



BANK OF SOUTH SUDAN (BSS)

REGULATION NO. 19, 2012

THE LICENSING AND SUPERVISION OF FOREIGN EXCHANGE BUREAUX

In accordance with the provisions of section 12 of the Bank of South Sudan Act, 2011, and section 7 of the Foreign Exchange Business Act, 2012 (Forex Business Act), I hereby issue the following Regulation that specifies conditions for licensing and supervising foreign exchange bureaus licensed to transact foreign currency business in South Sudan.

This Regulation shall be cited as the Licensing and Supervisions of Foreign Exchange Bureaux, 2012, and shall come into effect as from the date of its signature.

Interpretation

1. In this regulation, unless the context otherwise requires, the following words and expressions shall carry the same meanings assigned to them by the Bank of South Sudan Act, 2011 and the Foreign Exchange Business Act, 2012 (the Forex Business Act):

- "Associated enterprise";
- "Bank";
- "bank";
- "Beneficial ownership";
- "Close links";
- "Control";
- "Controller";
- "Enterprise";
- "External auditor";
- "Financial institution";
- "Fit and proper person";
- "Group" of enterprises;
- "Parent" or "parent company";
- "Person";
- "Significant participation";
- "Significant participant";
- "Subsidiary";
- "Supervised financial institution";
- "20 percent participation";
- "20 percent participant";

words denoting the masculine gender include the feminine as well.

2. Furthermore, in this regulation, unless the context otherwise requires, "foreign exchange bureau" means an enterprise licensed under this regulation to engage in:



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- (a) the foreign exchange business limited strictly to buying and selling foreign currency for the immediate delivery, and
- (b) international transmission of currency.

Requirement for a licence

3. The foreign currency business in South Sudan may only be engaged in, apart from a bank licensed in accordance with the Bank of South Sudan Act, 2011, by an enterprise licensed as a foreign exchange bureau by the Bank in accordance with this regulation.
4. A licence issued under this regulation shall be valid for one year, and shall be renewed annually.
5. A licence issued under this regulation is not transferable, assignable, or subject to encumbrance in any way.
6. The Bank shall maintain a register of all foreign exchange bureaus licensed under this regulation.

Creation of foreign exchange bureaus

7. Foreign exchange bureaus may be established by one or more legal or natural persons as founders and shareholders.
8. Foreign exchange bureaus shall be registered as companies under the applicable legislation of South Sudan. Foreign exchange bureaus shall not change their legal structure without the prior written authorisation of the Bank.
9. Each foreign exchange bureau shall have a charter and by-laws, which shall be approved by the Bank. The charter and by-laws must contain information prescribed by the Bank, taking into account the requirements of this regulation and the Companies Act of South Sudan.
10. Any amendment of the charter or by-laws of a foreign exchange bureau shall require the prior written authorisation of the Bank.
11. The Bank shall maintain a copy of the charter of each foreign exchange bureau.

Licensing process

12. An enterprise proposing to transact or carry on business as a foreign exchange bureau shall apply in writing to the Bank for a licence. The licensing process consists of two stages, preliminary approval and final approval.
13. An application for preliminary approval shall contain information prescribed by the Bank, and must address the criteria referenced in section 15.
14. The application for preliminary approval must be accompanied by an application fee in the amount of SSP 10,000.
15. Within 3 months from the date of receipt of the complete application for preliminary approval, the Bank shall either issue preliminary approval or refuse to do so, and shall not grant preliminary approval unless it is satisfied as to the following factors:
 - (a) the compliance of the founding documents to legal requirements;
 - (b) that each proposed director and manager of the foreign exchange bureau is a fit and proper person;
 - (c) that if any person proposes to hold a significant participation in the foreign exchange bureau no grounds exist for refusal under section 33;



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(d) the foreign exchange bureau will have adequate policies and procedures for the detection and prevention of money laundering, terrorist financing and other criminal activities;

(e) if the foreign exchange bureau will be a subsidiary of a foreign supervised financial enterprise, proof that the competent authority of the founder's home country has granted approval for the establishment of a foreign exchange bureau in South Sudan;

(f) all sources of funds to be used for the foreign exchange bureau's initial capitalisation do not raise any suspicion that the influence of any person supplying such funds may increase the risk of noncompliance with the Forex Business Act or regulations issued thereunder.

