

**LAWS OF SOUTH SUDAN**

**BANKING ACT, 2012**

ActNo.22

## **BANKING ACT, 2012**

### **Arrangement of Sections**

CHAPTER I .....	- 7 -
PRELIMINARY PROVISIONS .....	- 7 -
1. Title and Commencement .....	- 7 -
2. Repeal and Saving .....	- 7 -
3. Purpose .....	- 7 -
4. Authority and Application .....	- 7 -
5. Interpretations .....	- 7 -
6. Prohibition on Unlicensed Deposit Taking .....	- 13 -
7. Investigations of Suspected Unlicensed Deposit-Taking Activity .....	- 14 -
8. Temporary Orders Pending Further Investigation .....	- 15 -
9. Orders to Cease Unlawful Deposit-Taking .....	- 16 -
10. Use of the Word “Bank” and Derivatives Thereof .....	- 17 -
11. False or Misleading Advertising Regarding Deposits .....	- 17 -
CHAPTER II .....	- 18 -
ESTABLISHMENT AND LICENSING OF BANKS .....	- 18 -
12. Creation of Banks .....	- 18 -
13. Legal Structure of Banks .....	- 18 -
14. Memorandum of Association and Articles of Association of Banks .....	- 18 -
15. Licensing process .....	- 18 -
16. Preliminary Approval .....	- 18 -
17. Initial Capital .....	- 19 -
18. Final Decision on Licence .....	- 19 -
19. Duration and Display of Banking Licence .....	- 20 -
20. Expiration of a Banking Licence .....	- 20 -
21. Revocation of a Banking Licence .....	- 20 -

22.	Voluntary Surrender of a Banking Licence .....	22 -
23.	Reorganisation of Banks .....	22 -
CHAPTER III .....		23 -
SHAREHOLDINGS, SIGNIFICANT PARTICIPATION, AND CONTROL OF BANKS .....		23 -
24.	Requirements for Acquiring Significant Participation in Banks.....	23 -
25.	Disposals and Reductions of Significant Participation .....	24 -
26.	Reporting of Significant Participation .....	24 -
27.	Registration of Bank Shares.....	25 -
28.	Unauthorized Significant Participation.....	25 -
29.	Revocation of Authorisation .....	26 -
30.	Exceptions from Requirements for Prior Authorisation .....	26 -
31.	Information Requirements for Significant Participants .....	27 -
32.	Restrictions on Voting and Capital Distributions Received in Contravention of this Act-	27 -
CHAPTER IV .....		28 -
BANK SUBSIDIARIES, ASSOCIATED ENTERPRISES, BRANCHES AND REPRESENTATIVE OFFICES .....		28 -
33.	Subsidiaries of Banks.....	28 -
34.	Associated Enterprises of Banks.....	29 -
35.	Responsibilities of Banks Regarding their Subsidiaries and Associated Enterprises .....	29 -
36.	Bank Branches .....	30 -
37.	Cooperation with Foreign Competent Authorities.....	30 -
38.	Multiple Branches of Non-Resident Banks.....	31 -
39.	Capital Equivalency Deposits .....	31 -
40.	Application of this Actto Branches of Non-Resident Banks.....	32 -
41.	Relocation of a Branch.....	32 -
42.	Discontinuance of Operations of Foreign Branches in South Sudan.....	32 -
43.	Revocation of Branch Permits .....	33 -
44.	Representative Offices of Non-Resident Banks in South Sudan .....	34 -
45.	Representative Offices Abroad of Domestic Banks.....	34 -
CHAPTER V .....		35 -
BANK CORPORATE GOVERNANCE.....		35 -
46.	Application of Other Legislation .....	35 -
47.	Governance Structure of Banks .....	35 -
48.	General Meeting of Shareholders .....	35 -

49.	Membership of the Board of Directors .....	- 36 -
50.	Responsibilities of the Board of Directors .....	- 36 -
51.	Meetings of the Board of Directors.....	- 36 -
52.	Audit Committee.....	- 37 -
53.	Risk Management Committee.....	- 37 -
54.	Exceptions to Requirements to Establish Committees.....	- 38 -
55.	Other Committees of the Board of Directors .....	- 38 -
56.	Senior Management .....	- 38 -
57.	Qualifications for Members of the Board of Directors and Senior Management .....	- 38 -
58.	Fiduciary Duties.....	- 38 -
59.	Risk Management and Internal Controls .....	- 39 -
60.	Internal Audit Function.....	- 39 -
61.	Disclosure of Commercial Interests.....	- 39 -
62.	Secrecy Obligations .....	- 40 -
CHAPTER VI.....		- 40 -
ACTIVITIES AND OPERATIONAL REQUIREMENTS OF BANKS.....		- 40 -
63.	Banking Activities .....	- 40 -
64.	Prohibited Activities .....	- 42 -
65.	Capital Requirements.....	- 42 -
66.	Liquidity.....	- 43 -
67.	Classification of Assets and Provisioning for Losses .....	- 43 -
68.	Reserves to Cover General Banking Risks .....	- 43 -
69.	Foreign Exchange Position .....	- 43 -
70.	Limitation on Fixed Assets .....	- 44 -
71.	Large Exposures.....	- 44 -
72.	Requirements for Transactions with Related Persons.....	- 45 -
73.	Prohibited Transactions with Related Persons.....	- 46 -
74.	Reports of Transactions with Related Persons.....	- 46 -
75.	Prohibition on Credit to Purchase Bank or Bank Holding Company Shares.....	- 47 -
76.	Investments by Banks in Other Enterprises .....	- 47 -
77.	Customer Identification.....	- 48 -
78.	Prohibition on Banking Services in Support of Crime.....	- 48 -
79.	Freezing of Accounts .....	- 48 -
80.	Prohibition on Relationships with Shell Banks.....	- 49 -

81.	Requirements for Correspondent Banking Relationships .....	49 -
82.	Dormant Accounts .....	49 -
CHAPTER VII.....		50 -
FINANCIAL STATEMENTS, ACCOUNTING AND AUDITS .....		50 -
83.	Financial Year.....	50 -
84.	Financial Statements and Records .....	50 -
85.	Appointment of External Auditors.....	51 -
86.	Audits of Subsidiaries and Associated Enterprises of Banks.....	52 -
87.	Audits of Branches of Non-Resident Banks .....	52 -
88.	Qualifications and Independence of Auditors.....	52 -
89.	Changes in Auditors.....	52 -
90.	External Auditor’s Duty of Notification to the Bank of South Sudan .....	53 -
91.	Contacts between the Bank of South Sudan and External Auditors .....	53 -
92.	Publication of Financial Statements and Reports.....	54 -
93.	Correction of Errors or Misleading Information.....	55 -
94.	Special Audits .....	55 -
CHAPTER VIII .....		56 -
REPORTS AND INSPECTIONS .....		56 -
95.	Reporting by Banks.....	56 -
96.	Compilation of Statistical Information .....	56 -
97.	Inspections .....	56 -
CHAPTER IX .....		58 -
CONSOLIDATED SUPERVISION.....		58 -
98.	Transparency of Group Structures .....	58 -
99.	Applicability of Prudential Requirements to Groups Containing Banks .....	58 -
100.	Group-wide Risk Management Systems and Internal Controls .....	59 -
101.	Capital Adequacy of Bank Holding Companies .....	59 -
102.	Governance of Bank Holding Companies.....	59 -
103.	Activities of Bank Holding Companies .....	59 -
104.	Investments by Bank Holding Companies.....	59 -
105.	Subsidiaries and Associated Enterprises of Bank Holding Companies .....	60 -
106.	Foreign Subsidiaries and Associated Enterprises of Bank Holding Companies.....	61 -
107.	Reports by Bank Holding Companies.....	61 -
108.	Significant Participation in Bank Holding Companies .....	62 -

109.	Inspections of Bank Holding Companies.....	- 62 -
110.	External Audits of Bank Holding Companies.....	- 62 -
111.	Enforcement Measures Regarding Enterprises in Banks' Groups, and Persons with Significant Participation in Banks.....	- 62 -
112.	Cooperation Between Financial Sector Supervisors .....	- 63 -
CHAPTER X .....		- 64 -
PROMPT CORRECTIVE ACTION AND ENFORCEMENT MEASURES .....		- 64 -
113.	Capital Deficiencies .....	- 64 -
114.	Measures Relating to Critically Undercapitalised Banks.....	- 64 -
115.	Measures in Cases of Violations or Practices Endangering Banks.....	- 64 -
116.	Enhanced Supervisions .....	- 66 -
117.	Removal Orders .....	- 67 -
118.	Suspension of Persons Charged with Criminal Offences .....	- 68 -
119.	Disposal of Shares Pursuant to Enforcement Orders .....	- 68 -
120.	Procedures for Enforcement Orders.....	- 68 -
121.	Temporary Orders .....	- 68 -
122.	Temporary Asset Freezes.....	- 69 -
123.	Effectiveness of Temporary Orders and Asset Freezes .....	- 69 -
124.	Judicial Review of Temporary Orders .....	- 70 -
125.	Issuance, Effect and Termination of Orders .....	- 70 -
126.	Judicial Review of Final Enforcement Orders .....	- 71 -
CHAPTER XI.....		- 71 -
RECEIVERSHIP .....		- 71 -
127.	Inapplicability of Insolvency Act and Other Winding-up Provisions to Banks.....	- 71 -
128.	Appointment of Receiver for a Bank .....	- 71 -
129.	Legal effects of Appointment of Receiver .....	- 72 -
130.	Taking Control of the Bank .....	- 72 -
131.	Judicial Review of Licence Revocation and Receivership Appointment .....	- 73 -
132.	Powers of the Receiver .....	- 73 -
133.	Termination of Current Contracts .....	- 74 -
134.	Feasibility Analysis of the Receiver .....	- 74 -
135.	Decision of the Bank of South Sudan .....	- 75 -
136.	Moratorium .....	- 75 -
137.	Blocking Orders .....	- 76 -

138.	Nullification of Certain Pre-Appointment Transactions .....	- 77 -
139.	Forensic Investigations .....	- 78 -
140.	Negotiated Settlements and Compromises with Creditors.....	- 79 -
141.	General Meeting and Committee of Creditors .....	- 79 -
142.	Resolution of a Bank in Receivership without Liquidation .....	- 79 -
143.	Bridge Banks.....	- 80 -
144.	Invitation of Claims from Creditors.....	- 80 -
145.	Admission of Claims.....	- 81 -
146.	Secured Claims .....	- 81 -
147.	Priority of Payments in Liquidation.....	- 82 -
148.	Authority to Pursue Claims against Persons Responsible for Causing Losses to a Bank.-	- 83 -
149.	Prejudgment Attachment.....	- 83 -
150.	Maintenance of Records of Liquidations .....	- 84 -
151.	Cross-Border Receiverships.....	- 84 -
152.	Termination of Receivership.....	- 85 -
153.	Reports of Receiverships .....	- 85 -
CHAPTER XII.....		- 86 -
MISCELLANEOUS PROVISIONS .....		- 86 -
154.	Regulations .....	- 86 -

## BANKING ACT, 2012

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

### CHAPTER I

#### PRELIMINARY PROVISIONS

**1. Title and Commencement.**

This Act shall be cited as “Banking Act, 2012” and shall come into force on the date of its signature by the President.

**2. Repeal and Saving.**

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

**3. Purpose.**

The purpose of this Act is to provide for the establishment, regulation, and supervision of banks and other financial institutions in South Sudan, and any matters or issues related thereto.

**4. Authority and Application.**

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

**5. Interpretations.**

In this Act, unless the context otherwise requires:

**“acceptance facility”** means a promised future payment, which is accepted and guaranteed by a bank and drawn on a deposit at the bank, specifying the amount of money, the date, and the person to which the payment is due, and, after acceptance, becoming an unconditional liability of the bank;

**“associated enterprise”** means an enterprise in which another enterprise holds a twenty percent participation;

**“Bank”** means the Bank of South Sudan;



**“bank”** means a legal person engaging in the business of receiving money deposits or other repayable funds from the public and making credits for its own account, and may be:

- (a) a commercial bank;
  - (b) a savings bank;
  - (c) a mortgage bank; or
  - (d) a merchant bank, and any other specialized banks;
- but does not include a depository microfinance institution;

**“bank holding company”** means an enterprise that controls a bank;

**“banking activities”** mean the activities that are listed in Section 63 of this Act;

**“banking group”** means a group of companies engaged exclusively or mainly in banking activities or activities closely related to banking, as determined by the Bank;

**“banking licence”** means an authorisation issued by the Bank to a legal person granting the right to operate as a bank in South Sudan;

**“beneficial ownership”** means:

- (a) direct ownership;
- (b) indirect ownership, through one or more controlled enterprises; or
- (c) the ability in fact to realise the benefits of share ownership in an enterprise, through any contract, arrangement, agreement or understanding with another person, whether written or unwritten, formal or informal, with or without formal legal ownership of such shares, (including where shares are held by one or more trustees, legal representatives, agents, nominees, or other intermediaries;

**“branch”** or **“branch office”** means a place of business forming a legally dependent part of a bank where all or some banking activities are conducted; for the purposes of this Act, all domestic branch offices of a non-resident bank shall be treated as a single branch office;

**“capital distribution”** means any payment of a dividend or any other distribution of money or other property by an enterprise to its owners made on account of that ownership. The term does not include a stock dividend or rights to purchase shares in an enterprise;

**“close links”** means a situation in which two or more natural persons or enterprises are linked by a twenty percent participation or control relationship;

**“close relative”** of a person means any person who is related to that person by marriage, descent, blood or kinship up to the second degree, or who is the adopted child or foster child of that person;

**“commercial bank”** means a bank that has a banking licence to engage in the financial activities referenced in Section 63 (1) of this Act;

**“competent court”** means any court of competent jurisdiction designated by the Chief Justice;

**“control”** means, alone or acting in concert with one or more other persons:

- (a) beneficial ownership of at least fifty percent of any category of voting shares or capital of an enterprise;
- (b) the ability to elect a majority of the board of directors, or any similar body, of an enterprise; or
- (c) any situation in which:

