



BANK OF SOUTH SUDAN (BSS)

REGULATION NO. 15, 2012

MAXIMUM EXPOSURE TO ONE PERSON OR GROUP OF RELATED PERSONS

In accordance with the provisions of section 12 of the Bank of South Sudan Act, 2011, and section 71 of the Banking Act 2012 (the Banking Act), I hereby issue the following Regulation that establishes conditions relative to limitations on exposures to one person or a group of related persons for banks operating in South Sudan.

This regulation shall apply to all banks licensed in South Sudan, including their branches in foreign countries, and subsidiaries of such banks on a consolidated basis. It also applies to branches of foreign banks operating in South Sudan; in such cases, the reference to "core capital" in this regulation shall refer to the capital equivalency deposit maintained by such banks relative to such branches.

This Regulation shall be cited as Maximum Exposure to One Person or Group of Related Persons, 2012, and shall come into effect as from the date of its signature.

I. General Provisions and Definitions

1. In addition to the terms defined in BSS Regulation No. 8, 2012 on Definitions, the following definitions are used in this regulation:

"Person" includes a natural person; sole proprietorship, partnership, joint venture, association, trust, estate, corporation, limited liability company, not-for-profit corporation, sovereign government or agency, instrumentality, or political subdivision thereof; or any similar entity or organisation.

"Exposure" to a person or group of related persons includes:

- (a) all loans, factoring, financial leasing, accrued interest receivable, correspondent accounts, debt securities, term deposits, and accounts receivable issued to such person or group;
- (b) equity investments in the securities of such person or group;
- (c) the sum of off-balance sheet liabilities (guarantees, letters of credit, and commitments to lend) issued to this person or group;
- (d) any exposure to a third party that has been unconditionally guaranteed by this person or group.

This sum may be reduced by the amount of specific reserves, by the amount of any of the included exposures that are deducted in the calculation of the bank's regulatory capital, and by the exemptions listed in Section III of this regulation.

"Large exposure" means an exposure to one person, or a group of related persons, exceeding 10 percent of a bank's core capital, as defined by the BSS.

A **"group of related persons"** consists of two or more persons whose mutual relationships are such that, if one of these persons were to encounter financial difficulties, this could also lead to



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similar difficulties on the part of the other persons. The particulars of this definition are set forth in Section II.

II. Rules for determining whether persons form a group of related persons

A. Control

2. Two or more persons will be considered a "group of related persons" if:
 - (a) one of these persons controls the other; or
 - (b) they are under common control by one or more other persons.

B. Mutual guarantees

3. Two or more persons will be considered a "group of related persons" if the same third party is a guarantor for both persons. This rule, however, is qualified by section 14 below.

C. Substantial financial interdependence

4. Two or more persons will be considered a "group of related persons" if they are linked through substantial financial interdependence. This is the case, in particular, if 50 percent or more of one person's gross receipts or gross expenditures for the most recent financial year are derived from transactions with the other person. Gross receipts and expenditures include gross revenue/expenses, intercompany loans, dividends, capital contributions, and similar receipts or payments.

D. Common enterprise

5. Two or more persons will be considered a "group of related persons" if they use their loans or other funds obtained from the bank to participate in a common enterprise or joint activity, such that the expected source of repayment is the same for all such persons, unless each of these persons has another source of income from which the obligation to the bank can be fully repaid.

E. Direct benefit

6. Two or more persons will be considered a "group of related persons" if funds received from the bank by these persons are transferred to, or used for the direct benefit of, the same third person (regardless of whether the bank has incurred exposure to the third person separately or not), other than in a bona fide, arms-length transaction for the purchase of property, goods or services in the ordinary course of business;

F. Exposures to partnerships, joint ventures or associations

7. Exposures to a general or limited partnership, joint venture or association are deemed to be exposures to each partner of the partnership, or member of the joint venture or association. However, this rule does not apply to partners or members who, by the terms of the partnership or membership agreement, are not held generally liable for the debts or actions of the partnership, joint venture, or association.
8. Exposures to individual members of a partnership, joint venture, or association are not attributed to the partnership, joint venture, or association unless either the common enterprise test or the direct benefit test are applicable to persons.



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9. Exposures to members of a partnership, joint venture, or association are not attributed to other members of the partnership, joint venture, or association unless either the common enterprise test or the direct benefit test are applicable to persons.

10. Both the direct benefit and common enterprise tests are met between a member of a partnership, joint venture or association and such partnership, joint venture or association, when loans or extensions of credit are made to the member to purchase an interest in the partnership, joint venture or association.

