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LAWS OF SOUTHERN SUDAN

THE LIMITED PARTNERSHIPS ACT, 2008

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LAWS OF SOUTHERN SUDAN

THE LIMITED PARTNERSHIPS ACT, 2008

In accordance with the provisions of Article 59(2) (b) read together with Article 85 (1) of the Interim Constitution of Southern Sudan, 2005, the Southern Sudan Legislative Assembly, with the assent of the President of the Government of Southern Sudan hereby enacts the following—

CHAPTER I
PRELIMINARY PROVISIONS

1. Title and Commencement.

This Act may be cited as "The Limited Partnerships Act, 2008" and shall come into force on the date of its signature by the President.

Signed on 28th November, 2008

2. Repeal and Saving.

(1) Any provision of existing legislation in force in Southern Sudan which is governed by the provisions of this Act, is hereby repealed or ceases to operate in Southern Sudan; provided that, all registrations, proceedings or order issued and regulations made there under, except to the extent that they are revoked or cancelled by this Act, shall remain in force or effect, until they are repealed or amended in accordance with the provisions of this Act.

(2) The mention of particular matters in this section shall be without prejudice to the provisions of the Interpretation of Law and General Provisions Act, 2006.

3. Purpose.

The purpose of this Act is to provide for the law governing the formation, registration, operation and winding up of limited partnerships carrying on business in Southern Sudan, and for matters incidental thereto and connected therewith.

4. Authority and Application.

(1) This Law is drafted in accordance with the provisions of Article 55, paragraph 9 and 19(1) of Schedule B, and paragraphs 2 of Schedule D of the Interim Constitution of Southern Sudan, which grants the Government of Southern Sudan authority over commerce and trade, matters relating to businesses and their conditions of operation, and the regulation of professions and professional associations.

(2) This Act shall apply to every limited partnership operating in Southern Sudan and except as otherwise provided by this Act, or any other enactment, the law relating to partnerships does not apply to a limited partnership.

5. Interpretations.

In this Act, unless the context otherwise requires—

"business" includes every trade, occupation or profession;

"court" means the High Court;

"firm" means persons who have collectively entered into a partnership with one another to carry on a business and the name under which their business is carried on is called the "firm-name";

"general partner" means a partner who ordinarily takes part in the daily operations of the business, shares in the profits or losses, and is personally responsible for the partnership's debts and liabilities;

"limited partner" means a person who receives profits from the business but does not take part in managing the business and is not liable for any amount greater than his or her original investment;

"LP" means the Limited Partnerships;

"Minister" means the Minister for Legal Affairs and Constitutional Development;

"President" means the President of the Government of the Southern Sudan;

"register" means the register, which the Registrar is required to keep under section 6; and

"Registrar" means the Chief Registrar of Companies, Businesses, Non-Governmental Organizations and Associations designated under section 6 of this Act.

6. Registrar, Deputy Registrar and Assistant Registrars.

(1) The chief registrar shall be the registrar for the purposes of this Act.

(2) The Minister may appoint a deputy registrar and such assistant registrars as may, from time to time, be required for the purposes of this Act.

(3) The deputy registrar and every assistant registrar may, subject to the directions of the registrar, perform any act or discharge any duty, which the registrar may lawfully do or is required by this Act to do, and, for such purposes, shall have all the powers, privileges and authority of the registrar under this Act.

(4) The registrar shall keep a register of limited partnerships in the prescribed form in which shall be entered such particulars as are required by this Act and any regulations made under this Act.

CHAPTER II
NATURE OF LIMITED PARTNERSHIPS

7. Definition of limited Partnership.

(1) Limited partnership is a relationship which subsists between persons carrying on business in common with a view of making profit.

(2) Subject to subsection (3), a limited partnership shall be composed of not more than twenty persons.

(3) Where a limited partnership is formed for the purpose of carrying on a profession, the number of professionals which constitutes the limited partnership shall not exceed fifty.

(4) The relationship between or among members of any company or association which is—

(a) registered as a company under the Companies Act and relating to the registration of joint stock companies; or

(b) formed or incorporated by or in pursuance of any other written law, is not a limited partnership within the meaning of this Act.

(5) Every firm carrying on business in Southern Sudan under a business name which does not consist of the true surnames of all the partners who are individuals, without any addition other than the true first names of individual partners or initials of the first names; and the corporate names of all partners who are corporations, shall register its names under the Registration of Business Names Act.