16. In the event of refusal, the Bank shall provide the applicant with a written statement of the reasons.
17. Following preliminary approval but before the final decision of the Bank granting a licence, a foreign exchange bureau in organisation may only conclude transactions that are directed at the creation of the organisational structure of the foreign exchange bureau, engagement of the external auditor, and acquisition or arrangement for use of necessary premises, technical equipment, security systems and assets necessary to conduct business for which preliminary approval has been given.
18. Any significant change in circumstances of an applicant following the granting of preliminary approval must be promptly reported to the Bank. The Bank may reconsider its grant of preliminary approval, including revocation of such preliminary approval, based on any such new information.

Initial capital

19. The required initial capital for a foreign exchange bureau shall be an amount in South Sudanese Pounds calculated at the BSS official mid-rate that is equivalent to US Dollars 600,000. Such initial capital must be paid in cash or cash equivalents in South Sudanese Pounds, and be free of any lien or encumbrance.

Final decision on licence

20. A foreign exchange bureau licence is issued by the Bank following a grant of preliminary approval, and under the following additional conditions:
 - (a) proof that the required initial capital has been paid in full;
 - (b) the applicant has provided identification of each address where it proposes to carry on the foreign currency business, with a copy of the lease agreement on the premises or a document evidencing the ownership of the premises;
 - (c) evidence that the premises referenced in subsection (b) will be equipped with suitable means for protection and security of the means of payment, the property and the employees, and for the safeguarding of funds, recording of transactions, and detection of counterfeit notes.
21. The suitability of the premises referenced in section 20 (b) and (c) must be confirmed by a satisfactory inspection report by the Bank before the foreign exchange bureau commences business.
22. The Bank shall issue a licence within 30 days of the satisfaction of the conditions specified in section 20.
23. The Bank may refuse to issue a licence if the conditions listed in section 20 are not fulfilled within 3 months following the grant of preliminary approval.



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24. The Bank may attach any conditions to the granting of a licence that it deems appropriate to fulfil its obligations under this regulation.

Licence fee

25. The applicant shall, upon being granted a licence under this regulation, pay a fee of SSP 10,000. The foreign exchange bureau shall thereafter pay an annual fee of SSP 10,000 on or before the anniversary date of the granting of its licence.
26. A foreign exchange bureau that maintains more than one branch must deposit with the Bank an annual fee of SSP 5,000 for each subsequent branch, at the times designated in section 25.
27. If a foreign exchange bureau fails to pay the prescribed annual licence fees before or on the date referenced in section 25, the foreign exchange bureau shall pay to the Bank a late payment civil penalty at a rate of 25 per cent of each branch licence fee.

Duration and display of licence

28. A foreign exchange bureau licence shall remain in force until:
- (a) it expires in accordance with this regulation;
 - (b) the foreign exchange bureau voluntarily surrenders the licence, in accordance with procedures prescribed by the Bank; or
 - (c) the licence is revoked in accordance with this regulation.
29. Each foreign exchange bureau shall keep its licence displayed in its original form in a conspicuous place in the premises in which it carries on its lawful business. A copy of the licence shall be similarly displayed in each branch office of the foreign exchange bureau.

Requirements for acquiring significant participations in foreign exchange bureaus

30. No person may acquire a significant participation, 20 percent participation, or control of a foreign exchange bureau, without the prior written authorisation of the Bank.
31. Legal persons having significant participations in foreign exchange bureaus must be financial institutions.
32. The authorisation of the Bank shall be requested by submitting to the Bank a written application accompanied by supporting documents showing that the conditions specified by section 33 are met in accordance with regulations issued by the Bank. The Bank may require that additional documentary evidence be submitted in support of the request.
33. The Bank shall not issue an authorisation under section 30 unless it is satisfied that:
- (a) the applicant is a fit and proper person;
 - (b) the Bank can satisfactorily identify the source of the funds to be used for the proposed acquisition, and that if any of the funds will be supplied by another person, there is no reason to suspect that any influence exercised by that person would increase the risk of noncompliance with any provision of the Forex Business Act or regulations issued thereunder;
 - (c) there is no reason to suspect that the influence that would be exercised on the foreign exchange bureau as a result of the acquisition would increase the risk of noncompliance with any provision of the Forex Business Act, this or other regulations issued thereunder;