G. Loans to leasing companies

11. A loan or extension of credit to a leasing company for the purpose of purchasing equipment for lease will be deemed a loan or extension of credit to the lessee, provided:

- (a) the bank evaluates the creditworthiness of the lessee before the loan is extended to the leasing company;
- (b) the loan is without recourse to the leasing company;
- (c) the bank is given a security interest in the equipment and in the event of default, may proceed directly against the equipment and the lessee for any deficiency resulting from the sale of the equipment;
- (d) the leasing company assigns all of its rights under the lease to the bank;
- (e) the lessee's lease payments are assigned and paid to the bank; and
- (f) the lease terms are subject to the same limitations that would apply to a bank acting as a lessor.

III. Limitations on large exposures

A. General

12. Except as permitted by this regulation:

- (a) a bank's maximum exposure to one person or a group of related persons may not exceed 25 percent of the bank's core capital;
- (b) in the case of exposures to an insider or connected juristic person of the bank, as defined in any BSS regulation or circular pertaining to transactions with such persons, the limitations set forth in any such regulation or circular shall be applicable;
- (c) the total amount of all large exposures of a bank must not exceed 800 percent of the bank's core capital.

B. Exceptions

13. The following are not subject to the large exposure limitations:

- (a) in the case of foreign exchange transactions, exposures incurred in the ordinary course of settlement during the 48 hours following payment;



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- (b) in the case of transactions for the purchase or sale of securities, exposures incurred in the ordinary course of settlement during the five working days following payment or delivery of the securities, whichever is the earlier;
- (c) exposures to:
 - (1) central governments or central banks of OECD countries;
 - (2) the Government of the Republic of South Sudan or the BSS;
 - (3) the International Bank for Reconstruction and Development;
 - (4) the European Bank for Reconstruction and Development;
 - (5) the Inter-American Development Bank;
 - (6) Bank for Economic Cooperation and Development in the Middle East and North Africa;
 - (7) the North American Development Bank;
 - (8) the Asian Development Bank;
 - (9) the African Development Bank;
 - (10) the Inter-American Investment Corporation;
 - (11) the International Finance Corporation;
 - (12) the Bank for International Settlements; or
 - (13) other international organisations or multilateral development banks as may be designated by the BSS from time to time.
- (d) exposures, or portions thereof, to the extent fully guaranteed as to principal and interest by an entity listed in subsection (c);
- (e) exposures, or portions thereof, to the extent fully secured by obligations of an entity listed in subsection (c);
- (f) off-balance sheet liabilities where the beneficiary is an entity listed in subsection (c);
- (g) exposures to a central government or central bank whose long-term rating is not lower than "A", or an equivalent level by an internationally-recognised rating agency whose ratings are approved for use by the BSS; and provided that the value of the claim can be determined on a constant basis and the claim or guarantee can be converted to liquid funds on an immediate basis;
- (h) loans or extensions of credit secured by deposit accounts, provided:
 - (1) the deposit must be maintained in the bank granting the credit, or in another bank which is part of that bank's corporate group;
 - (2) the bank granting the credit must retain the right of full offset;



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- (3) the bank's rights in the collateral must be registered in accordance with South Sudanese law;
 - (4) the deposit must not be eligible for withdrawal before the loan matures, or else the bank must establish internal procedures to prevent withdrawal of the deposit without the bank's prior consent and to protect the bank's interest in the event of withdrawal; and
 - (5) a deposit that is denominated and payable in a currency other than that of the credit that it secures must be freely convertible to South Sudanese Pounds. The exception applies to only that portion of the credit that is covered by the South Sudanese Pound value of the deposit. The bank must establish procedures to revalue foreign currency deposits to ensure that the loan remains fully secured at all times.
- (i) the amount of a participation interest in a loan sold by a bank to another bank without recourse;
 - (j) deposits placed by banks in other banks in the bank's corporate group in the normal course of correspondent business, where the bank receiving the deposit has a long-term credit rating of not lower than "A", or an equivalent level by an internationally-recognised rating agency whose ratings are approved for use by the BSS;
 - (k) loans or extensions of credit to any bank or to any person, receiver, conservator, or other agent in charge of the business and property of a bank when an emergency situation exists and a bank is asked to provide assistance to another bank, and the loan is approved by the BSS.
14. Where an exposure is guaranteed by a third party other than an entity specified in section 13(c), or is collateralised by securities issued by such a third party, the bank may, for purposes of this regulation, treat the exposure as having been incurred by the third party rather than the obligor if:
- (a) the third party is not an insider or connected juristic person of the bank as defined in BSS in any applicable regulation or circular;
 - (b) the third party is not part of the same group of related persons as the obligor;
 - (c) the guarantee or collateral agreement represents an unconditional commitment to pay on the part of the third party guarantor; and
 - (d) the bank's files contain documentation that clearly and completely supports the creditworthiness of the third party guarantor, or financial strength of the third party issuer of the securities in question, such that the bank can fully rely on such commitment for the amount of the exposure in question.
15. Any securities used as collateral under section 14 must be valued at fair market value that exceeds the amount of the exposure in question, and must be either:
- (a) traded on a recognised stock exchange, as determined by the BSS; or
 - (b) effectively negotiable and regularly quoted on an organised securities market which, to the satisfaction of the BSS, provides for the establishment of an objective price such that the fair market value of the securities may be verified at all times.



