LAWS OF SOUTH SUDAN

MICROFINANCE DEPOSIT TAKING BILL, 2010

ENACTED BY SOUTH SUDAN LEGISLATIVE ASSEMBLY

ARRANGEMENT OF CHAPTERS

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THE MICROFINANCE DEPOSIT TAKING BILL, 2010.

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THE MICRO FINANCE DEPOSIT-TAKING INSTITUTIONS BILL, 2010.

An Act to provide for the licensing, regulation and supervision of microfinance deposit taking business in South Sudan and other matters connected therewith or incidental to the foregoing.

BE IT ENACTED by South Sudan Legislative Assembly as follows:

CHAPTER I—PRELIMINARY.

Short title and date of commencement

1. (1) This Act may be cited as the Microfinance Deposit-Taking Institutions Act, 2003.

(2) This Act shall come into operation on a date appointed by the Minister by a statutory instrument.

(3) The Minister may fix different dates of commencement for different provisions of this Act.

Repeal and Savings

2. All previous legislation relating to Microfinance Deposit Taking Business in South Sudan is hereby repealed by this Act, provided that any acts taken or orders issued or and regulation made or any other instrument made or issued there - under and having effect before the commencement of this Act, shall remain in force till repealed or amended by provisions of this Act or some other enactment In that behalf.

Interpretation

3. In this Act, unless the context otherwise requires:-

"Affiliate" means any entity, corporate or un incorporate, where five per cent or more of any class of its voting shares or other voting participation is directly or indirectly owned or controlled by the entity or institution, or is held by it with power to vote;

"Associate"

(a) In relation to a natural person means:-

(i) A close relative of that person; or

(ii) Any person who has entered into an agreement or arrangement with that person, relating to the acquisition, holding or disposal of, or the exercising of voting rights in respect of, shares in the controlling of a company in question;

(iii) Any company of which that person is a director;

(iv) Any person who is an employee or partner of that person.

(b) In relation to a person not being a natural person:-

(i) Being a company, means any subsidiary or holding company of that company, any other subsidiary of that holding company and any other company of which that holding company is a subsidiary;

(ii) Not being a company to which subparagraph (i) applies , means another non natural person which would have been a subsidiary of the first-mentioned non natural person;

(aa) Had such first-mentioned non natural person been a company; or

(bb) Where that other non natural person is not a company, had the first mentioned non natural person and that other non natural person each been a company;

(iii) Means any person in accordance with whose directions or instructions the board of directors of or, where such non natural person is not a company, the governing body is that non natural person is accustomed to act; and

(c) In relation to any person whether natural or not natural:-

(i) Means any non natural person of which the board of directors or where the non natural person is not a company, of which the governing body is accustomed to act in accordance with the directions or instructions of the person first-mentioned in this paragraph; and

(ii) Includes any trust controlled or administered by that person.

"Bank" means any company licensed under the Financial Institutions Act, 2010 to carry on banking business as its principal business and includes all branches and offices of that company in South Sudan;

"Banking business" has the meaning assigned to it in the Financial Institutions Act, 2010;

"Cease and desist order" means an order issued by Bank of South Sudan to an institution to refrain from doing anything that is unsafe or that may prejudice depositor's interests;

"Credit Reference Bureau" means the Credit Reference Bureau referred to in this Act;

"Bank of South Sudan" means the Bank of South Sudan (BOSS) established under the Bank of South Sudan Act 2005;

"Close relative", in relation to any person, means:-

(a) His or her spouse;

(b) His or her child, stepchild, parent ,ward of parent or stepparent;

(c) The spouse of any person mentioned in paragraph *(b)*;

"Collateral substitutes" means collateral not ordinarily used as security in conventional banking;

"Company" means a company limited by shares or guarantee and having a share capital;

"Compulsory savings" means funds that must be contributed to by borrowers of an institution as a condition for receiving a loan either as a percentage of the loan or as a nominal amount;

"Control" means the relationship between the parent undertaking and a subsidiary undertaking or similar relations between an individual and an undertaking or the power to determine the financial and operational policy of an institution under its charter or an agreement, or direct or indirect influence by a person over decision making and the management of an institution;

"Core capital" means shareholders' equity in the form of issued and fully paid-up shares including retained reserves approved by the Bank of South Sudan;

"Corporate governance" has the meaning assigned to it in subsection (2) of section 24 of this Act;

"Credit facilities" means:-

(a) The granting by an institution of advances, loans and other facilities by which a customer of the institution has access to funds or financial guarantees; or

(b) The incurring by the institution of other liabilities on behalf of a customer;

"Currency point" means the value of a currency point specified in the First Schedule to this Act;

"Deposit" means a sum of money received or paid on terms under which it will be repaid, with or without interest or a premium, and either on demand or at a time or in circumstances agreed by or on behalf of the person making the payment and the person receiving it; except that the following shall not qualify as deposits for the purposes of this Act:-

(a) Any sum of money which is paid by way of advance or part payment under a contract for the sale, hire or other provision of property or services, where the sum

is repayable only if the property or services is not or are not in fact sold, hired or otherwise provided;

(b) A sum of money which is paid by way of security for performing a contract;

(c) A sum of money which is paid as security for a loan granted or promised at a future date to be granted to the person making the payment, except that such sum or interest on it shall not be on lent;

"Executive officer" in relation to any institution, includes any general manager or deputy manager of the institution;

"*Gazette*" means the official South Sudan *Gazette*;

"Group guarantee" means a guarantee mechanism by which a group of borrowers undertake to be liable jointly or severally to a loan of any one of them.

"Home country regulator" means the supervisory authority of the home country where the head office of the parent financial institution is based;

"Institution" means a micro finance deposit-taking institution;

"Liquid assets" has the meaning assigned to it in subsection (2) of section 17 of this Act;

"License" means a license granted under section 7 of this Act;

"Loan insurance fund" means an earmarked fund contributed to by group members of an institution to act as collateral for loans given to individual members of the institution;

"MDI" means micro finance deposit-taking institution;

"MDI Deposit Protection Fund" means the Deposit Insurance Fund established under section 59 of this Act;

"Manager" means an officer of a financial institution empowered to control direct and influence decision-making of the institution;

Microfinance: Means the provision of financial services to lower income people especially the poor and very poor, mainly the people whose livelihood is around the poverty line (about the equivalent of US$ 400 a year or lower). In a broad sense, microfinance includes loans, savings/ deposit facilities, insurance and money transfer services to these low income people.

"Microfinance Deposit-Taking Business" means the business carried on by any of the following:-

Microfinance Bank; means any company licensed to provide microfinance services, including saving, financing, internal monetary transfers and other financial services required by the economically active poor people for the running and expansion of their medium, small and micro projects enterprises.

Deposit Microfinance Institution; means an institution licensed by the Bank of South Sudan to accept deposits from the general public for the purposes of providing microfinance services.

Microfinance Deposit Taking Business will entail the following in addition to the usual microfinance services:

(a) Acceptance of voluntary deposits from the general public;

(b) Intermediating such deposits wholly or partly by lending or extending credit for the account and at the risk of the person accepting those deposits, including the provision of short term loans to small or micro enterprises and low income households, usually characterized by the use of collateral substitutes, such as group guarantees or compulsory savings;

(c) Transacting such other activities as may, by regulations under section 89 of this Act, be prescribed by the Bank of South Sudan;

Microfinance Institution: means an entity whose primary activity is the provision of microfinance with the exception of collection of voluntary public deposits. Microfinance Institutions can also be referred to as Non-Deposit Taking Microfinance Institutions.

