LAWS OF SOUTHERN SUDAN

THE SOUTHERN SUDAN PENSIONS FUND BILL, 2010

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In accordance with the provisions of Articles 59(2) (b) read together with Article 85(1) and Article 146(2) of the Interim Constitution of Southern Sudan, 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 Bill may be cited as "The Southern Sudan Pensions Fund Bill 2010" and shall come into force on the date of its signature by the president.

2 Repeal and Saving

Any existing laws, provisional orders or legislations related to the provisions of this Bill are here by repealed, provided that all procedures, orders, rules, regulations and or appointments taken or made in accordance with the provisions of the repealed laws, provisional orders shall remain valid and enforce until they are repealed or amended in accordance with the provisions of this Bill.

3 Purpose

The purpose of this Bill is to provide a regulatory mechanism that will enhance the expansion of the pension's services and improvement of the prescribed benefits and to provide and ascertain equality in the delivery of pension's services.

4 Authority and Application

(1) This Bill is drafted in accordance with the provisions of article 141(2) read together with the provisions of schedule B items 7 and 9 of the Interim Constitution of Southern Sudan, 2005, that grants the Government of Southern Sudan the legislative competence to determine the terms, conditions of service, duties, rights of the employees, appointment, tenure and payment of the officers and the civil servants of their in-service and post-service benefits and gratuities.

(2) The provisions of this Bill shall apply to all government employees in Southern Sudan.

5 Interpretation

In this Bill, unless the context otherwise require the following words and expressions shall carry the meaning assigned to them—

"**Armed Forces**" means for the purposes of this Bill the Sudan Peoples' Liberation Army (SPLA);
"**Board**" means the board of Southern Sudan pension fund established in accordance with the provisions of section 9 of this Bill;
"**Chairperson**" means the Chairperson of the board appointed in accordance with provisions of this Bill;
"**Gratuity**" means the entitled remuneration payable in accordance with provision of this Bill;
"**Fund**" means the Pension Funds established in accordance with the provision of this Bill;
"**General Manager"** means the general manager of the Fund appointed in accordance with the provisions of section 15 of this Bill;
"Government" means any of the units of the Government of Southern Sudan (GoSS), State Government, Local Government organs, public institutions and corporations and public sector companies that the Government owns the whole of its shares and the banks owned by the Government;
"**Head of Unit**" means the chief executive officer of the Unit;
"Local Government" means the level of government closest to the people within a State in Southern Sudan as provided under Article 50(c) of the Interim Constitution of Southern Sudan, 2005;
"**Minister**" means the Minister responsible for the Fund appointed by the President;
"**Organised Forces**" mean the members of the Southern Sudan Police Service, Prison Service, Wildlife Service, Fire Brigade Service and other Southern Sudan security organs;
"Pension" means the entitled pension payable in accordance with provisions of this Bill;
"Pensioner" means the person who has previously served and retired as a civil servant from the government service and already receiving a Pension;
"President" means President of the Government of Southern Sudan;
"Salary" means the last basic salary that the Government pays in accordance with the approved criteria and includes the hardship allowance;
"State" refers to any of the ten states established by the Interim Constitution of Southern Sudan, 2005;
"Unit" means any Ministry headquarters or chamber or agency or department or organ or public administration affiliated to the Government of Southern Sudan or State government or Local Government organs or public institution or corporation and or company owned by the Government.

Chapter II

Establishment, Objectives, Functions and Powers of the Fund

6 Establishment

(1) There shall be established in Southern Sudan a Fund that succeeds the Directorate of Pensions to be known as the Southern Sudan Pensions Fund.

(2) The Fund shall be an autonomous body corporate, with perpetual succession and a common seal and shall, subject to the provisions of this Bill, be capable in its corporate name of—

(a) suing and being sued;
(b) taking, purchasing or otherwise acquiring, holding, changing and disposing of property, movable or immovable;
(c) borrowing money;
(d) doing or performing all such other things or acts for the proper performance of its functions under this Bill, this may lawfully be done or performed by a body corporate.

