



BANK OF SOUTH SUDAN (BSS)

REGULATION NO. 13, 2012

SIGNIFICANT PARTICIPATIONS IN BANKS AND BANK HOLDING COMPANIES

In accordance with the provisions of section 12 of the Bank of South Sudan Act, 2011, and Chapter III and section 108 of the Banking Act 2012 (the Banking Act), I hereby issue the following Regulation that establishes the conditions for acquiring significant participations in banks and bank holding companies in South Sudan, as well as reporting requirements for persons having such participations.

This Regulation shall be cited as Significant Participations in Banks and Bank Holding Companies, 2012, and shall come into effect as from the date of its signature.

I. Definitions

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

"Acquirer" means any person to who intends to become a significant participant, 20 percent participant, 30 percent participant, or controller of a bank, or bank holding company.

"Parallel banking structure" means two or more banks that are incorporated in different countries and are under common control, but are not part of a group that is subject to financial sector supervision on a consolidated basis, in South Sudan or abroad.

II. Procedure for acquisitions

2. A person may become a significant participant, 20 percent participant, 30 percent participant, or controller of a bank or bank holding company only with the prior written approval of the BSS.

3. Two or more persons acting in concert shall be deemed to be a single person for purposes of this regulation.

4. Without limiting the generality of definition of "acting in concert" in BSS Regulation No. 8, 2012 on Definitions, two or more persons will be presumed to be acting in concert with each other in the following circumstances unless it is shown otherwise:

(a) an enterprise will be presumed to be acting in concert with any controller or 20 percent participant of the enterprise;

(b) a person will be presumed to be acting in concert with members of his immediate family;

(c) enterprises that are members of the same group of companies will be presumed to be acting in concert with each other;

(d) enterprises that are controlled by the same person, or that have a common 20 percent participant, will be presumed to be acting in concert with each other;

(e) persons will be presumed to be acting in concert with each other where:

(1) they are managers, directors, or 20 percent participants in the same enterprise other than the given bank or bank holding company; or



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- (2) one of these persons provides credit to the other person, pledges assets on behalf of the other person, or is otherwise instrumental in obtaining financing for the other person to purchase shares of the bank or bank holding company (other than where the person providing the credit is a financial institution providing credit in the ordinary course of business);
- (f) a person or enterprise will be presumed to be acting in concert with any trust for which such person or enterprise serves as trustee;
- (g) partners in a general partnership will be presumed to be acting in concert with each other and with the general partnership; or
- (h) general partners in a limited partnership will be presumed to be acting in concert with each other and with the limited partnership.
5. Two or more persons shall not be deemed to be acting in concert solely because:
- (a) one of them is a proxy holder for one or more of the others regarding the voting of shares at an annual or special shareholders' assembly in accordance with applicable legislation; or
- (b) they exercise voting rights attached to shares or ownership interests in an entity in the same manner.
6. A person who wishes to acquire a significant participation, 20 percent participation, or control of a bank or bank holding company must submit the following information to the BSS at least 60 days prior to the intended acquisition:
- (a) information confirming that the acquirer is a fit and proper person;
- (b) a description of the acquirer's business activities;
- (c) if the acquirer is an enterprise:
- (1) proof of the legal status of the acquirer;
- (2) identification of each member of the acquirer's board of directors, senior management officials, and all significant participants in the acquirer, information on the business background of these persons, and information confirming that they are fit and proper persons;
- (d) financial information about the acquirer prescribed by the BSS;
- (e) information about the terms and conditions for the acquisition of the bank's or bank holding company's shares, including:
- (1) the source or sources of funds to be utilised for the acquisition;
- (2) the names of all persons from whom the acquirer intends to purchase the shares;
- (3) if the acquirer is acting on behalf of another person (the beneficial owner), the identity of the beneficial owner;