- (i) a person has the ability in fact to exert a dominant influence over the management or policies of the enterprise; or
- (ii) a majority of the members of the board of directors of an enterprise, or shareholders with beneficial ownership at least fifty percent of any category of voting shares or capital of the enterprise, are accustomed or under an obligation, whether formal or informal, to act in accordance with a given person's directions, instructions or wishes in conducting the affairs of the enterprise;

**“controller”** means any person having control of an enterprise;

**“core capital”** means the value of a bank's common stock and retained earnings, plus other financial instruments eligible for inclusion in core capital, less goodwill or any other intangible assets, as determined by the Bank;

**“credit”** means any disbursement or commitment to make a disbursement of a sum of money in exchange for a promise to repay the amount disbursed and to pay interest; other secured or unsecured charges on such amount; any extension of the due date of a debt; any guarantee issued; any receipt of post-paid goods or services; and any purchase of a debt security or other promise to pay a sum of money and to pay interest either directly or by a discounted purchase price;

**“critically undercapitalised”** means, in relation to a bank, having a capital level, in any category, of less than one-third of the level required by this Actor regulations of the Bank;

**“debt security”** means any bond, debenture, or functionally equivalent instrument of indebtedness, and any instrument that gives the right to receive another debt security through subscription or exchange. Debt securities may also be in book-entry form. The term “debt security” does not include promissory notes, bills of exchange, and cheques as defined in applicable legislation;

**“demand deposit”** means a deposit that can be withdrawn at any time on demand of the person placing the deposit;

**“deposit”** means a sum of money that is:

- (a) placed with a person by another person;
- (b) repayable to the person placing the funds, with or without interest or premium of any kind, under mutually agreed terms and conditions;
- (c) if agreed between the parties and permitted by law, transferable to other persons upon the instruction of the person placing the funds;
- (d) an unconditional liability of the person receiving the deposit; and
- (e) not dependent on any transactions between the person placing the funds and the person receiving the funds concerning the provision of goods, property, or services, or any type of collateral or security;

**“depository microfinance institution”** means a legal entity licensed to carry on, conduct, engage in or transact in microfinance business in South Sudan according to applicable legislation;

**“domestic”** refers to a legal person whose head office is located in South Sudan, or whose principal place of business is located in South Sudan;

**“dormant account”** means a deposit account, the holder of which has not evidenced any interest in the amounts on deposit by recorded transaction or written correspondence with the bank holding that account for at least five years;

**“electronic money”** means electronically (including magnetically) stored monetary value as represented by a claim on the issuer that is issued on receipt of funds for the purpose of making payment transactions as defined in this Act, and accepted by a natural or legal person other than the electronic money issuer;

**“enterprise”** means any corporation, limited liability company, partnership, or other legal person that is engaged in commercial activity;

**“equity capital”** means the excess of the value of a person’s assets over its liabilities to third parties, calculated in accordance with international accounting standards or international financial reporting standards;

**“exposure”** to a person or group of interconnected persons includes:

- (a) all loans, factoring, financial leasing, accrued interest receivable, correspondent accounts, debt securities, term deposits, and accounts receivable issued to such person or group;
- (b) investments in equity or debt securities of such person or group;
- (c) the sum of off-balance sheet liabilities (guarantees, letters of credit, and commitments to lend) issued to this person or group;
- (d) any exposure to a third party that has been unconditionally guaranteed by this person or group.

**“external auditor”** means, as appropriate, an audit firm or a member or employee of an audit firm;

**“financial institution”** means a bank; pension fund; pension asset management company; investment fund; securities underwriter, broker, or dealer; insurance company; financial leasing company; and any other enterprise engaging primarily in financial sector activities in South Sudan or abroad;

**“fit and proper person”** means a person who, in the judgment of the Bank, has an impeccable record for honesty, trustworthiness, fairness, integrity, competence, and soundness of judgment in personal and business activities, and, where appropriate, professional experience and qualifications suitable for the position to be held;

A legal person is considered to be a fit and proper person if all members of its board of directors and senior management, or equivalent governing bodies, and significant participants have such qualities;

No person shall be regarded as a fit and proper person if such person:

- (a) has been convicted by a competent court of an offence for which such person was or could have been sentenced to imprisonment, unless such conviction was motivated by religious or political views or activities;
- (b) or any enterprise of which such person has been a member of the board of directors or senior management, or has had any significant policy-making authority, has been declared bankrupt or subject to receivership, conservatorship, forced liquidation or similar legal proceedings, unless, in the judgment of the Bank, such declaration or legal proceedings did not arise due to such person’s negligence, unsound business practices, or improper conduct;

(c) on grounds of personal misconduct or professional incompetence, has been disqualified or suspended by a competent authority from practicing a profession;

**“Government”** means the National Government of the Republic of South Sudan;

**“group”** of enterprises or persons means a parent company, its subsidiaries, and all associated enterprises of the parent company and its subsidiaries;

**“independent member”** of the board of directors means a member who:

(a) is not a member of the senior management or an employee of the bank or of any enterprise in the same group as the bank;

(b) is not a significant participant of the bank or of any enterprise in the same group as the bank;

(c) is not a significant borrower from the bank, or a member of the board of directors, senior management, or any equivalent body, or employee of a significant borrower from the bank as defined by regulations of the Bank;

(d) does not have a business relationship with the bank, or with any enterprise in the same group as the bank, that could impair such member’s independence, as defined by regulations of the Bank;

(e) is not a close relative of a person described in any of paragraphs (a) to (d);

**“large exposure”** means exposure to a single person or group of related persons amounting to more than the equivalent of ten percent of a bank’s core capital;

**“leverage ratio”** means the ratio of core capital to total assets without regard to risk-weighting;

**“merchant bank”** means a bank whose business consists mainly of facilitating commercial activities by enterprises and whose activities are limited to those referenced in Section 63 (2) of this Act;

**“mortgage bank”** means a bank whose business consists mainly of granting loans for the acquisition, construction, enlargement, repair, improvement and maintenance of urban or rural real estate and for the substitution of mortgages taken out for that same purpose, and whose activities are limited to those referenced in Section 63 (3) of this Act;

**“non-resident”** refers to any non-domestic person;

**“parallel banking structure”** means an ownership or control structure in which a bank is under common control with another bank, where the banks are not part of a group that is subject to consolidated supervision in South Sudan or abroad;

**“parent”** or **“parent company”** means any enterprise that controls another enterprise;

**“person”** means a natural person or a legal person, or both;

**“purchase-and-assumption transaction”** means a transaction in which a financially sound bank purchases assets and assumes liabilities from a bank in receivership;

**“regulatory capital”** means the sum of core and supplemental capital, plus subordinated debt under certain conditions, minus certain deductions. The components of core and supplemental capital, the conditions under which subordinated debt may be included in the calculation of regulatory capital, and items that must be deducted in determining regulatory capital, are determined by the Bank;

**“related persons”** of a bank are:

(a) enterprises that are members of the same group of enterprises as the bank;

(b) members of the board of directors and management of the bank, and of any

enterprise that is a member of the same group of enterprises as the bank (or equivalent bodies), and close relatives of these persons;

- (c) any person having a significant participation in the bank, or in any enterprise in the same group of enterprises as the bank, and close relatives of these persons;
- (d) enterprises controlled by persons referenced in paragraphs (b) and (c);

**“representative office”** means a place of business forming a dependent part of a bank, that is located separate from the head office of the bank, does not conduct banking business, and the principal activities of which are to conduct market research, represent the bank, and protect its interests in a foreign jurisdiction;

**“savings bank”** means a bank whose activities are limited to acceptance of savings and time deposits and investments in Government or Bank securities;

**“savings deposit”** means a deposit that can be withdrawn at any time on demand of the person placing the deposit, but cannot be transferred to another person;

**“shell bank”** means a bank, or an enterprise engaged in similar activities, incorporated in a jurisdiction in which it has no substantial physical presence, and which is not part of any group that is subject to supervision on a consolidated basis;

**“significant participation”** means, alone or acting in concert with one or more other persons:

- (a) beneficial ownership of at least five percent of any category of voting shares or capital of an enterprise; or
- (b) the ability in fact to exert a significant influence over the management or policies of an enterprise;

**“significant participant”** means a person having a significant participation in an enterprise;

**“significantly undercapitalised”** means, in relation to a bank, having a capital level, in any category, of less than two-thirds of the level required by this Act or Bank regulations, but not “critically undercapitalised;”

**“subsidiary”** means any legal person that is controlled by another legal person;

**“supervised financial institution”** means:

- (a) a financial institution that is subject to prudential supervision in South Sudan or in its home country; or
- (b) the parent company of an institution mentioned in paragraph (a), the subsidiaries that are mainly or exclusively financial institutions, and that is subject to prudential supervision in South Sudan or in its home country.

**“thirty percent participation”** means beneficial ownership, alone or acting in concert with one or more persons, of thirty percent or more of any category of voting shares or capital of an enterprise;

**“thirty percent participant”** means any person having a thirty percent participation in an enterprise;

**“time deposit”** means a deposit that cannot be withdrawn without a penalty before a specified time, as agreed by the person placing the deposit and the person receiving the deposit;

**“twenty percent participation”** means beneficial ownership, alone or acting in concert with one or more other persons, of twenty percent or more of any category of voting shares or capital of an enterprise;

**“twenty percent participant”** means any person having a twenty percent participation in an enterprise;

**“ultimate parent company”** of a group means the enterprise in that group that is not a subsidiary of any other enterprise. If, in the opinion of the Bank, there is any doubt as to which enterprise in a group is the ultimate parent company, the Bank shall make this determination;

**“undercapitalised”** means, in relation to a bank, failure to meet any required minimum capital level, in any category, pursuant to this Actor Bank regulations;

For purposes of the definitions of significant participant, twenty percent participant, thirty percent participant, and controller:

- (a) a person is not considered to be significant participant or controller of an enterprise solely due to such person’s status as a member of the board of directors or management of such enterprise, or solely because members of the enterprise’s board of directors or senior management are accustomed to act upon advice given by such person in such person’s professional capacity; and
- (b) a bank is not considered to be a significant participant, twenty percent participant, thirty percent participant, or controller in an enterprise solely through the good faith acquisition of shares reaching or exceeding the relevant benchmarks through foreclosure on collateral, in order to partially or fully satisfy a doubtful claim, or to avoid a loss in connection with a debt previously contracted. However, a bank is considered to be a significant participant, twenty percent participant, thirty percent participant, or controller in the enterprise if shares acquired in this manner are not disposed of within one year from the date of acquisition.

## **6. Prohibition on Unlicensed Deposit Taking.**

No person shall engage in the business of receiving money deposits or similar repayable funds from the public in South Sudan without a banking licence issued by the Bank, other than the following persons:

- (a) persons licensed pursuant to legislation of South Sudan to receive deposits or other repayable funds from the public;
- (b) persons who fund the credits they make from non-repayable capital subscriptions and the proceeds of credits received from financial institutions or debt securities issued in the capital markets; and
- (c) persons who, by virtue of the nature or size of their business or the origin of their resources, are exempt by the Bank from the requirements of this Act; exemptions so granted by the Bank may be conditional or limited in time, or they may be partial and specify and list certain provisions of this Act that shall apply to the person receiving the exemption.

Persons referred to in subsection (a) shall otherwise be subject to the provisions of this Act.

**7. Investigations of Suspected Unlicensed Deposit-Taking Activity.**

- (1) If the Bank has reason to suspect that any person is transacting or carrying on business as a bank or taking deposits or similar repayable funds from the public in contravention of Section 6 of this Act, it may, by written authorisation, designate one or more representatives of the Bank, at any time and without prior notice, to:
  - (a) enter any premises that the Bank has reason to suspect are occupied or used by any person for the purpose of or in connection with such contravention;
  - (b) search for any book, record, statement, document or other item used, or is suspected of being used, in connection with the such contravention;
  - (c) seize or make a copy of any book, record, statement, documents or other item referred to in paragraph (b), or seize any money found on the premises;
  - (d) question any person who is present on the premises referred to in paragraph (a), or the auditors, directors, members or partners of any person conducting business on the premises, in connection with the conduct of such business;
  - (e) direct that the premises referred to in paragraph (a), or any part thereof, or anything on the premises, should be left undisturbed for as long as it is necessary to search the premises for any book, record, statement, document or item under paragraph (b);
  - (f) by notice in writing addressed and delivered to any person who has control over or custody of any book, record, statement, document or other item referred to in paragraph (b), require the person to produce the book, record, statement, document or other item to any designated representative of the Bank issuing the notice, at the place, on the date and at the time specified in the notice; and
  - (g) examine any book, record, statement, document or other item referred to in paragraph (b) and require from any person referred to in paragraph (d) an explanation regarding any entry in the book, record, statement, document or other item.
- (2) If a designated representative of the Bank performs a function under this section in the presence of any person affected by the performance of that function, the designated representative shall, at the request of the person affected, exhibit to that person the written authorisation referred to in that subsection.
- (3) No person shall:
  - (a) hinder or obstruct any designated representative of the Bank under subsection (1) in the performance of the representative's functions;
  - (b) refuse or fail to comply with any request made by any such designated representative in the performance of such representative's functions;
  - (c) refuse or fail to answer any question that any such designated representative directs to that person in the performance of such representative's functions;
  - (d) wilfully furnish false or misleading information to any such designated representative; or

- (e) falsely hold himself or herself out as such a designated representative.
- (4) In case of delay or refusal by any person to cooperate in any investigation undertaken by the Bank pursuant to subsection (1), upon the request of the Bank, law enforcement officials shall, if necessary by use of force, assist the Bank to that end.
- (5) Any person who contravenes any of the provisions of this section commits an offence and is liable on conviction to a fine not exceeding fifteen thousand South Sudanese Pounds, or imprisonment not exceeding one year, or both.
- (6) For the purposes of this section, “premises” includes any building or structure, or part of a building or structure, whether above or below the surface of the land or water, or any vehicle, vessel or aircraft.