8. Nature of Limited Partnerships.

(1) A limited partnership is a body corporate, with legal personality separate from that of its members, which is formed by being registered under Chapter III of this Act.

(2) The members of a limited partnership have such liability to contribute to its assets and liabilities in the event of its being wound up as is provided under this Act.

(3) A limited partnership shall consist of one or more persons called general partners, who shall have unlimited liability for all debts and obligations of the firm.

(4) A limited partnership shall, in addition to general partners, have one or more persons called limited partners who shall at the time of entering into the limited partnership contribute a stated amount of capital or property to the firm valued at a stated amount, and who shall not be liable for the debts or obligations of the firm beyond the amount of capital so contributed.

(5) A limited partner shall not, during the continuance of the limited partnership, either directly or indirectly draw out or receive back any part of his or her contribution to the partnership, and if he or she draws out or receives back any such contribution, he or she shall be liable for the debts and obligations of the firm up to the amount so drawn out or received back.

(6) A body corporate may be a limited partner.

CHAPTER III
REGISTRATION OF A LIMITED PARTNERSHIP

9. Registration of a Limited Partnership.

(1) Every limited partnership shall be registered with the registrar as such, in accordance with this Chapter.

(2) A limited partnership that is not registered in accordance with this section shall be taken to be a partnership and all its members general partners.

(3) A limited partnership registered as a limited partnership under this Chapter shall, at the end of its name add the expression "limited partnership" or the letters "LP".

10. Reservation of Name.

(1) The registrar may, on written application, reserve a name pending registration of a limited partnership.

(2) The name reserved under subsection (1) shall remain reserved for a period of thirty days or such longer period, not exceeding sixty days, as the registrar may, for exceptional reasons permit.

(3) During the period when the name is reserved under subsection (2), the registrar shall not register any other business with the name so reserved.

(4) The registrar shall not reserve a name or register any limited partnership where—

(a) there is reasonable cause to believe that the name is undesirable, deceptive or constitutes a criminal offence;

(b) the name gives an impression that the limited partnership is connected in anyway with the Government of Southern Sudan or any local authority;

(c) the name is the same as a name appearing in the register kept under the Companies Act; or

(d) the name does not include the particulars set out in subsection (1) of section 11.

11. Particulars of Registration of a Limited Partnership.

(1) The registration of a limited partnership shall be effected by delivering to the registrar an authenticated statement, in a form approved by the registrar and signed by the partners containing the following particulars—

(a) the name of the limited partnership;

(b) the general nature of the limited partnership's business;

(c) the registered office of the limited partnership and its principal place of business;

(d) the full name of each of the partners;

(e) the term, if any, for which the limited partnership is entered into, and the date of its commencement;

(f) a statement that the limited partnership is limited;

(g) a description of the status of every partner, limited or general;

(h) the sum contributed by each partner, and the form in which it is so contributed, whether paid in cash or otherwise; and

(i) where the commencement of the business or any part thereof requires the prior written approval of a competent authority authorizing all the partners to carry on such business or part, the statement shall be accompanied by a true copy of such approval, certified as such by all partners.

(2) The registrar shall, upon receiving the particulars referred to in subsection (1) and the prescribed fee for the registration, issue a certificate of registration of the limited partnership.

12. Incorporation by Registration.

(1) Where the registrar is satisfied that the requirements imposed by this Chapter have been complied with, he or she shall register and file the statement.

(2) The registrar shall assign a registration number to each limited partnership so registered and give a certificate that the limited partnership is incorporated by the name specified in the statement.

(3) The certificate shall be signed by the registrar and authenticated by the official seal.

(4) A limited partnership shall indicate its registration number on all its official documents.

13. Register and Index to be Kept.

(1) The registrar shall keep at his or her office a register and an index of all the limited partnerships registered under this Act, and all the statements registered in relation to those limited partnerships.

(2) Any authorized person or partner may inspect the statements filed by the Registrar, upon payment of such fees as may be prescribed by the Minister.

(3) Any authorized person or partner may require a copy of the certificate of registration of a limited partnership, or a copy of or an extract from any registered statement, to be certified by the Registrar upon payment of such fees as the Minister may prescribe.

(4) A certificate of registration, or a copy of or extract from any statement registered under this Act, if duly certified to be a true copy under the hand of the registrar, shall, in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence.

