LAWS OF SOUTH SUDAN

FOREIGN EXCHANGE BUSINESS ACT, 2012

Act No.23

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FOREIGN EXCHANGE BUSINESS ACT, 2012

Arrangement of Sections

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FOREIGN EXCHANGE BUSINESS ACT, 2012

In accordance with the provisions of Article 86 (2) (3) read together with Article 55 (2) (3) (b) of the Transitional Constitution of the Republic of South Sudan, 2011, the National Legislative Assembly, ratifies and promulgate the following into law-

CHAPTER I

PRELIMINARY PROVISIONS

1. Title and Commencement.

This Act shall be cited as the Foreign Exchange Business Act, 2012, and shall come into force on the date of its signature by the President.

2. Repeal and Saving.

Any existing legislation governing the subject of this Act is hereby repealed; *provided that* any orders issued or regulations made thereunder, except to the extent they are cancelled by or are otherwise inconsistent with provisions of this Act shall continue in force and effect until repealed or amended by this Act.

3. Purpose.

The purpose of this Act is to regulate the business of foreign exchange in South Sudan; to provide for the exchange of foreign currencies in South Sudan, the making of international payments, transfers of foreign exchange; and for other related and incidental matters thereto.

4. Application and Authority.

This Act is drafted in accordance with the provisions of Articles 52 and 182 of the Transitional Constitution of the Republic of South Sudan, 2011, which grant the Government the exclusive legislative and executive competence to enact legislation relating to regulatory mechanisms for banking and money supply at all levels of government in South Sudan.

5. Interpretations

In this Act, unless the context otherwise requires:

"Bank" means the Bank of South Sudan;
"bank" has the meaning assigned to it in the Banking Act, 2012;
"business" means either one or both of the following:
(a) a series of two or more transactions;

(b) a transaction or transactions in excess of an amount prescribed by regulations;

"competent court" means any court of competent jurisdiction designated by the Chief Justice;

"currency" means the currency of South Sudan or foreign currency;

"currency of South Sudan" means:

(a) banknotes and coins issued by the Bank of South Sudan; and

(b) any right to receive such banknotes or coins in respect of any balance at a financial institution located within or outside South Sudan;

"designated resident enterprise" means a person holding a licence issued by the Bank in accordance with this Act;

"financial institution" has the meaning assigned to it in the Banking Act, 2012;

"foreign currency" means a currency other than the legal tender of South Sudan;

"foreign exchange" includes:

(a) banknotes, coins or electronic units of payment in any currency other than the currency of South Sudan which are legal tender outside South Sudan;

(b) financial instruments denominated in foreign currency; and

(c) any right to receive such banknotes or coins in respect of any balance at a financial institution located within or outside South Sudan;

"**foreign exchange bureau"** means a legal person, other than a bank, holding a licence issued in accordance with this Act;

"foreign exchange business" means the business of buying, selling, borrowing or lending of foreign currency, including dealing in foreign currency and, subject to meeting the requirements determined by the Bank, to engage in the business of international money transfers;

"licence" means a licence issued by the Bank in accordance with Section 7 of this Act that permits a legal person to engage in the foreign exchange business;

"Government" means the National Government of the Republic of South Sudan;

"Governor" means the Governor of the Bank of South Sudan;

"Minister" means the Minister of Finance and Economic Planning;

"non-resident" means any person other than a resident;

"payment" means a transfer of currency or traveller's cheques made for the purpose of:

(a) discharging a liability;

(b) making a gift or donation; or

(c) creating a balance at a financial institution that can be drawn upon;

"person" includes any physical person and any company or association or body of persons corporate or unincorporated;

"**prescribed authority**" means a court; a police officer or other public officer; or a law enforcement agency of the Government or any person authorised by any such agency, and includes any person on whom any functions are conferred by or under this Act;

"resident" means:

(a) an individual who has been granted a resident permit in accordance with the Passports and Immigration Act 2011 and the Nationality Act, 2011;

(b) the Government and any of its diplomatic representations located outside South Sudan;