## **8. Temporary Orders Pending Further Investigation.**

- (1) At any time during any investigation undertaken in accordance with Section 7 of this Act, the Bank may:
  - (a) issue a temporary order;
    - (i) summarily suspending the business of any person suspected of conducting unauthorised deposit-taking activity, pending further investigation by the Bank;
    - (ii) prohibiting any such person, or any enterprise controlled by any such person, from taking any action to withdraw, transfer, remove, dissipate, or dispose of any funds, assets or other property pending further investigation by the Bank; and
    - (iii) appointing one or more representatives of the Bank to administer such temporary order;
  - (b) in connection with an order issued under paragraph (a), issue a written instruction to any bank or other financial institution to freeze summarily any account or accounts at such bank or financial institution that are maintained by, or under the control of, any person suspected of conducting unauthorised deposit-taking activity, or any enterprise controlled by that person, and to retain all moneys in any such account, pending the further instructions of the Bank;
- (2) Any person that is the subject of an order under subsection (1) may, within ten calendar days, file a petition for review of such order before an appropriate court. The filing of a petition for review has no postponing effect on the order. The court may dissolve, limit or suspend the order, or any instruction issued in connection with such order, only if it determines that:
  - (a) it is unlikely that the relevant person has directly or indirectly contravened the prohibition in Section 6 of this Act;
  - (b) such person will suffer irreparable injury if the order or instruction is not dissolved, limited or suspended;
  - (c) dissolving, limiting or suspending the order or instruction will not result in serious prejudice to any other person; and



- (d) the public interest favours dissolving, limiting or suspending the order or instruction.
- (3) An order or instruction issued under subsection (1) shall remain in effect:
  - (a) pending the conclusion of any proceedings undertaken in accordance with Section 9 of this Act, including, if applicable, the return of any unlawfully received money or deposits in accordance with an order issued by the Bank under that section;
  - (b) subject to subsection (4), until the order is dissolved, limited or suspended by a competent court in accordance with subsection (2); or
  - (c) until the Bank determines that it is no longer necessary.
- (4) If the Bank appeals against a decision of the competent court dissolving, limiting or suspending an order or instruction pursuant to subsection (2), the order or instruction shall remain in effect pending decision on such appeal.

**9. Orders to Cease Unlawful Deposit-Taking.**

- (1) If the Bank is satisfied that a person has obtained any moneys in contravention of the prohibition of Section 6 of this Act, the Bank shall, in writing:
  - (a) order the immediate cessation of the deposit-taking activities of that person; and
  - (b) order that person to repay all the moneys so obtained, along with all profits accruing to that person as a result of such illegally obtained monies or deposits, including any interest or other amounts that may be owing by that person in respect of those moneys:
    - (i) to the respective persons from whom such person has obtained the moneys;
    - (ii) in the manner and in accordance with the order; and
    - (iii) within the period of time imposed by the Bank and specified in the order.
- (2) Before the Bank issues an order pursuant to subsection (1), it shall provide the affected person with at least fifteen days written notice of the proposed action and an opportunity to make written representations before the Bank. The procedure for submission of such representations shall be determined by the Bank.
- (3) Any person that is the subject of an order under subsection (1) may, within ten calendar days, seek judicial review of such order before the appropriate court. The court shall fix a hearing date on the application within one month. Based upon the evidence adduced at the hearing, the court shall either affirm or dissolve the order of the Bank. The court shall affirm the order unless it determines that:
  - (a) there was no factual basis for the order; or
  - (b) the Bank manifestly misapplied the applicable legal provisions in issuing the order.
- (4) Any person referred to in subsection (1) who refuses or fails to comply with an order under that subsection, where such order is not dissolved by a court and

no appeals are pending, shall be treated as unable to pay its debts, or for the purposes of the Insolvency Act, 2012, be deemed to have committed an act of bankruptcy, as the case may be. The Bank may apply to the appropriate court for the winding-up, or commencement of bankruptcy proceedings with regard to that person, as the case may be.

**10. Use of the Word “Bank” and Derivatives Thereof.**

- (1) No person shall carry on business as a bank unless it uses as part of its name the word “bank” or one of its derivatives.
- (2) No person shall claim the status of bank or banker, or use the word “bank” or derivatives of the word “bank” in respect of a business, product or service without a banking licence, unless:
  - (a) such usage is established or recognised by law or international agreement; or
  - (b) it is clear from the context of the person’s activities that the word “bank” does not entail banking activities as defined in this Act.
- (3) Representative offices shall not use the word “bank” in their names, except in cases where the word “bank” forms an integral part of the name of the bank to which they belong.
- (4) An enterprise that has been granted preliminary approval for a banking licence pursuant to Section 16 of this Act shall carry in its name the words “bank in organisation” pending a final decision by the Bank on the licence application.
- (5) A bank whose banking licence has been revoked shall carry in its name the words “bank in receivership.”

**11. False or Misleading Advertising Regarding Deposits.**

- (1) A person shall be guilty of an offence if such person issues any advertisement, brochure, circular or other document inviting any person to make a deposit that:
  - (a) falsely represents that such person is authorised to accept deposits or is otherwise licensed under the provisions of this Act; or
  - (b) is issued contrary to any order given by the Bank under the provisions of subsection (2).
- (2) The Bank may at any time direct any person to withdraw, amend or refrain from issuing any advertisement, brochure, circular or other document relating to deposits that, in its sole discretion, it considers to be misleading.

## CHAPTER II

### ESTABLISHMENT AND LICENSING OF BANKS

#### 12. Creation of Banks.

Banks may be established by one or more legal or natural persons as founders and shareholders.

#### 13. Legal Structure of Banks.

Banks shall be registered as public companies under the legislation of South Sudan. The legal type shall be specified by regulation of the Bank. Banks shall not change their legal structure without the prior written authorisation of the Bank.

#### 14. Memorandum of Association and Articles of Association of Banks.

- (1) The Bank shall approve each bank's memorandum of association and articles of association, which shall contain information prescribed by the Bank, taking into account the requirements of this Act and applicable legislation concerning companies
- (2) Any amendment of the memorandum of association or articles of association of a bank shall require the prior written authorisation of the Bank. The procedure for submission and consideration of such amendments shall be determined by the Bank.
- (3) The Bank shall maintain a copy of the memorandum and articles of association of each bank.

#### 15. Licensing Process.

A company proposing to transact or carry on business as a bank shall apply in writing to the Bank for a banking licence under this Act. The licensing process consists of two stages, preliminary approval and final approval.

#### 16. Preliminary Approval.

- (1) An application for preliminary approval shall contain information prescribed by the Bank, and shall address the criteria referenced in subsection (3).
- (2) The application for preliminary approval must be accompanied by an application fee. The amount of the fee shall be determined by the Bank.
- (3) Within six months from the date of receipt of the complete application for preliminary approval, the Bank shall either issue preliminary approval or refuse to do so, and shall not grant preliminary approval unless it is satisfied as to the following factors:
  - (a) the compliance of the founding documents to legal requirements;

- (b) that each proposed director and manager of the bank is a fit and proper person;
  - (c) that if any person proposes to hold a significant participation in the bank, no grounds exist for refusal under Section 24 of this Act;
  - (d) the business plan and other materials submitted by the applicant demonstrate that the bank will be profitable after three years of operations;
  - (e) the bank will have adequate policies and procedures for risk management and internal controls;
  - (f) if the bank will be a subsidiary of a non-resident supervised financial enterprise, proof that the competent authority of the founder's home country has granted approval for the establishment of a bank in South Sudan;
  - (g) if the bank will be part of a group, the requirements of Section 98 of this Act will be satisfied; and
  - (h) the source of funds to be used for the bank's initial capitalisation does not raise any suspicion that the influence of any person supplying such funds may be detrimental to the bank.
- (4) In the event of refusal, the Bank shall provide the applicant with a written statement of the reasons.
- (5) Following preliminary approval, but before the final decision of the Bank granting a banking licence, a bank in organisation may only conclude transactions which are directed at the creation of the organisational structure of the bank, engagement of the external auditor, and acquisition or arrangement for use of necessary premises, technical equipment, security systems and assets necessary to conduct business for which preliminary approval has been given.
- (6) Any significant change in the applicant's circumstances following the granting of preliminary approval must be promptly reported to the Bank. The Bank may reconsider its grant of preliminary approval, including revocation of such preliminary approval, based on any such new information.

#### **17. Initial Capital.**

The required initial capital for a bank shall be determined by regulation of the Bank. Such initial capital must be paid in cash or cash equivalents in South Sudanese Pounds, and be free of any lien or encumbrance.

#### **18. Final Decision on Licence.**

- (1) A banking licence is issued by the Bank following a grant of preliminary approval, and under the following additional conditions:
- (a) proof that the required initial capital has been paid in full;
  - (b) the premises and equipment of the bank correspond to the requirements set by the Bank for the safe holding of depositors' funds;
  - (c) proof that the founders have selected an independent external auditor for the bank, acceptable to the Bank;

- (d) the bank has sufficiently trained staff and management information systems to handle its expected activities.
- (2) The Bank shall issue a banking licence within thirty days of the satisfaction of the conditions specified in subsection (1).
- (3) The Bank may refuse to issue a banking licence if the conditions listed in subsection (1) are not fulfilled within six months following the grant of preliminary approval.
- (4) The Bank may attach any conditions to the granting of a banking licence that it deems appropriate to protect the interests of depositors of the bank.
- (5) The Bank may issue a banking licence limiting or restricting the activities in which a bank may engage, notwithstanding Section 64 of this Act. Such a limited or restricted banking licence may be issued at the request of the applicant or at the discretion of the Bank as it deems appropriate to protect the interests of depositors of the bank.
- (6) The Bank shall maintain a registry of all banks licensed under this Act.

**19. Duration and Display of Banking Licence.**

- (1) A banking licence shall remain in force until it expires in accordance with this Act.
- (2) Each bank shall keep its banking licence displayed in its original form in a conspicuous place in the premises in which the bank carries on its lawful business. Complete and legible copies of the banking licence shall be similarly displayed in each branch office of the bank.

**20. Expiration of a Banking Licence.**

A bank's banking licence shall expire:

- (a) in the event of the merger or amalgamation of the bank on the basis of Section 23 of this Act, upon the entry of the new bank in the register of banks;
- (b) in the event of a reorganisation of the bank in accordance with a transaction approved by the Bank on the basis of Section 22 of this Act, upon the consummation of that transaction;
- (c) upon the voluntary surrender of the bank's banking licence in accordance with Section 22 of this Act; or
- (d) upon revocation of the banking licence in accordance with Section 21 of this Act.

**21. Revocation of a Banking Licence.**

- (1) The Bank shall revoke a bank's banking licence if:
  - (a) the bank is critically undercapitalised;

- (b) the bank cannot fulfil its obligations to its depositors or other creditors, or otherwise no longer can provide security for the assets entrusted to it;
  - (c) the bank is significantly undercapitalised and the Bank determines that receivership is necessary or appropriate in order to protect the interests of the bank's depositors or other creditors; or
  - (d) the bank is undercapitalised and:
    - (i) fails to submit a capital restoration plan within the time period required by the Bank in accordance with this Act;
    - (ii) fails to implement or achieve the results of such a plan that has been approved by the Bank; or
    - (iii) the Bank determines that there is no reasonable prospect of its becoming adequately capitalised.
- (2) The Bank may revoke a bank's banking licence if:
- (a) the Bank determines that false or fraudulent statements or other irregularities occurred in connection with the bank's licence application;
  - (b) the bank, or any member of the board of directors, senior management, employee, auditor or agent of the bank, refuses to provide information or documents to any inspector of the Bank in connection with an inspection pursuant to this Act;
  - (c) the bank has ceased to engage in the business of receiving money deposits or other repayable funds from the public or making credits;
  - (d) the Bank determines that the bank has conducted its administration or banking operations in an unsound or imprudent manner or otherwise has violated a law, or a regulation or order of the Bank, or any condition or restriction attached to a banking licence or permit issued by the Bank;
  - (e) the bank, or any enterprise in the same group as the bank, has engaged in criminal activities, money laundering, or terrorist financing;
  - (f) the circumstances or conditions under which the banking licence was granted are no longer fulfilled;
  - (g) a person has acquired a significant participation in the bank without the prior written authorisation of the Bank as required by Section 24 of this Act;
  - (h) the bank or bank holding company of which the bank is a subsidiary has lost its banking licence or is the subject of bankruptcy, liquidation, conservatorship, receivership or equivalent proceedings in South Sudan or abroad;
  - (i) a reorganisation, amalgamation, merger or division of the bank has occurred without the written authorisation of the Bank;
  - (j) the bank has moved all or part of its administration, operations, books or records outside South Sudan without the prior written consent of the Bank; or
  - (k) the bank has become member of a group of enterprises that, in the opinion of the Bank, does not conform to the requirements of Section 98 of this Act.

- (3) If the Bank revokes a banking licence, it shall serve on the bank a written statement of the grounds therefore. The revocation shall take effect at the time of such service.
- (4) A decision to revoke a banking licence shall include the appointment of a receiver for the bank in accordance with Section 128 of this Act.
- (5) Within five days from the date of its decision to revoke a banking licence, the Bank shall publish the decision in two official newspapers of general circulation in South Sudan.

**22. Voluntary Surrender of a Banking Licence.**

- (1) A bank may apply to the Bank in writing to surrender its banking licence. The application shall be accompanied by a liquidation plan and by the financial statements, together with a report of an independent external auditor acceptable to the Bank. Within three months the Bank shall decide on the request.
- (2) The request provided in subsection (1) may be approved by the Bank upon approval of the liquidation plan, and satisfaction that the bank is solvent and will have adequate liquid funds to pay its liabilities to its depositors and other creditors upon surrender of the banking licence.
- (3) The decision of the Bank on the application shall be communicated in writing to the bank. In case of refusal, the Bank shall provide a written statement of the reasons. Decisions to approve such a request shall have immediate effect and shall be published in a newspaper of general circulation in the country.
- (4) During the voluntary liquidation process, the former bank shall continue to be subject to the provisions of this Act, as deemed necessary by the Bank, as if it were still licensed.
- (5) The Bank shall monitor the progress of voluntary liquidation of a bank. The bank and persons carrying out the liquidation shall furnish the Bank with any information that the Bank may request in order to accomplish this task.
- (6) If, in the opinion of the Bank, any of the conditions stipulated in Section 21 of this Act is present, or it otherwise becomes impractical to complete the voluntary liquidation of a bank in a manner that protects the bank's depositors, the Bank may appoint a receiver for the bank in accordance with Chapter XI of this Act.