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- (f) if the acquirer would acquire the requisite participation or control of the bank or bank holding company without owning shares, a description of the arrangements or conditions that would bring about this result;
 - (g) identification of all persons with whom the acquirer has close links, and a description of the existing or anticipated relationship between the bank or bank holding company and such persons;
 - (h) if the bank will be part of a group as a result of the acquisition, the structure of the group, identification of each of its member companies, and information sufficient for the BSS to evaluate the group in accordance with section 98 of the Banking Act, and section 7 of the BSS Regulation No. 7, 2012 on Terms of Licence to Engage in Banking Activities;
 - (i) disclosure of any plans that the acquirer has to merge the bank with another entity, or to make significant changes in its activities or management (including a business plan and organisational structure, if applicable);
 - (j) if the acquirer is a foreign supervised financial institution:
 - (1) proof that the acquirer holds a valid licence or equivalent authorisation in its home country;
 - (2) information concerning the supervisory regime to which the acquirer is subject;
 - (3) information pertaining to the acquirer's compliance with legal and supervisory requirements pertaining to its business activities; and
 - (4) proof of permission from the competent authority responsible for supervising the applicant in its home country to make the intended acquisition, or confirmation that such permission is not required under the laws of the acquirer's home country.
7. An enterprise may not be a significant participant, 20 percent participant, 30 percent participant, or controller of a bank or bank holding company unless the enterprise is a financial institution.
8. A bank holding company must be a supervised financial institution.
9. The BSS shall approve or reject the application within three 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 six months. An application is not considered complete until all information necessary for the BSS to make a decision on the application has been received by the BSS. Decisions rejecting an application must explain the grounds on which the application is rejected.
10. Where an acquirer is a foreign supervised financial sector enterprise, the BSS shall grant approval only following consultations with the competent authority that supervises the acquirer, and only following a determination by the BSS that:
- (a) the acquirer is adequately supervised on a consolidated basis in its home country (including, if the acquirer is a bank, in accordance with the *Core Principles*);
 - (b) effective cooperation between the BSS and such supervisory authority is feasible; and
 - (c) the acquirer has a satisfactory record of compliance with legal and supervisory requirements.



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11. The BSS shall not approve an application under section 6 unless it is satisfied that:
- (a) the applicant is a fit and proper person;
 - (b) the applicant is financially sound;
 - (c) the BSS 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 be detrimental to the bank or bank holding company;
 - (d) there is no reason to suspect that the influence that would be exercised on the bank as a result of the acquisition would threaten the sound and prudent management of the bank or bank holding company;
 - (e) if as a result of the acquisition, the bank or bank holding company would become part of a group, the conditions of section 98 of the Banking Act will be satisfied;
 - (f) if as a result of the acquisition the bank or bank holding company would become a subsidiary of a non-resident supervised financial institution:
 - (1) the competent authority of the country where the head office of that institution is located has given its authorisation to the acquisition;
 - (2) the BSS is satisfied, following consultations with the foreign competent authority, that the applicant is effectively supervised on a consolidated basis in its home country; and
 - (3) an agreement of cooperation has been concluded between the BSS and the competent foreign supervising authority, specifying the allocation of powers and responsibilities and the rules and procedures governing exchanges of information between the BSS and the foreign competent authority;
 - (g) the acquisition would not hinder the BSS in the discharge of its supervisory responsibilities because of close links between the bank or bank holding company and any person;
 - (h) there are no reasonable grounds to suspect that the acquisition would result in, or increase the risk of the bank's or bank holding company's involvement in money laundering or terrorist financing;
 - (i) there are no reasonable grounds to suspect that bank would become part of a parallel banking structure as a result of the acquisition;
 - (j) any other conditions as the BSS may specify in order to fulfil its functions under the Banking Act would be met.
12. The BSS may attach any conditions to the grant of approval that it deems appropriate to protect the interests of depositors of the bank.

III. Obligation of acquirers to notify BSS of acquisitions

13. If an acquisition under section 2 is approved, the BSS may set a time period after the expiration of which the acquirer must inform the BSS within 10 days as to whether or not the intended acquisition has been carried out.



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IV. Revocation of approval

14. The BSS may by order revoke its approval under section 2 if:

- (a) it becomes aware of facts that would warrant refusal of such approval; or
- (b) any conditions upon which approval was given are not satisfied.

Before the BSS issues such an order, it shall provide the affected person with prior written notice and an opportunity to make written representations, unless that person consents to the issuance of the order. Such notice shall be given at least 15 days prior to the proposed date for issuance of the order.

15. In the event of revocation under section 14, the person in question:

- (a) shall not participate in any manner in the conduct of the affairs of the bank or bank holding company without the prior written permission of the Bank; and
- (b) shall sell or otherwise dispose of all or any part of his beneficial ownership in the bank or bank holding company as may be specified in the order of the BSS revoking its approval.

V. Relinquishments of significant participations

16. A person who proposes to relinquish a significant participation in a bank or bank holding company, or control of a bank or bank holding company, or to reduce his beneficial ownership of the bank or bank holding company below the thresholds of 20 percent participation or 30 percent participation, must give written notification of the BSS at least 10 days prior to the expected date of such relinquishment or reduction, of the size, if any, of the beneficial ownership in the bank that he would retain.

17. The BSS may set a time period after the expiration of which a person described in section 16 must notify the BSS as to whether or not the intended reduction or relinquishment has been carried out.