(3) The Headquarters of the Fund shall be in Juba, the seat of the Government of Southern Sudan and shall establish branches in all Southern Sudan States.

(4) The Fund shall be under the direct supervision of the Minister appointed by the President upon resolution of the Council of Ministers.

7 Objectives

The Fund shall perform and exercise its functions and powers to realize the following objectives—

(a) to extend Pension coverage to include all Government employees;
(b) to improve and modernize the pension services and to promote the proscribed benefits;
(c) to work for the attainment of balance in pension services; and,
(d) to coordinate the pension service policies at the Government of Southern Sudan level.

8 Functions and Powers

The Fund shall perform and exercise the following functions and powers—

(a) to manage the approved pension system in accordance with the provisions of the public service pensions legislation or any other subsequent legislation;
(b) to manage the pension systems of the Government, public institutions and corporations and companies owned by the Government and or Pensions prescribed by other legislation that entrusts its management to the Fund;

(c) to collect the prescribed Government financial obligations in accordance with the provisions of this Bill or any other laws or pension regulations that entrust it to the Fund;
(d) to collect the pension deduction and to undertake its utilization to the service of the Government employees;
(e) to invest the collected finances and to work for its development and promotion;
(f) to conduct a periodical review of Pensions and the prescribed benefits with the aim of its improvement;
(g) to develop and promote the pension services;
(h) to borrow from the local and international financial institutions and or banks for the purposes of investment;
(i) to receive grants, gifts, donations and trusts;
(j) to insure the invested properties;
(k) to conclude contracts and agreements; and
(l) to exercise all the powers appropriate to achieve the objectives.

Chapter III

Governance of the Fund

9 Establishment and Composition of the Board

(1) There shall be established a Board of the Fund to be entrusted with and to undertake the management of its affairs and to exercise the functions and powers of the Fund conferred upon by the provisions of this Bill.

(2) The Board shall be under the supervision of the Minister.

(3) The members of Board shall be appointed and or relieved by resolution of the Council of Ministers upon recommendation of the Minister and shall consist of the following members—
(a) the Chairperson with high qualification and experience who shall be appointed upon recommendation of the Minister;
(b) a representative of the ministry responsible for finance and economic planning;
(c) a representative of the ministry responsible for social welfare;
(d) a representative of the ministry responsible Health;
(e) a representative of the Southern Sudan Trade Union;
(f) the General Manager of Pension Fund as both member and secretary;
(g) a representative of the Local Government Board;
(h) a representative of Pensioners Union of Southern Sudan;
(i) a representative of ministry responsible for labour, public service and human resource development;
(j) a representative of Armed Force;
(k) a representative of other Organized Forces; and,

(l) two experts in fields relevant to actuarial science, pension policy and management.

(4) The Board may issue its internal code of conduct and procedures to regulate its work.

10 Eligibility for the Membership of the Board

A member of the Board shall—

(a) be Southern Sudanese citizen;
(b) be of sound mind and high character;
(c) have not been convicted of an offense related to honour and honesty during the last five (5) years; and
(d) have not been terminated by dismissal in an administrative disciplinary proceedings or for weak performance.

11 Quorum, Tenure and Meetings of the Board

(1) Members of the Board shall hold office for a period of three years from the date of appointment and may be eligible for re-appointment for one further term of a period not exceeding three years.

(2) The Board shall convene its ordinary meetings—

(a) Quarterly upon the invitation by its Chairperson and may convene any extraordinary meeting at any time at any time upon request of the Minister, Chairperson or by two thirds (2/3) majority of the members, on matters of necessity or emergency, provided that reasonable period of time has been given to the members;
(b) The quorum for the convening of the meetings shall be by simple majority of the members present and its decisions shall be passed and/or endorsed by resolution of a simple majority votes of the Members present and in case of equal votes, the Chairperson shall have the casting vote;
(c) The Chairperson of the Board shall preside over all the meetings of the Board and shall specify the date, the time and the venue of the scheduled meetings; and,
(d) in the absence of the Chairperson the meeting shall be presided over by the deputy chairperson and in the absence of the deputy chairperson, the Minister, when present, shall preside over the meetings.