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- (d) if as a result of the acquisition, the foreign exchange bureau would become part of a group, the group will meet requirements established by the Bank relative to transparency of beneficial ownership and control;
- (e) if as a result of the acquisition, the foreign exchange bureau would become a subsidiary of a non-resident supervised financial institution:
- (i) the competent authority of the country where the head office of that institution is located has given its authorisation to the acquisition;
 - (ii) the Bank is satisfied, following consultations with the foreign competent authority, that the applicant is effectively supervised on a consolidated basis in its home country; and
 - (iii) an agreement of cooperation has been concluded between the Bank and the competent foreign supervising authority, specifying the allocation of powers and responsibilities and the rules and procedures governing exchanges of information between the Bank and the foreign competent authority;
- (f) the acquisition would not hinder the Bank in the discharge of its supervisory responsibilities because of close links between the foreign exchange bureau and any person;
- (g) there are no reasonable grounds to suspect that the acquisition would result in, or increase the risk of the foreign exchange bureau's involvement in money laundering or terrorist financing;
- (h) any other conditions as the Bank may specify in order to fulfil its functions under this regulation would be met.
34. The Bank shall approve or reject the application within two months from the date that a complete application is submitted, and shall notify the applicant of its decision in writing. For applications submitted by a non-resident applicant, this period shall be four months. Decisions rejecting an application must explain the grounds on which the application is rejected.
35. If the Bank issues the authorisation, it may fix a maximum period for completing the acquisition. The applicant shall notify the Bank within 10 days of when the acquisition takes place.

Disposals and reductions of significant participations

36. A person who proposes to relinquish a significant participation, 20 percent participation, control of a foreign exchange bureau, must give written notification to the Bank of the size, if any, of the beneficial ownership in the foreign exchange bureau that he would retain.

Reporting of significant participations

37. Each foreign exchange bureau must notify the Bank in writing:
- (a) annually, at a time prescribed by the Bank, of the all persons having significant participations in such foreign exchange bureau and the amount of each such person's ownership in the foreign exchange bureau;
 - (b) within 10 days after acquiring knowledge that any person has become a significant participant, 20 percent participant, or controller of the foreign exchange bureau;
 - (c) within 10 days after acquiring knowledge that any person has ceased to be a significant participant, 20 percent participant, or controller of the foreign exchange bureau;
- or



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(d) without delay of any facts or circumstances that raise the suspicion that any person may have become a significant participant, 20 participant, or controller of the foreign exchange bureau, without the prior written authorisation of the Bank.

Registration of foreign exchange bureau shares

38. Each foreign exchange bureau shall maintain a register of the current beneficial holders of all shares in the foreign exchange bureau in such form and manner as the Bank may prescribe. No transfer of shares of the foreign exchange bureau shall be valid unless the transfer is recorded in the register.
39. No foreign exchange bureau shall allot, issue or register a transfer of shares that equals or exceeds the shareholdings specified in section 30 to any person unless that person has obtained the prior written authorisation of the Bank.
40. The registrar of companies shall not register any transfer of shares of a foreign exchange bureau without receiving a notice of no objection from the Bank.
41. Notwithstanding any contrary provisions of the Companies Act, no foreign exchange bureau shall without the written approval of the Bank:
 - (a) allot or issue any of its shares to, or register any of its shares in the name of any person other than the intended beneficial shareholder;
 - (b) transfer any of its shares in the name of a person other than the beneficial shareholder, or
 - (c) allow any of its shares to remain registered in the name of a person other than the beneficial shareholder.
42. Any person who contravenes section 41 commits an offence and is liable on conviction to a fine equal to twice the nominal value of the shares registered or transferred in contravention of section 41 for each day on which the shares remain so registered.

Unauthorised significant participations

43. If the Bank has reason to suspect that any person may have contravened the requirement of section 30, it may, by written authorisation, designate one or more representatives of the Bank, at any time and without prior notice, to exercise any of the functions described in sections 94 through 100 relative to such suspected contravention.
44. If the Bank determines that a person has violated the requirements of section 30, it shall issue an order requiring that person to dispose of the significant participation in the foreign exchange bureau, or such part of the significant participation as the Bank deems appropriate. The procedural requirements of section 108 shall apply to the issuance of such orders.

