



**SUPERVISORY AND REGULATORY GUIDELINES 2017
LADDER OF COMPLIANCE**

**A GUIDE TO THE BANK OF SOUTH SUDAN LADDER OF
SUPERVISORY INTERVENTION**

**BANK SUPERVISION DEPARTMENT
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I. TITLE AND COMMENCEMENT

This Guide shall be cited as Regulatory Guideline on supervisory interventions, and shall come into force on the date of its signature by the Governor, Bank of South Sudan.

II. INTRODUCTION

The Bank of South Sudan (BSS) is responsible for the licensing, regulation and supervision of banks and other financial Institutions operating in South Sudan pursuant to the Bank of South Sudan Act, 2011 and the Banking Act, 2012. Additionally, the Bank of South Sudan has the duty, in collaboration with financial institutions, to promote and maintain high standards of conduct and management in the sector.

All licensed financial institutions are therefore, expected to adhere to the Bank of South Sudan licensing and prudential requirements, ongoing supervisory programmes and regulatory reporting requirements, and are subject to periodic onsite inspections. Licensees are expected to conduct their affairs in conformity with all other legal requirements of South Sudan.

III. INTERPRETATION

In this Guide, unless the context otherwise requires:

"bank" means a legal person(s) engaging in the business of receiving money deposits or other repayable funds from the public and making credits for own account, and may be;

- a) a commercial bank;
- b) a saving bank;
- c) a mortgage bank; or
- d) a merchant bank, and any other specialized banks;

"Bank" means the Bank of South Sudan (BSS);

"banking license" means an authorization issued by the Bank to a legal person granting the right to operate as a bank in South Sudan;

"Intervention" the action or process of intervening during severe financial difficulties or regulatory breach;

"commercial bank" means a bank that has a banking license to engage in the financial activities referenced in Section 63 (1) of the Banking Act, 2012;

"savings bank" means a bank whose activities are limited to acceptance of savings and time deposits and investments in Government or Bank securities.

"mortgage bank" means a bank whose business consists mainly of granting loans for further acquisition, construction, enlargement, repair, improvement and maintenance of urban or rural real estate, and for the substitution of mortgages taken out for that same purpose and whose activities are limited to those referenced in Section 63 (2) of the Banking Act, 2012;

"merchant bank" means a bank whose business consists mainly of facilitating commercial activities by enterprises and whose activities are limited to those referenced in Section 63 (2) of the Banking Act, 2012;

"Basel Committee of Banking Supervision" (BCBS) is a committee of banking supervisory authorities that was established by the central bank governors of the Group of Ten countries in 1974. It provides a forum for regular cooperation on banking supervisory matters;

"inter alia" means among other things;

"corporate governance" means a system of rules, practices and processes by which a company is directed and controlled. Corporate governance essentially

involves balancing the interests of a company's many stakeholders, such as shareholders, management, customers, suppliers, financiers, government and the community;

"financial solvency" means the degree to which the current assets of an individual or entity exceed the current liabilities of that individual or entity. Solvency can also be described as the ability of a corporation to meet its long-term fixed expenses and to accomplish long-term expansion and growth;

"insolvency" means the situation where the liabilities of a person or firm exceed its assets;

"cross Border Banking" means; any financing arrangement that crosses national borders. Cross border financing could include cross border loans, letters of credit or bankers acceptances, for example, issued in South Sudan for the benefit of person(s) outside South Sudan;

"moral suasion" means persuasion tactics used by authority to influence and pressure, but not to force banks into adhering to policy;

"stakeholder" means, anyone with an interest in a business;

"stakeholders" are individuals, groups or organizations that are affected by the activity of the business;

"supervisory principles" means, the requirements for supervisors, the approaches to supervision and supervisors' expectations of banks. This is achieved through a greater focus on effective risk-based supervision and the need for early intervention and timely supervisory actions;

"prudential requirements" means, an international banking regulation standards under Basel III. The Basel Committee on banking supervision (BCBS) sets the standard for international banking prudential regulation;

“creditors” means, an entity (person or institution) that extends credit by giving another entity permission to borrow money intended to be repaid in the future;

“Receivership” means, a situation in which an institution or enterprise is held by a receiver—a person “placed in the custodial responsibility for the property of others”.

