed to a company being subject to bankruptcy, conservatorship or receivership, or equivalent legal proceedings;
 - (e) he has, on grounds of personal misconduct, incompetence, or violations of legal or regulatory provisions or any code of conduct, been removed or suspended from duty, or suspended or prohibited from practicing a profession, by a competent authority;
 - (f) he has been unable to perform the functions of his office for more than six months because of an infirmity of body or mind;
 - (g) during membership of the Board has engaged in significant violations of any duty imposed by the law, or has engaged in partisan political activities, or has engaged in serious misconduct or demonstrated gross incompetence in the office, substantially prejudicing the interests of the Bank; or
 - (h) he has been absent without good cause from three successive meetings of the Board.
- (2) In the event of the discovery of any of the circumstances set forth in subsection (1) above, the Governor shall notify the Board and the President in writing and shall include his recommendation as to whether the member in question should be removed from the Board. In the event that the circumstances pertain to the Governor, such notification and recommendation shall be made by the Senior Deputy Governor. In the event that the circumstances pertain to both the Governor and the Senior Deputy Governor, such notification and recommendation may be made by the Minister or by any member of the Board.
- (3) The procedures for the submission of recommendations in accordance with subsection (2) of this section shall be determined by the Board and shall give the affected member the opportunity to submit representations on the matter.
- (4) The decision on the question of removal of a Board member shall lie with the President.

20. Resignation of Board Members

Members of the Board may resign from their positions by written notice to the President of South Sudan:

- (a) in the case of the Governor or Deputy Governors, not less than three months in advance;
- (b) in the case of any other member of the Board, not less than one month in advance, or such shorter period of time as the President may deem necessary.

21. Vacancies on the Board

Any vacancy on the Board shall be filled by the appointment of a new member of the Board in accordance with section 15 of this Act to serve the remaining period of the term of the member to be replaced.

22. Meetings of the Board

- (1) The Governor shall preside at all meetings of the Board; and in the absence of the Governor, the Senior Deputy Governor shall preside. In the absence of both the Senior Deputy Governor, the other Deputy Governor shall preside.
- (2) The Board shall meet for the discharge of its functions as often as business requires, and in any case the Board shall meet at least four times in a year; and the Governor may convene a meeting whenever two voting members request for a meeting.
- (3) The quorum at any meeting of the Board shall be by a simple majority of voting members, including either the Governor or at least one of the Deputy Governors or a person presiding at the meeting.
- (4) A decision on a question proposed at any meeting of the Board shall be determined by a simple majority of the votes of the members present and voting; and in the case of equality of votes, the person presiding shall have an additional tie-breaking vote.
- (5) The Board may invite any number of persons to attend any of its meetings as consultant or adviser.
- (6) No act or proceedings of the Board shall be invalidated by reason only of the existence of a vacancy among the members of the Board.
- (7) All acts done by any person in good faith as a member of the Board shall be valid notwithstanding any defect in his or her appointment.
- (8) In all other matters not provided for under this Act, the Board may determine its own procedures.

23. Proceedings, Minutes, and Decisions of the Board

- (1) The proceedings of the meetings of the Board shall be confidential. The Board may declare to make the outcome of all or part of its deliberations public.
- (2) There shall be minutes of each Board meeting signed by the person presiding at the meeting, and by the Secretary of the Board. Minutes shall be approved by the full Board. Summaries of such minutes shall be published within 1 month of such approval.
- (3) The Secretary of the Board shall be appointed by the Governor from among the senior staff of the Bank; the Secretary shall not be a member of the Board.
- (4) Decisions of the Board shall be recorded and issued to the relevant bodies over the signature of the Chairman presiding at the Board meeting that adopted the decision, and shall be published without delay.

24. Audit Committee of the Board

- (1) The Board shall appoint an Audit Committee, which shall consist of three non-executive voting members of the Board. The Audit Committee shall select one of its members to serve as Chairperson of the Audit Committee in accordance with the Charter of the Audit Committee approved by the Board.
- (2) The Audit Committee shall assist the Board in fulfilling its oversight responsibilities for matters relating to:
 - (a) the integrity of the Bank's financial statements;
 - (b) the Bank's compliance with legal and regulatory requirements;
 - (c) the annual external audit of the Bank; and
 - (d) the performance of the Bank's Internal Audit Department.
- (3) To perform its functions under subsection (2) above, the Audit Committee is authorized to:
 - (a) Review the annual financial statements of the Bank before the statements are approved by the Board;
 - (b) Review such other financial reports of the Bank as the Board or Audit Committee may deem necessary;
 - (c) Review, evaluate, and make recommendations regarding the approval of the accounting policies and internal controls for the Bank before they are approved by the Board;
 - (d) Oversee the implementation and maintenance of the accounting policies and internal controls of the Bank;
 - (e) Meet with the Internal Auditor and Governor or Deputy Governors to discuss the effectiveness of the internal controls of the Bank;
 - (f) Report its findings regarding the accounting policies and internal controls to the Board, and recommend any changes it deems necessary;
 - (g) Make recommendations to the Board regarding the appointment, replacement, or dismissal of the Internal Auditor and members of the senior staff of the Internal Audit Department;

- (h) Make recommendations to the Board concerning the appointment of the external audit firm for the Bank;
 - (I) meet with the external auditor and Auditor General to discuss the annual audit of the Bank;
 - (j) Authorize investigations into any matters within its scope of responsibility;
 - (k) Retain independent counsel, accountants, or others to advise the committee or assist in the conduct of an investigation; and,
 - (l) perform other tasks, related or incidental to the above, as determined by the Board.
- (4) The Audit Committee shall meet regularly at least four times per year, and may convene additional meetings as circumstances require. These meetings may be in executive or open session at the Committee's discretion. Meeting agendas shall be prepared in advance and minutes shall be kept.

25. Other Committees

The Board may establish other committees to assist it with its functions under this Act.