Revocation of authorisation

45. If, at any time, the Bank determines that one or more of the conditions specified or referred to in section 30 are no longer applicable to a person having a significant participation in a foreign exchange bureau, the Bank may by order, revoke its authorisation given under that section. The procedural requirements of section 108 shall apply to the issuance of such orders.
46. A person who is the subject of an order under section 45:
 - (a) shall not participate in any manner in the conduct of the affairs of the foreign exchange bureau without the prior written permission of the Bank; and



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- (b) shall sell or otherwise dispose of all or any part of his beneficial ownership in the foreign exchange bureau as may be specified in the order.
47. Any voting rights of that person in the foreign exchange bureau shall not be taken into account for the purpose of determining the quorum for any session, including any extraordinary session, of the general meeting of shareholders.
48. Upon the request of the Bank, a court may appoint a special and autonomous administrator who shall be authorised to exercise the voting rights referred to in section 47.
49. Any person who contravenes an order issued under section 45 commits an offence and is liable on conviction to a fine not exceeding SSP 50,000 or imprisonment not exceeding one year or both.

Exceptions from requirements for prior authorisation

50. Section 30 does not apply if a person becomes a significant participant, 20 percent participant, or controller of a foreign exchange bureau:
- (a) as a result of foreclosure in connection with a debt previously contracted in good faith and for which the shares served as collateral;
- (b) through inheritance or other circumstances over which the person has no control.
51. In the situations described in section 50, the person in question must:
- (a) inform the Bank within 30 days of the acquisition;
- (b) not take any action directed at influencing the management or policies of the foreign exchange bureau, or vote any shares so acquired, unless and until he has received the written authorisation of the Bank in accordance with this regulation.
52. A request for authorisation under section 51(b) must be submitted within 60 days of acquisition, unless the person intends to dispose of any shares associated therewith within a given period of time, in which case he must notify the Bank without delay.
53. If the Bank does not approve an application under section 52, the applicant must reduce his beneficial ownership in the foreign exchange bureau to a level below a significant participation, or such other level as the Bank may direct, within a time period set by the Bank.

Information requirements for significant participants

54. Each significant participant of a foreign exchange bureau shall submit to the Bank:
- (a) an annual report in the form prescribed by the Bank relating to such person's business activities, including a list of enterprises that such person controls; and
- (b) if the significant participant is an enterprise, the name of each newly appointed member of the board of directors and management, or persons holding equivalent positions, with information confirming that each such person is a fit and proper person, within 10 business days after such appointment.
55. The Bank may at any time require that significant participants in foreign exchange bureaus, and enterprises that these persons control, submit information for the purpose of:
- (a) clarifying, expanding upon, or following up on information submitted under section 54; or



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(b) determining whether or not the circumstances under which the Bank's authorisation under section 30 was given are still applicable.

Restrictions on voting and capital distributions received in contravention of this regulation

56. No person shall either personally or by proxy granted to any other person, cast a vote attached to, or receive a capital distribution payable on, any share in a foreign exchange bureau allotted or issued to him or registered in his name in contravention of this regulation.
57. The validity of any resolution adopted by a foreign exchange bureau shall not be affected by a vote being cast in contravention of section 56, if that resolution was adopted by the requisite majority of votes validly cast.
58. Any dividend referred to in section 56 shall accrue to the foreign exchange bureau concerned.

Directors and senior managers of foreign exchange bureaus

59. Each member of the board of directors and senior management of a foreign exchange bureau must:
 - (a) be a fit and proper person; and
 - (b) not be an employee of a public authority other than in a teaching capacity.

Branches

60. A foreign exchange bureau that wishes to establish a branch must obtain the prior written approval of the Bank. An application for such approval shall include information prescribed by the Bank as it deems fit to fulfil its obligations under this regulation.
61. The Bank may reject an application under section 60 if the proposed operations of the branch would be incompatible with the provisions of this regulation, or if the proposed managers, premises or equipment of the proposed branch office do not meet the requirements of this regulation. The suitability of the branch premises must be verified by an onsite inspection by the Bank.
62. The Bank may attach any conditions to the grant of approval under section 60 that it deems appropriate to fulfil its obligations under this regulation.
63. A foreign exchange bureau must notify the Bank of:
 - (a) the establishment of a branch, within 10 days after such establishment;
 - (b) its intent to close the branch, at least 30 days prior to the intended closure; and
 - (c) closing of the branch, within 10 days following such closure.
64. The Bank may revoke its approval under section 60 if:
 - (a) the branch does not commence operations within 60 days after approval is given;
 - (b) operations of the branch are discontinued for more than six months;
 - (c) the circumstances under which approval was given are no longer applicable;
 - (d) it is discovered that the approval was based on false or incomplete information;
 - (e) the foreign exchange bureau fails to submit information concerning the activities of the branch as required by the Bank; or
 - (f) the branch engages in activities other than foreign currency business.