14. Registered Offices.

A limited partnership shall at all times have a registered office situated in Southern Sudan to which communications and notices may be addressed.

15. Registration of Change in Particulars of a Limited Partnership.

(1) If during the continuance of a limited partnership any change is made or occurs in—

(a) the name of the limited partnership;

(b) the general nature of the business of the limited partnership;

(c) the registered office of the limited partnership and its principal place of business;

(d) the partners, and where a person becomes a partner, an authenticated statement that he or she consents to becoming a partner;

(e) the address of or the name of any partner;

(f) the term or character of the limited partnership;

(g) the sum contributed by any limited partner;

(h) the liability of any partner by reason of his or her becoming a limited partner instead of a general partner or a general partner instead of a limited partner;

(i) the name of the general partner or partners; or

(j) the number of shares held by each partner, a statement, signed by the firm,

specifying the nature of the change shall, within fourteen days be sent by post or delivered to the registrar for registration, and the registrar shall issue a certificate of change in particulars to the firm.

(2) Notice of any arrangement or transaction under which any person will cease to be a general partner in any firm, and will become a limited partner in that firm, or under which the share of a limited partner in a firm will be assigned to any person, shall, in addition to registration under subsection (1), be forthwith advertised in the *Gazette*, or published in a newspaper of general circulation in Southern Sudan and until notice of the arrangement or transaction is so advertised, the arrangement or transaction shall, for the purposes of this Act, be deemed to be of no effect.

(3) A limited partnership, which contravenes the provisions of subsection (1), commits an offence, and each general partner shall, on conviction, be liable to a fine not exceeding ten Sudanese Pounds for each day during which the contravention continues.

16. Effect of Change of Name.

A change of name by a limited partnership does not affect any of its rights or duties or render defective any legal proceedings by or against it that might have been commenced or continued against it by its former name and proceedings may be commenced or continued against it by its new name.

17. Stamp Duty on Contributions by Limited Partners.

The statement of the amount contributed by a limited partner, and a statement of any increase in that amount, sent to the registrar for registration under this Act, shall be charged with such nominal stamp duty as may be specified in the law governing payment of stamp duty.

18. Direction by Registrar to Change Name.

(1) Where there is reasonable cause to believe that the name by which a limited partnership is registered gives misleading indication of the nature of its activities as to be likely to cause harm to the public, the registrar may in writing direct the limited partnership to change its name within such period as he or she may specify.

(2) A limited partnership may, within three weeks from the date of the direction, apply to court to set it aside and the court may set the direction aside or confirm it and if it confirms it, shall specify the period within which it must be complied with.

(3) Where a limited partnership fails to comply with a direction under this section, the limited partnership and any member in default commits an offence and is liable to a fine not exceeding five hundred Sudanese Pounds and for continued contravention, to a daily default fine of five Sudanese Pounds.

19. Making False Returns to be an Offence.

Where a person makes, signs, sends or delivers for the purpose of registration under this Act any false statement which he or she knows to be false or does not believe to be true, he or she commits an offence.

20. Improper use of "Limited Partnership", etc.

Where any person carries on a business under a name or title which includes as the last words the expression "limited partnership" or "LP", that person, unless the firm is a registered limited partnership, commits an offence and on conviction is liable to a fine not exceeding eight hundred Sudanese Pounds and for continued contravention, to a daily default fine of forty Sudanese Pounds.

21. Conversion of Partnership to Limited Partnership.

A partnership subsisting under the Partnership Act may, subject to the provisions of this Act, convert to a limited partnership by delivering to the registrar for registration, a statement containing the particulars specified in this Chapter, and complying with the requirements for incorporation of limited partnerships.

CHAPTER IV
MEMBERSHIP

22. Membership of a Limited Partnership.

(1) On incorporation, all the persons who subscribe their names to the statement shall be members of a limited partnership.

(2) Any other person may become a member of a limited partnership by and in accordance with an agreement with the existing members.

(3) A person may cease to be a member of limited partnership by—

(a) death;

(b) dissolution;

(c) in accordance with an agreement with the other members; or

(d) in absence of an agreement with the other members as to cessation of membership, by giving reasonable notice to other members.

(4) Once membership ceases all rights and obligations cease at that instant.