26. Powers and Duties of the Governor

- (1) All powers that are not specifically reserved for the Board or the Internal Auditor shall be vested in the Governor. Within the limitation of his powers, the Governor shall have the authority to take all actions required for the administration and operations of the Bank.
- (2) The Governor, with the approval of the Board, may delegate some or all of his powers to either of the Deputy Governors or other eligible employees or agents of the Bank. The Bank shall maintain an up-to-date list of its authorized signatories together with a description of their authority and shall publish the list.
- (3) If the Governor is absent or otherwise unable to act, the Senior Deputy Governor shall carry out the functions of the Governor and exercise all the powers of the Governor.
- (4) The Governor shall be responsible to the Board for the execution of decisions of the Board and for the direction and control of the administration and operations of the Bank. To that end, the Governor shall report to the Board, not less than once every calendar quarter, on:
 - (a) the administration and operations of the Bank;
 - (b) the conduct of its monetary and regulatory policies;
 - (c) the soundness of the financial system including in particular the banking and payment systems of South Sudan;
 - (d) the state of the money, capital and foreign exchange markets; and
 - (e) any events or conditions that, in the opinion of the Governor, are likely to have a significant effect on the administration or operations of the

Bank, the conduct of its policies, the financial system of South Sudan, or the before mentioned markets.

- (5) The Governor shall ensure that the Board shall timely receive all such information as the Board shall require for the supervision of the administration or operations of the Bank.

27. Internal Auditor and Internal Audit Department

- (1) An Internal Auditor of the Bank shall be appointed for a term of five years by the Board, from candidates who are professionally qualified accountants, and who otherwise meet the criteria that apply to members of the Board set forth in section 17 above, except that the Internal Auditor shall be a full-time employee of the Bank. The Internal Auditor shall be eligible for reappointment.
- (2) The Internal Auditor shall head the Internal Audit Department of the Bank.
- (3) The Internal Auditor shall report to the Board, through the Audit Committee.
- (4) The Internal Auditor may be removed from his position by the Board on the same grounds, and through the same procedures, set forth in section 19 above, that apply to members of the Board, except that:
 - (a) a recommendation for such removal may be made by any member of the Board; and
 - (b) the decision to remove the Internal Auditor shall be made by majority vote of the Board rather than by the President.
- (5) The senior staff of the Internal Audit Department shall be appointed and dismissed by the Internal Auditor with the consent of the Audit Committee, in accordance with policies and procedures approved by the Board with the advice of the Audit Committee. Other staff members of the Internal Audit Department shall be appointed and dismissed in accordance with policies approved by the Board.
- (6) The Internal Auditor and the Internal Audit Department shall have the duty:
 - (a) to advise the Board on the effectiveness of the risk management policies approved by the Board;
 - (b) to perform continuous audits, in accordance with international standards of internal auditing, of the administration and operations of the Bank, in order to assist the Board with supervising observance of the laws and regulations that apply to the Bank;
 - (c) to audit, and to submit to the Board, through the Audit Committee, reports and recommendations on the accounts and Records as well as the accounting procedures and internal controls and budgets of the Bank;
 - (d) to formulate a Code of Conduct for the Internal Audit Department staff, make recommendations to the Board regarding its adoption, periodic review and any appropriate amendments, and ensure its implementation;

- (e) to monitor the proper implementation of the decisions of the Board, the Governor and Deputy Governors;
 - (f) to present to the Board such reports and studies as the Board shall request for the supervision of the administration or operations of the Bank; and
 - (g) to carry out any other assignment and duty given to the Internal Auditor by the Board or the Audit Committee.
- (7) The Internal Auditor or a member of the Internal Audit staff designated by the Internal Auditor shall have the right attend meetings of the Board and Audit Committee.

28. Powers of the Internal Audit Department

- (1) The employees of the internal audit unit have the right to:
 - (a) examine all documents of the Bank;
 - (b) monitor the work of the Bank at each stage without restrictions; and,
 - (c) require explanations from the employees of the Bank concerning deficiencies and errors discovered in their work, and the elimination of such deficiencies.
- (2) Staff of the Bank are obliged to provide employees of the Internal Audit Department with the documents and explanations referred thereto in this section.

29. Professional Staff, other Employees and Agents

- (1) Unless otherwise provided by this Act, the Governor, in consultation with the Board and Deputy Governors, shall appoint and dismiss members of the senior professional staff of the Bank. Senior professional staff members shall include, at a minimum, the three Directors General and the officials denoted in subsections (d) through (e) of section 14 above
- (2) Other employees of the Bank shall be appointed and dismissed in accordance with policies approved by the Board.
- (3) No salary, fee, wage, or other remuneration or allowance paid by the Bank shall be computed by reference to net profit or other revenues of the Bank.
- (4) All salaries, fees, wages, or other remunerations or allowances paid by the Bank shall, to the maximum extent practicable, be comparable to prevailing rates for similar work done in the locality where the work is done by persons having similar skills and experiences as those persons who are to be paid by the Bank.
- (5) The Board shall adopt policies to regulate the employees' work and employment conditions at the Bank.

- (6) The Bank may engage agents to perform tasks on behalf of the Bank, and determine their remuneration, in accordance with policies approved by the Board.
- (7) The Bank may, in accordance with terms and conditions approved by the Board:
 - (a) establish staff retirement funds or similar arrangements for the benefit or protection of its employees and their dependents and nominees, and make contributions towards the costs associated with such arrangements;
 - (b) establish a credit program for its employees and members of their families.
- (8) The Head of the Legal Administration at the Bank shall be deployed by the Minister of Justice, in consultation with the Board of the Bank.

30. Limitations on Credit by Bank Officials and Staff Members

During their employment by the Bank, the officials and staff of the Bank shall not receive credit from any bank or other regulated entity subject to the oversight of the Bank, except in accordance with policies approved by the Board.