"Microfinance deposit-taking institution" means a a microfinance institution licensed by Bank of South Sudan to carry on, conduct, engage in or transact in microfinance deposit taking business in South Sudan;

"Minister" means the Minister responsible for finance/ cooperatives etc…

"Non-performing loan" means a loan or asset whose principal or interest has been due and unpaid for ninety days or more, or where its principal or interest payments, overdue by ninety days or more have been capitalized;

*Non-prudential regulation/Supervision: means o*versight on financial institutions that do not take savings from the public, to ensure that their business conduct and interactions with clients are fair, transparent and legitimate. The aim is to ensure that financial institutions do not treat their clients in ways detrimental to the clients' interest, and that dealings are arms-length and transparent

"Person" means any individual, company, partnership, fund, foundation or enterprise wherever located or incorporated;

*Prudential Regulation or Supervision: means r*egulation or supervision aimed at protecting the financial system as a whole and protecting the safety of depositors in the financial institutions in order to prevent financial system instability and losses. It involves the regulator overseeing and enforcing critical aspects of the financial soundness and conduct of the regulated institutions

"Reputable financial institution" means a financial institution licensed to conduct banking or other financial institution business under the laws of any state, country or territory other than South Sudan and which meets such other criteria as may be prescribed by the Bank of South Sudan;

"Reputable public company" means a company that is financially strong, whose ownership is widely distributed, is of good public standing and meets such other criteria as may be prescribed by the Bank of South Sudan

"Resident" means :-

(a) An individual who is ordinarily resident in South Sudan in accordance with South Sudan immigration Act, 2005;

(b) The Government of South Sudan states, and its diplomatic representations located outside of South Sudan;

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

(d) A corporation, firm or enterprise incorporated or formed under the laws of South Sudan;

(e) A branch located within South Sudan of a company, firm and other enterprise whose principal place of business is located outside of South Sudan; except that "resident" does not include a foreign diplomatic representation or an accredited official of that representation located within South Sudan, or office of an organization 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;

"Short-term loan" means a loan, the period for the repayment of which does not exceed two years;

"Significantly undercapitalized" means, one whose core capital does not exceed eight per cent of its total risk adjusted assets, of such other percentage as may from time to time, be determined by Bank of South Sudan.

"Small loan" means a loan which is less than one per cent of the core capital prescribed in this Act for individual borrowers and five per cent of the core capital prescribed in this Act for group borrowers;

"Time deposits" means deposits repayable after a fixed period or after notice and includes savings deposits.

Application of Act

4. This Act shall apply only to micro finance deposit-taking institutions operating in South Sudan. It is aimed at implementing prudential regulation to such institutions with the express objective of safeguarding the public's deposits with the institution as well as the financial system of the country.

All other institutions engaged in microfinance will be non-prudentially regulation by the Bank of South Sudan. Depending on the type of entity, further regulation and policy guidelines will be enforced by the relevant organs of the Government of South Sudan. Establishment of microfinance operations in South Sudan.

No agency is authorized to establish microfinance operations unless such an agency is a legal personality or registered as a:

a- Public corporation established by a law;
b- Public or private share company registered under the South Sudan Companies Act
c- Legally registered non-governmental organization;
d- Legally registered credit association; or
e- Legally registered cooperative society.

Microfinance institutions are not authorized to attract public deposits before obtaining a license to do so as per the stipulations set forth for microfinance banks and deposit taking institutions .

5. (1) No microfinance Deposit Taking business shall be transacted in South Sudan except by an incorporated company, which is in possession of a valid license granted by Bank of South Sudan authorizing it to conduct microfinance deposit taking business in South Sudan.

(2) Any person who contravenes subsection (1) commits an offence and is liable on conviction to a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding five years or both; and in the case of a continuing offence to a further fine not exceeding fifty currency points for each day during which the offence continues after conviction.

(3) Bank of South Sudan shall upon a person being convicted under subsection (2) issue a cease and desist order to that person, prohibiting that person from conducting microfinance business in South Sudan.

CHAPTER II—LICENSING OF MICRO FINANCE DEPOSIT-TAKING BUSINESS.

Incorporation of Microfinance Deposit Taking Business.

6. (1) Whenever Bank of South Sudan has reason to believe that a person is transacting microfinance deposit taking business in South Sudan without a license, Bank of South Sudan shall, at all times:-

(a) Have full and free access to the premises at which that person is suspected of transacting microfinance business without a license or at which that person may have books, accounts and records; and

(b) Have the power to examine, copy or take possession of the books, accounts and records of that person in order to ascertain whether or not that person has contravened, or is contravening any of the provisions of this Act.

(2) Any refusal to allow full and free access to the premises referred to in subsection (1) or to submit any books, accounts or records to which subsection (1) applies shall be prima facie evidence of the fact of operation without a license.

Application of a license.

7. (1) A company which desires an authority to carry on microfinance deposit-taking business in South Sudan shall apply in writing to Bank of South Sudan for a license under this section and shall supply:-

(a) A copy of the memorandum and articles of association or other instrument under which the company is incorporated;

(b) Verified official notification of the company's registered place of business;

(c) The prospective place of operation, indicating that of the head office and branches;

(d) Biographical data on each of the founders, proposed directors and officers;

(e) The information which is necessary for assessing the trustworthiness of the applicant;

(f) The information which is necessary for assessing the professional qualifications, as required for managing the institution and of the proprietors;

(g) A copy of the latest balance sheet of the company or such other suitable evidence of the resources needed for business operations;

(h) A feasibility study of the company showing the nature of the planned business, the organizational structure and the planned internal monitoring procedures of the company and covering *inter alia* the following aspects:-

(i) Mission statement and overall goals;

(ii) Market research;

(iii) Ownership and governance;

(iv) Management;

(v) Financial analysis;

(vi) Business strategy.

(2) Any person who knowingly or recklessly furnishes any document or information which is false or misleading in a material particular in connection with an application for a license under subsection (1) commits an offence and is liable on conviction to a fine not exceeding one hundred currency points or imprisonment not exceeding three years or both.

(3) Upon receiving an application under subsection (1), Bank of South Sudan shall within six months consider the application and may, subject to section 17, grant a license, with or without conditions or refuse to grant a license.

(4) Before issuing a license under this Act, Bank of South Sudan shall take into account all the matters it considers relevant to the application and, without limiting the generality of the foregoing, Bank of South Sudan shall have particular regard to:-

(a) Whether the institution will be operated responsibly by persons who are fit and proper for involvement in microfinance business in accordance with the criteria specified in the Second Schedule to this Act;

(b) The business record and experience of the applicant or applicants;

(c) The nature and sufficiency of the financial resources of the applicant as a source of continuing financial support for the institution;

(d) The soundness and feasibility of the plans submitted by the applicant or applicants for the future conduct and development of the business of the institution;

(e) Whether public interest will be served by the granting of the license.

(5) Any person who fails to comply with any of the conditions of its license commits an offence and is liable on conviction to a fine not exceeding fifty currency points and, in the case of a continuing offence, to a further fine not exceeding ten currency points for each day during which the offence continues after conviction.

Issuance of Letter of Intent

8. (1) Bank of South Sudan shall consider an application for license and if satisfied that the applicant meets the requirements, it may issue a letter of intent to the applicant, which shall act as an interim approval of the application.

(2). Upon being issued with a letter of intent, an applicant shall proceed to:–

(a) Prepare the premises to meet the prescribed standards;

(b) To put in place management information systems and such other institutional structures required for carrying out the deposit-taking business in South Sudan; and

(c) Pay the prescribed fee as set out in the Second Schedule to this Act.

(3) Bank of South Sudan may, on being satisfied that the applicant has fulfilled all the requirements in sub-section (2), issue a license to the applicant, which shall signify an approval to commence operations.

(4) A license issued under this Act shall be in Form 3 set out in the First Schedule to this Act.

(5) A license issued under this Act shall not be transferable or assignable.

Validity of license.

9. (1) A license issued under this Act, unless revoked shall be valid up to the 31st March of the year in which it is issued and may, on expiry, be renewed.

(2) An application for the renewal of a license shall be made in writing to Bank of South Sudan at least three months before the date of expiry.

(3). An institution which fails to commence business within twelve months of the grant of a license, shall if it still proposes to carry out the deposit-taking business, make a fresh application for license.

Institutions to use the word "Deposit- Taking Microfinance."

10. (1) Every institution shall prominently display at its usual place of business in a part thereof to which the public has access the words "deposit-taking microfinance".

(2) No person shall carry on business under a name which is likely to mislead the public or give the impression that the institution is carrying on any other business than deposit taking microfinance business.

(3) A person who contravenes this Act commits an offence punished by law.

Publication of names of licensed Microfinance Deposit Taking businesses by Bank of South Sudan.

11. (1) Upon issuing a license to an institution, Bank of South Sudan shall, within fourteen days of licensing, publish in the South Sudan Gazette, the names of the newly licensed institution.

(2) Bank of South Sudan shall, every twelve months, publish in at least two newspapers of nationwide circulation, the names of all institutions licensed to carry out the deposit-taking business in South Sudan.