12 Loss of Membership

(1) The Minister may remove the Chairperson or a member of the Board from office after compliance with the procedure set out in this section.

(2) The Minister shall not remove the Chairperson or a member of the Board from office unless the Minister has sent a notice to the member that it is proposed to

remove such member from office on any one or more of the following grounds, namely, that he:

(a) Violation of any of the conditions of eligibility of membership set forth under the provisions of section 10 of this Bill;
(b) is an undercharged bankrupt or has made any arrangement with his creditors; or,
(c) is found or declared to be of unsound mind under any law in force in Southern Sudan; or
(d) has ceased to be qualified to continue as a member, or is disqualified from continuing as a member;
(e) is guilty of misbehaviour;
(f) incompetence and inefficiency;
(g) gross misconduct;
(h) absence without permission or sufficient cause from three consecutive meetings of the Board;
(i) conviction of an offence involving dishonesty, fraud or moral turpitude; and/or,
(j) death, accompanied by full particulars relating to the proposed grounds for removal, and has afforded the member an opportunity of making representations against the proposed removal.

(3) A Board member may resign by a letter addressed to the Minister through the Fund.

(4) The vacant post caused by the loss of membership for any of the reasons stated in subsection (1) above, shall be filled in the same manner provided for in section 9(3) above of this Bill.

13 Functions and Powers of the Board

(1) The Board shall perform and exercise the following functions and powers in realization of the Fund objective and programs—

(a) To formulate and lay down general policies of the Fund in implementation of the provisions of the Public Service Pensions Legislation;
(b) To insure appropriate management of the Fund;
(c) Endorsement of annual budget of the fund and its submission to the Minister for approval;
(d) To approve and supervise the investments of the Fund in both domestic and external transactions;
(e) To ensure sound financial procedures and management;
(f) To approve the opening of the bank account of the Fund;
(g) oversee the general direction and supervision of the Fund;
(h) To approve the annual final accounts for the revenue and expenditures;
(i) To endorse the annual report prepared by the General Manager;

(j) To propose the general conditions to guarantee safe investment of the Fund properties that shall be endorsed by the resolution of the Council of Ministers upon the recommendation of the Minister;

(k) To submit periodical reports to the Minister every three (3) months on the activities of the Fund for promotion of its performance and to support its organs;

(l) To constitute branch committees from among the members to be entrusted with the matters within the competence of the Board and may co-opt to its membership any person that it deems appropriate with experience and opinion to study such a matter;

(m) establish and approve rules and procedures for appointment, promotion, termination, discipline and terms and conditions of service of staff of the Fund in accordance with the public service guidelines and regulations; and,

(n) Any other such functions or powers that may be delegated or assigned by the Minister or any other law.

(2) The Minister may request the submission of any Board resolution thereto for approval.

14 Remuneration

The remuneration of the board and the branch committees shall be determined by regulation and approved by the Minister.

Chapter IV

Appointment, Eligibility, Functions and Powers of the General Manager

15 Appointment

There shall be a General Manager for the Fund to be nominated by Minister and appointed by the President upon a resolution of the Council of Ministers.

16 Eligibility

The General Manager appointed under the provisions of section 15 above, shall be selected from persons of high moral reputation and integrity and shall fulfill the following eligibility conditions for appointment—

(a) Be a Southern Sudanese citizen;

(b) Be of a sound mind;

(c) Be a holder of at least a Bachelors degree from a recognized University in any field relevant to pension policy and management;

(d) Have not less than ten years working experience in pension policy and management; and,

(e) have not been convicted of an offense related to honour and honesty during the last five years.