IV. PURPOSE

The Banking Act, 2012 provides a wide range of discretionary intervention powers to the Bank of South Sudan (BSS), to address situations that give the Bank of South Sudan cause for concern. The objective of the intervention process is to identify areas of concern early, and to intervene effectively to minimize problems and losses to depositors, and other creditors of license institutions.

This guideline sets out the procedures that the Bank of South Sudan will generally follow when the Bank has cause for concern regarding the operations of a licensed institution or in the event of noncompliance by a licensed institution with applicable legislation, regulations, guidelines and directives of the Bank of South Sudan.

The objective of this guideline is to promote awareness and enhance the transparency of the system of intervention for licensees and other interested parties. The guideline summarizes the circumstances under which intervention measures may be expected.

This guideline sets out the BSS core supervisory principles, outlines its supervisory activities and provides the framework for remedial supervisory intervention. In addition, nothing in this Guide prevents the BSS from taking such course of action, as it deems necessary, for the protection of depositors or of the financial system in South Sudan.

V. APPLICABILITY

This Guideline applies to all licensed financial institutions.

VI. THE BANK OF SOUTH SUDAN SUPERVISORY PRINCIPLES

1. The Bank of South Sudan supervises its licensees in accordance with Section 97 of the Banking Act, 2012;
2. The Bank of South Sudan subscribes to the Basel Core Principles of Effective Supervision and endorses the Basel Committee's Report on the Supervision of Cross Border Banking issued in 1996 and the principles of consolidated supervision;
3. The Bank of South Sudan shall continue to review its policies and practices to ensure that they remain effective and efficient, and are in line with the requirements of the South Sudan financial sector and international best practices;
4. The supervision of banks is conducted on a consolidated basis. The Bank of South Sudan Act, 2011, and The Banking Act 2012, permit exchange of supervisory and other information between the Bank of South Sudan and foreign supervisory authorities for the purpose of facilitating consolidated supervision;
5. Supervision shall include:
 - a) onsite inspections of the licensee to review and assess, *inter alia*, the licensee's financial condition, general policies and procedures, anti-money laundering compliance, internal audit, risk management and corporate governance frameworks; and
 - b) offsite surveillance of the licensee's overall financial condition and compliance with legislation, regulations, guidelines and directives;

6. The Bank of South Sudan shall exercise its judgment in identifying and evaluating the risks inherent in a licensee's business profile and strategy;
7. The level and frequency of supervisory scrutiny shall depend on the risk assessment of the licensee;
8. The Bank of South Sudan shall communicate findings and recommendations to licensees in a timely manner;
9. The Bank of South Sudan shall notify the licensee in writing of any supervisory intervention that is being taken or will be taken; and
10. The Bank of South Sudan shall continue to rely on external auditors for the fairness of the financial statements and may occasionally call upon them to perform special scope audits in accordance with Section 94 of the Banking Act, 2012.

VII. THE BANK OF SOUTH SUDAN ROUTINE SUPERVISORY ACTIVITIES

The Bank of South Sudan performs certain core supervisory activities pursuant to the Banking Act, 2012. These required activities include:

1. The review of applications and licensing of banks and;
2. The review and assessment of a wide range of applications and requests for regulatory approvals includes:
 - (a) Changes in control and ownership of a licensee;
 - (b) Appointments of new directors and senior executives; and
 - (c) Significant acquisitions by licensees and other major business investments.

3. The ongoing monitoring of licensed institutions includes:

- (a) Monitoring compliance with statutory and other regulatory requirements;
- (b) Assessing the financial condition and operating performance of licensees;
- (c) Monitoring required remedial measures.