31. Conflicts of Interest

- (1) The Governor, the Deputy Governors, the Internal Auditor, and senior professional staff of the Bank shall devote the whole of their professional services to the Bank, and none of them shall occupy any other office or employment, whether remunerated or not, except as nominee or agent of the Bank, or in an educational capacity, in accordance with policies approved by the Board.
- (2) No former Governor, Deputy Governor, Internal Auditor, or other member of the senior professional staff of the Bank shall serve in any capacity at a regulated entity during a period of one year following their departure from the Bank, without the prior written approval of the Board.
- (3) No member of the staff of the Bank shall simultaneously have other employment, whether gainful or not, except in accordance with policies approved by the Board.
- (4) No Governor, Deputy Governor, officer or member of the staff of the Bank shall accept any gift or credit for himself, or on behalf of any person with whom he has family, business or financial connections, if the acceptance thereof would result, in diminishing his impartial devotion to his duties.
- (5) Members of the Board, the Governor, Deputy Governors, Internal Auditor and any senior officials of the Bank shall, upon assumption of their offices and annually thereafter, make confidential declaration of their assets, liabilities and business and financial interests including those of their spouses and children.

- (6) The Board shall adopt more specific policies governing conflicts of interest relating to the officials and staff of the Bank.

32. Secrecy

- (1) Any information from which an individual or body may be identified and that is acquired by the Board in the course of the performance of its functions or the exercise of its powers under this Act or any other applicable law shall be regarded as confidential by the Board and its employees.
- (2) No information of the type referred hereunder the provisions of subsection (1) above, may be disclosed without the consent of the person and or body duly authorized and or delegated by the Board thereof, except to the extent that its disclosure is expressly authorized or required by or under this Act or any other applicable law or where it appears to the Board to be necessary:
- (a) to enable the Board to perform any of its functions and exercise any of its powers under this Act or any other applicable act;
 - (b) in the interests of the investigation, detection, prevention or prosecution of crime;
 - (c) in connection with the discharge of any international obligation to which South Sudan may from time to time be subject;
 - (d) to assist, in the public interest, any authority that appears to the Board to exercise, in a place outside South Sudan, functions corresponding to some or all of those of the Board within or outside South Sudan; or
 - (e) to comply with the directions of any division of any Court.
- (3) Without prejudice to the provision of subsections (1) and (2) above, any information communicated to the Board by a committee of the Government shall be regarded as confidential if that committee of the Government so requests, and shall be kept confidential by the Board and its members and employees; and no such information shall be disclosed except in compliance with the direction of any division of any court.
- (4) A person shall not, for a period of one year after he ceases to be a member of the Board, acquire, hold or maintain, directly or indirectly, any office, employment, consultancy arrangement or business in South Sudan where he may be liable to use or disclose information acquired by him in the exercise, performance and discharge of the powers, duties and functions of the Board, and if he acquires any such interests involuntarily or by way of succession or testamentary disposition, he shall divest himself or herself of such interest, within two months of the acquisition of such interest.
- (5) Whoever discloses information or causes or permits the disclosure of information in a manner which he knows or has reasonable cause to believe is in contravention of the provisions of subsections 2 and 4 above shall be guilty of an offence and upon conviction shall be sentenced to imprisonment for a period not exceeding six months or a fine not exceeding Ten Thousand South Sudanese pounds, or both.

CHAPTER IV

FINANCIAL AFFAIRS

33. Capital

- (1) The required capital of the Bank shall be 15 million South Sudanese pounds, which shall be wholly provided by the [Government/State], or such higher amount as shall result from allocations from net profits pursuant to section 36 below.
- (2) The entire initial required capital of the Bank shall be fully paid up in cash or cash equivalents within two weeks from the date on which this Act enters into force. The method of payment of the initial required capital shall be determined by the Minister.
- (3) The Bank and its capital shall be owned by the State, and such capital shall not be subject to lien or to encumbrance.

34. Reserves of the Bank

- (1) The Bank shall establish a General Reserve for the purpose of covering possible losses that have not been specifically identified. The General Reserve shall be used only to cover a capital deficiency.
- (2) The Bank may establish additional reserves for specific purposes by unanimous decision of the Board.

35. Calculation of net Profit or net Loss of the Bank

For each financial year, the net profit or the net loss of the Bank shall be calculated in accordance with International Financial Reporting Standards as the sum of net operating revenues or losses (including realized gains and losses) and net unrealized valuation gains or losses, and after making provision:

- (a) for bad and doubtful debts, depreciation of assets, and contributions to the staff retirement fund; and
- (b) subject to the approval of the Minister, for such other purposes as the Bank may deem necessary.

36. Allocation of Net Profit

- (1) If the Bank has a net profit for any financial year, the net profit shall be allocated and used in the following order of priority:
 - (a) to the capital account of the Bank in such amount as shall be required to increase the capital of the Bank to a level equivalent to five percent of the aggregate amount of monetary liabilities shown on the balance sheet of the Bank for the end of that financial year;
 - (b) an allocation from net profit shall be made to redeem securities issued by the State pursuant to section 38 of this Act and held by the Bank;

- (c) in the event there is remaining net profit after the allocations referred to in paragraphs (a) and (b) above:
 - (i) 50% shall be allocated to the General Reserve maintained by the Bank in such amount as shall be required to increase the amount of the General Reserve to a level equivalent to the amount of the required capital of the Bank;
 - (ii) the remaining 50% shall be allocated first to any other reserve for specific purposes established by unanimous decision of the Board of the Bank in accordance with subsection 34(2);
 - (iii) any residual net profit after the allocation referred to in subparagraph (ii) above shall be transferred to the Government within four months after the end of the financial year, and residual net unrealized valuation gains if any shall be allocated to a Valuation Reserve Account maintained on the balance sheet of the Bank.
- (2) The allocations from net profit referred to in paragraphs (a) through (c) of subsection (1) above shall be deemed to have been made entirely from net operating revenues. If no operating revenues are included in net profit, or after such allocations have exhausted net operating revenues included in net profit, such allocations shall be calculated as if made from net unrealized valuation gains.
- (3) For the purposes of this Act, the aggregate amount of the monetary liabilities of the Bank shall be the sum of:
 - (a) all outstanding banknotes, coins and debt securities issued by the Bank; and
 - (b) the credit balances of all accounts maintained on the books of the Bank by account holders.