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General provisions on operations

65. Each foreign exchange bureau shall ensure that:
 - (a) it maintains adequate capital, reserves, and liquidity to conduct its business;
 - (b) it maintains a system for managing and containing risks to its business, whether arising from fluctuations in exchange rates or from other factors; and
 - (c) its business and operations are carried out with prudence and integrity by a sufficient number of persons who are fit and proper for their respective positions.
66. A foreign exchange bureau shall not:
 - (a) conduct any other commercial activity at any site at which it engages in foreign currency business; or
 - (b) make investments in other enterprises.
67. Foreign exchange bureaus may purchase the following, subject to any circulars or guidelines that may be adopted by the Bank:
 - (a) foreign exchange in the form of banknotes along with the retention of personal identification documents of the client;
 - (b) travellers' cheques;
 - (c) cheques and payment orders drawn on foreign currency accounts opened with local banks;
 - (d) inward transfers from abroad.
68. Each foreign exchange bureau shall be permitted to set its own business hours, which are to be notified to the Bank.
69. A foreign exchange bureau may not relocate its business premises to other premises without providing the Bank with at least 30 days prior written notification of the proposed new address, and receiving the written approval of the Bank. The Bank shall verify the suitability of the new premises through an onsite inspection to confirm compliance with the requirements of section 20(c) before giving approval.
70. Each foreign exchange bureau shall be independent in choosing which foreign currencies to purchase or sell, determine the purchasing and selling exchange rates of currencies against the South Sudanese Pound and be responsible for storing the funds at the site for purchasing and selling currencies.
71. Foreign exchange bureaus may engage only in spot transactions in foreign currency.
72. A foreign exchange bureau may suspend purchasing and selling currencies for more than 30 days only after it has given a prior written notice to the Bank to this effect.
73. When purchasing and selling currencies, a foreign exchange bureau shall ensure an immediate execution of the transaction.
74. A foreign exchange bureau must have the referencing facilities to determine the appropriate rates of exchange.
75. A foreign exchange bureau may change the purchasing and selling rates of currencies during a business day, timely informing its customers about such changes by amending all informative indications at its business premises. The foreign exchange bureau shall have the obligation to record immediately the set exchange rates in its accounting records.



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Items to be displayed by foreign exchange bureaus

76. A foreign exchange bureau shall prominently display, at each site where it conducts business, the following information, clearly visible and legible:
- (a) its name, address, phone number, and hours of operations;
 - (b) its licence or a complete and legible copy thereof;
 - (c) clearly legible currency units, codes and names, as well as purchasing and selling rates of currencies as at that moment, including all additional costs, such as the commission, if any, which are to be borne by the customer;
 - (d) rates for purchasing old-issue or damaged banknotes and for purchasing and selling coins;
 - (e) indication that the customer will receive a receipt for the conducted transaction;
 - (f) indication that it is the customer's responsibility to check, before leaving the place of the transaction, the compliance of the transaction recorded in the receipt with the provisions of the mutual agreement (foreign currency or its code, amount, exchange rate), as well as the nominal value and quality of the banknotes received as a result of the transaction.
77. When placing information outside the premises, a foreign exchange bureau shall ensure that it contains an indication of the name of the foreign exchange bureau, and includes information analogous to that placed in the premises in accordance with the requirements referred to in section 76.

Counterfeit and damaged notes

78. A foreign exchange bureau shall not issue counterfeit or severely damaged banknotes to a customer.
79. Counterfeit or forged notes presented by customers shall be seized, the customer issued with a receipt, and the counterfeit note(s) delivered to the Bank.