17 Functions and Powers

The General Manager shall perform and exercise the following functions and powers—

(a) Serve as the chief administrator responsible for the daily discharge of the activities of the Fund and implement decisions taken by the Board;
(b) Be the secretary of the Board;
(c) appoint and supervise the employees of the Fund necessary for discharge of the Fund's business;
(d) Prepare and submit the annual budget proposal to the Board;
(e) Submit and promote services plans that the fund provides;
(f) To sign contracts on behalf of the Fund in accordance with the regulations;
(g) To represent the fund in any forum;
(h) To perform and exercise any such functions or powers assigned or delegated thereto by the Board; and,
(i) Be the chief financial officer of the Fund and to sign all financial transactions, records, reports and statements and primary signatory to all cheques of the Fund

Chapter V

Finance, Accounts and Audit

18 Financial Resources of the Fund

The financial resources of the Fund shall consist of the following—

(a) Transfers from all the financial rights, assets and deposits owned by the Directorate of Pensions;
(b) Total proceeds of the funds paid by the government in accordance with the provisions of section 20 below, of this Bill;
(c) Proceeds of the deducted and committed pensions;
(d) The calculated value of the employees financial entitlements granted to them in accordance with the provisions of the Social Insurance Act or any other law upon their transfers to work in accordance the provisions of the Public Service Pension Act or any other subsequent legislation;
(e) Proceeds accruing from fund investment;
(f) Grants, gifts, and loans received by the Board;
(g) Finances of any system for the post-service benefits that its administration has been entrusted thereto; and,
(h) Proceeds of the administrative fees and financial penalties imposed in the situation when the payment delayed.

19 Utilization of the Financial Resources

The financial resources of the Fund shall be utilized for attaining its objectives and without prejudice to the generality of the provisions of this section, financial resources may be used in the following situation—

(a) Payment of pensions and gratuities;
(b) Commutation of pension in accordance with the prescribed conditions;
(c) Investment in accordance with the Fund plan and policy;
(d) Payment of the Fund financial obligations;
(e) Expenses of its management and discharge of its business including the remuneration for the members of the board and the branch committees and the salaries, allowances and other entitlement of the employees; and,
(f) Any necessary expenditure for the discharge of its duties and obligations.

20 Obligations of the Government towards the Fund

(1) The ministry responsible for finance and economic planning shall pay to the Fund the prescribed value of the following—
   (a) existing family pensions and the pensions of retired officials before the commencement of this Bill;
   (b) The Share of valued costs of the Pensions and gratuities for the employees continue serving in the Government after the commencement of this Bill.

(2) Payment of the value mentioned in subsection one above shall be in accordance with the payment programme to be agreed upon by both parties and the amount paid shall not be less than the amount annually paid by the Government before the establishment of the Fund and the payment may be in cash or in kind or as may be agreed upon by them.

21 Obligation of the Fund

The Fund shall commit itself in providing the following—
(a) To continue paying the pensions and gratuities referred under the provisions of section 20 (1) above;
(b) To improve the paid pensions in percentages to be approved by the board.

22 Deposits of the Fund

With the exception of the funds entered into the investment operations, the funds of the Fund shall be deposited in a bank account to be opened in the Bank of the Southern Sudan (BoSS) or in any other recognized financial institutions or commercial bank and its management and withdrawal shall be determined by the Board and the regulations as may be necessary for the performance of its functions and duties in accordance with the ***Public Finance Management and Accountability Bill, 2010.***

23 Budget of Fund

(1) Each year, the Fund shall prepare and submit for approval a budget proposal, in accordance with the Government budget process, for the following financial year.

Such budget proposal shall be subject to review, revision and approval by the Minister.

(2) The financial year of the Fund shall be the period of twelve (12) months commencing on the 1st January and ending on the 31st December of the same year.

24 Accounts, Books and Records Be Kept

(1) The General Manager shall maintain comprehensive books of accounts and records of all funds received and spent by the Fund during the financial year.

(2) The General Manager shall prepare and submit a financial report to the Board, not later than three months from the end of the previous financial year. The report shall include:
(a) a financial statement of income and expenditure during the financial year;
(b) a statement of assets and liabilities of the Fund for the financial year, prepared in accordance with generally accepted accounting principles
(c) a financial audit report.