37. Allocation of Net Loss

If the Bank incurs a net loss for any financial year, the net loss shall be allocated as follows:

- (a) if the net loss is composed of net operating losses and net unrealized valuation losses, the amount of net operating losses shall be charged to the General Reserve or to capital in that order, and the amount of net unrealized valuation losses shall be allocated to the Valuation Reserve Account or, to the extent the balance of the Valuation Reserve Account would be negative as a result of such allocation, to the General Reserve or to capital in that order;
- (b) if the net loss is the sum of net operating losses and greater net unrealized valuation losses, the net loss shall be allocated to the Valuation Reserve Account or, to the extent that the balance of the Valuation Reserve Account would be negative as a result of such allocation, to the General Reserve or to capital in that order; or,
- (c) if the net loss is the sum of a net operating loss and smaller net unrealized valuation gains, the loss shall be charged to the General Reserve or to capital in that order.

38. Coverage of Shortfalls in Capital

Whenever, on one of its monthly pro forma balance sheets prepared pursuant to section 76(3) below, the value of the Bank's assets falls below the sum of its liabilities and required capital, the Minister shall, within two months after submission of the notification to the President and Assembly as required by section 76(4) below, provide South Sudanese pounds or debt securities issued by the Government at a market rate of interest in such amount or amounts as shall be necessary to remedy this deficit.

CHAPTER V

MONETARY UNIT, BANKNOTES AND CURRENCY

39. Monetary Unit

The currency of South Sudan and its monetary unit is the South Sudanese pound, the symbol of which shall be "SSP." The South Sudanese pound shall be issued and put into circulation by the Bank.

40. Issue of Banknotes and Coins

- (1) The Bank shall have the exclusive right to issue banknotes and coins intended for circulation in South Sudan. No other person shall issue currency notes, banknotes or coins, or any documents that are, in the opinion of the Bank, likely to pass as legal tender.
- (2) Banknotes and coins issued under this section shall be a first charge on the assets of the Bank.
- (3) Banknotes and coins issued by the Bank and intended for circulation in South Sudan are not promissory notes, bills of exchange, or any other type of commercial documents under the legislation of South Sudan, and the Bank is obligated on and with respect to them only as provided by this Chapter.
- (4) Any reference in this Act to banknotes or coins is to banknotes or coins intended for circulation in South Sudan, issued or to be issued pursuant to this Chapter by the Bank.

41. Functions of the Bank Regarding Currency

- (1) The Bank shall directly administer the currency reserve inventory and ensure an adequate supply of banknotes and coins as needed to meet the currency requirements of the economy of South Sudan. To this end, the Bank shall:
 - (a) arrange for the printing of notes and the minting of coins; and secure keeping and safety of the same;

- (b) issue banknotes and coins in its offices and such agencies as the Bank may from time to time establish or appoint; it may reissue or replace the same at such places;
 - (c) arrange for cancellation and destruction of notes, or the cutting, breaking or destruction of coins withdrawn from circulation according to section 45 below or found by the Bank to be unfit for use.
- (2) There shall vest in the Bank any foreign exchange confiscated in South Sudan or which is the subject matter of judicial decision or settlement subject to the laws in force.
 - (3) Creation, possession, or distribution of counterfeit money shall be punishable as set by applicable law. Facilities for identification of counterfeit money shall be provided by the Bank. Procedures governing submission for analysis and possible subsequent referral to the authorities for criminal prosecution shall be pursuant to a regulation of the Bank.

42. Currency Features

The Bank, in consultation with the Minister and with the approval of the Council of Ministers shall determine the denomination, measures, form, material, content, weights, designs, and other features of banknotes and coins. Banknotes shall bear the signature of the Governor of the Bank and the Minister.

43. Unfit Currency

- (1) Unfit currency shall be demonetized. Subject to subsection (2) below, the Bank shall withdraw, destroy, and replace any unfit currency presented to it with currency of an equivalent amount.
- (2) The Bank may decline to replace any unfit currency. Such currency shall be withdrawn and destroyed without indemnity to the owner, except that, in special cases, the Bank may grant compensation in whole or in part.
- (3) No person shall be entitled to recover from the Bank the value of any lost, stolen, or unfit currency except pursuant to a regulation of the Bank. The circumstance in which, and the conditions and limitations subject to which, the value of unfit currency may be refunded shall be within the absolute discretion of the Bank, and set forth in a regulation of the Bank.
- (4) The Bank may confiscate without compensation any unfit currency.
- (5) Every officer employed in the collection of revenue in South Sudan shall forward to the Bank any currency paid to the officer that he suspects of being unfit or counterfeit.

44. Accounting Treatment of Currency Issued*

Circulating banknotes and coins shall be treated in the accounts of the Bank as a liability of the Bank; such liability shall not include banknotes and coins in the vaults of the Bank.

45. Currency Recall

- (1) The Bank may decide to call in and withdraw from circulation banknotes or coins, by issuing in exchange therefore other banknotes or coins in equivalent amounts. The procedure for such recall shall be determined by the Bank and shall:
 - (a) specify the location, date and hours during which the banknotes or coins must be presented for exchange;
 - (b) provide for the determination and treatment of any counterfeit money presented for exchange;
 - (c) if deemed appropriate by the Bank, set requirements and conditions as to proper identification of persons presenting banknotes or coins for exchange and for documentation of exchange transactions; and
 - (d) provide for all other matters relating to the exchange procedure deemed appropriate by the Bank.
- (3) At the end of the exchange period referred to in subsection (1) above, or at any other time specified by the procedure, banknotes and coins called in for exchange shall be demonetized and cease to be legal tender. Any new banknotes or coins issued in connection with a currency recall as provided in this section shall be fully redeemable in the same manner, and to the same extent, as were the banknotes or coins subject to the recall.