Powers of Bank of South Sudan to inspect Microfinance Deposit Taking Businesses.

12. (1) If Bank of South Sudan has reason to believe that a person is carrying out the deposit-taking business in South Sudan without a valid license, Bank of South Sudan, under a warrant issued by the High Court, shall, at all times:-

(a) Have full and free access to the premises at which that person is suspected of carrying out the deposit-taking business in South Sudan without a valid license or at which that person may have books, accounts and records; and

(b) Have the power to examine a copy or take possession of the books, accounts and records of that person in order to ascertain whether or not that person has contravened, or is contravening any of the provisions of the Act and regulations.

(2). Refusal to allow Bank of South Sudan full and free access to the premises or to submit any books, accounts or records shall be *prima facie* evidence that the person is operating a deposit-taking business without a license.

CHAPTER III – PLACE OF MICROFINANCE BUSINESS

Opening, relocating and closing of Microfinance Deposit Taking Business.

13. (1) No institution shall open, relocate or close a place of business without the prior written approval of Bank of South Sudan.

(2) An application to open, relocate or close a place of business shall be made to Bank of South Sudan in the manner prescribed in this Act and shall be accompanied by the prescribed fee.

(3) A person who contravenes sub- section (1) commits an offence punishable by law.

Opening head office or branch.

14. (1) No institution shall open a head office or branch without a valid license.

(2) An application for opening a branch shall be in the Form set out in the Third Schedule to these Regulations and shall be accompanied by the following information:-

(a) A summary report showing performance of the institution;

(b) An organization structure for the proposed place of business;

(c) A feasibility study of the future operations and development of the new place of business for a minimum of three years from the date of application including projections for:-

(i) Expected deposit mobilization and interest payable stating separately the proposed major sources of deposits;

(ii) Projected investments to be made and earnings, stating policy and categories of business to be funded;

(iii) Operating expenses including rent, salaries ,employees benefits, and director's remuneration;

(iv) Liquid and cash reserve assets;

(v) Provisions for loans and advances;

(vi) Fixed assets including business premises;

(vii) Other incomes including commissions and discounts, among others; and

(viii) Net operating profit/loss.

(d) Statistical and other data which may have been collected in respect to the area in which the applicant intends to serve including population of the area, sectoral activities such as agricultural activities, micro business and industrial development, among others and existing financial intermediaries; and

(e) A schedule of all the preliminary expenses.

(2) Every institution shall notify Bank of South Sudan of its readiness to operate a head office or branch and shall invite Bank of South Sudan for inspection of the premises before commencing operations.

(3).Bank of South Sudan shall undertake the inspection of the head office or branch premises and examine compliance with the standards and the operational readiness of the institution for commencing operations.

(4).Bank of South Sudan shall, if satisfied that all requirements have been fulfilled, grant a license upon payment of the prescribed fee.

Opening of an agency or outlet.

15. (1) No institution shall open or operate an agency or an outlet without the prior written approval by Bank of South Sudan.

(2) An institution that contravenes sub- section (1) commits an offence punishable by law.

(3) An application to open an agency or outlet shall be in the form set out in the Third Schedule to this Act.

Relocation of place of business.

16. (1) The reasons for opening the agency or outlet;

(a) A duly executed copy of the agency agreement between the parties concerned, if any; and

(b) The security features and space available for carrying out the deposit-taking business in South Sudan.

(2).Bank of South Sudan shall, if satisfied that the applicant fulfils all the requirements, grant an approval for opening an agency or outlet.

(3) An institution granted an approval to open an agency or an outlet shall ensure that the agency or outlet opens for business no later than ninety (90) days after the date of approval and the institution shall notify Bank of South Sudan of the opening within fourteen days from the date of opening.

(4) An institution that contravenes this Act is liable to such administrative sanction as the Bank of South Sudan may prescribe.

(5) No institution shall relocate a place of business without a written approval by Bank of South Sudan.

(6) An application for an approval to relocate a place of business shall be made to Bank of South Sudan in the Form set out in the Fourth Schedule to this Act and shall be accompanied by the following information:-

(a). The reasons given for the change of location and plan for settlement or transfer of claims and liabilities;

(b). Completion of the preparations of the new place of business premises; and

(c). Analysis of the potential and feasibility for changing the place of business location.

(7) A person who contravenes sub- section (1) commits an offence punishable by law.

(8) Bank of South Sudan may impose the prescribed monetary penalties on an institution that contravenes this Act.

Closure of place of business.

17. (1) No person shall, without the written approval of Bank of South Sudan:-

(a) Close or cause to be closed a place of business, in a manner so as to permanently cease operation of business; or

(b) Close temporarily or cause the temporary closure of a place of business.

(2). An application to close a place of business shall be made to Bank of South Sudan in the Form set out in the Fourth Schedule to this Act and shall be accompanied by:-

(a) The reasons for such closure; and

(b) A plan for settlement or transfer of assets and liabilities.

(3) An application for temporary closure of a place of business excluding public holidays and Sundays shall be accompanied by the following information:-

(a) The reasons for closure;

(b) Period of closure; and

(c) The date at which the place of business shall reopen.

(4) In deciding on the approval to authorize the closure of a place of business, Bank of South Sudan shall be satisfied that:

(a) The public interest in the location of the institution will not be jeopardized by the closure; and

(b) Alternative financial services provided by the institution are available in the locality.

(5) Bank of South Sudan shall consider the application for permanent closure of a place of business and if satisfied, shall grant an approval for permanent closure of an institution.

(6) An institution granted approval to close its business permanently shall:-

(a) Report closure to Bank of South Sudan not later than fourteen days after closure; and

(b) Give a notice of the closure to the public, at least six months prior to such closure.

(7) An institution granted approval to close a place of business, whether permanently or temporarily, shall ensure that the notices of the closure are made:-

(a) In at least two newspapers of nationwide circulation;

(b) To all government administrative offices in the area of the place of business.

(8) An institution that contravenes this Act is liable to such administrative sanction as the Central may prescribe.

CHAPTER IV – CAPITAL OF MICROFINANCE DEPOSIT TAKING BUSINESS.

Minimum capital requirements.

18. (1) Every Microfinance Deposit-Taking institution shall, at all times:-

(a) Maintain records including balance sheets and periodic statements of income and expenditure to enable proper computation of the institution's capital adequacy; and

(b) Maintain the prescribed minimum capital requirements.

(2)Bank of South Sudan shall determine whether an institution is in compliance with the capital adequacy requirements in accordance with the Act and Regulations.

(3). An Institution that contravenes sub-section (1) is liable to such administrative sanctions as may be prescribed by Bank of South Sudan.

Criteria for higher minimum capital ratio.

19. Bank of South Sudan may require higher minimum capital ratios for an individual institution based on, but not limited to the following criteria-

(a) If an institution has losses resulting in a capital deficiency;

(b) If an institution has significant exposure to risk ;

(c) If an institution has a high, or particularly severe, volume of poor asset quality;

(d) If an institution is growing rapidly, either internally or through acquisitions without adequate capitalization and risk management system among other resource needs as may be determined by Bank of South Sudan; or

(e) If there is a likelihood that an institution may be adversely affected by the activities or conditions of its holding company, associates or subsidiaries.

On-Balance Sheet Items.

20. (1) Every institution shall assess and provide for risks in the evaluation of their respective capital adequacy measurement.

(2) Every institution shall classify and assign risk weight to credit exposures into four categories according to their relative risk exposures, in the following manner –

(a) Zero weight may be assigned to the on-balance sheet items including cash, balances with Bank of South Sudan, claims Government of South Sudan (GOSS) on the South Sudan Government by way of investments in Treasury Bills, Treasury bonds and promissory notes, loans fully secured by cash and loans duly guaranteed by the Government of South Sudan or central governments or such other organizations acceptable to the GOSS;

(b) 20% weight, where deposits and balances due from commercial banks, financial institutions, mortgage finance and building societies in South Sudan, deposit-taking microfinance institutions in South Sudan, securities issued by foreign governments and balances due from foreign banks (including banks in groups) and claims (loans and advances) guaranteed by a multilateral development bank (MDB), a Regional Development Bank, or a development agencies;

(c) 50% weight where loans are fully secured by a first legal charge over residential property located within cities and municipalities in South Sudan that are either occupied by the borrower or rented, Provided that the 50% will not be applied to loans granted to companies engaged in speculative residential building or property development or any portion of loans in excess of 80% of the forced sale value of the residential property or rescheduled facilities;

(d) The 100% weight shall apply to all other claims on the public and private sector which are not covered under the other categories, and include- deposits in banks, financial institutions, mortgage finance building societies, and deposit-taking microfinance institutions, that are all under statutory management; premises and other fixed assets, loans and advances, bills discounted and all other assets of these institutions.