25. Audit

(1) The Board shall ensure that, for each financial year the accounts of the Fund are audited by the Auditor-General or such other audit firm approved by the Auditor-General in writing and authorised by the Board.

(2) The Board shall ensure that within four months from the end of the financial year, or such other period as the Government may require in writing, an audited statement of accounts, in accordance with the provisions of section 24 above, is submitted to the ministry responsible for finance and economic planning.

(3) The Auditor-General shall have access to all the books of accounts, vouchers and other records, and shall be entitled to any information and explanation required in relation to those and any other records of the Fund.

26. Annual and Other Reports

(1) In addition to the Financial Audit Report, required by section 24(2)(c) above, within four months after the end of each financial year, or such other period as designated by the Government in writing, the Fund shall also prepare an Annual Report of its activities during that financial year.

(2) The Annual Report shall, *inter alia*, include the following information with regard to the proceeding and policy of the Fund —
(a) a copy of the auditor's report;
(b) a statement of financial performance and of cash flows, budget performance and balance sheet;
(c) a description of the activities of the Fund during the previous year;

(d) an analysis of the extent to which it has met its objectives of the previous year;
(e) an evaluation as to the extent to which the advice and directives of the Board have been complied with;
(f) its objectives for the coming year;
(g) any recommendations on the matters governed by this Bill.
(h) an overview of the operations of the Fund.

(3) The Fund shall publish and disseminate widely the Annual Report, along with its audited accounts. In the event the Fund fails to distribute the Annual Report, it shall be distributed by the ministry responsible for finance and economic planning.

(4) The Fund shall submit to the President and the Assembly such other reports on its activities or any other matter that may from time to time be required.

Chapter VI

Miscellaneous Provisions

27 Transfer of Rights, Properties and Liabilities

(1) The rights, properties and liabilities of the Directorate of Pensions shall be transferred to the Fund.

(2) The rights, properties and liabilities transferred to the Fund in accordance with the provisions of subsection (1) above, shall be assessed and recorded in its books amount equal to its total gross.

(3) The employees of the Directorate of Pensions shall continue serving in the Fund with the same terms and conditions of service until they are observed in the Fund Posts with terms and conditions the Board deems appropriate.

28 Powers of the Fund Officials

(1) The officials of the Fund selected by the Director General shall possess the power to peruse all the records, books, papers, correspondences and documents relevant to the Fund and the power to request appropriate statements from the competent authorities and the Heads of governmental units

(2) The Heads of the concerned Units shall undertake to facilitate the function of the officials and shall provide them with true and correct information

29 Guarantee of the Collection

The Fund shall have the right to collect the amounts due in accordance with the provisions of this Bill and in the event of violations and or delay by the concerned institutions in payment within the prescribed period, the Fund shall impose financial penalty to be determined in the regulations.

30 Disclosure of Interest.

Any Member of the Board who has interest in any issue before the Board for decision shall disclose to the Board, the nature of such an interest, and the Chairperson may allow or refuse the member with interest to attend the meeting scheduled for discussion of such an issue or may not allow the member to vote and or request the member to leave the meeting until the subject-matter is resolved.

31. Declaration of Assets

Members of the Board, the General Manager, and any senior public service officials employed by the Fund shall, upon assumption of their offices, make confidential declaration of their assets and liabilities including those of their spouses and children in accordance with the applicable law.

32. Other Officers and Staff of the Fund

(1) The General Manager shall engage, within budgetary limits, such other senior officers and support staff with the consent of the Board on such terms as he may consider necessary or desirable for the efficient and effective performance of the functions and duties of the Fund.

(2) The General Manager shall on annual basis, prepare a detailed organisational chart reflecting the Fund's staffing requirements for the next financial year, subject to the approval of the Board.