Customer receipts

80. A foreign exchange bureau shall, for every sale or purchase of foreign currency, issue an accurate receipt in such a form as may be prescribed by the Bank from time to time, and shall not issue such a receipt for a purpose other than to cover an actual purchase or sale of foreign currency.
81. A customer shall be entitled to refuse the transaction of purchasing or selling currency at any time until its execution. If the transaction has been executed and the customer, without leaving the business premises, has established the transaction's non-compliance with the provisions of the mutual agreement, or has realised that the nominal value of the banknotes received does not meet the publicised exchange rate, or their quality is not suitable, the bureau shall, upon the request of the customer, cancel the transaction.

Prevention of criminal activity, money laundering and terrorist financing

82. A foreign exchange bureau shall not provide services to or for the benefit of a person where the foreign exchange bureau knows, or has reasonable grounds to suspect, that such services would support, or aid in the furtherance or perpetration of, any criminal activity, money laundering or terrorist financing.
83. Each foreign exchange bureau must have policies and procedures to detect and prevent use of the foreign exchange bureau for criminal activities, money laundering and terrorist financing.



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84. The board of directors of each foreign exchange bureau shall review the policies and procedures referenced in section 83 at least once per year, and make any changes they deem necessary based on their review.

Security deposit

85. Every foreign exchange bureau shall deposit with the Bank an amount in South Sudanese Pounds calculated at the BSS official mid-rate that is equivalent to US Dollars 60,000 being 10% of paid-up capital to be held as security for the due performance of its obligations.
86. Furthermore, every foreign exchange bureau that carries out international currency transmission services shall deposit with the Bank an additional amount in South Sudanese Pounds calculated at the BSS official mid-rate that is equivalent to US Dollars 120,000 being 20% of paid-up capital to be held as security for the due performance of its obligations to those persons who hand over or will hand over funds to it for transmission purposes.
87. The deposits referenced in sections 85 and 86 shall be in cash and may be invested in such manner as the Bank may deem fit.
88. When a licence of foreign exchange bureau is voluntary surrendered, or revoked, the Bank may deduct from the security deposit referenced in sections 85 and 86 expires an amount of money required to pay any sums lawfully and rightfully claimed by:
- (a) the customers of the foreign exchange bureau who had handed over money to the foreign exchange bureau for transmission purposes; and
 - (b) other creditors.
89. The Bank shall, upon being satisfied that there are no outstanding claims by the customers of a foreign exchange bureau referenced in section 88, although not earlier than 90 days and not later than 180 days from the date on which a foreign exchange bureau ceased to conduct business, release the deposit or the balance of the deposit, as the case may be, to the foreign exchange bureau.

Recordkeeping

90. Each foreign exchange bureau shall keep complete and accurate records of all of its transactions in such books, accounts, records and registers as the Bank may specify from time to time.
91. Such records must be maintained in such a way as to facilitate collection of statistical data and information required by this regulation, and to facilitate audits and examinations by internal and external auditors and the Bank, as the case may be.
92. Such books, accounts, records and registers shall be retained for a period of at least 5 years after the day on which the transaction takes place.

Reports

93. Every foreign exchange bureau shall furnish to the Bank, at such time and in such form as the Bank may specify, such reports and information as the Bank may reasonably require for the proper discharge of its functions. Such reports shall include, at a minimum:
- (a) monthly balance sheet and profit and loss statements, within seven calendar days after the end of every month;
 - (b) its audited financial statements and external auditor's report, within three months after the end of the financial year, which shall be on 31 December for all foreign exchange bureaus;



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- (c) a report, not later than 31 March of each year, endorsed by the board of directors and senior management of the foreign exchange bureau, evaluating the effectiveness of the foreign exchange bureau's policies and procedures for preventing money laundering and terrorist financing during the previous year, and containing the foreign exchange bureau's plans for remedying any identified deficiencies;
- (d) a prompt report of any situation raising the suspicion that a person may have become a significant participant, 20 participant, or controller of the foreign exchange bureau without receiving the approval of the Bank as required by this regulation;
- (e) a daily report, as of the close of daily business, of the volume and the minimum buying and maximum selling rates of exchange that have actually taken place in foreign currency transactions throughout the day;
- (f) reports of foreign exchange transactions equivalent to or above South Sudanese Pound equivalent of US Dollars 5,000, or such smaller amount as may be referenced in Anti-Money Laundering and Counter Terrorist Financing Act, no later than the next business day after the day such transactions occur; and
- (g) a weekly report, on the day of the week prescribed by the Bank, on the aggregate amount of each foreign currency purchased and sold, with the weighted average exchange rates of each such currency.