(3) For the purpose of this Act "Multilateral Development Banks (MDBs)" include international financial intermediaries whose shareholders include both borrowing developing countries and donor developed countries.

(4) An institution that fails to comply with this section shall be subject to such administrative sanction as may be prescribed by Bank of South Sudan.

Off-Balance Sheet Items

21. (1) Every institution shall ensure that-

(a) Off-balance sheet items fully secured by cash or cash equivalent and those that are guaranteed by Government of South Sudan or OECD Central Government shall be assigned 0% risk weight; and

(b) Off balance sheet items with the maturity exceeding a year are assigned a risk weight of 50%, including performance bonds and bid bonds.

(2) An institution that fails to comply with this Regulation is liable to such administrative sanctions as may be prescribed by Bank of South Sudan.

Returns to Bank of South Sudan.

22. (1) Every institution shall prepare and submit to Bank of South Sudan, at the end of every month to be received by the 10th day of the following month, returns on Capital to Risk Weighted Assets in the form set out in the Fifth Schedule to these Regulations.

(2) An institution that fails to comply with this Regulation is liable to such administrative sanctions as may be prescribed by Bank of South Sudan.

Administrative sanction of Microfinance Deposit Taking business.

23. Where an institution defaults in meeting the provisions of this Act, Bank of South Sudan may pursue any or all of the following administrative sanctions against an institution and its officers:

(a) Prohibition from declaring or paying dividends;

(b) Prohibition from establishing new places of business;

(c) Prohibition from engaging in new activities or from expanding existing activities;

(d) Suspension from lending, investment, and credit extension operations;

(e) Prohibition from acquiring, through purchase or lease, additional fixed assets;

(f) Prohibition from accepting further deposits;

(g) Prohibition from declaring or paying bonuses, salary incentives, severance packages, management fees or other discretionary compensation to directors or officers.

CHAPTER V – CORPORATE GOVERNANCE OF MICROFINANCE DEPOSIT TAKING BUSINESS

Ownership of shares of Microfinance Deposit Taking business.

23. (1) No person or group of related persons shall hold more than thirty per cent (30%) of the shares in an institution.

(2) If at the commencement of this Act any person or group of related persons holds more than thirty percent of the shares in an institution or controlling company, that person or group of related persons shall:-

(a) Within five years from the commencement of this Act, reduce their shareholding in the institution or controlling company to the percentage prescribed in subsection(1) of this section;

(b) Within ninety days from the commencement of this Act, present a credible plan of action regarding the reduction of their shareholding.

(3) Subsections (1) and (2) of this section shall, subject in each case to the approval of the Bank of South Sudan, not apply to the holding or acquisition of shares in an institution by a

wholly owned subsidiary of a bank licensed under the Financial Institutions Act, 2010 or by a reputable financial institution, or in exceptional cases, a reputable public company.

(4) No person shall own ten per cent (10%) or more of the shares of an institution except where that person has been approved as a fit and proper person by Bank of South Sudan in accordance with the provisions to this Act.

(5) Notwithstanding any provision in any other legislation, where any person intends to transfer ten per cent or more of the shares in an institution, that person shall first seek the approval of the Bank of South Sudan.

(6) Notwithstanding the provisions of the Companies Act, an institution or its controlling company shall not without the written approval of the Bank of South Sudan, allot or issue or transfer any of its shares to, or register any of its shares in the name of any person other than the intended beneficial shareholder.

Board of directors.

24. (1) The operations of every institution shall be directed by a board consisting of at least five (5) directors, headed by a chairperson who is a non-executive director of the institution.

(2) No person shall become a director of an institution without the approval of Bank of South Sudan and which shall have due regard to the fit and proper person criteria prescribed in Second Schedule to this Act.

Functions of the Board

25. (1) The board of directors of an institution shall be responsible for:-

(a) The good corporate governance and business performance of the institution;

(b) Ensuring that the board is in full control of the affairs and business operations of the institution;

(c) Ensuring that the business of the institution is conducted in a safe and sound manner;

(d) Ensuring and reporting to the shareholders at the annual general meeting of the institution that the internal controls and systems, and management information systems of the institution provided that:-

(i) Reasonable assurance as to the integrity and reliability of the financial statements of the institution;

(ii) Adequately verify, safeguard and maintain accountability of the assets of the institution;

(iii) Are based on written policies and procedures based on established and written policies are implemented by trained and skilled officers with an appropriate segregation of duties; and

(iv)Policies are continuously monitored, reviewed and updated by the board of directors to ensure that no material breakdown occurs in the functioning of such controls, procedures and systems.

(2) For the purposes of this Act, "corporate governance" covers the overall environment in which the institution operates and consists of checks and balances which promote a healthy balancing of risk and return.

Disqualification of members of the board of Directors.

26. The following persons are disqualified from being directors of an institution:-

(a) A person who is less than eighteen years of age;

(b) A person who is of unsound mind and has been so found by a court in and outside South Sudan;

(c) A person who has the status of a bankrupt;

(d) A person who is not a natural person;

(e) A person under any legal disability in and outside South Sudan;

(f) Any individual who does not satisfy the fit and proper criteria in accordance with the provisions of this Act.

(g) A former director of an institution responsible for its placement under management by the Bank of South Sudan, receivership or liquidation.

Duties of directors of the Board.

27. (1) A director in relation to an institution in which he or she serves stands in a fiduciary relationship and shall in addition and without derogation owe the institution and its shareholders the following duties:-

(a) A duty to act honestly and in good faith;

(b) A duty to act in the best interests and for the benefit of the institution;

(c) A duty to act independently, free from undue influence of any person;

(d) A duty to access necessary information to enable the director to control and discharge his or her responsibilities.

(2) It shall be the duty of the board of directors as an organ and each director individually to immediately report in writing to Bank of South Sudan if they have reason to believe that:-

(a) The institution may not be able to conduct properly its business as a going concern;

(b) The institution appears to be or may in the near future be unable to meet all or any of its obligations under this Act;

(c) The institution has suspended or is about to suspend any payment of any kind.

(3) No director serving on the board of an institution or a Financial Institution licensed under the Financial Institutions Act, shall simultaneously serve as a board member, or in any executive capacity with another institution or its subsidiary or affiliate.

Meetings of the Board.

28. (1) The directors shall meet at least quarterly during each financial year.

(2) Unless otherwise specified by the Bank of South Sudan, the board of directors of an institution shall meet at such time and place in South Sudan as dictated by the business of the institution.

(3) Bank of South Sudan may:-

(a) Order the board of directors of an institution to convene a meeting and consider specified agenda;

(b) Appoint an observer to any board meeting of an institution;

(c) By notice order any institution to provide it within such period as shall be specified in the notice, a copy of the board minutes and resolutions duly certified as a true record by the secretary and chairperson to the board.

(4) Where a meeting of the board is convened under paragraph *(a)* of subsection (3), the quorum of the meeting shall be three directors and decisions shall be taken by simple majority.

(5) A director or officer of an institution shall not deliberate on any matter in which he or she has an interest.

(6) In any meeting where the subsection (5) applies, every director or officer of an institution shall inform the meeting of his or her interest and shall to the extent of the deliberation on the matter in which he or she has an interest, exclude him or herself from further attendance at that meeting.

Finance manager

29. (1) Every institution shall appoint officials who shall perform such functions and duties prescribed by regulations, as may be agreed upon in consultation with the Bank of South Sudan.

(2) A finance manager shall have the following duties:-

(a) Perform such functions as the board of directors shall specify in relation to establishing broad guidelines for the institution's tolerance for risk, and expectations from investment;

(b) Introduce such measures as in his or her opinion may serve to enhance the credibility and objectivity of financial statements and reports prepared with reference to the affairs of the institution.