33. Oath

Members of the Board, the General Manager and other employees of the Fund shall, before assuming their duties, take the following oath or affirmation before the relevant appointing authority:

"I……., do hereby swear by the Almighty God/solemnly affirm that as Board Member/Executive Director/employee of the Southern Sudan Pension Fund, I shall be faithful, and shall diligently and honestly discharge my functions and duties and shall strive to exercise the powers vested upon me by the Southern Sudan Pension Fund Bill, with integrity and dignity in the best interest of the people of Southern Sudan; and that I shall respect and abide by all the rules, regulations and instructions there under; and that I shall not without due authority disclose or make known any information, matter or thing that comes to

my knowledge by reason of my employment in the Fund so help me God/God is my witness".

34. Restriction on Outside Employment

The General Manager and staff of the Fund shall not practice any private profession, transact commercial businesses, or receive remuneration or accept employment of any kind from any other source other than the Fund.

35. Exemption from Liability

No member of the Board, nor any officer or support staff of the Fund, shall be subject to liability for any act or omission committed by him in the exercise or performance of his functions and duties with the Fund; *provided that*, such acts or omissions were committed in good faith.

36. Confidentiality

(1) Any information from which an individual or body may be identified and that is acquired by the Fund in the course of the performance of its functions or the exercise of its powers under this Bill or any other applicable act shall be regarded as confidential by the Fund and its employees.

(2) No information of a type referred to in subsection (1) above, may be disclosed without the consent of every individual who, and everybody which, can be identified from that information, except to the extent that its disclosure is expressly authorized or required by or under this Bill or any other applicable act or where it appears to the Fund to be necessary:

(a) to enable the Fund to perform any of its functions and exercise any of its powers under this Bill or any other applicable act;

(b) in the interests of the investigation, detection, prevention or prosecution of crime;

(c) in connection with the discharge of any international obligation to which Southern Sudan may from time to time be subject;

(d) to assist, in the public interest, any authority that appears to the Fund to exercise, in a place outside Southern Sudan, functions corresponding to some or all of those of the Fund within or outside Southern Sudan; or

(e) to comply with the directions of any division of any Court.

(3) Without prejudice to subsections (1) and (2) above, any information communicated to the Fund by a committee of the Government shall be regarded as confidential if that committee of the Government so requests, and shall be kept confidential by the Fund and its members and employees; and no such information shall be disclosed except in compliance with the direction of any division of any Court.

(4) A person who discloses information or who causes or permits the disclosure of information in a manner which he knows or has reasonable cause to believe is in contravention of this section shall be guilty of an offence and if convicted shall be liable in accordance with subsection (6) below.

(5) A person shall not, for a period of two years after he ceases to be a member of the Commission, acquire, hold or maintain, directly or indirectly, any office, employment, consultancy arrangement or business in Southern Sudan where he may be liable to use or disclose information acquired by him or her in the exercise, performance and discharge of the powers, duties and functions of the Commission, and if he acquires any such interests involuntarily or by way of succession or testamentary disposition, he shall divest himself or herself of such interest, within two months of the acquisition of such interest.

(6) Any person, who contravenes the provisions of this section shall be guilty of an offence and shall be liable to a fine not exceeding Ten Thousand Sudanese Pounds (SDG 10,000) or to imprisonment for a period not exceeding six months or to both.

37. Exemption from Taxes and Fees

The following incomes of the Fund shall be exempted from the imposed taxes and fees by the Government—

(a) Pension deductions and commitment of any kind
(b) Moveable and immoveable properties and all the investment operations of any type
(c) Pensions, gratuities, commuted amounts, grants and compensations

38. Liquidation of the Fund

The Fund shall not be liquidated except in accordance with the provisions of the law.

39. Regulations

The Board, with the approval of the Minister, may issue the following:

(a) Internal regulations for organizing its business and meetings,
(b) Regulations to govern its administrative, financial and technical matters of the Fund,
(c) Regulations setting the terms and conditions of service of the Fund employees, and
(d) Any other regulations as may be necessary and appropriate for the effective and efficient implementation of the provisions of this Bill and the implementation of Fund objectives.