**23. Reorganisation of Banks.**

- (1) The reorganisation through merger, amalgamation, or division of a bank, including a bank in receivership, shall be permitted only with the written approval of the Bank. Such authorisation shall be granted only if the resulting bank or banks have or meet the criteria for receiving a banking licence, or if the reorganisation is approved in connection with the receivership of a bank

and is determined by the Bank to be in the best interests of the bank's depositors.

- (1) In the event that a bank's banking licence expires in connection with a reorganisation, the Bank shall publish notice of this fact in a newspaper of general circulation in the country within five days of such expiration.

### CHAPTER III

## SHAREHOLDINGS, SIGNIFICANT PARTICIPATION, AND CONTROL OF BANKS

### 24. Requirements for Acquiring Significant Participation in Banks.

- (1) No person may acquire significant participation in, or control of, a bank, without the prior authorisation of the Bank.
- (1) Legal persons having significant participation in banks must be financial institutions.
- (2) The authorisation of the Bank shall be requested by submitting to the Bank a written application accompanied by supporting documents showing that the conditions specified by subsection (4) are met in accordance with regulations issued by the Bank.
- (3) The Bank shall not issue an authorisation under subsection (1) unless it is satisfied that:
  - (a) the applicant is a fit and proper person;
  - (b) the applicant is financially sound;
  - (c) the Bank can satisfactorily identify the source of the funds to be used for the proposed acquisition, and that if any of the funds will be supplied by another person, there is no reason to suspect that any influence exercised by that person would be detrimental to the bank;
  - (d) there is no reason to suspect that the influence that would be exercised on the bank as a result of the acquisition would threaten the sound and prudent management of the bank;
  - (e) the conditions of Section 98 of this Act will be satisfied, if, as a result of the acquisition, the bank would become part of a group;
  - (f) if, as a result of the acquisition, the bank would become a subsidiary of a non-resident supervised financial institution:
    - (i) the competent authority of the country where the head office of that institution is located has given its authorisation to the acquisition;
    - (ii) the Bank is satisfied, following consultations with the foreign competent authority, that the applicant is effectively supervised on a consolidated basis in its home country; and
    - (iii) an agreement of cooperation has been concluded between the Bank and the competent foreign supervising authority, specifying the allocation of powers and responsibilities and the



- rules and procedures governing exchanges of information between the Bank and the foreign competent authority;
- (g) the acquisition would not hinder the Bank in the discharge of its supervisory responsibilities because of close links between the bank and any person;
  - (h) there are no reasonable grounds to suspect that the acquisition would result in, or increase the risk of, the bank's involvement in money laundering or terrorist financing;
  - (i) there are no reasonable grounds to suspect that the bank would become part of a parallel banking structure as a result of the acquisition;
  - (j) any other conditions as the Bank may specify by regulation in order to fulfil its functions under this Act would be met.
- (4) The Bank shall approve or reject the application within three months from the date that a complete application is submitted, and shall notify the applicant of its decision in writing. For applications submitted by a non-resident applicant, this period shall be six months. Decisions rejecting an application must explain the grounds on which the application is rejected.
- (5) If the Bank issues the authorisation, it may fix a maximum period for completing the acquisition. The applicant shall notify the Bank of the completion of the acquisition within ten days of such completion.

**25. Disposals and Reductions of Significant Participation.**

A person who proposes to relinquish a significant participation in a bank, or control of a bank, or to reduce such person's beneficial ownership of the bank below the thresholds specified in Section 24 of this Act, must give written notification to the Bank of the size, if any, of the beneficial ownership in the bank that such person would retain.

**26. Reporting of Significant Participation.**

Each bank must notify the Bank in writing:

- (a) annually, at a time prescribed by the Bank, of all persons having a significant participation in such bank and the amount of each such person's beneficial ownership in the bank;
- (b) within ten days after acquiring such knowledge, of any person who has acquired a significant participation in, or control of, the bank or has acquired beneficial ownership in the bank reaching or exceeding any of the thresholds specified in Section 24 of this Act;
- (c) within ten days after acquiring such knowledge, of any person who has ceased to have a significant participation in, or control of, the bank, or has disposed of beneficial ownership in the bank below any of the thresholds specified in Section 24 of this Act; or
- (d) without delay, of any facts or circumstances that raise the suspicion that any person may have acquired a significant participation in, or control of, the bank, or may have acquired beneficial ownership of the bank at a level

reaching or exceeding the thresholds specified in Section 24 of the Act without the prior written authorisation of the Bank.

**27. Registration of Bank Shares.**

- (1) Each bank shall maintain a register of the current beneficial holders of all shares in the bank as required by applicable legislation concerning companies.
- (2) No bank shall allot, issue, or register a transfer of shares that equals or exceeds the thresholds specified in Section 24 of this Act to any person, unless that person has obtained the prior written authorisation of the Bank.
- (3) The registrar of companies shall not register any transfer of shares of a financial institution referred to in subsection (4), unless it has received a notice of no objection from the Bank.
- (4) Notwithstanding any contrary provisions of applicable legislation concerning companies, no bank shall, without the written approval of the Bank:
  - (a) allot or issue any of its shares to, or register any of its shares in the name of, any person other than the intended beneficial shareholder;
  - (b) transfer any of its shares in the name of a person other than the beneficial shareholder; or
  - (c) allow any of its shares to remain registered in the name of a person other than the beneficial shareholder.
- (5) Any person who contravenes subsection (4) commits an offence and is liable, on conviction, to a fine equal to twice the nominal value of such shares registered or transferred in contravention of subsection (4) for each day on which the shares remain so registered.

**28. Unauthorised Significant Participation.**

- (1) If the Bank has reason to suspect that any person may have contravened the requirements of Section 24 of this Act, it may, by written authorisation, designate one or more representatives of the Bank, at any time and without prior notice, to exercise any of the functions described in Section 7(1) of this Act relative to such suspected contravention. The provisions of Sections 7(4) through 7(7) of this Act shall apply to any such investigation.
- (2) If the Bank determines that a person has violated the requirements of Section 24 of this Act, it shall issue an order requiring that person to dispose of the significant participation in the bank, or such part of the significant participation as the Bank deems appropriate. The procedural requirements of Section 120 of this Act shall apply to the issuance of such orders.
- (3) Pending the issuance of a final order in accordance with subsection (2), the Bank may issue a temporary order prohibiting the relevant person from participating in any manner in the conduct of the affairs of the bank, including the direct or indirect exercise of any voting rights in the bank.

**29. Revocation of Authorisation.**

- (1) If, at any time, the Bank determines that one or more of the conditions specified or referred to in Section 24 of this Act are no longer applicable to a person having a significant participation in a bank, the Bank may, by order, revoke its authorisation given under that section.
- (2) Before the Bank issues an order in accordance with subsection (1), it shall provide the affected person with prior written notice and an opportunity to make written representations, unless that person consents to the issuance of the order. Such notice shall be given at least fifteen days prior to the proposed date for issuance of the order.
- (3) The procedures for submission and consideration of representations in accordance with subsection (1) shall be determined by regulations of the Bank.
- (4) A person who is the subject of an order under subsection (1):
  - (a) shall not participate in any manner in the conduct of the affairs of the bank without the prior written permission of the Bank; and
  - (b) shall sell or otherwise dispose of all or any part of such person's beneficial ownership in the bank as may be specified in the order.
- (5) Any voting rights of that person in the bank shall not be taken into account for the purpose of determining the quorum for any session, including any extraordinary session, of the general meeting of shareholders.
- (6) Upon the request of the Bank, a court may appoint a special and autonomous administrator who shall be authorised to exercise the voting rights referred to in subsection (5).
- (7) Any person who contravenes an order issued under subsection (1) commits an offence and is liable on conviction to a fine not exceeding ten thousand South Sudanese Pounds, or imprisonment not exceeding one year, or both.

**30. Exceptions from Requirements for Prior Authorisation.**

- (1) Section 24(1) of this Act does not apply if a person acquires a significant participation in, or control of, a bank:
  - (a) as a result of foreclosure in connection with a debt previously contracted in good faith and for which the shares served as collateral; or
  - (b) through inheritance or other circumstances over which the person has no control.
- (2) In the situations described in subsection (1), the person in question must:
  - (a) inform the Bank within thirty days of the acquisition; and
  - (b) not take any action directed at influencing the management or policies of the bank, or vote any shares so acquired, unless and until such person has received the written authorisation of the Bank in accordance with this Act.

- (3) A request for authorisation under subsection (2) must be submitted within sixty days of acquisition, unless the person intends to dispose of any shares associated therewith within a given period of time, in which case such person must notify the Bank without delay.
- (4) If the Bank does not approve an application under subsection (3), the applicant must reduce such applicant's beneficial ownership in the bank to a level below significant participation, or such other level as the Bank may direct, within a time period set by the Bank.

**31. Information Requirements for Significant Participants.**

- (1) Each significant participant of a bank shall submit to the Bank:
  - (a) an annual financial statement and a list of enterprises that person controls;
  - (b) if the significant participant is an enterprise, the name of each newly appointed member of the board of directors and management, or persons holding equivalent positions, with information confirming that each such person is a fit and proper person, within ten business days after such appointment.
- (2) The Bank may, at any time, require that significant participants in banks, and enterprises that these persons control, submit information for the purpose of:
  - (a) clarifying, expanding upon, or following up on information submitted under subsection (1); or
  - (b) determining whether or not the circumstances under which the Bank's authorisation under Section 24 of this Act was given are still applicable.

**32. Restrictions on Voting and Capital Distributions Received in Contravention of this Act.**

- (1) No person shall, either personally or by proxy granted to any other person, cast a vote attached to, or receive a capital distribution payable on, any share in a bank allotted or issued to such person or registered in such person's name in contravention of this Act.
- (2) The validity of any resolution adopted by a bank shall not be affected by a vote being cast in contravention of subsection (1), if that resolution was adopted by the requisite majority of votes validly cast.
- (3) Any dividend referred to in subsection (1) shall accrue to the bank concerned.

## CHAPTER IV

### BANK SUBSIDIARIES, ASSOCIATED ENTERPRISES, BRANCHES AND REPRESENTATIVE OFFICES

#### 33. Subsidiaries of Banks.

- (1) A bank may establish or acquire a subsidiary, in South Sudan or abroad, only with the prior written approval of the Bank. The procedures and specifics of obtaining such approval shall be established by regulations of the Bank.
- (2) A bank may have only financial institutions as subsidiaries.
- (3) To obtain approval under subsection (1), a bank must submit to the Bank an application containing information prescribed by regulation of the Bank, addressing the criteria referenced in subsection (4).
- (4) The Bank shall approve or deny the application for permission within sixty days of receiving a complete application, and shall approve the application only if it is satisfied that such approval will not be detrimental to the financial system of South Sudan, or to depositors or potential depositors of the bank. In case of denial, the Bank must notify the applicant in writing of the reasons for its refusal.
- (5) The Bank may:
  - (a) attach any conditions to an approval under this section that it deems appropriate to protect the interests of depositors of the bank; and
  - (b) fix a maximum period for completing the acquisition.
- (6) Should a bank establish or acquire a subsidiary without obtaining the authorisation of the Bank, it must terminate its control of the subsidiary within a time period and in a manner prescribed by the Bank. Any sale or other transfer of beneficial ownership of the subsidiary's shares must be to persons who are not related persons of the bank as defined in this Act, unless the Bank permits otherwise.
- (7) The Bank may, by order, revoke its approval for a bank to establish or acquire a subsidiary if it determines that:
  - (a) the circumstances under which such approval was given are no longer applicable; or
  - (b) the subsidiary has engaged in criminal activities, money laundering or terrorist financing.
- (8) Before the Bank issues an order pursuant to subsection (7), it shall provide the affected bank with at least fifteen days written notice of the proposed action and an opportunity to make representations before the Bank. The procedure for submission of such representations shall be determined by the Bank.

- (9) In case the Bank issues an order under subsection (7), the bank must take the actions specified in subsection (6).

**34. Associated Enterprises of Banks.**

- (1) A bank may have only financial institutions as associated enterprises.
- (2) A bank must notify the Bank at least sixty days in advance of its intention to establish or acquire an associated enterprise in South Sudan, and must obtain the prior written approval of the Bank to establish or acquire a foreign associated enterprise.
- (3) The notification or application under subsection (2) of this must include the information and documents prescribed by the regulations of the Bank.
- (4) The Bank may prohibit the intended acquisition or establishment of an associated enterprise by a bank if, in the judgment of the Bank, it would be detrimental to the financial system of South Sudan, or to depositors or potential depositors of the bank. In this event, the Bank must notify the bank in writing of the reasons.
- (5) If no objection is received from the Bank within the sixty-day time period referred to in subsection (2), the bank may proceed with the intended acquisition or establishment of the domestic associated enterprise.
- (6) The Bank may, by order, require a bank to terminate its investment in an associated enterprise on the same grounds that are specified in Section 33(1) of this Act as applied to the associated enterprise. Section 33(8) shall apply to the procedures for issuance of such orders.

**35. Responsibilities of Banks Regarding their Subsidiaries and Associated Enterprises.**

- (1) A bank that establishes or acquires a subsidiary or associated enterprise, in South Sudan or abroad, must ensure that:
- (a) the subsidiary or associated enterprise will:
- (i) furnish the bank with all of the information necessary to allow it to meet its obligations under this Act;
- (ii) permit the Bank to perform onsite inspections and obtain any information from the subsidiary or associated enterprise as may be necessary for the Bank to perform its functions under this Act; and
- (b) the establishment or acquisition of the subsidiary or associated enterprise will not result in close links with other persons that would impair the ability of the Bank to perform its functions under this Act.
- (2) The Bank may refuse to allow a bank to establish or acquire a subsidiary or associated enterprise, and may, by order, require the termination of that relationship, if, in the opinion of the Bank, the conditions set forth in subsection (1) are not satisfied.