VI. Exceptions to requirement of prior approval

18. The requirements of section 2 to obtain prior approval of the BSS do not apply if a person acquires a significant participation, 20 percent participation, 30 percent participation or control of a bank or bank holding company:

- (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.

19. In the situations described in section 18, the person in question must:

- (a) inform the BSS within 30 days of acquiring the requisite participation or control; and
- (b) not take any action directed at influencing the management or policies of the bank or bank holding company, or vote shares so acquired, unless and until he has received the written approval of the BSS in accordance with this regulation.

20. A request for approval under section 19 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 the BSS must be promptly informed.



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21. If the BSS does not approve the person's application under section 19, the provisions of section 15 shall be applicable.

VII. Information requirements for significant participants

22. As a condition of BSS' approval of an acquisition under this regulation, each acquirer is obliged to provide the BSS with such information on its operations, activities and financial condition, and any entity that it controls that the BSS deems appropriate or necessary to carry out its responsibilities under the Banking Act, the Bank of South Sudan Act and any other relevant legislation, and BSS regulations and circulars issued thereunder. Such information must be furnished at such times as determined by the BSS.

23. In accordance with section 31 of the Banking Act, each significant participant in a bank or bank holding company is obliged to furnish the BSS with:

- (a) an annual financial statement and a list of all enterprises that such person controls; and
- (b) if the significant participant is an enterprise, the identity of every newly appointed member of its board of directors and senior management together with the information confirming that such person is a fit and proper person, within 10 days after such appointment.

24. The financial statement referenced in section 23 must be audited and conform to International Financial Reporting Standards (IFRS) in the case of an enterprise.

25. If the significant participant is a bank holding company, section 107 of the Banking Act requires that it also furnish the BSS with an annual report containing:

- (a) the structure of the group of which the bank holding company is a member, including the name and principal business activity of each member of the group and the amount of the bank holding company's beneficial ownership; and
- (b) the bank holding company's assessment of the effectiveness of its group's risk management, internal controls and corporate governance practices for the previous year.

26. Section 107(2) of the Banking Act also requires a bank holding company to notify the Bank without delay of:

- (a) any facts or circumstances that may materially affect the financial situation of the bank holding company or any of its subsidiaries or associated enterprises;
- (b) any significant changes in the structure of the group of which it is the ultimate parent company.

27. Section 107 of the Banking Act also requires bank holding companies to furnish such other information as the BSS deems necessary to fulfil its obligations under the Banking Act, as well as any information the BSS may request regarding significant participants in the bank holding company. In accordance with these provisions, each bank holding company shall furnish the BSS with a quarterly financial statement, which need not be audited but must conform to IFRS. The BSS may require other reports from time to time, in accordance with section 107 of the Banking Act.

28. In accordance with sections 26 and 107 of the Banking Act, each bank and bank holding company must notify the BSS in writing:



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- (a) semi-annually, at a time prescribed by the BSS, of the all persons having significant participations in such bank or bank holding company, and the amount of each such person's beneficial ownership;
- (b) within 10 days after acquiring knowledge that any person has acquired a significant participation in, or control of the bank or bank holding company, or has acquired beneficial ownership in the bank reaching or exceeding 20 percent participation or 30 percent participation;
- (c) within 10 days after acquiring knowledge that any person has ceased to have a significant participation in, or control of, the bank or bank holding company, or has disposed of beneficial ownership in the bank or bank holding company below 20 percent participation or 30 percent participation; and
- (d) without delay of any facts or circumstances that raise the suspicion that any person may have acquired a significant participation in, or control of the bank or bank holding company, or may have acquired beneficial ownership of the bank or bank holding company at a level reaching or exceeding 20 percent participation or 30 percent participation without the prior written authorisation of the BSS.

VIII. Other conditions of BSS approval

30. Each applicant under this regulation shall be obliged, as a condition to BSS approval of its application, to agree in writing to:

- (a) abide by all applicable laws and regulations that pertain to it as a significant participant in the bank or bank holding company, and use its best efforts to ensure such compliance by any entity that he or it controls or of which he or it is a 20 percent or 30 percent participant, as the case may be;
- (b) take any corrective actions as may be required by the BSS in the event that the BSS determines that the activities or financial condition of such person, or any enterprise controlled by such person, could be detrimental to the interests of the bank or bank holding company in which the person is a significant participant; and
- (c) abide by the provisions of section 15, in the event that the BSS revokes its authorisation as set forth in section 14.

Made under my hand on

This 19th day of SEPT. 2012

Kornelio Koriom Mayik

Governor

Bank of South Sudan