CHAPTER VI

LEGAL TENDER

46. South Sudanese Pound as Legal Tender

A tender of payment of money is a legal tender if made in banknotes or coins. Banknotes and coins shall be accepted, for the amount of their denomination in the currency of South Sudan, in payment of all public and private debts in South Sudan.

47. Public Accounts and Compulsory Payments

- (1) All public budgets, financial Records and accounts, required by any law of, and established or maintained in South Sudan, shall be or be assessed in South Sudanese pounds. Payment of money when required in any indictment or other legal proceedings other than for the enforcement of a foreign currency obligation shall be stated in South Sudanese pounds.
- (2) Compulsory payments shall be assessed and required to be paid in South Sudanese pounds. "Compulsory payment" means any payment made to or by a public authority other than under a contract or any other voluntary

transaction. It includes the payment of taxes (either direct or indirect), custom dues, excise, levies, fees, charges and penalties, as well as any payment to public utilities, payment according to a court order, or payment prescribed by law.

48. Sums Mentioned in Laws, Valuation, and Conversion

- (1) Any sum mentioned in legislation, including legislation passed by the former Government of South Sudan, unless it is otherwise expressed, shall be construed as being in South Sudanese pounds.
- (2) Where any law or any convention, contract or agreement to which South Sudan is a party does not provide for the manner of conversion to the currency of South Sudan, the Bank may make regulations specifying, or specifying the means or method of ascertaining, determining or calculating, the equivalent South Sudanese pound value of that foreign currency.
- (3) For the purposes of the administration, application and operation of the laws relating to the customs, tax obligations, or any other payments, the Bank may in accordance with regulations, specify or specify the means or method of determining or calculating, the equivalent South Sudanese pound value of currencies of countries other than South Sudan for a day or any longer period or generally.
- (4) In case of a decision with regard to currency re-denomination in accordance with this law, all Records, accounts, obligations, debts, price quotations, and references in other legislation, will read to be re-denominated according to the exchange rate of the re-denomination.

49. Designation of Prices for Goods and Services

Prices for all goods and services in South Sudan shall be denominated in South Sudanese pounds.

50. Freedom of Currency

- (1) Notwithstanding section 49 above:
 - (a) where all parties to a private contract or any other voluntary private transaction, including parties to a bill, note, instrument or security for money, are residents of South Sudan, the payment obligation relative to such contract or transaction shall be denominated in South Sudanese pounds;
 - (b) where one of the parties to a private contract or transaction referenced in subsection 1(a) above is a non-resident of South Sudan, the parties may denominate the payment obligation in any currency agreed upon.
- (2) An agreement of the parties under subsection 1(b) above may be express or implied from surrounding circumstances including course of dealing, usage of trade, or course of performance.

- (3) If there is no contrary agreement by the parties as set forth in subsections (1) or (2) above, every contract, sale, payment, bill, note, instrument and security for money, and every transaction, dealing, matter and thing relating to money or involving the payment of or the liability to pay money, shall be deemed to be made, executed, entered into, done or carried out in South Sudanese pounds.

51. Enforcement of Foreign Currency Payment Obligations

A foreign currency obligation may be enforced according to its terms. In any judicial proceeding to enforce any such obligation:

- (a) where such obligation provides for a manner of conversion to South Sudanese pounds, the court shall give effect to the manner of conversion in such obligation;
- (b) the court may require payment of an amount in South Sudanese pounds sufficient to purchase the amount of the obligation in such foreign currency;
- (c) the amount referenced in paragraph (b) shall be calculated by a bank in South Sudan at the close of business on business day prior to the day payment of the obligation is to be received by the creditor;
- (d) if the court is satisfied that conversion as referenced in paragraphs (b) and (c) above would be inequitable to both parties, it may require payment of an amount in South Sudanese pounds sufficient to purchase the amount of the obligation in the foreign currency at a bank in South Sudan on such other day as the court considers equitable in the circumstances;
- (e) in the event paragraph (d) is applicable, the court shall order the conversion to be made at such rate as to make the creditor whole and avoid rewarding a debtor who has delayed in carrying out the obligation.

CHAPTER VII

MONETARY FUNCTIONS AND OPERATIONS

52. Monetary and Exchange Rate Policy

The Bank shall be responsible for the formulation, adoption and execution of the monetary and exchange rate policies of South Sudan, which shall aim to preserve the value of the South Sudanese pound as determined in accordance with section 53 below.

53. External Value of the South Sudanese Pound

- (1) The Bank shall determine by regulation the exchange rates at which it shall purchase and sell South Sudanese pounds.
- (2) If the international reserves mentioned in section 61 below have declined or, are in danger of declining to such an extent as to jeopardize the execution of the monetary or exchange rate policies of South Sudan or the prompt settlement of the country's international transactions, the Bank shall consult

with the Minister and may adjust the exchange rate referenced in subsection (1) of this section in light of existing and expected conditions in the foreign exchange market.

54. Overnight Advances

- (1) The Bank may, on the terms and conditions established by regulation, grant to any bank that holds an account at the Bank, overnight advances in South Sudanese pounds that are secured by any of the following assets:
 - (a) international reserve assets as specified in Section 61 of this Act;
 - (b) debt securities issued by the Bank or the Government of South Sudan;
 - (c) deposits of that bank with the Bank; or
 - (d) warehouse receipts and other documents of title issued in respect of staple commodities or other goods duly insured against risk of loss or damage.
- (2) Overnight advances may be renewed for up to 15 days and shall carry an appropriate market rate of interest.
- (3) If an advance made under this section is not repaid at the required time:
 - (a) until the situation is rectified:
 - (i) the Bank shall make no further advances to such bank under this section;
 - (ii) the bank shall not be permitted to participate in the clearing and settlement system; and
 - (b) the Bank may take any corrective action authorized by the Banking Act as it deems appropriate.
- (4) Advances granted by the Bank under this section shall be made only at the head offices of such banks in South Sudan.

55. Issuance of Debt Securities

For the purpose of conducting monetary policy operations, the Bank may, under terms and conditions determined by regulation:

- (a) issue in its own name debt securities having a maturity of no longer than 12 months;
- (b) purchase, sell and redeem debt securities issued by the Bank pursuant to subsection (a).