(c) an enterprise whose principal place of business or centre of control and management is located in South Sudan;

(d) a branch located within South Sudan of an enterprise whose principal place of business is located outside South Sudan; and

(e) any enterprise incorporated or formed under the laws of South Sudan;

except that "r**esident"** does not include a foreign diplomatic representation or an accredited official of such a representation located within South Sudan, an office of an organisation established by international treaty located within South Sudan, or a branch located outside South Sudan of a company, firm, or enterprise whose principal place of business is located in South Sudan;

"security" means a share, stock, bond or note, other than a cheque or traveller's cheque or a debenture denominated in the currency of South Sudan or in foreign currency; and

"traveller's cheque" means an instrument issued by a bank or similar institution which is intended to enable the person to whom it is issued to obtain bank notes or coins in the currency of South Sudan or in foreign currency from another person on the credit of the issuer.

CHAPTER II

AUTHORITY OF THE BANK OF SOUTH SUDAN AND LICENSING

6. Authority of the Bank of South Sudan.

(1) The Bank shall be the regulatory authority for the purposes of giving effect to this Act.

(2) The Bank may require any person resident or conducting business in South Sudan, whether or not that person is carrying on business licensed under this Act, to furnish details of any or all of such person's foreign exchange transactions or provide returns in a format prescribed by the Bank, giving details of that person's foreign exchange transactions.

(3) The Bank may, to such extent and subject to such conditions as it may think proper, delegate to any person or class of persons the performance of any of the powers conferred upon the Bank under this Act, other than the powers set out in Section 12 of this Act.

(4) Subject to the provisions of this Act, the Bank shall be responsible for the implementation of this Act and may do all such things as may be necessary for the proper carrying out of the objectives of this Act.

(5) In the exercise of the powers conferred on the Bank by subsection (3), the Bank may issue guidelines, manuals, and circulars and may request for an information for ensuring the execution of the provisions of this Act, and the regulations made hereunder this Act.

7. Licensing.

(1) No person, other than a bank licensed under the Banking Act, 2012, or a legal person licensed as a foreign exchange bureau under this Act, shall engage in the foreign exchange business or in the business of international money transfers.

(2) The Bank may issue, for a fee determined by the Bank, a licence under this Act to any legal person, provided that only an enterprise formed or incorporated under applicable legislation concerning companies shall qualify to be issued a licence as a foreign exchange bureau under this Act.

(3) The Bank shall determine the minimum paid up share capital required to:
(a) carry out the business of foreign exchange bureau; and
(b) carry out the business of international money transfers.

(4) A licence issued or renewed under this section shall expire one year after the date of issue unless the licence has been renewed, extended, or revoked by the Bank.

(5) In considering an application for the renewal of a licence, the Bank may, subject to such conditions or restrictions as the Bank considers appropriate, extend the validity of an existing licence for not more than three months so as to permit the licensee to take such action as the Bank considers necessary to enable the licensee to comply with this Act and the regulations, permissions, instructions and directions issued under this Act.

(6) When issuing or renewing a licence under this section, the Bank may impose upon the licensee such conditions or restrictions as the Bank considers appropriate.

8. Suspension and Revocation of Licences.

(1) The Bank may revoke or suspend a licence if it has reasonable cause to believe that the licensee has violated the provisions of this Act or its regulations.

(2) Subject to subsection (1), the Bank may, at any time, suspend, vary any condition or restriction of, or impose further conditions or restrictions upon a licence that has been issued, extended, or renewed under Section 7 of this Act.

(3) Subject to subsection (1), the Bank may revoke a licence that has been issued, extended or renewed under Section 7 of this Act if it finds that the licensee:
(a) has not commenced the operations permitted under the licence within three months after the date of issue of the licence;
(b) has, in the course of its application for the issue, extension, or renewal of a licence under Section 7 of this Act, failed to disclose to the Bank material information of which the licensee was aware, or should have been aware with the exercise of due diligence;
(c) has provided information material to the application which is found to be untrue or false;

(d) has contravened any provision of this Act or any regulation, permission, instruction or direction issued under this Act;
(e) has, since the issue of the licence, ceased to qualify for the licence;
(f) is guilty of malpractice or irregularity in the management of its affairs; or
(g) is placed under liquidation or receivership or is adjudged bankrupt.