(3) The guidelines referred to in subsection (2) shall include but may not be limited to the following areas:-

(a) Limits on loan to deposit ratio;

(b) Limits on loan to capital ratio;

(c) Limits on exposure to single or related customers;

(d) Flexible limits on the percentage reliance on a particular deposit liability category;

(e) Limits on maximum and minimum maturities for newly acquired categories of assets and liabilities;

(f) Limits on maximum and minimum maturities for existing categories of assets and liabilities;

(g) Limits on the sensitivity of the net interest margin on changes in market interest rates;

(h) Maximum percentage imbalance between rate sensitive assets and liabilities;

(i) Limits on minimum spread acceptable between costs and yields of liabilities and assets;

(j) Limits on minimum liquidity provision to be maintained to sustain operations while longer term adjustments are made;

(k) Primary sources of meeting funds that should be quantified.

Internal auditors of Microfinance Deposit Taking business.

30. (1) Every institution shall, with the approval of Bank of South Sudan appoint an internal auditor who shall report to the board of directors.

(2) The duties of the internal auditor shall be to:-

(a) Evaluate the reliability of the information produced by accounting and computer systems;

(b) Provide an independent appraisal function;

(c) Evaluate the effectiveness, efficiency and economy of the institutions' operations;

(d) Evaluate compliance with laws, policies and operating instructions;

(e) Provide investigative services to line management;

(f) Certify returns submitted to Bank of South Sudan by the institution; and

(g) Establish appropriate accounting procedures and accounting controls in respect of the institution's business;

(h) Ensure compliance with the procedures established under paragraph *(g)*;

(i) Require the management of the institution to implement and maintain appropriate internal control procedures and management information systems;

(j) Review, evaluate and approve those procedures;

(k) Review operations and transactions of the institution that could adversely affect the well-being of the institution;

(l) Ascertain the nature of the external audit, co-ordinate the internal and external audits and consider rectification and implementation of issues raised by the external auditor; and

(m) Perform an audit of the financial statements of the institution to detect irregularities and illegal acts in the conduct of the institutions business.

CHAPTER VI – ACCOUNTS, EXTERNAL AUDITING AND FINANCIAL REPORTING.

Keeping of Accounts.

31. The financial and non-financial records referred to in section 47 shall be kept and recorded in the English language using the system of numerals employed in Government accounts and shall comply with the requirements of the Companies Act, international accounting standards and such other requirements that Bank of South Sudan may in writing prescribe.

Audit Plan.

32. (1) Every internal auditor shall prepare an annual audit work plan for the assignments to be performed during the next financial year and present it to the audit committee for review.

(2) The annual audit plan shall include:-

(a) The scope;

(b) Objective;

(c) Timing;

(d) Frequency; and

(e) Resources of the planned internal audit work.

(3) The report of the internal auditor shall contain the findings and recommendations as well as the responses of the officers.

(4) The reports and working papers of the internal auditors shall be kept for at least five years.

(5) The board audit committee shall follow up its recommendations to verify whether the recommendations provided are implemented and the status of the recommendations shall be communicated to the board audit subcommittee at least on a quarterly basis and permanent coordination shall be maintained with all functional officers.

Application to appoint external auditors.

33. (1) No institution shall appoint an external auditor without the approval of Bank of South Sudan.

(2) All applications for approval of external auditors shall be submitted to Bank of South Sudan by 31st August of each year and prior to the commencement of the interim audit if any, where this is to be conducted before 31st August.

(3) An institution that contravenes sub regulation (1) commits an offence.

Contents of the application.

34. (1) An application for the approval of the appointment of the external auditor shall contain the following information:-

(a) Name of the registered external auditor;

(b) Where the auditor is a firm, names, qualifications and experience of each partner;

(c) Physical and postal address of the local office and in case of an international external auditor, full details of the head office;

(d) Details of the partner in charge of the external audit of the institution;

(e) Name, qualifications and experience of the officer to be engaged in the external audit of the institution;

(f) Details of the external auditor's experience in other similar institutions;

(g) Details of any existing business relationship between the partner in-charge of the external audit and the institution;

(h) Confirmation that neither the external auditor, nor the partners or staff involved in the audit of an institution are holding past due loans in the institution;

(i) A copy of the practicing certificate and/ or license of the external auditor; and

(j) Any other information considered necessary in support of the application.

(2) Every external audit firm shall keep Bank of South Sudan informed of any changes in partnerships, audit managers, disciplinary actions against the firm or its partners, within 30 days of the event.

(3) A person who contravenes sub regulation (2) shall be subject to the prescribed administrative sanctions.

Evaluation of the Application.

35. In assessing an application, Bank of South Sudan shall consider and be satisfied that:-

(a) The external auditor is not disqualified from being appointed as an external auditor;

(b) The external auditor or any of its partners have not been granted any type of loans or credit facilities in the institution, except in the normal course of business and at arm's-length; and the loans or credit facility is performing and has been approved by the full board;

(c) The external auditor or its partners do not represent directly or indirectly the interests of the shareholders or directors of the institution in any business ventures;

(d) The external auditors do not have any business association with the shareholders or directors of the institution except in public quoted companies, where the shareholding is less than 5% of the shares;

(e) The external auditor, its partners and employees have the capacity to conduct an audit that satisfies the International Standards on Auditing.

(f) Where the external auditor or its partners have been subject to any disciplinary action by any professional body, ensure that clearance has been obtained from that body; and

(g) There has been no element of misconduct in the performance of the external auditor's duties in other firms whether in its auditing, accounting, secretarial, trustee, nominee services or otherwise.

Preparation, Submission of Financial Statements.

36. (1). Every institution shall prepare and submit to Bank of South Sudan audited financial statements and other disclosures within three months after the end of each financial year in the manner set out in this Act.

(2) Every institutions shall, within three months of the end of every financial year, publish in a newspaper of nationwide circulation, between Mondays and Fridays excluding public holidays and weekends,

(a) A copy of their audited balance sheet showing its assets and liabilities,

(b) An audited profit and loss statement covering its activities and other disclosures and

(c) Any other information as may be directed by Bank of South Sudan in the format prescribed by Bank of South Sudan;

(3) Every institution shall submit to Bank of South Sudan for review and approval, all the audited financial statements and other disclosures to be published at least three weeks before publication;

(4) Upon approval by Bank of South Sudan, an institution shall prominently exhibit a copy of their most recent audited annual financial statements with a note indicating that any person so interested with the financial statements may obtain a copy from a specified office or employee of the institution, throughout the year, in a conspicuous position at all their places of business with a permanent premise.

(5) Every institution shall:-

(a) Prepare and submit to Bank of South Sudan, un-audited quarterly financial statements and other disclosures on or before the twentieth day from the dates of their preparation, in the manner set out in Part B of the Ninth Schedule to these Regulations ; and

(b) Cause a copy of the un-audited quarterly financial statements and any other disclosures to be conspicuously exhibited in the place of business with permanent premises.

(6)Every institution shall ensure that all un-audited quarterly financial statements and other disclosures to be displayed, are signed by the chief executive.

(7) Every institution shall prepare un- audited monthly financial statement and submit to Bank of South Sudan within fifteen days from the date of the return, in the manner prescribed by Bank of South Sudan.

(8). An institution that contravenes this regulation commits an offence and is liable to such administrative sanctions as Bank of South Sudan may prescribe.

CHAPTER VII – RECEIVERSHIP OF MICROFINANCE DEPOSIT TAKING BUSINESS.

Placing of Microfinance Deposit Taking business under receivership.

37. (1) Bank of South Sudan may close up an institution and place it under receivership if:-

(a) There is a likelihood that the institution will not be able to meet the demands of its depositors or pay for its obligations in the normal course of business;

(b) The company has incurred or is likely to incur losses that will deplete all or substantially all of its capital;

(2) Upon an institution being placed under receivership, Bank of South Sudan shall become the receiver of the closed company.

(3) Notwithstanding of subsection (2) of this section Bank of South Sudan may in writing appoint any suitably qualified person or group of persons or experts to perform such functions of a receiver as shall be prescribed.

(4) The appointment of a person under subsection (3) shall not be construed so as to exclude Bank of South Sudan from performing any of the functions that a receiver may perform.

(5) No suit or other legal proceedings shall lie against any person appointed as a receiver by Bank of South Sudan for anything which is done or intended to be done in good faith in the exercise of his duties as a receiver.

Options available to receiver.