Inspections

- 94. The Bank shall be entitled to inspect a foreign exchange bureau as to compliance with the requirements of the Forex Business Act, this and other relevant regulations. The inspection may be conducted without prior notice or agreement. The inspection may take place at the legal address of the foreign exchange bureau, at any premises at which a foreign exchange bureau carries out its business, or remotely by examining documents submitted by the foreign exchange bureau.
- 95. The Bank shall be entitled to request any document or information related to the foreign exchange bureau's operation in purchasing and selling currencies.
- 96. Every director, manager, employee and agent of a foreign exchange bureau shall produce to the person making an inspection, and within a reasonable time, such books of accounts and any other documents in the foreign exchange bureau's custody or power, and furnish such statements or information relating to the affairs of the foreign exchange bureau as may be required by the inspector.
- 97. The Bank shall be entitled to examine the identity of significant participants in any foreign exchange bureau, as well as members of the board of directors and management of a foreign exchange bureau. If the significant participants are legal persons, the Bank shall be entitled to obtain information on their beneficial owners, until the actual beneficial owners or controllers of the foreign exchange bureau are identified. The foreign exchange bureau shall have an obligation to provide the Bank with such information if it is not available from the public registers wherefrom the Bank is entitled to receive such information.
- 98. If the Bank has reason to suspect that a person may have conducted, or is conducting, foreign currency business without the licence required by this regulation, the Bank may, in order to ascertain whether a violation of this regulation has occurred:
 - (a) require the submission of relevant information from any such person, and from any person with which that person has close links;
 - (b) enter and inspect any premises at which that person is suspected of having committed or of committing the violation, or at which that person may have books, records, documents or other relevant information; and



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- (c) examine, copy or take possession of any relevant books, records, or documents of that person, or from any person with which that person has close links.
99. A person that is the subject of an investigation under section 98, any employees and agents of that person, and all members of the board of directors, and management of any such person that is an enterprise, shall upon request provide information on such person's or enterprise's business activities and present any requested documentation to the Bank. The obligation of such members of the board of directors, management, employees and agents to provide information under this section shall continue even after their relationship with such person has ceased.
100. The Bank shall report the cases where currencies have been purchased and sold without a licence or where the requirements set out by the South Sudan laws and regulations have been violated to the competent State authority authorised by law to prosecute such violations.

External audits

101. Every foreign exchange bureau shall, at its own expense, appoint annually an external auditor to carry out an audit of its business.
102. The Bank may, if it is of the view that the external auditor appointed by the foreign exchange bureau does not carry out his duties under this regulation to the satisfaction of the Bank, direct the foreign exchange bureau to appoint another external auditor and where such direction has been made, the foreign exchange bureau shall comply with that direction.
103. If a foreign exchange bureau fails to appoint an external auditor under section 101, the Bank may appoint an external auditor for that foreign exchange bureau and fix the remuneration to be paid by that foreign exchange bureau to such external auditor.
104. A foreign exchange bureau shall without delay give written notice to the Bank:
- (a) on the appointment of its external auditor; and
 - (b) if it proposes to replace or remove its external auditor at the expiration of their term of his appointment.
105. An external auditor shall immediately inform the Bank in writing if:
- (a) he resigns;
 - (b) he does not seek to be re-appointed;
 - (c) he decides to qualify his audit report; or
 - (d) he discovers any matter which, in his judgment, constitutes a violation of any relevant provision of South Sudan laws or regulations relating to the foreign currency business.
106. An external auditor of a foreign exchange bureau shall not be deemed to have violated any duty, including any duty of professional secrecy, by reason of his communicating in good faith to the Bank, any information that he is authorised or required to provide under the Forex Business Act or this regulation.

Remedial orders

107. Where the Bank determines that a foreign exchange bureau, or any person responsible for managing or conducting the business of a foreign exchange bureau, has committed any violation of any requirement of relevant legislation or regulation in connection with its business, the Bank may issue an order:
- (a) requiring foreign exchange bureau or the person to cease such violation, and/or to take any action that the Bank deems appropriate to remedy the situation; and/or



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- (b) imposing a monetary penalty, taking into account:
- (i) the seriousness of the violation;
 - (ii) the impact or potential impact of the violation on clients of the foreign exchange bureau;
 - (iii) the extent to which the violation was intentional or repeated; and
 - (iv) the financial capability of the foreign exchange bureau or person in question.