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IV. Reporting requirements

16. Each large exposure of a bank must be reported to the BSS on a quarterly basis in the format set out in the attached Schedule.

17. Banks are required to inform the BSS within 5 days if the limitations specified in section 12 are exceeded. If, in the sole judgment and discretion of the BSS, circumstances so warrant, the BSS may allow the bank a limited amount of time to achieve compliance with the limitations. Such arrangements must be approved by the BSS and are subject to any conditions and reporting requirements that the BSS deems fit.

V. Internal controls to ensure compliance

18. Each bank must establish and maintain sound administrative and accounting procedures and adequate internal control mechanisms for the purposes of identifying and recording all large exposures and subsequent changes to them, in accordance with this regulation, and for the monitoring those exposures in the light of each bank's own exposure policies.

19. Each bank must maintain a central database showing the total amount of its exposures to a person and group of related persons as defined in this regulation. The database must also include the due date, classification category, and the number of extensions, if any, for each exposure item. The database must be maintained on an ongoing basis and updated at least quarterly.

VI. Nonconforming exposures

20. An exposure that was within a bank's legal limit when incurred, will not be deemed a violation, but will be treated as "nonconforming" if it is no longer in conformity with the bank's lending limit because:

- (a) the bank's regulatory capital has declined;
- (b) borrowers or investee enterprises have subsequently merged or formed a common enterprise;
- (c) lenders have merged;
- (d) the lending limit or capital rules have changed;
- (e) collateral securing a loan has declined in value;
- (f) other circumstances, similar to the above, which are beyond the control of the bank and are, upon request of the bank, deemed by the BSS to be worthy of the procedures set out in sections 21 and 22.

21. A bank must use reasonable efforts to bring a nonconforming exposure noted in section 20 into conformity with the bank's large exposure limit within 30 days, unless:

- (a) it is prevented from doing so due to judicial proceedings, regulatory actions or other extraordinary circumstances beyond the bank's control; or
- (b) to do so would be inconsistent with safe and sound banking practices.

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22. In cases set forth in section 20, the bank must notify the BSS of the situation without delay and must supply the BSS with information, in the form and at times requested by the BSS, concerning its efforts to bring the exposure into compliance.

VII. Transitional provisions

23. In cases where a bank had exposure outstanding to one person or group of related persons on the date of enactment of this regulation in excess of the limitations in the regulation, the exposures may be repaid or otherwise reduced according to their original terms and conditions. The bank may not, however, incur new exposures to such persons unless:

(a) following such new exposures, the total exposure outstanding to such person and all related persons would comply with the limitations of this regulation; or

(b) such new exposures are permitted under the provisions of section 24 of this regulation.

24. In cases where a bank is under a legally binding contractual obligation, incurred prior to the effective date of this regulation, to incur exposure to a person that would result in the bank's exposure exceeding the limitations of this regulation, a bank may incur such exposure, provided that it can demonstrate such legal obligation through written documentation, and incurring such exposure would not be detrimental to the bank or the interests of its depositors or other creditors. In this event the requirements of sections 20 through 22 are applicable.

Made under my hand on
This 19th day of SEPT 2012

Kornelio Koriom Mayik

Governor
Bank of South Sudan



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SCHEDULE

QUARTERLY REPORT ON CREDIT CONCENTRATION AND LARGE EXPOSURES

Name of Bank _____

For the quarter ending _____

(Amounts in SSP '000)



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Name of BORROWER (indicate the borrower's name and the names of others with a common interest)	OUTSTANDING AMOUNT (include all credit facilities equal to or above 10% of core capital or total capital, from the highest to the lowest)			% of capital		Status (performing or non-performing)	Collateral	
				core	total		Amount	Description
	On balance sheet	Off balance sheet	total					

Name of responsible officer _____

Signature _____

Date _____