38. (1) Bank of South Sudan or any person appointed as a receiver shall within twelve months after assuming the function of receiver, consider and implement any one or more or all of the following:-

(a) Arrange for a merger with another institution;

(b) Arrange for the purchase or takeover of assets and assumption of certain liabilities by other institutions;

(c) Arrange to sell the institution;

(d) Arrange to liquidate the institution.

(2) Bank of South Sudan or its appointed agent shall take the action described in subsection (1) which in the opinion of Bank of South Sudan is most likely to result in marshalling the greatest amount of the institution's assets or which otherwise protects the interests of the institution's depositors and other creditors.

(3) In determining the amount of assets that are likely to be realized by a sale of the institution's assets, the receiver shall:-

(a) Evaluate the alternatives on a present value basis, using a realistic discount rate;

(b) Document the evaluation and the assumptions on which the evaluation is based including any assumptions with regard to interest rates, asset recovery rates, inflation, asset holding and other costs.

(4) In determining how best to dispose of the assets of the institution in receivership, Bank of South Sudan or its appointed agent shall be guided by the objectives of minimizing costs to the Deposit Protection Fund and losses to uninsured depositors while maintaining the stability of the financial sector.

(5) Where Bank of South Sudan arranges an acquisition under subsection (2) of this section, it shall negotiate with the acquiring company or institution the terms and conditions of acquisition.

Effect of placement of Microfinance Deposit Taking business under receivership.

39. Where an institution is placed under receivership:-

(a) No steps may be taken by any person to enforce any security over the property of the institution;

(b) No other proceedings and no execution or other legal process may be commenced or continued against the institution or its property.

Bar on liquidation or winding up.

40. Notwithstanding any other law to the contrary, no proceedings for the winding up or liquidation of an institution shall be commenced or continued except:-

(a) Where the proceedings are commenced or continued by the Bank of South Sudan; or

(b) Where the proceedings are commenced by an institution which has obtained the prior approval of the Bank of South Sudan.

Voluntary liquidation.

41. (1) An institution may, with the prior approval of Bank of South Sudan apply to the High Court to voluntarily liquidate its operations.

(2) Subject to subsection (1) of this section, an institution under voluntary liquidation shall immediately cease all activities except those which are incidental to the orderly realization, conservation and preservation of its assets and settlement under this section.

(3) In case of a liquidation under this section:-

(a) The liability of shareholders for uncalled subscriptions to the capital stock of the institution shall continue until the end of the liquidation process;

(b) Notwithstanding of the Companies Act, where an institution is in voluntary liquidation, the ranking of claims shall be in accordance with subsection (2) of section 42 of this Act, except, that the provisions relating to preferential payments in section 315 of the Companies Act, 2003 shall not be applicable to a voluntary liquidation of an institution;

(c) The Board of Directors of the institution shall, before paying creditors holding direct claims and with the approval of the Bank of South Sudan, make such arrangements as are necessary to ensure a *pro rata* distribution among holders of claims that are likely to be reduced to judgment in a court.

(4) Where Bank of South Sudan is satisfied that the assets of an institution that has applied for voluntary liquidation of its operations under this section are insufficient to discharge its obligations or that the completion of the liquidation of its operations is unduly delayed, Bank of South Sudan may place the institution in compulsory liquidation in conformity with the provisions of section 42 of this Act.

Liquidation by the Bank of South Sudan.

42. (1) Upon determination that an institution should be liquidated, Bank of South Sudan shall make an order for the winding up of the affairs of the institution:-

(2) Notwithstanding anything in the Companies Act, where any proceedings for the liquidation of an institution are commenced under this section, Bank of South Sudan or its appointee shall be the liquidator of the institution.

Duties of Liquidator.

43. (1) A liquidator shall:-

(a) Immediately after appointment give notice thereof to each claimant and creditor of the institution known to the liquidator;

(b) Immediately after appointment publish notice of the appointment once a week for four consecutive weeks in a newspaper circulating in the whole South Sudan, requiring:-

(i) Any person indebted to the institution to render an account and pay to the liquidator at the time and place specified in the notice any amount owing;

(ii) Any person possessing property of the institution to deliver it to the liquidator at the time and place specified in the notice; and

(iii) Any person having a claim against the institution, whether liquidated, unliquidated, future or contingent, to present particulars thereof in writing to the liquidator not later than thirty days after the first publication of the notice;

(c) Carry on the business of the institution as required by an orderly liquidation;

(d) Settle or compromise any claims by or against an institution;

(e) Keep accounts of the moneys received and paid out by the liquidator in the course of the liquidation of the institution;

(f) Maintain separate lists of each class of directors, shareholders and other persons having claims against the institution;

(g) Where necessary, summon a meeting of creditors and contributories;

(h) Within a period not exceeding five months from the date of his appointment submit to Bank of South Sudan report detailing the assets of the institution in his custody or control and their value, and as far as can be established, the liabilities of the institution to its depositors and other creditors.

(i) Within two months after submission of its report on the assets and liabilities of the institution, commence the payment to the depositors and creditors of the institution.

(2) Payment under paragraph (i) of subsection (1) shall be in the following order of priority:-

(a) Payment to the loan insurance fund;

(b) Payment to the MDI Deposit Protection Fund;

(c) Payment to the liquidator for all expenses incurred in the process of liquidating the institution;

(d) Payment to employees for all wages and salaries due net of any liabilities to the institution;

(e) Payment to secured creditors in *pari passu;*

(f) Payment to depositors for deposits which are in excess of the protected deposit amount;

(g) Payment to other creditors to rank in *pari passu;* and

(h) And finally to the shareholders of the institution in accordance with their respective rights and interest.

(3) The provisions of section 315 of the Companies Act shall not apply to a compulsory liquidation of an institution;

(4) Where a notice is issued under paragraph (b) of subsection (1) of this section, any statement of claim which is not received by the liquidator before the expiry of thirty days from the date of the publication shall not be treated as a claim eligible for payment under liquidation but shall be treated as an ordinary debt due from the institution.

(5) Any person who fails to file a claim with the liquidator within the period prescribed in paragraph *(b)* subsection (1) of this section shall not be entitled to be paid in priority to other debts but shall be treated as an ordinary debt due from the institution.

(6) Every depositor of an institution under compulsory liquidation shall be deemed to have filed his or claim for the amount shown in the books of the institution standing to his or her credit, but that the liquidator shall be entitled to deduct from such amount any amount paid to the depositor from the Deposit Protection Fund and such other amounts as may be due from the Depositor to the institution.

(7) In the administration of the assets of the institution and in the distribution of those assets among its creditors, the liquidator shall have access to and comply with the directions of the Bank of South Sudan.

(8) Upon realizing all the property of the institution or so much of as can, in his or her opinion, be realized without needlessly protracting the liquidation and distribution to all depositors of the institution, cause audited financial statements to be submitted to the Bank of South Sudan.

Powers of Liquidator.

44. (1) A liquidator may:-

(a) Sell by public auction or private sale any property of the institution with power to transfer the whole of it to any person or company;

(b) Do all acts and execute documents in the name and on behalf of the institution;

(c) Prove, rank and claim in bankruptcy, insolvency or sequestration of any contributory for any balance against his or her estate and receive dividends in the bankruptcy or sequestration in respect of that balance, as a separate debt due from the bankrupt or insolvent and dateable with the other separate creditors;

(d) Draw, accept, make and endorse any Act of exchange or promissory note in the name and on behalf of the institution;

(e) Borrow money on the security of the property of the institution;

(f) Take out in his or her official name letters of administration to any deceased contributory, and do in his or her official name any other act necessary for obtaining payment of any amount due from a contributory of his estate which cannot be conveniently done in the name of the institution, and in all such cases the money due shall, for the purpose of enabling the liquidator to take out the letters of administration or recover the money, be deemed to be due to the liquidator himself or herself; except that nothing in this paragraph shall be deemed to affect the rights, duties and privileges of the Administrator General;

(g) Appoint an agent to do any business which the liquidator is unable to do himself or herself;

(h) Enforce the individual liability of the shareholders and directors of the institution;

(i) Eliminate the interests of shareholders;

(j) Where liquidation proceedings have been commenced in respect of the institution in one country or more, make such payments to the liquidator of the institution as may be necessary;

(k) Do all other things necessary for the liquidation of the institution and distribution of its property.