23. Relationship, Rights and Duties under a Limited Partnership.

(1) Except as is otherwise provided by this Act or any other enactment, the rights and duties of the members of a limited partnership, and the rights and duties of a limited partnership and its members shall be governed—

(a) by agreement between the members, or between the limited partnership and its members; or

(b) in the absence of agreement as to any matter, by any provision made in relation matter by regulations made under this Act.

(2) An agreement made before the incorporation of a limited partnership between the person who subscribe their names to the statement may, subject to the terms of such agreement, impose obligations on the limited partnership.

24. Members as Agents.

(1) Every member of a limited partnership is the agent of the limited partnership, save that a limited partnership is not bound by anything done by a member in dealing with a person if—

(a) the member has no authority to act for the limited partnership by doing that thing; and

(b) the person knows that the member has no authority.

(2) Where a person ceases to be a partner of a limited partnership, such partner may be regarded by any person dealing with the limited partnership, as still being a partner, unless—

(a) the person has notice that the partner has ceased to be a member of the limited partnership;

(b) notice that the partner has ceased to be a member of the limited partnership has been delivered to the registrar.

(3) Where a member of a limited partnership is liable to any person, other than another member of the limited partnership, as a result of a wrongful act or omission of the member, in the course of the business of the limited partnership, or with its authority, the limited partnership is liable to the same extent as the member.

CHAPTER V
MANAGEMENT OF A LIMITED PARTNERSHIP

25. Management of a Limited Partnership.

(1) A limited partner shall not take part in the management of the limited partnership business and shall not bind the firm.

(2) Without prejudice to subsection (1), a limited partner may, upon giving seven days notice to the general partners, in person or by that partner's agent, inspect the books of the firm and ascertain the state and prospects of the limited partnership business.

(3) Where a limited partner takes part in the management of the limited partnership business, that partner shall be liable for all debts and obligations of the firm incurred while he or she so takes part in the management as though he or she were a general partner.

(4) Where a member of a limited partnership has ceased to be a member, has died, become bankrupt, has been wound up or has assigned the whole or any part of his or her share in the limited partnership, the former member, his or her personal representative, his or her assignee, his or her trustee in bankruptcy or liquidator, as the case may be, may not interfere in the management or administration of any business or affairs of the limited partnership.

(5) For the purposes of this section, a limited partner does not participate in the management and control of the limited partnership business solely by doing one or more of the following—

(a) being a contractor for or an agent or employee of a limited partnership or of a general partner, or being an officer, director or shareholder of a general partner in the limited partnership, which is a corporation;

(b) consulting with and advising a general partner with respect to the business;

(c) acting as surety for the limited partnership or guaranteeing or assuming one or more specific obligations of the limited partnership; or exercising a right or power permitted by or under this Act or which a shareholder in a company may exercise.

(6) A limited partnership shall not be dissolved by the death or bankruptcy of a limited partner; and the mental incapacity of a limited partner shall not be a ground for dissolution of the limited partnership by a court unless the contribution of the person who is mentally incapacitated cannot otherwise be ascertained and realized.

(7) In the event of the dissolution of a limited partnership, its affairs shall not be wound up by the general partners unless the court otherwise directs.

(8) Subject to any agreement express or implied between or among the partners—

(a) any difference arising as to ordinary matters connected with the limited partnership business may be decided by a majority of the general partners;

(b) a limited partner may, with the consent of the general partners, assign his or her contribution in the limited partnership, and upon such an assignment the assignee shall become a limited partner with all the rights of the assignor;

(c) partners shall not be entitled to dissolve the limited partnership by reason of any limited partner suffering his or her contribution to be charged for his or her separate debt;

(d) a general partner may be introduced as a limited partner without the consent of the existing limited partners; and

(e) a limited partner shall not be entitled to dissolve the limited partnership by notice.

26. Limited Partnerships to Keep Proper Books.

It is the duty of every partner of a registered limited partnership engaged in commerce to see that proper books of accounts are kept, and in any legal proceedings it shall be a question of fact for the court to decide whether in all the circumstances reasonable and proper books have been kept.

CHAPTER VI
TAXATION

27. Taxation of Limited Partnerships.

For purposes of tax, a trade, profession or business carried on by a limited partnership with a view to profit shall be treated as carried on in partnership by its members and not by the limited partnership as such and accordingly, the property of the limited partnership shall be treated for tax purposes as partnership property.