4. Regular onsite inspections of licensees.

VIII. THE BANK OF SOUTH SUDAN APPROACH TO SUPERVISORY INTERVENTION

In considering the appropriate supervisory intervention in the event of a concern arising or a supervisory breach by a licensee, the Bank of South Sudan shall take into account, among other things, the following:

- 1. The impact on stakeholders', particularly depositors' interests, third parties and market confidence;
- 2. The nature and extent of the contravention;
- 3. The ability and extent to which remedial action shall rectify the contravention;
- 4. The willingness and ability of the licensee to cooperate with and assist the Bank of South Sudan in terms of its investigations and recommendations. This includes how quickly, effectively and completely the licensee brought the contravention to the attention of the Bank of South Sudan.
- 5. The degree and timeliness of co-operation in meeting the requests of the Bank of South Sudan for information, and any remedial actions the licensee has already taken or intends to take in rectifying the situation, and any action

that has been taken to ensure that such a contravention does not arise in the future;

6. The compliance history of the licensee. This includes whether the Bank of South Sudan, or any other regulator, has taken any previous action against the licensee, and whether the licensee has previously failed to comply with license conditions or direction of the Bank of South Sudan, and the general compliance history of the licensee in terms of any other correspondence considered relevant by the Bank of South Sudan;
7. The amount of loss incurred or any benefit lost as a result of the contravention;
8. The nature and extent of any crime facilitated, occasioned or otherwise attributable to the contravention;
9. The nature and extent of civil and/or criminal proceedings that have been or are expected to be commenced against the licensee or any of its directors and/ or shareholders;
10. The extent to which the directors and officers have acted in a fit and proper manner;
11. Whether there are a number of issues which, when considered individually may not justify disciplinary action, but which do, when considered collectively, indicate a pattern of unfit and improper behavior;
12. Whether any guidelines have been issued in respect of the contravention and, if so, the extent to which the licensee has followed this guideline; and

13. Action taken by the Bank of South Sudan or other regulatory authorities in previous similar cases. Where it appears warranted, the Bank of South Sudan will involve the home or other host regulatory authorities regarding an intended supervisory action or advise them of an action which has already occurred.

Licensees have a duty to report any concerns with their operations or breaches of legislation, regulations, guidelines or directives to the Bank of South Sudan in a timely manner.

IX. THE BANK OF SOUTH SUDAN LADDER OF SUPERVISORY INTERVENTION

The Ladder of Supervisory Intervention contained in this guideline outlines the actions that financial institutions can normally expect the Bank of South Sudan to take, given non-compliance with legislation, regulations, guidelines or licensee-specific directives. However, circumstances can vary from case to case. Therefore, this guideline should not be interpreted as limiting the scope of action that may be taken by the Bank of South Sudan in dealing with specific problems or licensees. It is important to note that, the Bank of South Sudan intervention process is not a rigid regime under which every licensee or situation is necessarily addressed with a predetermined set of actions.

Stage 1 Intervention: Early Warning

Stage 1 Intervention is initiated when there are deficiencies in policies or procedures within a licensee or the existence of practices, conditions and circumstances which may lead to deterioration in the financial condition of the licensee. Management and the board of directors of the licensee shall be formally notified of Bank of South Sudan's concerns and shall be requested to take measures to rectify the situation. The deficiencies, when identified during the

course of the onsite inspection, shall be outlined in the Report of Examination which shall be submitted to the licensee's board of directors and External Auditors.

Likely Intervention:

- The exercise of moral suasion;
- The issuance of the Report of Examination outlining the Bank of South Sudan concerns and recommendations or a formal letter of directions to the management or the board of directors of the licensee;
- Ongoing monitoring of remedial actions by requesting additional information and follow up onsite examinations recommendations;
- Requiring the licensee's external auditor to enlarge the audit scope or to perform other procedures; and
- The imposition of administrative penalties or financial penalties, where applicable.

Stage 2 Intervention: Risk to financial viability or solvency

Stage 2 Intervention is initiated when there are situations or problems that, although not serious enough to present an immediate threat to financial viability or solvency, could deteriorate into serious problems if not addressed promptly, as evidenced by:

- Concerns about the licensee's ability to meet capital or liquidity requirements on an ongoing basis;

- Deterioration in the quality or value of assets, or the profitability of the business undertaken by the licensee;
- Undue exposure to off-balance sheet risk;
- Poor earnings or operating losses;
- Low level of accessible liquidity or poor liquidity management;
- Less than satisfactory management quality or deficiency in management procedures or controls (including material breaches of standards of sound business and financial practices);
- Qualifications to the audited financial statements;
- Other concerns arising from:
 - a financially weak or troubled owner;
 - potential weaknesses elsewhere in the group;
 - rapid growth;
 - non-compliance with regulatory requirements;
 - credit rating downgrades;
 - systemic issues; and
- Failure to take remedial action or to comply with recommendations contained within the Report of Examination.