(2) A liquidator may, with the sanction of the Bank of South Sudan:-

(a) Retain advocates, notaries, accountants, appraisers and other professional advisors;

(b) Bring, defend or take part in any civil, criminal or administrative action or proceedings in the name and on behalf of the institution;

(c) Carry on the business of the institution as required for an orderly liquidation;

(d) Settle or compromise any claims by or against the institution.

(3) The exercise by a liquidator of the powers conferred by this section shall be subject to the control of Bank of South Sudan and any creditor or contributory may apply to the High Court for review of any exercise or proposed exercise of any of those powers; except that no review shall be allowed except where the action complained of is arbitrary and capricious.

Stay of proceedings.

45. (1) Notwithstanding anything to the contrary in any other enactment no court shall entertain any application for stay of the proceedings in relation to the liquidation or winding up of an institution.

(2) Subsection (1) does not apply to an application filed by the Bank of South Sudan.

Reliance on Statements.

46. A liquidator is not liable if the liquidator relies in good faith on:-

(a) Financial statements of the institution represented to the liquidator by an officer of the institution, or a written report of the auditor or auditors of the institution, to reflect fairly the financial condition of the institution; or

(b) An opinion, a report or a statement of a lawyer or advocate, a notary, an accountant, an appraiser or other professional adviser retained by the liquidator.

Examination of others, etc

47. (1) Where a liquidator has reason to believe that any property of the institution is in the possession or under the control of a person or that a person has concealed, withheld or misappropriated any such property, the liquidator may apply to the High Court for an order requiring that person to appear before the court at the time and place designated in the order and to be examined.

(2) Where an examination conducted pursuant to subsection (1) discloses that a person has concealed, withheld or misappropriated any property of the institution, the court may order that person to restore the property or pay compensation to the liquidator.

Costs of Liquidation.

48. A liquidator shall pay the costs of liquidation out of the property of the institution and shall pay or make adequate provision for all claims against the institution.

Release of Liquidity.

49. (1) Where Bank of South Sudan is satisfied that the audited financial statements present a correct state of affairs of the liquidation and is satisfied with the performance of the liquidator, Bank of South Sudan may release the liquidator and discharge him or her

from all liability in respect of any act done or default made by him or her in the administration of the affairs of the institution.

(2) An order made under subsection (1) may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact.

(3) The release of the liquidator shall operate as his or her removal from office.

CHAPTER VIII—RISK CLASSIFICATION AND PROVISION OF LOANS TO CUSTOMERS.

Loan review function of Microfinance Deposit Taking business.

50. (1) Every institution's loan review function shall ensure that:-

(a) The loan portfolio and lending function conforms to a sound written lending policy, which has been approved and adopted by the board;

(b) Management and the board are adequately informed regarding credit risk, among other risks and risk management control effectiveness;

(c) Problem accounts are identified properly and on a timely basis and internally classified in accordance with the classification criteria in these regulations; and

(d) Appropriate and adequate level of provisions for potential loss are made and maintained at all times.

(2) An institution that contravenes sub-regulation (1) shall is liable to such administrative sanction as Bank of South Sudan may prescribe.

Review and classification of Loans.

51. (1) Every institution shall review, classify and appropriately make provisions for its loan portfolio at least once every three months.

(2) Every institution shall classify loans and advances in the manner set out in the Tenth Schedule to these Regulations.

(3) Where an institution has granted multiple loans to a single borrower, and any one of such loans is non-performing, the institution shall evaluate every other loan to that borrower and place such loans on non-performing status accordingly.

(4) Every institution shall classify a group loan as past due in its entirety, when any of the members of the group defaults and the amount due is not covered by the members of the group:

(5) Provided that if the amount due is guaranteed by the members of the group, only the portion in arrears shall be accounted for as past due and the group members shall pay up for the guarantee.

(6) An institution that contravenes this Regulation is liable to such administrative sanction as may be prescribed by Bank of South Sudan.

Renegotiated or Restructured Loans.

52. (1) Every institution shall classify a renegotiated or restructured loan in the substandard category unless:-

(a) All past due principal and interest is repaid in full at the time of renegotiation, in which case it may revert to 'Normal' classification.

(b) All past due interest is repaid in full at the time of renegotiation in which case it may revert to 'Watch' classification.

(2) A renegotiated or restructured loan classified as doubtful or loss shall continue to be classified as doubtful or loss unless:-

(a) All past due principal and interest is repaid in full at the time of renegotiation, in which case it may revert to 'Watch' classification or;

(b) All past due interest is repaid in full at the time of renegotiation in which case it may revert to 'Substandard' classification; and

(c) All past due principal and interest is repaid in full at the time of renegotiation and there has been consistent repayment of three installments in which case it may revert to 'Normal' classification.

(3) No institution shall restructure or renegotiate any loan or credit facility more than twice over the life of the original loan or credit facility.

(4) Any loan or credit facility restructured for the second time shall be classified as substandard if all past due principal and interest is repaid in full at the time of renegotiation:

Provided that if all past due interest is repaid in full at the time of renegotiation, the loan or credit facility shall be classified as doubtful.

(5) A person who contravenes this regulation is liable to such administrative sanction as may be prescribed by Bank of South Sudan.

Suspension of interest on loan.

53. (1) Where a loan is classified as non- performing every institution shall suspend any interest on such loans and advances and:-

(a) The interest in suspense shall not be treated as income; and

(b) All interest in suspense shall be taken into account in the computation of provisions for non-performing accounts; and

(c) Reverse any interest on non-performing loans or credit facilities accrued into income but uncollected and credit into the interest in suspense account until paid in cash by the borrower.

(2). Every institution shall ensure that a non-performing loan or credit facility is returned to accrual basis only when all outstanding dues and unpaid obligations have been paid up to date.

(3) Every Institution shall ensure that all interest on nonperforming loan or credit facilities previously accrued into income but uncollected is reversed and credited into the interest in suspense account until paid in cash by the borrower.

(4) An institution that contravenes this Regulation is liable to such administrative sanction as may be prescribed by Bank of South Sudan.

Issues to consider in determining loss.

54.(1) In determining the amount of potential loss in specific loans or in the aggregate loan portfolio, every institution shall be guided by the following minimum provisioning percentages:-

(a) For loans classified “Normal”, 1%;

(b) For loans classified “Watch”, 5%;

(c) For loans classified “Substandard”, 25%;

(d) For loans classified “Doubtful”, 75%; and

(e) For loans classified “Loss”, 100%.

(2) Where the impairment charges computed under International Financial Reporting Standards (IFRS) are lower than provisions required under these Regulations, the excess provisions shall be treated as an appropriation of retained earnings.

(3) Where the impairment charges computed under IFRS are higher than provisions required under these Regulations, the IFRS impairment charges shall be considered adequate for the purposes of these Regulations.

(4) An Institution that contravenes this Regulation is liable to such administrative sanction as Bank of South Sudan may prescribe.

Write-off of loans.

55. (1) An institution shall write-off a loan or a portion of a loan from its balance sheet when:-

(a) The institution loses control of the contractual rights over the loan;

(b) All or part of a loan is deemed uncollectible or there is no realistic prospect of recovery;

(c) The borrower becomes bankrupt; or

(d) Efforts to collect debt are abandoned for any other reason.

(3) Every institution shall write off a loan or a portion of a loan classified as loss, within 90 days of their being classified as loss, and if there are no recoveries within that period.

(4) An institution that contravenes this Regulation is liable to such administrative sanction as may be prescribed by Bank of South Sudan.

Review of assets and reporting.

56.(1) Every institution shall, at least every year, review its assets and make necessary provisions as need arises, if an actual loss of an asset occurs or when the recoverable amount of the asset is less than it's carrying value.

(2) Every institution shall submit a copy of the review report to Bank of South Sudan within fifteen days from the date of review.

(3) Every institution shall submit returns in the manner prescribed in the Eleventh schedule to these regulations.
(4) An institution that fails to submit accurate information to Bank of South Sudan on a timely basis is liable to such administrative sanction as may be prescribed by Bank of South Sudan.

(5) An institution that contravenes this Regulation is liable to such administrative sanction as may be prescribed by Bank of South Sudan.

Offences.

57. A person who contravenes these regulations commits an offence and is liable on conviction to a fine not exceeding one hundred thousand Southern Pounds or to imprisonment for a term not exceeding one year or to both.

CHAPTER IX—MISCELLANEOUS PROVISIONS.

MDI Deposit Protection Fund.