- (3) Each bank shall keep at its head office a copy of the current financial statements of each of its subsidiaries and associated enterprises. Such financial statements shall be available for inspection by any representative of the Bank during any onsite inspection of the bank.
- (4) Each bank must notify the Bank in writing:
  - (a) of the acquisition or establishment of a subsidiary or associated enterprise, within ten days of such acquisition or establishment;
  - (b) of its intent to dispose of a subsidiary or associated enterprise, or reduce its investment in an enterprise such that it would no longer be a subsidiary or associated enterprise of the bank, at least thirty days prior to the intended disposal or reduction;
  - (c) any actual disposal or reduction referenced in paragraph (b), within ten days following such disposal or reduction; and
  - (d) all amendments and additions to the memorandum of association and articles of association of any of its subsidiaries, within ten days following the adoption of any such amendments or additions.

**36. Bank Branches.**

- (1) A written permit from the Bank shall be required for:
  - (a) a domestic bank that wishes to establish a branch in South Sudan or abroad; and
  - (b) a non-resident bank that wishes to establish a branch in South Sudan.
- (2) An application under subsection (1) shall include information prescribed by the Bank.
- (3) The Bank shall make a decision on an application referenced in subsection (1) within sixty days of submission of a complete application, and shall approve the application only if it is satisfied that such approval would not be detrimental to the financial system of South Sudan, or to depositors or potential depositors of the bank. In case of denial, the Bank shall notify the applicant bank in writing of the reasons.
- (4) The Bank may grant a permit under this section subject to any conditions it deems appropriate to fulfil its obligations under this Act.

**37. Cooperation with Foreign Competent Authorities.**

- (1) The Bank shall consult with the appropriate foreign competent authority before approving an application:
  - (a) by a domestic bank to establish or acquire a foreign supervised financial institution as a subsidiary or associated enterprise, or to establish a foreign branch;
  - (b) by a non-resident bank to establish a branch in South Sudan.
- (2) The Bank shall approve an application referred to in subsection (1) only if:

- (a) the Bank is satisfied that the legislation and regulations of the foreign jurisdiction require, and the foreign competent authority effectively exercises, supervision on a consolidated basis; and
  - (b) an agreement of cooperation has been concluded between the Bank and the foreign competent authority, specifying the allocation of powers and responsibilities and the rules and procedures governing exchanges of information between the Bank and the foreign competent authority regarding the supervision of the subsidiary, associated enterprise or branch.
- (3) The Bank shall promptly inform the appropriate foreign competent authority of any approval under this section, and shall coordinate supervision of the subsidiary or branch with such competent authority.
- (4) If the Bank revokes its permit referred to in subsection (1), it shall immediately notify the appropriate foreign competent authority.

**38. Multiple Branches of Non-Resident Banks.**

- (1) A non-resident bank that has an operating branch in South Sudan is obliged to submit an application to the Bank, in accordance with Section 36 of this Act, prior to opening any subsequent branch in South Sudan.
- (2) At the sole discretion of the Bank, the Bank may waive the requirements of subsection (1) and Section 36 of this Act with respect to any information required in the application for a subsequent branch if, in the opinion of the Bank, it would be duplicative of information that the Bank already possesses, or if the Bank can make a decision on the application based on the information it already possesses.
- (3) A non-resident bank that has more than one branch operating in South Sudan must submit to the Bank a declaration naming one of its branches as the responsible administrative centre authorised to represent all of its other branches. All communications from the Bank relating to branch offices of such non-resident bank in South Sudan may be made to the branch office named in such declaration.

**39. Capital Equivalency Deposits.**

- (1) A non-resident bank maintaining a branch in South Sudan must maintain a deposit with the Bank, or a commercial bank approved by the Bank, in an amount the Bank deems appropriate based on the information contained in the non-resident bank's application to establish the branch in South Sudan.
- (2) Any limitations or restrictions based upon capital that apply to domestic banks shall be deemed to refer, as applied to the branch of a non-resident bank operating in South Sudan, to the capital equivalency deposit of the non-resident bank.
- (3) The capital equivalency deposit must:



- (a) be in South Sudanese Pounds or in a foreign currency approved by the Bank; and
  - (b) be free from any lien, charge, right of setoff, credit, or preference in connection with any claim against the non-resident bank.
- (4) The capital equivalency deposit may not be withdrawn without the prior written approval of the Bank.
- (5) If a non-resident bank maintains more than one branch in South Sudan, one capital equivalency deposit shall apply to all such branches on an aggregate basis. The non-resident bank shall aggregate business transacted by all such branches in determining its compliance with capital-based limitations or restrictions. The branch described in Section 38(3) of this Act shall maintain consolidated information so that the Bank can monitor compliance with such limitations and restrictions.
- (6) Each branch of a non-resident bank operating in South Sudan shall maintain a capital equivalency account and keep records of the amount of liabilities requiring capital equivalency coverage in a manner and form prescribed by the Bank.

**40. Application of this Act to Branches of Non-Resident Banks.**

Branches of non-resident banks operating in South Sudan are subject to the provisions of this Act, and regulations of the Bank, as determined to be appropriate by the Bank.

**41. Relocation of a Branch.**

- (1) A domestic bank shall notify the Bank at least thirty days in advance of its intent to relocate a domestic or foreign branch.
- (2) A non-resident bank shall notify the Bank at least thirty days in advance of its intent to relocate a branch within South Sudan.
- (3) During the process of relocating a branch in accordance with subsections (1) or (2), a bank shall provide the Bank with any information that the Bank deems necessary to fulfil its obligations under this Act.
- (4) A bank shall notify the Bank no more than ten days after the relocation of a branch referred to in subsections (1) or (2).

**42. Discontinuance of Operations of Foreign Branches in South Sudan.**

- (1) If a non-resident bank decides to close its branch in South Sudan, it shall submit to the Bank for its approval a liquidation plan guaranteeing the satisfaction of all obligations of the branch to its clients in South Sudan. The Bank shall approve or disapprove the plan within one month, and shall monitor the progress of such plan during its implementation.

- (2) The non-resident bank and branch are required to provide the Bank with information and access to the branch premises as necessary to accomplish the liquidation process.
- (3) The Bank may revoke its approval of the liquidation plan and carry out the forcible liquidation of the branch if it determines that the conditions under which it gave its approval are no longer satisfied, and in particular that the satisfaction of the branch's obligations to its clients in South Sudan is not assured. For this purpose, the provisions of Chapter XI of this Act shall apply as appropriate as determined by the Bank.

**43. Revocation of Branch Permits.**

- (1) The Bank may revoke a permit to establish a branch if:
  - (a) the branch does not commence operations within six months after the permit is approved;
  - (b) operations of the branch are discontinued for more than six months;
  - (c) in the judgment of the Bank, the circumstances under which the permit was granted are no longer applicable;
  - (d) it is discovered that the permit was based on false, misleading or incomplete information;
  - (e) the bank fails to submit information concerning the activities of the branch as required by the Bank; or
  - (f) the Bank determines that the activities or financial situation of the branch (or the non-resident bank maintaining a branch in South Sudan) pose a serious danger to the interests of the bank's depositors in South Sudan or the financial system of South Sudan.
- (2) The Bank shall revoke a permit for a non-resident bank to establish a branch in South Sudan if:
  - (a) the competent authority of the home country of the non-resident bank has revoked the bank's licence or equivalent authorisation in that country; or
  - (b) the Bank determines that the branch is, or is likely to become, incapable of meeting its obligations to its depositors.
- (3) If the Bank revokes a permit for a non-resident bank to establish a branch in South Sudan, it may:
  - (a) require the non-resident bank to adopt and adhere to a liquidation plan for the branch, acceptable to the Bank; or
  - (b) appoint a receiver to carry out the liquidation of the branch in accordance with the provisions of this Act and procedures established by the Bank.
- (4) Within five days from the date of its decision to revoke a permit to establish a branch, the Bank shall publish the decision in an official newspaper of general circulation of the country.

**44. Representative Offices of Non-Resident Banks in South Sudan.**

- (1) A non-resident bank that wishes to open a representative office in South Sudan shall notify the Bank in writing at least thirty days prior to the proposed establishment of the representative office. The notification shall contain information prescribed by the Bank.
- (2) The Bank shall confirm to the bank the receipt of such a notification. The representative office may commence its activities only after the bank has received the confirmation from the Bank.
- (3) A non-resident bank shall notify the Bank in writing:
  - (a) of its opening of a representative office in South Sudan, within ten days of such opening;
  - (b) of its intent to close a representative office in South Sudan, at least thirty days prior to the intended date of such closure; and
  - (c) of the closure of a representative office in South Sudan, within ten days of such closure.
- (4) In order to ensure compliance with this Act and regulations of the Bank, the Bank may:
  - (a) require representative offices of non-resident banks in South Sudan, or the non-resident banks maintaining such representative offices, to furnish such information as the Bank may require at such time and in such manner as the Bank may determine; and
  - (b) conduct inspections of such representative offices, in accordance with Section 97 of this Act.
- (5) If it appears to the Bank that a representative office is engaged in banking or financial business or that the affairs of a representative office are being conducted in a manner detrimental to banking or financial business in South Sudan, the Bank may, at any time, issue a written order to the representative office to take such corrective action as the Bank considers to be necessary within such period as may be specified in the order. If the representative office fails to comply with such order, the Bank may order that the affairs of the representative office in South Sudan be wound up and the office closed within such time as the Bank may direct.
- (6) The Bank shall require a non-resident bank to close its representative office in South Sudan if:
  - (a) the non-resident bank loses its licence to conduct banking operations in its home country; or
  - (b) the representative office engages in activities not permitted for representative offices of banks.

**45. Representative Offices Abroad of Domestic Banks.**

- (1) Domestic banks shall notify the Bank in writing:
  - (a) of the opening of a representative office outside South Sudan, at least ten days prior to opening such representative office;

- (b) of its intent to close a representative office outside of South Sudan, at least thirty days prior to the intended date of such closure;
  - (c) of the closure of a representative office outside South Sudan, within ten days of such closure.
- (2) The Bank shall, by order, require a domestic bank to close its representative office abroad if the representative office engages in activities not permitted for representative offices of banks.
  - (3) Before the Bank issues an order in accordance with subsection (3), it shall provide the bank concerned with at least fifteen days written notice of the proposed order and the opportunity to submit written representations to the Bank. The procedures for submission and consideration of such representations shall be determined by the Bank.
  - (4) The Bank may conduct inspections of representative offices abroad of domestic banks to ensure compliance with this Act and regulations of the Bank.

## CHAPTER V

### BANK CORPORATE GOVERNANCE

#### **46. Application of Other Legislation.**

The provisions of the other applicable legislation related to corporate governance of companies shall apply to banks, except to the extent those provisions conflict with, or are amended or supplemented by, the provisions in this Act, in which case the provisions of the Act shall apply.

#### **47. Governance Structure of Banks.**

Each bank shall have the following governance structure:

- (a) a general meeting of shareholders;
- (b) a board of directors;
- (c) senior management.

#### **48. General Meeting of Shareholders.**

- (1) The Bank, in addition to the rights of shareholders and the board of directors provided under applicable legislation, may call an extraordinary meeting of shareholders of a bank.
- (2) One or more representatives of the Bank may attend, and address, any session of the general meeting of shareholders of a bank without a right to vote.

**49. Membership of the Board of Directors.**

- (1) The board of directors of a bank shall have not less than five and not more than fifteen members.
- (2) A majority of the directors of a domestic bank shall, during the tenure of their office, be resident in South Sudan.
- (3) A majority of the members of the board of directors shall be independent members.
- (4) The board of directors shall designate one of its members to be chairman of the board of directors. The chairman shall not be a member of senior management of the bank.
- (5) Each member of the board of directors of a bank shall own shares of the bank, or the bank's parent bank holding company, in such member's individual name, in an amount determined by the bank. Members of the board of directors who own such shares may be permitted to receive all or a portion of their remuneration in the form of bank or bank holding company shares in accordance with policies approved by the board of directors.

**50. Responsibilities of the Board of Directors.**

The board of directors of a bank shall have overall responsibility for the safe and sound management of the bank, in accordance with requirements established by the Bank.

**51. Meetings of the Board of Directors.**

- (1) The board of directors shall meet regularly, at least once a month. Special meetings may be held as necessary. A special meeting shall be called if:
  - (a) the bank becomes undercapitalised;
  - (b) it is requested by the audit committee or external auditor of the bank;
  - or
  - (c) it is requested by the Bank.
- (2) Except as provided by subsection (7), a majority of the sitting members of the board of directors shall constitute a quorum for any meeting of the board.
- (3) A representative of the Bank may attend, and address, any meeting of the board of directors.
- (4) The board of directors may take valid decisions by a simple majority of the votes of its members who are present and voting, unless the bank's memorandum of association or articles of association provides for greater majorities in particular cases. Members may not abstain from voting except as permitted or required by this Act. In case of a tie vote, the chairman shall cast the deciding vote.

- (5) The board of directors shall designate an employee of the bank who is not a member of the board of directors as secretary to the board. Minutes of each meeting of the board of directors shall be kept and shall be signed by each member attending the meeting, and by the secretary.
- (6) The Bank may, by written notice, require a bank to hold a special meeting of its board of directors, at a time and place specified by the Bank, if the Bank deems it necessary, and to consider any matters set forth in such written notice.
- (7) Where a meeting of the board of directors is convened by the Bank under subsection (6):
  - (a) the quorum for the meeting shall be three directors or one third of the total number of directors whichever is greater;
  - (b) decisions shall be taken by a simple majority of those directors present at the meeting;
  - (c) any such decision shall be binding on the bank; and
  - (d) if not enough directors attend the meeting to constitute a quorum under paragraph (a), the Bank shall take appropriate action as it deems fit.

**52. Audit Committee.**

- (1) The board of directors of each bank shall establish an audit committee, which shall consist of at least three independent members of the board of directors.
- (2) None of the members of the audit committee may be members of the senior management or employees of the bank or an enterprise in the same group as the bank.
- (3) At least one member of the audit committee shall have expertise in banking, accounting, or financial management.
- (4) The duties and responsibilities of the audit committee shall be established by the articles of association of the bank, in accordance with regulations or guidelines of the Bank.