Likely Intervention:

- The Bank of South Sudan shall meet with the licensee's senior management and/or board of directors and External Auditors to outline its concerns and to discuss remedial actions;
- The Bank of South Sudan may require the board of directors of the licensee to provide a letter of commitment, signed by each director, acknowledging the recommendations of the Bank of South Sudan. A letter of commitment should state that the board of directors of the licensee is aware of the recommendations for remedial action and has approved the steps necessary for the licensee to comply with such recommendations;
- The Bank of South Sudan may inform the licensee's home regulator of circumstances which have led to supervisory action;
- The licensee will be placed on the *supervisory watch-list*.

Supervisory Watch-list Special Conditions

- The scope of onsite inspections and/or frequency of onsite examinations may be enlarged or increased;
- The level of offsite monitoring of the licensee may be enhanced (that is, increased frequency and/or the level of detail in reporting);
- The licensee's External Auditors may be requested to perform a special scope audit;
- Administrative penalties or financial penalties may be imposed, where applicable;

- Directives to comply with the previous directions or to cease contraventions may be issued;
- The licensee may be required to produce a detailed plan, signed by all directors, acceptable to the Bank of South Sudan that reflects appropriate remedial measures that shall rectify the regulatory problem within a specified timeframe; and
- The imposition, amendment or variation of conditions upon the license include, but not limited to, restrictions on:
 - payments of dividends;
 - lending or investment activities;
 - new deposit taking; and
 - other restrictions tailored to the specific circumstances, as deemed necessary by the Governor.

Stage 3 Intervention: Risk to financial viability or solvency.

Stage 3 Intervention is initiated when situations or problems described at Stage 2 Intervention are at a level where they pose a material threat to the future financial viability or solvency of the institution unless there is access to financial support from the parent or unless effective corrective measures are applied promptly.

Likely Intervention:

- The licensee's management, board of directors and External Auditors shall be informed of the Bank of South Sudan ongoing concerns;
- The Bank of South Sudan may require the board of directors of the licensee to provide a letter of commitment, signed by each director, acknowledging the recommendations of the Bank of South Sudan. A letter of commitment should state that the board of directors of the licensee are aware of the recommendations for remedial action and has approved the steps necessary for the licensee to comply with such recommendations;
- A special audit may be required from an auditor other than the licensee's External Auditors;
- The Bank of South Sudan may require the substitution of director(s) or officer(s) of the licensee;
- The Bank of South Sudan may appoint a person to advise the licensee on the proper conduct of its affairs;
- The Bank of South Sudan may inform the licensee's home regulator or other host regulators of the circumstances which have led to supervisory action.

Stage 4: Intervention Related to Imminent Insolvency or Non-viability of a Licensee.

Stage 4 Intervention is initiated when there is a severe financial difficulty or regulatory breaches resulting in:

- Failure or imminent failure to meet regulatory capital or liquidity requirements in conjunction with the inability to rectify the situation within a short period of time;
- Failure to develop and implement an acceptable business plan, thus making failure or insolvency inevitable within a short period of time; and
- Prolonged and consistent failure to comply with Bank of South Sudan directives.

Likely Intervention:

- New business restrictions may be imposed on the licensee or existing restrictions may be expanded;
- The Bank of South Sudan shall have frequent meetings with management and board of directors of the institution;
- The Bank of South Sudan shall provide written notification of the intended intervention that shall be undertaken unless the situation is rectified imminently;
- The Bank of South Sudan may require the appointment of a receiver to assume control of licensee's affairs;
- The Bank of South Sudan shall inform the licensee's home regulator or other host regulators of the circumstances which have led to supervisory action.

Stage 5 Intervention: Intervention Related to Insolvency or Severe Regulatory Breaches.

Stage 5 Intervention is initiated by severe financial difficulties or regulatory breaches by a licensee

The Bank of South Sudan likely intervention shall include:

- Suspension of the license; and/or
- Revocation of the license;
- Informing the licensee's home regulator or other host regulators of the circumstances which have led to supervisory action.

Issued under my hand in Juba on this.....day of.....in the year ...



Hon. Othom Rago Ajak
Governor
Bank of South Sudan (BSS)