108. Except where the circumstances render it impossible to do so, before the Bank issues an order under section 107, it shall give the foreign exchange bureau or person concerned at least 15 days' prior written notice and an opportunity to submit written representations as to why the proposed order should not be issued. The procedures for the submission and consideration of such representations shall be determined by the Bank.

Revocation or suspension of a licence

109. The Bank may revoke a licence of a foreign exchange bureau if it finds that:

- (a) the foreign exchange bureau has not commenced the operations permitted under the licence within three months after the date of issue of the licence;
- (b) the foreign exchange bureau has suspended its operations for more than 30 days without giving prior written notice to the Bank;
- (c) the foreign exchange bureau has suspended operations for more than six months, even if the 30 day notice requirement of subsection (b) is satisfied;
- (d) the foreign exchange bureau has, in the course of its application for the issuance, extension, or renewal of a licence under this regulation, failed to disclose to the Bank any material information of which the foreign exchange bureau was aware, or should have been aware, with the exercise of such diligence as could reasonably have been expected in the circumstances;
- (e) the foreign exchange bureau has provided information material to the application which is found to be untrue or false;
- (f) the foreign exchange bureau has contravened any provision of this regulation or any regulation, permit, or remedial order issued under this regulation, or with any conditions imposed by the Bank in connection with the issuance of the licence or any approval referenced in this regulation;
- (g) the Bank determines that the circumstances under which the licence was given are no longer satisfied;
- (h) the foreign exchange bureau has carried on or is carrying on business in a manner likely to be detrimental to the interests of the public or of its customers;
- (i) the foreign exchange bureau has been placed under liquidation or receivership or is adjudged bankrupt;
- (j) the foreign exchange bureau fails to furnish any reports required by this regulation within the terms stipulated by the Bank;
- (k) the foreign exchange bureau fails to submit required documents or information, or submits false information to the Bank in connection with any inspection of the foreign exchange bureau's business;
- (l) any significant participant, or any member of the board of directors or management of the foreign exchange bureau does not meet the requirements of this regulation;
- (m) the foreign exchange bureau has violated any laws or regulations regarding money laundering or terrorist financing;



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(n) the foreign exchange bureau, or any of its directors, managers, or significant participants, has been convicted, whether in South Sudan or elsewhere, of an offence involving fraud or dishonesty, or that involves a finding that it or he has acted in a fraudulent or dishonest manner.

110. Where the Bank determines that any of the circumstances referenced in section 109 is present, the Bank in its sole discretion may, instead of revoking the licence, suspend the licence, or impose conditions or restrictions on the operation of the licence. Any such suspension, or any such conditions or restrictions, shall remain in place until the Bank is satisfied that the reasons for imposing the same have been rectified.
111. Except in cases referenced in section 112, the procedural provisions of section 108 shall apply where the Bank proposes to suspend or revokes a licence, or impose further conditions or restrictions in respect of a licence.
112. Notwithstanding section 111, in the case of subsections (i), (m) or (n) of section 109, the Bank may revoke the licence of a foreign exchange bureau without any prior notice or opportunity to submit written representations.

Judicial review of final Bank orders and decisions

113. Any person who is aggrieved by a final order or decision of the Bank under this regulation (other than an order issued with the consent of that person) may file a petition for review of such order or decision by a competent court within 30 days of the date of service of such order or decision.
114. The court, based on the record of the Bank relative to the order or decision, may:
- (a) in the case of a remedial order, or a decision referenced in section 110, affirm, or annul the order or decision, in whole or in part, or may remand the matter to the Bank for further proceedings; or
 - (b) in the case of any other decision, affirm or annul the decision.
115. The court may annul an order or decision of the Bank under this regulation only if it determines that there was no factual basis for the order or decision, or that the Bank manifestly misapplied the applicable legal provisions.
116. The commencement of proceedings for review under section 113 does not postpone the effect of the order or any requirements set forth in the order or decision in question.

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

Kornelio Koriom Mayik

Governor
Bank of South Sudan