(4) If the Bank has made a finding under subsection (3), the Bank may, instead of revoking the licence, suspend the licence for a specific period or impose conditions or restrictions on the licence.

(5) Unless the circumstances render it impossible to do so, before the Bank suspends or revokes a licence or imposes further conditions or restrictions in respect of a licence under this section, the Bank shall give the holder of the licence at least fifteen days written notice and opportunity to submit written representations as to why the proposed action should not be taken.

9. Judicial Review.

(1) Any person aggrieved by a decision of the Bank under Sections 7 or 8 of this Act may seek judicial review of such decision in a competent court within thirty days after being notified of the decision.

(2) The court, based on the record of the decision of the Bank, may affirm or annul the order, in whole or in part, or may remand the matter to the Bank for reconsideration. The court may annul an order of the Bank only if it determines that there was no factual basis for the order, or that the Bank manifestly misapplied the applicable legal provisions.

10. Restriction on Imports and Exports.

The Bank may, by regulation, impose restrictions on the import into, or export from, South Sudan of banknotes, coins, travellers' cheques and securities denominated in the currency of South Sudan or in foreign currencies.

CHAPTER III

INTERNATIONAL PAYMENTS

11. International Payments.

(1) All payments in foreign currency, to or from South Sudan, between residents and non-residents, or between non-residents, shall be made through a bank licensed under the Banking Act, 2012, or through a foreign exchange bureau licensed under this Act.

(2) Every transfer of foreign exchange to or from South Sudan shall be through a bank licensed under the Banking Act, 2012, or through a foreign exchange

bureau licensed under this Act to carry out the business of international money transfers.

(3) Where the Bank has reason to believe that an offence is about to be, or has been, committed, the Bank may require a bank or foreign exchange bureau to obtain the permission of the Bank before executing any payment referred to in subsection (1), and the permission shall be granted solely on the basis of a determination by the Bank that the payment is consistent with the laws of South Sudan.

(4) The Bank may make regulations prescribing information to be provided to the Bank by a person licensed under this Act, residents and non-residents in connection with the conclusion of any transaction involving foreign currency, the maintenance of bank accounts in South Sudan or outside South Sudan, and the settling of any payment by a resident or non-resident.

(5) The Bank shall, by regulation, prescribe the conditions for carrying out the business of foreign exchange transfers.

12. Imposition of Temporary Restrictions.

(1) If the Governor has determined that South Sudan has experienced a severe deterioration in its balance of payments requiring a temporary imposition of exchange controls beyond those provided for in Section 10 of this Act, the Governor may, in consultation with the Minister, make regulations restricting:
   (a) payments between residents and non-residents or between non-residents carried out in South Sudan;
   (b) payments to or from South Sudan;
   (c) the acquisition, holding and use in South Sudan of foreign currency, traveller's cheques in foreign currency, by any person; and
   (d) the rate at which the purchase and sale of foreign exchange may take place in South Sudan.

(2) Subject to subsection (1), regulations under this section shall remain in force for a period not exceeding three months; except that, with the written consent of the Minister, the Bank may extend the period of operation of the regulation for a further period not exceeding three months, and thereafter, for such further period as may be authorized by the National Legislative Assembly by a resolution.

(3) If the period of any regulations extended under subsection (2) expires when the National Legislative Assembly is not in session, the Bank may extend the period of operation until the twenty-eighth day following the commencement of the next session of the National Legislative Assembly.

(4) Within fourteen days after any regulations are made under subsection (1), the Governor shall cause to be published in the Official Gazette the reasons justifying any restrictions imposed under this subsection (1).

CHAPTER IV

ENFORCEMENT

13. Provision of Information.

(1) The Bank may require, by written directive, any person in South Sudan, within such time and in such manner specified in the directive, to furnish to the Bank or its designated representative any information in such person's possession or control that the Bank or its representative may require for the purpose of enforcing this Act.