CHAPTER VII
WINDING UP OF LIMITED PARTNERSHIPS

28. Winding up of Limited Partnerships.

(1) Subject to the provisions of this Chapter, any limited partnership may be wound up under this Act.

(2) The provisions of the Insolvency Act with respect to winding up shall apply to a limited partnership with the exceptions and additions in this section.

(3) The circumstances in which a limited partnership may be wound up are as follows—

(a) if the limited partnership is dissolved or has ceased to have a place of business in Southern Sudan or has a place of business in Southern Sudan only for the purpose of winding up its affairs or has ceased to carry on business in Southern Sudan;

(b) if the limited partnership is unable to pay its debts; or

(c) if the court is of the opinion that it is just and equitable that the limited partnership should be wound up.

(4) A limited partnership shall be deemed to be unable to pay its debts—

(a) if a creditor, by assignment or otherwise, to whom the limited partnership is indebted in a sum exceeding ten thousand Sudanese Pounds then due, has served on the limited partnership, by leaving at its principal place of business or by delivering to the partner, or by otherwise serving in such manner as the registrar may approve or direct, a demand under his or her hand requiring the limited partnership to pay the sum so due, and the limited partnership has for thirty days after the service of the demand neglected to pay the sum or to secure or compound for it to the satisfaction of the creditor;

(b) if any action or other proceeding has been instituted against any member or partner for any debt or demand due, or claim to be due, from the limited partnership, or from him or her in his or her character of partner, and notice in writing of the institution of the action or proceeding having been served on the company by leaving the same at its principal place of business, or by delivering it to the partner, or by otherwise serving the same in such manner as the court may approve or direct, the limited partnership has not within fourteen

days after service of the notice paid, secured or compounded for the debt or demand, or procured the action or proceeding to be stayed or indemnified the defendant to his or her reasonable satisfaction against the action or proceeding, and against all costs, damages and expenses to be incurred by him or her by reason of the same;

(c) if execution or other process issued on a judgment, decree or Act obtained in any court in favour of a creditor against the limited partnership, or any partner thereof as such, or any person authorized to be sued as nominal defendant on behalf of the limited partnership, is returned unsatisfied; or

(d) if it is otherwise proved to the satisfaction of the court that the limited partnership is unable to pay its debts.

29. Contributories in Winding up of Limited Partnership.

(1) In the event of a limited partnership being wound up, every member, shall, subject to the provisions of this Act, be deemed to be a contributory who is liable to pay or contribute to the payment of—

(a) any debt or liability of the limited partnership;

(b) any sum for the adjustment of the rights of the partners among themselves; or

(c) the costs and expenses of winding up.

(2) Notwithstanding the provisions of sub-section (1) above, limited partners shall, with the exception of liabilities arising from fraud or misrepresentation, only be liable to the extent of their contribution.

(3) In the event of the death or insolvency of any contributory, the provisions of this Act with respect to the personal representatives and heirs of deceased contributories and to the assignees and trustees of bankrupt or insolvent contributories shall apply.

30. Actions Stayed on Winding-up Order.

Where a order has been made for winding up a limited partnership, no action or proceeding shall be proceeded with or commenced against any contributory of the limited partnership in respect of any debt of the limited partnership, except by leave of the court, and subject to such terms as the court may impose.

31. Application of Insolvency Law.

(1) The provisions of this Act with respect to limited partnership shall be in addition to and not in restriction of any provisions in the Insolvency Law contained with respect to winding up of companies by the court, and the court or liquidator may exercise any powers or do any act in the case of a limited partnership which might be exercised or done by it or him or her in winding up a limited partnership formed and registered under this Act.

(2) Notwithstanding the provisions of subsection (1) above, a limited partnership shall not, except in the event of its being wound up, be deemed to be a company under the Insolvency Act and then only to the extent provided by this Chapter.

CHAPTER VIII
MISCELLANEOUS PROVISIONS

32. Regulations.

The Minister may make regulations concerning any of the following matters—

(a) Applying or not applying, with such modifications as appear appropriate, any law relating to companies, partnerships or other law;

(b) the fees to be paid for anything required to be done under this Act;

(c) the duties or additional duties to be performed by the registrar and other officers of acts by this Act required to be done by the registrar;

(d) the forms to be used for the purposes of this Act;

(e) prescriptions on all matters that are required or permitted by this Act to be prescribed, or that are necessary or convenient to be prescribed for the carrying out or giving effect to this Act.

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