**53. Risk Management Committee.**

- (1) The board of directors of each bank shall establish a risk management committee consisting of at least three members of the board of directors. The duties and responsibilities of the risk management committee shall be determined by the bank's articles of association, in accordance with regulations or guidelines of the Bank.
- (2) The board of directors of a bank may assign some or all of the functions of the risk management committee to the audit committee.

**54. Exceptions to Requirements to Establish Committees.**

The Bank may, by regulation or guideline, exempt banks with boards of directors consisting of five members from the requirements of Sections 52 or 53 of this Act, under conditions deemed fit by the Bank.

**55. Other Committees of the Board of Directors.**

- (1) The board of directors may establish other committees as it deems appropriate.
- (2) Minutes of each meeting of each committee of the board of directors shall be kept and shall be signed by the person chairing the meeting.

**56. Senior Management.**

- (1) The senior management of a bank shall be appointed and dismissed by the bank's board of directors and shall be responsible for the management and execution of the bank's activities, in accordance with policies approved by the board of directors.
- (2) The senior management of a bank shall consist of at least three members, as provided for in the articles of association of the bank in accordance with guidelines established by the Bank.

**57. Qualifications for Members of the Board of Directors and Senior Management.**

A member of the board of directors or senior management of a bank must:

- (a) be a fit and proper person; and
- (b) not be an employee of a public authority other than in a teaching capacity.

**58. Fiduciary Duties.**

- (1) In addition to the fiduciary duties provided in applicable legislation concerning companies, members of the board of directors and senior management must:
  - (a) perform their duties honestly and in good faith with a view to the best interests of the bank;
  - (b) exercise such care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; and
  - (c) act independently, free from undue influence of any other person, and avoid conflicts of interest between the bank's interests and their own personal or business interests.
- (2) Members of the board of directors and senior management are personally liable for damage caused to the bank for violations of the duties referred to in subsection (1).
- (3) In the event of violations of the duties referred to in subsection (1) by members of the board of directors and senior management resulting in losses

to a bank, the shareholders of the bank shall have right to bring a derivative action on behalf of the bank against such persons seeking compensation for such losses to the bank, in accordance with the procedures set forth in applicable legislation. In addition, the Bank may require such persons to compensate the bank through the issuance of an order under Section 115 of this Act.

**59. Risk Management and Internal Controls.**

- (1) Each bank must have a comprehensive system for identification, measurement, monitoring and control of all risks to which the bank is exposed. The system shall be approved by the board of directors.
- (2) Each bank shall have internal controls and information systems that are appropriate for the size of the bank and the nature, scope, and risk of its activities.
- (3) The bank's system of internal controls shall be approved by the board of directors, and shall be subject to periodic assessment by the bank's internal audit function.

**60. Internal Audit Function.**

- (1) Each bank shall establish an independent internal audit function, the duties and responsibilities of which shall be specified in the bank's articles of association in accordance with regulations or guidelines of the Bank.
- (2) The internal audit function shall report to the audit committee, or if there is no such committee, to the full board of directors. It shall operate pursuant to policies approved by the board of directors.
- (3) The director of the internal audit function shall be appointed to and removed from office by the board of directors of the bank.
- (4) The director and employees of the internal audit function must be fit and proper persons.

**61. Disclosure of Commercial Interests.**

- (1) In addition to the disclosure requirements of directors provided in applicable legislation concerning companies, each member of the board of directors and the senior management shall disclose in full to the board of directors, or a committee designated by the board of directors, the significant commercial interests that such person, or members of such person's household have, directly or indirectly. Such disclosures shall be made annually in accordance with guidelines adopted by the board of directors.
- (2) Whenever any matter related to business interests of a member of the board of directors or the senior management, or any committee with decision making authority, comes up for discussion, the member concerned shall provide



complete information at the beginning of the discussion, shall not participate in the discussion and such member's presence shall not be counted as necessary for the purpose of constituting a quorum.

**62. Secrecy Obligations.**

Present and past members of the board of directors and senior management and employees of a bank shall be required to keep secret, not to use for personal gain and not to permit to be examined by others unless required by law, any information that they obtained in the course of their services to the bank. Such information may be disclosed to:

- (a) the officers, staff and agents of the Bank, including the inspectors, auditors, conservators and experts appointed by the Bank in accordance with this Act;
- (b) other state authorities, and to judicial and justice departments assigned in accordance with the law or by a competent court; and
- (c) a private credit bureau or public credit registry, if such bureau or registry has been duly authorised by the Bank to receive such information.

**CHAPTER VI**

**ACTIVITIES AND OPERATIONAL REQUIREMENTS OF BANKS**

**63. Banking Activities.**

- (1) Commercial banks may engage in the following activities:
  - (a) acceptance of any type of deposits from enterprises and physical persons;
  - (b) extending credits, including:
    - (i) consumer and mortgage credit;
    - (ii) financing of commercial transactions;
    - (iii) factoring, with or without recourse; and
    - (iv) financial leasing services;
  - (c) provision of foreign exchange facilities;
  - (d) acceptance and discounting of bills of exchange;
  - (e) provision of financial and investment advice, including portfolio management, investment advisory services and nominee services;
  - (f) participation in inter-bank clearing systems;
  - (g) issuing guarantees, bonds or letters of credit;
  - (h) issuing electronic money;
  - (i) safekeeping and custody operations; and
  - (j) acceptance and placement of third party drafts and promissory notes connected with operations in which they take part.
- (2) Merchant banks may engage in:
  - (a) acceptance of demand and time deposits from enterprises;

- (b) extending credits referenced in paragraphs (ii) through (iv) of subsection (1);
  - (c) provision of foreign exchange facilities;
  - (d) facilitation of domestic and international trade through the granting of acceptance facilities;
  - (e) provision of corporate financial advisory services through:
    - (i) shares issues;
    - (ii) rights issues;
    - (iii) mergers and acquisitions and corporate reconstruction; and
    - (iv) private placements;but excluding underwriting of equity securities;
  - (f) issuance of bonds, debt obligations, guarantees, or letters of credit and certificates in such loans as they may grant or similar instruments traded in the domestic or international markets, according to regulations of the Bank;
  - (g) provision of financial and investment advice, including portfolio management, investment advisory services and nominee services;
  - (h) participation in inter-bank clearing systems; and
  - (i) issuing electronic money.
- (3) Mortgage banks may engage in:
- (a) acceptance of any type of deposits from enterprises and physical persons;
  - (b) extending credits, provided that no mortgage bank shall advance or have outstanding at any time more than twenty-five percent of all its loans for a purpose other than the acquisition, construction, enlargement, repair, improvement and maintenance of urban or rural real estate and for the substitution of mortgages taken out for that purpose; and
  - (c) provision of guarantees, bonds or other forms of collateral connected with the operations in which they may take part and acting as an intermediary in loans extended in local and foreign currency.
- (4) Savings banks may engage in:
- (a) acceptance of savings and time deposits from physical persons; and
  - (b) investments in Government and Bank securities.
- (5) The activities referenced in subsections (1) through (4) must be conducted in a sound and prudent manner and in accordance with the requirements of the law, any conditions or restrictions attached to a bank's banking licence, approvals issued by the Bank, and regulations, guidelines and orders issued by the Bank.
- (6) Domestic banks must conduct their operations in South Sudan, except as permitted by provisions of this Act pertaining to branch offices, representative offices and subsidiaries abroad. No bank shall move all or any part of its administration, operations, books or records outside of South Sudan without the prior written consent of the Bank.

**64. Prohibited Activities.**

- (1) Except as permitted by this section, no bank shall engage, directly or indirectly through one or more subsidiaries or associated enterprises, or as an agent or general partner, in wholesale or retail trade, manufacturing, transportation, agriculture or fisheries, mining, building, or other business activities, except for activities that are authorised by Section 63 of this Act.
- (2) With the prior written authorisation of the Bank, a bank may carry on or participate in the carrying on of activities referenced in subsection (1) for a period of not more than five years, to the extent necessary to obtain satisfaction of claims. The Bank may require the bank to cease such activities by a date specified.
- (3) Not more than two extensions of the initial five-year period referenced in subsection (2) may be granted by the Bank, for not longer than one year apiece.

**65. Capital Requirements.**

- (1) Every person proposing to transact financial institution business in the capacity of a bank shall have a minimum paid-up cash capital as determined by regulation, which shall be invested initially in such liquid assets in South Sudan as the Bank may approve.
- (2) Each bank shall ensure that the value of its regulatory capital is equivalent to not less than twelve percent of the total value of its assets determined on a risk-adjusted basis, or such higher percentage as specified by regulations issued by the Bank, whereby not less than one-half of regulatory capital shall consist of core capital.
- (3) The Bank may, by regulation, require that banks maintain a specified leverage ratio. The leverage ratio shall be determined by the Bank, but shall not be lower than four percent.
- (4) The Bank may, if it considers it appropriate in the particular circumstances of a bank, and having regard to the risks arising from the activities of the bank and such other factors as the Bank considers relevant, increase the risk-adjusted regulatory capital or leverage ratio requirements applicable to that bank.
- (5) No bank shall repurchase any of its own shares or engage in a capital distribution without the prior written authorisation from the Bank.
- (6) No bank may increase its capital by issuing shares in exchange for assets other than cash or cash equivalents.

**66. Liquidity.**

- (1) Each bank shall maintain a minimum amount of liquid assets as may be prescribed by regulation of the Bank from time to time, having regard to the risks arising from the activities of the bank and such other factors as the Bank considers relevant.
- (2) The Bank may, if it considers it appropriate in the particular circumstances of a bank, and having regard to the risks arising from the activities of the bank and such other factors as the Bank considers relevant, increase the liquidity ratio applicable to that bank.

**67. Classification of Assets and Provisioning for Losses.**

- (1) Each bank shall value its assets on a regular basis and use all measures in compliance with the principles of sound banking management and law to collect claims.
- (2) Banks are required to value all claims on the basis of the likelihood of payment thereof. Claims on which the full or partial payment is unlikely shall be written off to the extent it is unlikely to be paid.
- (3) Each bank shall periodically form reserves for the coverage of losses arising from loans and similar claims and other assets, as well as from assumed off-balance sheet contingent liabilities.
- (4) The procedures for the valuation, assessment of the quality, and classification of loans, similar claims, other assets and off-balance sheet contingent liabilities, and the method of calculating reserves based on such classifications, shall be established by regulations of the Bank.

**68. Reserves to Cover General Banking Risks.**

- (1) Each bank shall form reserves in order to cover possible losses arising from general risks involved in conducting its activities.
- (2) The size of the reserves referred to in this section and the procedure for the formation, maintenance and use of the reserves shall be established by regulation of the Bank. The Bank may stipulate higher obligatory reserves for general banking risks for banks that, in the opinion of the Bank, conduct risky business operations or that show an unusually high increase in their exposure to various types of risks.

**69. Foreign Exchange Position.**

- (1) The overall net foreign exchange position of a bank shall not exceed a percentage of the core capital of the bank as determined by regulations of the Bank.

- (2) The methods for calculating net open currency positions, the overall net foreign exchange position and the limitations on net open currency positions shall be established by regulations of the Bank.

**70. Limitation on Fixed Assets.**

- (1) Except as provided by subsection (2), no bank shall purchase or acquire any fixed assets, or any right therein, except as may be reasonably necessary for the purpose of conducting its business or of housing or providing amenities for its staff, in which case the cost of the property, in aggregate, shall not exceed one hundred percent of the bank's core capital.
- (2) A bank may secure a debt on any immovable property and, in case of default of payment of the debt, may foreclose and take possession of the immovable property in accordance with law. Any such immovable property so acquired must be disposed of within a time period prescribed by the Bank.

**71. Large Exposures.**

- (1) Subject to subsection (2), no bank may incur or have outstanding any exposure to a single person, or to a group of related persons, amounting to more than twenty-five percent of its core capital. In the case of exposures to related persons of a bank, the limitations of Section 72 (6) of this Act are applicable.
- (2) The Bank may, by regulation, create exceptions from the limitation of subsection (1), subject to any conditions or limitations that the Bank may prescribe for certain low-risk assets or counterparties.
- (3) For purposes of this section, a group of related persons shall mean two or more persons that are:
  - (a) related through a control relationship; or
  - (b) so interconnected that if one of them experiences financial difficulties, another one or all of them are likely to experience financial difficulties as well.
- (4) The Bank shall prescribe in its regulations the circumstances in which the conditions specified in subsection (3) are considered to exist.
- (5) No bank shall have large exposures exceeding, in the aggregate, eight hundred percent of its core capital.
- (6) All large exposures of a bank shall be reported to the Bank on a quarterly basis.
- (7) A bank must notify the Bank in writing within five business days if the limitations of this section are exceeded.
- (8) All banks must maintain internal controls and a central exposure ledger to ensure compliance with the requirements of this section.

**72. Requirements for Transactions with Related Persons.**

- (1) A bank may not undertake any transaction with any of its related persons unless it has the prior written approval of a majority of the bank's board of directors. The board's decision must be based on full disclosure of all material terms and conditions of the transaction. The minutes of the board's decision must contain a determination by the board of directors that the transaction is fair to, and in the best interest of, the bank. The bank must maintain a written record of such approval, including the names of those members of the board of directors approving the transaction.
- (2) A member of a bank's board of directors shall not participate in the consideration or approval of any transaction between the bank and:
  - (a) such member;
  - (b) any close relatives of such member; or
  - (c) any enterprise in which such member or any close relatives of such member has a significant participation, or serves as a member of the board of directors, member of senior management, or in any equivalent position.
- (3) The requirements of subsection (1) do not apply to:
  - (a) deposits in the bank made by its related persons in the normal course of business;
  - (b) making deposits in a bank that is a member of the same group, in the ordinary course of correspondent business, subject to any restrictions that the Bank may prescribe by regulation or order;
  - (c) granting credit fully secured by a deposit account in the bank granting the credit and meeting conditions prescribed by the Bank;
  - (d) granting credit fully secured by obligations of, or guaranteed as to principal and interest by, a central government or central bank whose long-term rating is not lower than "A," or an equivalent level by an internationally-recognised rating agency whose ratings are approved for use by the Bank; and
  - (e) selling a loan to a related person of the bank without recourse.
- (4) Credit by a bank to members of its board of directors or senior management may only be granted in accordance with regulations or guidelines prescribed by the Bank.
- (5) Outstanding credit to related persons of a bank must not exceed the following aggregate limits:
  - (a) five percent of the core capital of the bank, in the case of credits to any related person of the bank, close relatives of that person, and enterprises in which that person or any of that person's close relatives has a twenty percent participation;
  - (b) twenty-five percent of the core capital of the bank to all related persons of that bank combined.