58. (1) Bank of South Sudan shall by statutory instrument establish a Fund in Bank of South Sudan to be known as the MDI Deposit Protection Fund.

(2) The object of the MDI Deposit Protection Fund shall be to compensate depositors for losses incurred by them in the event of the insolvency of an institution.

Branches of Microfinance Deposit Taking business.

59. (1) An institution shall not open a new place of business or change the location of an existing business in South Sudan or change its hours of business without submitting a written application for the purpose to the Bank of South Sudan.

(2) No institution incorporated in South Sudan shall open a new branch, agency or office in any place outside South Sudan without submitting a written application to Bank of South Sudan for approval.

(3) Bank of South Sudan may approve or refuse to give approval to an application under subsection (1) or (2).

(4) Before granting any approval under subsections (1) and (2) Bank of South Sudan may require to be satisfied by an inspection of the institution or otherwise as to—

(a) The history and financial condition of the institution;

(b) Whether the proposed management are fit and proper;

(c) Adequacy of the institution's capital structure and earning prospects;

(d) The convenience and needs of the community to be served; and

(e) Whether the public interest will be served by opening of a new place of business or changing the location of the place or hours of business, as the case may be.

(5) An institution shall not close an existing place of business unless it has given six months' notice to the Bank of South Sudan, or such shorter period of notice as Bank of South Sudan may consider reasonable, of its intention to close the place of business.

(6) Any institution which contravenes subsection (1) or (2) or (5) commits an offence and is liable on conviction to a fine not exceeding fifty currency points and, in the case of a continuing offence, to a further fine not exceeding ten currency points for each day during which the offence continues after conviction.

Freezing of Accounts.

60. (1) Bank of South Sudan shall, if it has reason to believe that an account held with a institution has funds which are the proceeds of crime, direct in writing the institution at which the account is maintained, to restrict the operation of that account in accordance with the direction.

(2) An institution acting in compliance with a direction under subsection (1) of this section shall incur no liability solely as a result of that action.

Unclaimed balances.

61. (1) Where a deposit has been made with an institution in South Sudan and in respect of which no transaction or business has taken place and no statement of account has been requested or acknowledged by the depositor during a period of two years:-

(a) In the case of a deposit for a fixed period, from the day on which the fixed period terminated; and

(b) In the case of any other deposit, from the day on which the last transaction took place or a statement of account was last requested or acknowledged by the depositor, whichever is later, no withdrawals shall be allowed on such account except with the permission of two officers of the institution out of a number of signatories authorized to grant such permission.

(2) An account referred to in subsection (1) shall be transferred to a separate register of dormant accounts in the books of the institution and the institution shall give notice in writing to the depositor at his or her last known address.

(3) Where an account is transferred to the register of dormant accounts and the account has been on the register for three years, the institution shall advertise the fact that it has been on the register for three years, and the cost of advertisement shall be charged on the account.

(4) No other fee or service charge may be levied on the dormant account apart from the cost of the advertisement referred to in subsection (3).

(5) Any account may be transferred out of the register of dormant accounts if the depositor, or if he or she is dead his or her legal or personal representative, makes a request to that effect.

(6) Unclaimed balances shall, after a period of five years, be transferred to Bank of South Sudan and Bank of South Sudan shall employ them to off-set the costs of supervising institutions or as may be prescribed.

(7) Bank of South Sudan shall refund any unclaimed balances to the depositor of those balances with the respective institution or if the depositor is dead, his or her legal representative, if a request is made after the dormant account has been transferred to the Bank of South Sudan.

(8) In this section, "register of dormant accounts" means the financial records maintained by an institution at its head office containing a record of dormant accounts.

Officers deemed public officers.

62. An officer or servant of an institution shall be deemed a person employed in the public service for the purposes of sections 83, 84 and 88 of the Penal Code.

Obligations under the Companies Act, 2003.

63. Nothing in this Act shall be deemed to relieve an institution from any of its obligations under the Companies Act or Building Societies Act.

Protection of Bank of South Sudan.

64. No suit or other legal proceedings shall lie against Bank of South Sudan or any officer of Bank of South Sudan for anything which is done or is intended to be done in good faith, under this Act.

Deposit Advertisements.

65. (1) Any institution or any person who issues any advertisement, brochure, circular or other documents inviting any person to make a deposit which:-

(a) Falsely represents that he or she is authorized to accept deposits or is otherwise licensed under this Act; or

(b) Is issued contrary to any direction given by Bank of South Sudan under of subsection (2), commits an offence and is liable on conviction to a fine not exceeding fifty currency points.

(2) Bank of South Sudan may at any time direct any person to withdraw, amend or refrain from issuing any advertisement, brochure, circular or other document relating to deposits which, in its sole discretion, considers to be misleading.

Offences.

66. (1) Any person who, being a director, manager, officer or employee of an institution:-

(a) Fails, to take any reasonable steps to secure compliance with the requirements of this Act;

(b) Makes any statement or gives any information which is false or misleading in answer to any request for information made under this Act;

(c) Is privy to the furnishing of any false information supplied under this Act; commits an offence and is liable on conviction to a fine not less than fifty currency points but not exceeding one hundred currency points or imprisonment not less than six months but not exceeding two years or both.

(2) An institution which fails to comply with an order issued by Bank of South Sudan under this Act commits an offence and is liable on conviction to a fine not exceeding fifty currency points.

(3) Any institution which refuses or fails to do anything required to be done by this Act or which does anything prohibited by this Act, commits an offence and is liable on conviction to a fine not exceeding fifty currency points.

(4) Where a director or officer of a financial institution authorizes a contravention of, or contravenes any provision of this Act, he or she shall be personally liable to the penalty specified in relation to the contravention.

(5) Any person who being an officer or director of an institution, causes loss to the institution directly or indirectly commits an offence and is on conviction liable to a fine not less than fifty currency points but not exceeding one hundred currency points or imprisonment not less than six months but not exceeding two years or both.

(6) Any person being a director or officer of an institution, who receives or possesses or takes for himself or herself or for any related person of the director or officer any property of the institution otherwise than in payment for it of the full value, commits an offence and is liable on conviction to a fine not less than one hundred currency points but not exceeding two hundred currency points or imprisonment not less than one year but not exceeding two years or both.

Power to issue regulations notices and directions.

67. (1) Bank of South Sudan may, make such regulations, and issue such notices and directions as may be necessary or expedient for carrying out the purposes and provisions

of this Act and for prescribing anything that may be required or authorized to be prescribed by this Act.

(2) Without prejudice to the general effect of subsection (1), regulations, notices and directions may be made under this section with respect to the operations and activities of institutions, including the minimum qualifying criteria for the issue or grant of a license under this Act.

(3) Without prejudice to subsection (1) and (2) of this section, regulations made under this section may relate to:-

(a) Prudential norms on asset quality; bad debt provisions and write offs;

(b) Licensing of institutions;

(c) Minimum level of capital for institutions;

(d) Computation of on-going capital adequacy requirements for an institution;

(e) Lending limits on credits extended to insiders;

(f) Limitations for advances or credit facilities to a single borrower;

(g) The operations and permitted usages of a loan insurance fund;

(h) Reporting requirements by the institution to the Bank of South Sudan;

(i) Control of money-laundering in South Sudan;

(j) Generally giving effect to the provisions of this Act.

(4) Regulations made under this section may, in respect of any contravention of any of the regulations or a notice issued under this section:-

(a) Prescribe a penalty of a fine not exceeding two hundred and fifty currency points or imprisonment not exceeding two years or both;

(b) In the case of a continuing contravention, prescribe an additional penalty not exceeding fifty currency points in respect of each day on which the offence continues;

(c) Prescribe a higher penalty in respect of a second or subsequent contravention;

(d) Provide that a court which convicts the offender may forfeit to the State any document or other matter involved in the commission of the contravention.

Transitional provisions.

68. Any person who, immediately before the commencement of this Act was carrying on microfinance business in South Sudan shall, immediately upon the coming into force of this Act apply for a license under this Act and within twenty four months from the commencement of this Act comply with the requirements of this Act or wind up its business within six months.

Amendment of the Act.

69. (1) The Minister may, with the approval of Parliament, by statutory instrument amend the First Schedule to this Act.

(2) The Minister may, by statutory instrument, amend the Second Schedule to this Act.

Given under my hands this……..day of……year 2010

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President of the

GOVERNMENT OF SOUTH SUDAN