56. Required Reserves of Banks

- (1) The Bank may require that banks shall maintain deposits in South Sudanese pounds with the Bank and cash in their vaults at prescribed minimum levels that relate to the size, type or maturity of their deposits, borrowed funds and such other liabilities as the Bank may determine by regulation (required reserves). Required reserve ratios shall be applied uniformly to reserve liabilities and to all banks.

- (2) The Bank may from time to time prescribe by regulation the required reserves that shall be maintained by way of cash holdings and money deposits with the Bank, which shall be calculated as the average daily reserves over the stipulated holding periods. Required reserves maintained with the Bank shall be remunerated at a rate decided by the Bank.
- (3) Regulations mentioned in subsection (2) above, by which required reserves are established or modified, shall specify the date by which banks shall comply with the new requirements or reserve ratios.
- (4) The Bank may impose on and collect from any bank that fails to maintain required reserves at the minimum levels prescribed in accordance with subsection (2) above, a levy on the shortfall in such bank's required reserves, until the shortfall is corrected. Such levy shall be set by regulation of the Bank.
- (5) If a bank fails to fulfil its required reserves for two consecutive periods, the Bank shall cease to process withdrawal transactions for the bank, and shall require the bank to take measures to correct the shortfall within one week. If the failure to fulfil the reserve requirement continues for another week, the Bank may take any remedial action authorized by relevant legislation relative to the bank.

57. Publication of Information Relating to Currency

Each month the Bank shall publish monthly information concerning the total amount of South Sudanese pounds in circulation and the official foreign exchange reserves of the Bank, with a breakdown of the holdings of other currencies.

CHAPTER VIII

FOREIGN EXCHANGE OPERATIONS

58. General Policy

- (1) South Sudanese pounds shall be freely convertible into foreign currency throughout South Sudan in all voluntary transactions undertaken between private parties.
- (3) No restrictions shall be imposed by the Bank or other authorities on the making of payments and transfers for international transactions, unless the Bank determines that such restrictions are required in the performance of an obligation of South Sudan under international law. All decisions on these matters must be taken unanimously by the Board.

59. Responsibilities of the Bank

The Bank shall have responsibility for:

- (a) the issuance of regulations, circulars and orders required for the execution of foreign exchange policy and for foreign exchange market operations within the territory of South Sudan;
- (b) the registration and issuance of licenses, and the regulation and supervision, of foreign exchange dealers including banks, and other financial institutions, pursuant to relevant legislation;
- (c) setting limits on foreign exchange positions of foreign exchange dealers and banks;
- (d) maintaining and managing the international reserves of the Bank; and
- (e) buying and selling freely usable foreign exchange for South Sudanese pounds at its posted exchange rates according to its regulations.

60. International Clearing and Payments Agreements

The Bank may, either for its own account or on behalf of the Government, enter into clearing and payments agreements or any other contracts for the same purpose with public and private central clearing institutions domiciled abroad.

61. International Reserve Assets

- (1) The Bank shall establish and maintain the international reserves of South Sudan which shall consist of all or any of the following assets:
 - (a) any gold, other precious metals and precious stones;
 - (b) any banknotes and coins in freely convertible foreign currency;
 - (c) any credit balances that are payable in freely convertible foreign currency and are held in accounts of the Bank on the books of foreign central banks or other financial institutions;
 - (d) Special Drawing Rights of the International Monetary Fund;
 - (e) any bills of exchange, promissory notes, certificates of deposit, bonds and other debt securities that are payable in freely convertible foreign currency and are held by or for the account of the Bank; and
 - (f) any forward purchase or repurchase agreements and any currency swap agreements of the Bank concluded with or guaranteed by foreign central banks or international financial organizations, and any futures, option and other contracts held by the Bank, that entitle the Bank to receive payment in freely convertible foreign currency.
- (2) The Bank shall maintain the international reserves at a level that shall be adequate for the execution of the monetary and exchange rate policies of South Sudan and for the prompt settlement of the country's international transactions.

62. Acquisition, Holding and Disposal of International Reserves

The Bank shall have the authority to take all actions necessary to acquire, to hold, and to dispose of, the international reserve assets specified in section 61(1) above, and manage them in accordance with internationally recognized best practices.

63. Investment of International Reserve Assets

The international reserve assets of the Bank referenced in section 61 above shall be invested abroad in accordance with investment guidelines established by the Board, giving priority to safety, liquidity, and income, in that order.

CHAPTER IX

RELATIONS WITH THE GOVERNMENT

64. Banker, Adviser, and Fiscal Agent

- (1) The Bank shall act as banker and adviser to, and as fiscal agent of, the Government, and such Government agencies as the Board, in consultation with the Minister shall determine.
- (2) The Bank shall consult with the Minister on any proposals concerning matters that relate to the Ministry's objectives or that otherwise are within its fields of competence.
- (3) Each year:
 - (a) the Minister shall consult the Bank on the occasion of the preparation of the Government budget for the next following budget year, including the extent of external financing of domestic expenditures;
 - (b) the Bank shall submit to the Minister a written report on economic and financial matters pertinent to the budget;
 - (c) the Minister shall include the report of the Bank referred to in subsection (b) above in its budget proposal to the Assembly for the following year.

65. Advances to the Government

- (1) The Bank may make advances to the Government only in respect of temporary deficiencies of recurrent revenue.
- (2) The total amount of advances made or outstanding under subsection (1) shall not at any time exceed:
 - (a) 5 percent of the gross recurrent revenue of the Government, as shown in the appropriation account for the latest year for which that account has been audited by the Auditor General, or
 - (b) 50 percent of the capital of the Bank, as shown on the most recent monthly financial statements of the Bank, whichever amount is lower.
- (3) Each advance made to the Government under this section shall:
 - (a) have a maturity of no longer than 3 months;
 - (b) be secured by negotiable securities issued by the Government and having a maturity of not more than 12 months;
 - (c) bear interest at a market rate; and

- (d) be made solely for the purpose of providing temporary accommodation to the Government.
- (4) For at least 6 months of every calendar year, there must be no outstanding liabilities of the Government to the Bank.
- (5) For purposes of this section, recurrent revenues of the Government shall include revenue from taxes, customs, excise and other duties, fees, rents, profits and income from any investment or undertaking, but shall not include proceeds from grants, loans, or disposal of assets for purposes of privatisation or any form of borrowing, whether short-term or long-term.
- (6) Where any advance under this section is not repaid within the required time period, the Bank shall report this fact to the Assembly, and shall not make any additional advances to the Government until the situation is rectified.