- (6) Every transaction by a bank with a related person of that bank shall be promptly reported to the board of directors of the bank or a designated committee thereof, except for transactions described in subsection (3).
- (7) If credit has been provided by the bank to the related person in violation of the provisions of this section or Section 73 of this Act, such credit must be immediately repaid. Members of the board of directors and senior management shall be personally liable, jointly and severally, for payment of principal of, and interest and other charges on, any such credit granted with their knowledge and without their objection.
- (8) For purposes of this section and Section 73 of this Act, a transaction will be deemed to be a transaction with a related person to the extent that proceeds of the transaction are transferred to, or used for the benefit of, that related person.

**73. Prohibited Transactions with Related Persons.**

- (1) A bank may not engage in any transaction with a related person on more favourable terms or conditions than to persons who are not related to the bank.
- (2) A bank may not purchase a low quality asset, as defined by the Bank, from a related person, or accept a low quality asset as collateral for a loan to a related person.
- (3) A bank shall not grant credit to any person where the proceeds are to be used to:
  - (a) pay an obligation to a related person of the bank;
  - (b) purchase an asset from a related person of the bank; or
  - (c) invest in the business of a related person of the bank.
- (4) If a bank enters into a transaction in violation of the requirements of this section or Section 72 of this Act, it must deduct the outstanding amount of any outstanding exposure to, or for the benefit of, the related person when computing the on-going capital requirements of the bank.

**74. Reports of Transactions with Related Persons.**

- (1) Each bank must submit a quarterly report to the Bank on all outstanding transactions with its related persons, except for those transactions specified in Section 72(3) of this Act, including those undertaken or completed since its previous report. Such reports must include, at a minimum, the name of the related person in question, the amount of the transaction, and a summary of its terms and conditions.
- (2) The Bank may require more frequent reporting of transactions by banks with their related persons, and may require the reporting of information beyond that specified in subsection (1) pertaining to such transactions. Such reporting may be required from individual banks on a case-by-case basis via written notification to the bank or banks in question, or from all banks, or certain categories of banks, via regulation.

- (3) Each bank must maintain internal controls and records to ensure compliance with the requirements of this section and Sections 72 and 73 of this Act.

**75. Prohibition on Credit to Purchase Bank or Bank Holding Company Shares.**

No bank shall grant credit to any person for the purpose of purchasing shares in that bank or its parent bank holding company, or knowing that the proceeds of such credit will be used directly or indirectly for such purpose.

**76. Investments by Banks in Other Enterprises.**

- (1) All banks must ensure that they have in place the necessary policies and procedures, as well as the financial and managerial capability, to undertake and monitor investments in other enterprises.
- (2) A bank must obtain the prior written authorisation of the Bank before making any equity investment that would exceed:
- (a) fifteen percent of the core capital of the bank in any single enterprise; or
  - (b) sixty percent of the core capital of the bank in all enterprises in the aggregate.
- (3) The procedures and criteria for applying for the authorisation referenced in subsection (2) shall be established by the Bank. The Bank shall make a decision on an application for such authorisation within sixty days of receipt of a complete application, and may give its authorisation subject to any conditions it deems appropriate or necessary to fulfil its obligations under this Act.
- (4) The limitations in subsection (2) or (3) do not apply to:
- (a) securities purchased by a bank subsidiary acting as a securities underwriter;
  - (b) securities held temporarily during a financial transaction or rescue operation;
  - (c) securities taken by a bank as a result of foreclosure on a debt; or
  - (d) securities held by a bank in its own name on behalf of others in trust.
- (5) Securities referred to in paragraphs (4) (a) through (4) (c) must be disposed of within one year of their acquisition, or such longer period as may be approved in writing by the Bank for good cause shown.
- (6) A bank may not have a significant participation in any enterprise that is not a financial institution.
- (7) If a bank acquires an investment without the prior written authorisation of the Bank as required by subsection (2), the bank shall be ordered by the Bank, in writing before a date stated in the order, to dispose of the investment or any part of the investment as determined by the Bank.



- (8) The Bank may revoke an authorisation under subsection (2) and require a bank to dispose of all or any part of the relevant investment if it determines that:
  - (a) the circumstances under which the authorisation was given are no longer applicable; or
  - (b) the investment would threaten the financial stability of the bank or endanger the interests of the bank's depositors.
- (9) The procedures of Section 120 of this Act shall apply to orders issued by the Bank pursuant to subsection (7) and to decisions by the Bank to revoke an authorisation pursuant to subsection (8).

**77. Customer Identification.**

- (1) No bank shall maintain accounts on its books or provide services to undisclosed persons.
- (2) Each bank shall:
  - (a) register the identity of each person who opens an account in the bank or otherwise uses the bank for activities, including transfers of funds or securities, securities transactions, or the negotiation of payment instruments, or such other activities as the Bank shall specify in its regulations;
  - (b) require each such person to provide adequate information to the bank about the identity of any other person who is a beneficiary of such account or for whose account such activities are conducted; and
  - (c) register the identity of each such beneficiary or other person and shall maintain proof of the identity of the persons so registered.

**78. Prohibition on Banking Services in Support of Crime.**

- (1) No bank shall maintain an account on its books or provide services to or for the benefit of a person if the bank knows, or has reasonable grounds to suspect, that such account or services would support, or aid in the furtherance or perpetration of, any criminal activity, money laundering or terrorist financing.
- (2) Each bank shall report to the Bank and the applicable law enforcement agencies in South Sudan no later than the end of the next business day following any request or instruction to the bank by any person to maintain such account or to provide such services.

**79. Freezing of Accounts.**

- (1) The Bank shall, if it has reason to believe that any account held in any bank has funds on the account that are the proceeds of crime, issue a written instruction to such bank to freeze the account, pending further instructions from the Bank.
- (2) A bank that acts in compliance with an instruction under subsection (1) shall incur no liability solely as a result of that action.

**80. Prohibition on Relationships with Shell Banks.**

No bank operating in South Sudan, whether a domestic bank or via a branch of a non-resident bank, shall:

- (a) enter into a correspondent relationship with a shell bank, or with any bank that it has reason to know allows its accounts to be used by a shell bank; or
- (b) continue any such relationship on or after the effective date of this Act.

**81. Requirements for Correspondent Banking Relationships.**

Any domestic bank or branch of a non-resident bank operating in South Sudan that proposes to enter into, or continue, a correspondent relationship with a respondent non-resident bank must adhere to requirements established by the Bank relating to such relationships.

**82. Dormant Accounts.**

- (1) During January of each year, each bank shall:
  - (a) provide written notification to the holder of each dormant account of particulars of the dormant account, and advise such person of the right to claim the funds in the account within a period of thirty days following the date of the notice, and of the procedure referenced in subsections (2) and (3) if no such claim is made; and
  - (b) publish in at least one local newspaper the name of the account holder and the particulars of the dormant account.
- (2) If, after the thirty day period referenced in subsection (1), the account holder has not claimed the funds in the dormant account or cannot be located, the bank shall notify the Bank in writing and shall turn over the amount on deposit in the dormant account to the Bank, to be held in a special account at the Bank. The Bank may use the funds in such special account for such purposes as it may deem fit.
- (3) For a period of ten years following the date of transfer by the bank of the amount referenced in subsection (2) to the Bank, any person who furnishes to the Bank satisfactory proof of ownership is entitled to the immediate repayment by the Bank of the amounts so transferred. After expiration of such period, any remaining unclaimed amounts shall be transferred to the Ministry of Finance and Economic Planning for inclusion in the revenues of the Government.

## CHAPTER VII

### FINANCIAL STATEMENTS, ACCOUNTING AND AUDITS

#### 83. Financial Year.

The financial year of every bank shall be the period of twelve months ending on the 31<sup>st</sup> December in each calendar year.

#### 84. Financial Statements and Records.

- (1) Each bank shall, at all times, keep financial ledgers and other financial records that will:
  - (a) show a complete, true and fair state of its affairs; and
  - (b) explain its transactions and financial position to enable the Bank to determine whether the bank has complied, and continues to comply, with:
    - (i) this Act;
    - (ii) the Companies Act;
    - (iii) International Accounting Standards, including International Financial Reporting Standards; and
    - (iv) such other requirements as the Bank may prescribe.
- (2) The financial ledgers and other financial records to which this section applies shall be kept in South Sudan and shall comply with the requirements of:
- (3) All accounting entries in financial ledgers and all financial records to be kept by a bank shall be kept and recorded in the English language using the system of numerals employed in Government accounts.
- (4) A bank shall preserve the financial ledgers and other financial records referred to in this section for a period of not less than ten years.
- (5) For the purposes of this section, “financial records” include any book, computer record, report, statement or document relating to the business affairs, transactions, and property of a bank.
- (6) Every bank shall maintain within South Sudan such nonfinancial records as are necessary:
  - (a) to reveal clearly and correctly the state of its business affairs and financial condition; and
  - (b) to explain its transactions so as to enable the Bank to determine whether the bank has complied with this Act.
- (7) Each bank, its directors, senior management, employees and agents shall take reasonable precaution to:
  - (a) prevent loss or destruction of,
  - (b) prevent the falsification of the entries in,
  - (c) facilitate the detection and correction of inaccuracies in, and

- (d) ensure that unauthorised persons do not have access to or use of information in, the financial statements, registers and records required or authorised by this Act to be prepared and maintained.
- (8) No person shall, with intent to deceive or mislead in any financial ledger, record, report, statement or other document relating to the business affairs, transactions, property, assets, liabilities or accounts of a bank:
  - (a) make a false entry knowing the entry to be false, or cause such an entry to be made;
  - (b) omit an entry or cause an entry to be omitted; or
  - (c) alter, abstract, conceal, remove or destroy an entry, or cause an entry to be altered, abstracted, concealed, removed or destroyed.
- (9) Any person who contravenes the provisions of subsection (8) commits an offence and is liable on conviction to a fine not exceeding three thousand South Sudanese Pounds, or imprisonment not exceeding one year, or both.
- (10) A bank shall indicate in its profit and loss account any civil penalty levied against it under this Act.

**85. Appointment of External Auditors.**

- (1) Each bank shall appoint annually an external auditor approved by the Bank, whose duty shall be to:
  - (a) prepare and present to the board of directors of the bank a report and audit opinion as to whether the financial statements present a full and fair view of the financial condition of the bank in accordance with the provisions of this Act;
  - (b) advise the bank on maintaining proper accounting systems and procedures; and
  - (c) advise the bank on the effectiveness of its internal controls and risk management systems and procedures.
- (2) If a bank fails to appoint an approved external auditor under subsection (1), or to fill any vacancy for an external auditor that may arise, the Bank may appoint an external auditor and fix the remuneration to be paid by the bank to that external auditor.
- (3) No bank shall appoint the same external auditor for more than three consecutive years without the written approval of the Bank.
- (4) The same audit firm may simultaneously audit two or more banks not part of the same group of enterprises, in accordance with guidelines prescribed by the Bank.
- (5) The Bank may require an external auditor to undertake any of the following duties, in addition to those referenced under subsection (1), with remuneration paid by the bank concerned:

- (a) to submit such additional information in relation to its audit as the Bank may consider necessary;
  - (b) to carry out any other special investigation; and
  - (c) to submit a report on any of the matters referred to in paragraphs (a) and (b).
- (6) The external auditor for a bank shall abide by such accounting standards and systems as the Bank may prescribe.

**86. Audits of Subsidiaries and Associated Enterprises of Banks.**

- (1) If a bank has one or more subsidiaries or associated enterprises, the annual external audit of the bank must include those enterprises on a consolidated basis with the bank as prescribed by International Accounting Standards and International Financial Reporting Standards. Each such subsidiary or associated enterprise must also be audited on a stand-alone basis. The same external auditor must perform the audit of the bank and all of its subsidiaries and associated enterprises.
- (2) By way of an exception to subsection (1), with the written approval of the Bank, a subsidiary or associated enterprise need not be included in the external audit of a bank if:
- (a) such subsidiary or associated enterprise generated less than five percent of the revenue of bank during the most recently completed financial year;
  - (b) such subsidiary or associated enterprise accounts for less than five percent of the consolidated assets of the bank; or
  - (c) in the opinion of the Bank, the inclusion of the subsidiary or associated enterprise in the audit would distort the actual financial and economic situation of the group.

**87. Audits of Branches of Non-Resident Banks.**

Each non-resident bank with one or more branch offices in South Sudan shall observe the requirements of this Chapter and shall prepare separate accounts and records and pro forma financial statements for each such branch.

**88. Qualifications and Independence of Auditors.**

An external auditor appointed to perform an audit of a bank under this Act must meet requirements prescribed by the Bank and legislation of South Sudan relative to qualifications and independence.

**89. Changes in Auditors.**

- (1) No bank shall dismiss or change its external auditor except with the prior written approval of the Bank.
- (2) An external auditor for a bank shall give prompt written notice to the Bank if such auditor:
- (a) resigns as auditor of a bank;

- (b) does not seek to be re-appointed as external auditor of a bank; or
  - (c) is notified by a bank of such bank's intent to dismiss the external auditor.
- (3) If an external auditor of a bank has resigned or been dismissed, no other external auditor shall accept an appointment as auditor of the bank, or consent to such appointment, until such external auditor has requested and received from the first external auditor a written statement of the circumstances and reasons as to why the first external auditor resigned or why, in the first external auditor's opinion, the dismissal occurred.
- (4) Subsection (3) does not apply if no reply from the first external auditor is received within fifteen days after a request under that subsection is made. In that event, the external auditor may accept the appointment after providing the Bank with written notification of the circumstances.
- (5) Unless subsection (4) applies, an appointment of a new external auditor for a bank is void if subsection (3) has not been complied with.