(2) A person required under subsection (1) to furnish information that is stored in a computer or any other electronic media shall also produce such books, accounts or other documents as may be required for that purpose by the Bank or its representative.

(3) If a person is convicted for failing to give information or produce any document when required to do so under this section, the court may make an order requiring the offender, within such period as may be specified in the order, to comply with the requirement to provide the information or to produce the required documents.

(4) Any information or document obtained under this section is admissible in evidence in a prosecution for an offence under this Act of any person from whom it was obtained or of any enterprise for which that person at the time of the commission of the offence was or was purporting to act as director, general manager, secretary or other similar officer of the enterprise.

14. Search and Seizure.

(1) If the court is satisfied by information given under oath by a person authorised by the Bank to act for the purpose of this section, either:

(a) that an offence under this Act has been or is being committed and that evidence of the commission of the offence is to be found at any premises specified in the information, or in any vehicle, vessel, or aircraft so specified; or

(b) that any document which ought to have been produced under Section 13 of this Act and has not been produced is to be found at any premises or in any vehicle, vessel or aircraft referred to in paragraph (a); then

the court may issue a search warrant authorising a police officer, together with any other person named in the warrant and any other police officers, to enter the premises specified in the information or any premises upon which the vehicle, vessel or aircraft specified may be, at any time within one month from the date of the warrant, and to search the premises, or the vehicle, vessel or aircraft.

(2) A person authorised by a warrant issued under subsection (1) to search any premises or any vehicle, vessel or aircraft may:

(a) search any person who is found in, or who the authorised person has reasonable grounds to believe has recently left or is about to enter, those premises or that vehicle, vessel or aircraft; and

(b) seize any property found on that person or on the premises or in the vehicle, vessel or aircraft, which the authorised person has reasonable grounds for believing to be evidence of, or to have been used in connection with, the commission of an offence under this Act, or any documents which such authorised person has reasonable grounds to believe ought to have been produced under Section 13 of this Act.

(3) If, by virtue of this section, a person has any power to enter any premises, vehicle, vessel, or aircraft, that person may use such force as is reasonably necessary for the purpose of exercising that power.

(4) If there are reasonable grounds for suspecting that a person has committed an offence under this Act, a police officer may seize any property in that person's possession or under such person's control which appears to the police officer to be evidence of, or to have been used in connection with, the commission of the offence.

15. Notice.

(1) In the event that any property has been seized under Section 14 of this Act, the person who executed the seizure shall, within one month after the seizure, give notice in writing of the seizure and the reasons for the seizure to the owner.

(2) Such notice shall not be required if:

(a) the property was seized in the presence of the owner;

(b) the owner of the property cannot be identified; or

(c) a person is, within one month after the seizure, charged with an offence in connection with the seized property.

(3) If any property has come into the possession of a prescribed authority under Section 14 of this Act, and a period of one month has elapsed from:

(a) the date of seizure; or

(b) the date of notice if the notice has been given under subsection (1); then

the property shall, by order of the court, be forfeited to the State unless, within that period, the owner has claimed the property by giving notice in writing to the Bank.

(4) If the Bank has received a notice of a claim under subsection (3), and a period of two months has elapsed from the date of receipt of the notice, the property shall be released to the owner unless, within that period, the Bank has either:

(a) by notice in writing to the owner, required the owner to institute proceedings in a competent court for the recovery of the property; or

(b) instituted proceedings in a competent court for the forfeiture of the property.

(5) If the Bank has given an owner notice to institute proceedings under subsection (4) and the owner has not instituted proceedings within a period of two months from the date of receipt of the notice, the property shall, by order of the court, be forfeited to the State.

16. Recovery of Forfeiture.

(1) If proceedings for the recovery or forfeiture of property have been instituted in a court under Section 15 of this Act, the court may order the property to be forfeited to the State if the court finds that the property was used in connection with the commission of an offence under this Act.