66. Consultations and Reporting on Public Sector Borrowing

- (1) Each year, the Minister shall consult with the Bank on its plan for domestic and external public sector borrowing during the next following financial year, including the amounts to be contracted and disbursed under such borrowing and the expected terms and conditions of such borrowing.
- (2) All borrowing transactions by the Government and its agencies shall be reported in such detail as the Bank shall require by regulation.

67. Depository and Cashier for the Government

- (1) The Bank shall accept deposits from the Government and from such Government agencies as the Minister shall determine.
- (2) As depository, the Bank shall receive and disburse monies and keep account thereof and provide other financial services related thereto.
- (3) The Bank shall pay to the limits of the deposited amounts against payment orders concerning such accounts.
- (4) The Bank shall pay interest on such deposits at relevant market related rates after deduction of its administrative costs related to such deposits.
- (5) The Bank may authorize other financial institutions to receive such deposits in compliance with conditions prescribed by the Bank.

68. Fiscal Agency Function

- (1) The Bank may, only through a trust fund and on such terms and conditions as it shall agree with the Minister, act as fiscal agent for the account of the Government and its agencies, in the following matters:

- (a) marketing of debt securities issued by the relevant authorities, or as registrar and transfer agent thereof;
- (b) payment of principal of, and interest and other charges on, such securities; and
- (c) such other matters as shall be consistent with the objectives and basic tasks of the Bank.

- (2) The Bank shall charge fees for any services performed under this section at its cost.

69. Required Information

The Bank shall be entitled to receive from the Government all such financial and economic information and documents as the Bank shall reasonably request for the carrying out of its functions.

CHAPTER X

RELATIONS WITH REGULATED ENTITIES

70. Supervision of Regulated Entities

- (1) The Bank shall be exclusively responsible for the supervision, regulation and licensing of financial entities in South Sudan in accordance with the regulation.
- (2) The principal functions of the Bank with regard to regulated entities shall be:
 - (a) to promote the general safety, stability, efficiency, and transparency of the banking and financial systems of South Sudan;
 - (b) to counteract undesirable developments in regulated entities that may endanger the safety of assets entrusted to them, impair the proper conduct of their business, or produce unacceptable systemic risk in the banking or financial systems, or serious disadvantages to the national economy.
- (3) Without any limitation on subsection (2) above, the Bank shall:
 - (a) be responsible for supervising compliance with the provisions of this Act, other relevant laws and regulations of the Bank pertaining to regulated entities;
 - (b) take appropriate steps to ensure that regulated entities conducting business in South Sudan are operated in a safe, responsible, honest and business-like manner;
 - (c) suppress or aid in suppressing illegal, dishonourable or improper practices in the conduct of the business of regulated entities, including misuse of regulated entities for criminal purposes, money laundering or terrorist financing;
 - (d) co-operate with and assist financial services supervisory authorities in South Sudan and abroad, whenever appropriate, to the extent permitted by this or any other provision of law; and

- (e) consider and propose reforms of laws relating to supervision of regulated entities.
- (4) In performing the supervisory functions assigned to it by this Act, the Bank shall be authorized, in particular, to:
- (a) carry out the licensing of any regulated entities, including setting eligibility requirements for those wishing to engage in the business of regulated entities as authorized by relevant legislation;
 - (b) submit any regulated entities to prudential requirements, and/or other requirements designed to facilitate supervision by the Bank and/or protection of customers and clients;
 - (c) require regulated entities to provide information to the Bank to facilitate supervision by the Bank;
 - (d) conduct inspections of regulated entities as authorized by relevant legislation;
 - (e) issue corrective orders to, and impose penalties and sanctions on, regulated entities in accordance with relevant legislation in cases of legal or regulatory violations;
 - (f) revoke licenses of regulated entities in accordance with legal requirements; and,
 - (g) perform other functions provided by relevant legislation.

71. Lender of Last Resort Function

- (1) The Bank may provide lender of last resort liquidity support to a solvent bank, by granting to it financial assistance as may be provided in the regulation.
- (2) Each commitment referenced in subsection (1) must be secured by assets specified in section 54(1), unless:
 - (a) the Bank determines in writing that other collateral would be justified by exceptional circumstances, dictated by the liquidity situation of the bank and by the public interest; and
 - (b) the Minister has concurred in writing with such determination within 24 hours after it has been submitted to him by the Bank.
- (3) Commitments under subsection (1) may not exceed 50 percent of the Bank's capital unless any excess is matched equally by funds from the Ministry.
- (4) The terms and procedures for providing assistance under subsection (1) shall be determined by the Bank. The interest rate for such credits must be at market rates as determined by regulation of the Bank.
- (5) The period for assistance referenced in subsection (1) may be extended by the Bank for one additional 3-month period, with the approval of the Board and the written concurrence of the Minister, on the condition that the bank takes any measures required by the Bank to overcome its liquidity deficiencies, to the satisfaction of the Bank.

CHAPTER XI

ACCOUNTS, FINANCIAL STATEMENTS, AUDIT, AND REPORTS

72. Financial Year

The fiscal year of the Bank shall be the year according to the Gregorian calendar, and commence on the first day of January and end, on the 31st of December of the same year.

73. Accounting Practices

The Bank shall maintain accounts and records adequate to reflect in accordance with consistently maintained International Financial Reporting Standards its operations and financial condition.

74. Financial Statements

The Bank shall prepare financial statements for each of its financial years. They shall include a balance sheet, income statement, a statement of cash flows, and related statements.

75. Audit of Accounts

- (1) The accounts and records of the Bank shall be audited annually in accordance with International Standards on Auditing by the Auditor General.
- (2) The Bank shall provide the Auditor General with such assistance as the Auditor General may require. The Auditor General shall have access, upon request, to all accounts, books, minutes, records and other documents, information and data of the Bank.

76. Transmittal and Publication of Statements and Reports

- (1) The Bank shall, within four months after the close of each of its financial years, submit to the Minister for transmission to the President a copy of its financial statements certified by the Auditor General and the Bank's external auditors.
- (2) The Bank shall once a year submit to the Assembly:
 - (a) a report on its operations and affairs during that year, reviewing that year's performance against its plans and setting out its objectives for the coming year; and,
 - (b) a report on the state of the economy.

- (3) The Bank shall, within 15 working days of the end of each month, prepare and submit to the Minister pro forma balance sheets. The pro forma reports will include the net change in the foreign reserve position over the course of the month.
- (4) If a monthly pro forma balance sheet referred to in subsection (3) above, shows that the value of the Bank's assets is less than the sum of its liabilities and required capital, the Minister shall, within 10 working days of receipt of such statement from the Bank, notify the President and Assembly in writing and carry out the requirements of section 38 of this Act.
- (5) Upon their submission, the Bank shall publish the financial statements and reports referred to in subsections (1) and (2) above; it may publish such other reports and studies on financial and economic issues as it may deem appropriate.

CHAPTER XII

COLLECTION OF STATISTICAL INFORMATION

77. Collection of Statistical Information

- (1) The Bank shall collect the statistical information required for the achievement of its objectives and the carrying out of its tasks, from the competent authorities of South Sudan or directly from economic agents. To that end, it shall cooperate with the competent authorities in other states and with international organizations.
- (2) The Bank shall seek to harmonize the rules and practices governing the collection, compilation and distribution of statistics within its fields of competence.
- (3) The Bank shall define by regulation the statistical information and the form in which such information is to be provided to the Bank, the persons that are to provide such information to the Bank, and the confidentiality regime that shall apply to statistical information provided to the Bank.
- (4) The Bank may require all banks and other regulated entities operating within the territory of South Sudan to provide to the Bank annual, quarterly, or more frequent reports covering monetary statistics, income and expense reports, nonperforming loans and loan losses and provisioning, foreign currency positions, interest rates, and other reports of activities. The Bank shall be obliged to compile statistics in accordance with international standards and practices.
- (5) The Bank may compile and aggregate statistical information received from banks and other financial institutions as needed to meet its policy needs, to inform the public, and fulfil obligations to international organizations.

- (6) The Bank may require that banks and other financial institutions and agents provide to the Bank information on specific transactions, individuals, or firms as are needed to carry out its supervisory, policy, and statistical functions.
- (7) The Bank shall not disseminate to the public statistical information revealing business relations of individuals or undertakings unless it has obtained the prior written permission by the individuals or the undertakings concerned to do so.
- (8) The Bank may provide information on confidential bank monetary records related to specific transactions, individuals, or firms to supervisors or other due authorities for the execution of their official duties.
- (9) The Bank may impose sanctions on banks, monetary institutions and agents, and their management in the event of incomplete information or late reporting, non-reporting, or inaccurate reporting.
- (10) Each person from whom the Bank may collect statistical information pursuant to this section shall provide to such information in accordance with the relevant regulations. The Bank may apply any enforcement measures authorized by the applicable law to any person who violates this requirement.

CHAPTER XIII

MISCELLANEOUS PROVISIONS

78. Preferential Right

The Bank shall have an unconditional preferential right to satisfy any claim against any debtor of the Bank at the time such claim becomes due and payable. Such claim may be satisfied:

- (a) from any cash balances and other assets that the Bank holds for its own account or for the account of the debtor concerned, whether as collateral to secure such claim or otherwise;
- (b) by the Bank keeping such cash balances, and/or selling such assets at a reasonable price and retaining the proceeds of such sale after deducting the associated costs;
- (c) without action or approval of any court; and
- (d) notwithstanding any competing claim of ownership or other previously acquired rights, unless there is clear and convincing evidence that staff of the Bank knew or should be considered to have known at the time such assets came into the possession of the Bank that such assets did not belong to the debtor concerned.

79. Standards of Good Administration

- (1) The Bank shall perform its assigned tasks in accordance with law.
- (2) The decisions of the Bank shall be impartial, in accordance with law.

- (3) In carrying out its tasks and providing services, the Bank shall be obliged to consider the benefits while imposing a restriction.

CHAPTER XIV

TRANSITIONAL PROVISIONS

80. Execution of Contracts and Transactions

Every contract, sale, bill, note, instrument and Security and every transaction, dealing, matter and thing relating to money or involving the liability to pay money that was made, executed or entered into, done or carried out before this Act enters into force shall, remain to be executed, done or carried out on or after that date.

81. Temporary Monetary Policy Objective

For the first six months following the end of the period for redeeming Sudanese pounds for South Sudanese pounds, monetary policy shall target the amount of sales of foreign exchange, in order to achieve a representative and stable market exchange rate for use beyond such period.

82. Temporary Suspension of Limitation on Advances to the Government Based on the Bank's Capital

For the first five years following the effective date of this Act, the limitation on advances to the Government based on the Bank's capital specified in section 65(2)(b) above shall not be applicable.

Assent of the President of the Government of Southern Sudan

In accordance with the provision of Article 85 (1) of the Transitional Constitution of the Republic South Sudan, 2011, I, Gen. Salva Kiir Mayardit, President of the Republic of South Sudan, hereby Assent to the Bank of South Sudan Act, 2011 and sign it into law.

Signed under my hand in Juba, this ^{29th} day of the month of ^{AUG.} in the Year 2011 AD.


Gen. Salva Kiir Mayardit,

President

The Republic of South Sudan

Juba.