(2) If any property has come into the possession of a prescribed authority, whether in consequence of the seizure of the property under Section 14 of this Act or otherwise, the liability of the property to forfeiture shall not be affected by the fact that the owner of the property was in no way concerned with the act or omission that rendered the property liable to forfeiture.

(3) If any property is forfeited under this section:
(a) the forfeiture shall be deemed to have taken effect at the time when the liability to forfeiture arose; and
(b) the forfeiture shall, subject to any appeal in any proceedings which resulted in the forfeiture, be final and no application or proceedings for restitution or in detinue by any person, shall lie.

17. Retention of Seized Property.

(1) Notwithstanding any other provision of this Act, if property has come into the possession of a prescribed authority, whether in consequence of the seizure of the property under this Act or otherwise, and the prescribed authority is satisfied that there are reasonable grounds for suspecting the property to be evidence of the commission of an offence under this Act, the prescribed authority may retain the property for a period of twelve months from the date it came into its possession and, if any person is, within that period, prosecuted for an offence under this Act in which the property is or can properly be adduced in evidence, the property shall be retained until the prosecution has been completed.

(2) For the purposes of subsection (1), any person to whom any powers of the Bank under this Act are delegated or on whom any functions are conferred by or under this Act, including a police officer, shall be deemed to be a prescribed authority for the purposes of the definition of that expression in Section 5 of this Act.

(3) For purposes of subsection (1), proceedings shall be deemed not to have been finally completed so long as there is pending an appeal in the matter.

(4) The powers conferred by this section in relation to any property shall be in addition to, and not in derogation from, any powers otherwise exercisable in relation to that property.

CHAPTER V

MISCELLANEOUS

18. General Prohibitions.

No person in South Sudan shall, with intent to evade any provision of this Act:

(a) destroy, mutilate, deface or remove any document;
(b) make any declaration which is false in any material particular;
(c) in furnishing any information for any of the purposes of this Act, make any statement which such person knows to be false in a material particular, or recklessly make any misrepresentation in relation to any statement which is false in a material particular;
(d) counterfeit or in any way falsify any document or knowingly use a document which is counterfeit or false; or
(e) obstruct any person in the exercise of any powers conferred by or under this Act.

19. Offences.

(1) Any person who:
  (a) engages in any of the businesses referenced in Section 7 of this Act without a licence;
  (b) contravenes any restriction imposed under Section 7 of this Act;
  (c) contravenes any restriction imposed under Section 10 of this Act;
  (d) fails to provide information required under Section 13 of this Act; or
  (e) contravenes Section 18 of this Act,

commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand South Sudanese Pounds, or imprisonment not exceeding two years, or both.

(2) If a person is convicted of an offence under subsection (1), and the offence is concerned with any property, the court shall order the property to be forfeited to the State unless it sees good reason not to do so.

(3) Where a body corporate commits an offence under this Act or under regulations made under this Act, any director, general manager, secretary or other similar officer of the body corporate or other person purporting to act in any such capacity, shall also be considered to have committed the offence if any act or omission of that person is proved to have given rise to the contravention which constituted the offence.

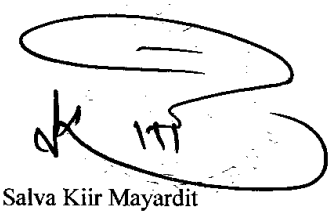
(4) A person shall not be taken to have committed an offence under subsection (3) if it can be proved that the contravention was committed without such person's consent or participation and that such person exercised all due diligence to prevent the commission of the offence, having regard to all circumstances.

(5) Any employee of the Bank, or the spouse or child of such employee, who owns any share or part of a foreign exchange bureau, commits an offence and is liable, on conviction, to a fine not exceeding twenty thousand South Sudanese Pounds and imprisonment not less than ten years.

20. Regulations.

The Bank may issue regulations for the purpose of carrying out the provisions of this Act in accordance with the Bank of South Sudan Act, 2011.

Issued under my hand in Juba on this 5 day of June in the year, 2012



Gen. Salva Kiir Mayardit
President of the Republic