**90. External Auditor's Duty of Notification to the Bank of South Sudan.**

- (1) An external auditor must notify the Bank without delay of:
- (a) any act by any member of the board of directors or senior management, or any shareholder, significant participant, employee or agent of the bank that constitutes fraud, embezzlement, or a material violation of a provision of this Act or any regulation issued by the Bank;
  - (b) any situation that results in a material loss for the bank or could endanger its continued operation; or
  - (c) any matter that would, in the judgment of the external auditor, cause the external auditor's report to be qualified.
- (2) Disclosure to the Bank of any of the facts referred to in subsection (1) made by an external auditor shall not be considered a violation of any legal provisions regarding banking secrecy or confidentiality of information, and the external auditor shall not bear responsibility of any kind that would otherwise arise in such circumstances.

**91. Contacts between the Bank of South Sudan and External Auditors.**

- (1) The Bank shall periodically, and at least once a year, arrange trilateral meetings with each bank, or branch of a non-resident bank operating in South Sudan, and its external auditor to discuss matters relevant to the Bank's supervisory responsibilities that arise in the course of the audit of the bank.
- (2) The Bank may, if it considers it desirable or necessary in the performance of its functions under this Act, arrange bilateral meetings with external auditors of banks or branches of non-resident banks operating in South Sudan.

- (3) The Bank may review, and obtain copies of, the external auditor's related working papers in connection with any audit performed under this Act, and may require an external auditor to provide additional explanations concerning the conducted audit.

**92. Publication of Financial Statements and Reports.**

- (1) The board of directors of each domestic bank shall, not later than three months after the end of each financial year, submit to its general meeting of shareholders:
  - (a) its audited consolidated financial statements, together with the report of its external auditors for that financial year;
  - (b) a report on the bank's corporate governance system for that financial year, which shall address any items relative thereto as shall be prescribed by the Bank; and
  - (c) a report disclosing, for the most recently concluded financial year:
    - (i) the name of every significant participant in the bank;
    - (ii) the number and the aggregate amount of large exposures incurred or outstanding by the bank;
    - (iii) any transactions with related persons of the bank; and
    - (iv) the range of interest rates and performance status of such related person transactions.
- (2) Each domestic bank shall, within fifteen days after the general meeting of the bank's shareholders approves the audited financial statements referred to in subsection (1):
  - (a) provide such financial statements, external auditor's report, and corporate governance report referred to in subsection (1) to the Bank; and
  - (b) publish such statements and reports in at least two official newspapers of general circulation in South Sudan and on its website.
- (3) Each domestic bank shall:
  - (a) exhibit the financial statements and reports referred to in subsection (1) in a conspicuous place in each of its offices and branches, in South Sudan or abroad, and keep them so exhibited and posted on its website throughout the following twelve months;
  - (b) provide copies of such financial statements and reports to any person requesting such copies. The bank may charge reasonable fees, not exceeding the administrative costs incurred in producing such copies.
- (4) Each non-resident bank with one or more domestic branch offices in South Sudan shall:
  - (a) submit to the Bank its audited financial statements prepared on a consolidated basis as well as pro forma financial statements for its branch offices in South Sudan, together with external audit reports, for the most recently completed financial year, no later than the date when such statements and reports for the non-resident bank as a whole are submitted to the non-resident bank's home country competent authority;

- (b) publish such statements and reports in at least two official newspapers of general circulation in South Sudan, and on its website, within fifteen days of their submission to the Bank;
- (c) exhibit such statements and reports in a conspicuous place in each of its branch offices in South Sudan throughout the current financial year; and
- (d) make copies of such statements or reports available to any person in South Sudan requesting such copies. The bank may charge reasonable fees, not exceeding the administrative costs incurred in producing such copies.

**93. Correction of Errors or Misleading Information.**

- (1) If a material error becomes evident in any financial statement or report that has been published under this section, the bank shall promptly notify the Bank of the error and a corrected report shall be issued and published.
- (2) If the Bank determines that any financial statement or report of a bank referenced in this Chapter does not comply with the requirements of this Act or contains information that may be misleading in any way, or is not published in the form and with the contents specified by this Act, the Bank may require the bank concerned to:
  - (a) amend or correct any such statement or report, or any misleading information in any such statement or report, to comply with this Act or any other additional requirements that the Bank may prescribe;
  - (b) re-publish the amended or corrected financial statement or report; or
  - (c) submit to the Bank any further documents or information or explanations relating to any such statement or report.

**94. Special Audits.**

- (1) The Bank, in consideration of the public interest, or the interests of a bank, or its depositors, may appoint an external auditor to audit the accounts of the bank with respect to any specific operation or operations. The external auditor shall prepare a report based on the special audit for the Bank and provide a copy to the bank.
- (2) The bank concerned shall bear the costs of the audit referenced in subsection (1).
- (3) The external auditor appointed under subsection (1) shall have all of the powers pertaining to requiring documents and books, and be subject to the same obligations, in the same way as an external auditor appointed by the bank under this Act.



## CHAPTER VIII

### REPORTS AND INSPECTIONS

#### 95. Reporting by Banks.

- (1) Each domestic bank, and each domestic branch and representative office of a non-resident bank operating in South Sudan, must prepare and provide to the Bank reports relating to its financial and administrative affairs in accordance with internationally accepted supervisory and statistical standards and practices.
- (2) The reports referenced in subsection (1) shall contain such information, be prepared in such form and detail, and be submitted at such times as shall be prescribed by the regulations of the Bank.

#### 96. Compilation of Statistical Information.

- (1) The Bank shall compile and aggregate statistical information received from banks as required to meet its policy needs for the public, and to fulfil obligations to international organisations. Banks and other financial institutions and agents, as well as any other firm or organisation that is involved in the granting of credit, shall be obligated to prepare and provide to the Bank, or another organisation authorised by the Bank, information on specific transactions, individuals, or firms that are needed, and compilation of statistics concerning its supervisory, policy, and statistical functions.
- (2) The Bank is prohibited from disseminating to the public statistical information and data that reveal the identity of individual persons or firms, unless already in the public domain or for carrying out the functions of a private credit bureau or public credit registry. Otherwise, the perpetrator shall be punished in accordance with law.
- (3) The Bank may provide information mentioned in subsection (2) to supervisors or other authorities for the execution of supervisory duties, if such supervisors and authorities are authorised in accordance with the laws or regulations on confidentiality of banking and financial records to receive such information.

#### 97. Inspections.

- (1) Each domestic bank and each of its subsidiaries and associated enterprises, as well as branch offices and representative offices of non-resident banks operating in South Sudan, shall be subject to inspections by inspectors of the Bank or by auditors appointed by the Bank, at such times as the Bank may deem appropriate.
- (2) In the case of foreign subsidiaries and associated enterprises of domestic banks, or branch offices and representative offices of non-resident banks operating in South Sudan, such inspectors or auditors referenced in subsection

- (1) may include persons appointed by the relevant foreign competent authority, as agreed between the Bank and such foreign competent authority.
- (3) In their inspections pursuant to subsections (2) and (3), persons appointed by the Bank are authorised:
- (a) to enter any office of the bank, subsidiary, associated enterprise, branch or representative office concerned, and to examine there the accounts, books, documents and other records of such bank, subsidiary, associated enterprise, branch or representative office; and
  - (b) to obtain from members of the board of directors and senior management, employees and agents of any such bank, subsidiary or associated enterprise, or from the management of any such branch or representative office, information on any matter relating to the administration and operations of the bank, subsidiary, associated enterprise, branch or representative office.
- (4) Each member of the board of directors and senior management, and all employees and agents of any bank, subsidiary, or associated enterprise, and all managers, employees and agents of any branch or representative office subject to inspection under this section, shall present for inspection all books, records, accounts and documents under their custody or control, and to furnish the person conducting the inspection with such data and information about the bank, subsidiary, associated enterprise, branch or representative office as the inspector may require, within such period may be specified.
- (5) A person authorised to conduct an inspection under this section may require from any person referenced in subsection (4) a signed, written declaration concerning any fact, financial position or document that pertains to such inspection.
- (6) The Bank may, if necessary, enlist the assistance of law enforcement officials, by the use of force if necessary, to gain access to the accounts, books and other records of such bank, subsidiary, associated enterprise, branch or representative office to examine them. Law enforcement officials shall cooperate with the Bank as needed in such efforts.
- (7) The Bank shall not be authorised to carry out inspections or to prepare reports or provide information at the request of other public bodies, except when requested by foreign bank regulators in connection with cooperation agreements referenced in this Act, or otherwise provided in this Act ordered by a competent court.
- (8) The Bank shall send a report of the inspection to the concerned bank, subsidiary, associated enterprise, branch or representative office within three months following completion of the inspection.
- (9) Without prejudice to the application of any cooperation agreement that may exist with the supervisory authority of the country of origin, inspectors from the supervisory authority of a foreign country may exercise their functions in

South Sudan with regard to the branches, representative offices, subsidiaries and associated enterprises of their banks operating in South Sudan upon prior written notification to the Bank.

## CHAPTER IX

### CONSOLIDATED SUPERVISION

#### **98. Transparency of Group Structures.**

- (1) Each group that contains a bank must be sufficiently transparent to allow the Bank to determine:
  - (a) the ultimate controllers of the group;
  - (b) the business activities of each enterprise in the group;
  - (c) the financial situation of the group and each of its individual enterprises;
  - (d) the risk profile of the group and each of its individual enterprises;
  - (e) the effectiveness of the group's policies, procedures and practices regarding risk management, internal controls and corporate governance at the group level; and
  - (f) the business, financial and other relationships between the members of the group.
- (2) The organisational structure of any group containing a bank must not impede the Bank's ability to perform its supervisory duties, or the internal or external audit functions.
- (3) A bank that is a member of a group must function as a separate legal entity from the rest of the group. In particular, the bank must be able at all times to identify its assets, liabilities, revenues, expenses, and risk profile, separate from the group.

#### **99. Applicability of Prudential Requirements to Groups Containing Banks.**

- (1) The following provisions of this Act apply to banking groups on a consolidated basis as well as to each bank with the group:
  - (a) capital adequacy requirements (Section 65);
  - (b) large exposures (Section 71);
  - (c) investments in other enterprises (Section 76).
- (2) The Bank may by regulation apply other provisions of this Act to banking groups.
- (3) Each group that contains a bank must have policies and procedures regarding capital adequacy, investments, large exposures, and foreign exchange risk that are adequate for its business activities and that will protect the bank or banks in the group. The ultimate parent company of the group is responsible for ensuring compliance with this requirement.

- (4) The Bank shall review the policies and procedures specified in subsection (3) for each such group at least annually to ensure their suitability for these purposes, and to ensure that such policies and procedures are being complied with. The Bank may require any adjustments to such policies and procedures that, in its judgment, are necessary to protect the bank or banks in the group.
- (5) The Bank may, in particular, require a bank to hold additional capital, or to operate with a capital adequacy ratio above the ratio that would normally be applicable, if the Bank determines that the capital of the group is not sufficient to protect the bank.

**100. Group-wide Risk Management Systems and Internal Controls.**

Each group that contains a bank must have risk management systems and internal controls that are appropriate for the group's activities. Such systems and internal controls must be subject to review and updating on a regular basis. The ultimate parent company of the group is responsible for ensuring that these requirements are met for the entire group.

**101. Capital Adequacy of Bank Holding Companies.**

Each bank holding company shall maintain adequate capital, as determined by the Bank, for the conduct of its business and, in particular, to allow it to serve as a source of financial strength for each bank in its group.

**102. Governance of Bank Holding Companies.**

- (1) All persons elected or appointed as members of the board of directors, or senior management, or equivalent bodies of a bank holding company, must be fit and proper persons.
- (2) The fiduciary duties that apply to members of the board of directors and senior management of banks also apply to members of the board of directors and senior management, or equivalent bodies, of bank holding companies.
- (3) The Bank is authorised to issue regulations pertaining to corporate governance standards for bank holding companies.

**103. Activities of Bank Holding Companies.**

Bank holding companies may engage only in financial activities, management of financial institutions, and activities that are incidental to these activities.

**104. Investments by Bank Holding Companies.**

- (1) All bank holding companies must ensure that they have in place the necessary policies and procedures, as well as the financial and managerial capability, to undertake and monitor investments in other enterprises.
- (2) A bank holding company may not have a significant participation in any enterprise that is not a financial institution.

- (3) Subsection (2) does not apply in case a bank holding company acquires a significant participation in an enterprise in satisfaction of a debt previously contracted in good faith, provided that the bank holding company's beneficial ownership is reduced to a level below that of a significant participation within one year.

**105. Subsidiaries and Associated Enterprises of Bank Holding Companies.**

- (1) A bank holding company may have only financial institutions as subsidiaries and associated enterprises.
- (2) Before establishing or acquiring a domestic subsidiary or associated enterprise, a bank holding company must provide at least sixty days' prior written notification to the Bank. The notification must contain information prescribed by the Bank.
- (3) The Bank may prohibit the establishment or acquisition of a subsidiary or associated enterprise by a bank holding company if, in its opinion:
  - (a) it would be detrimental to the bank holding company's subsidiary bank or the interests of its depositors; or
  - (b) the requirements of Section 98 (1) of this Act would not be satisfied.
- (4) If no objection is received from the Bank within sixty days following the submission of a notification under subsection (1), the bank holding company may proceed with the intended establishment or acquisition.
- (5) A bank holding company that establishes or acquires a subsidiary or associated enterprise, in South Sudan or abroad, must ensure that:
  - (a) the subsidiary or associated enterprise will:
    - (i) furnish the bank holding company with all of the information necessary to allow it to meet its obligations under this Act;
    - (ii) permit the Bank to perform onsite inspections and obtain any information from the subsidiary or associated enterprise as may be necessary for the Bank to perform its functions under this Act; and
  - (b) the establishment or acquisition of the subsidiary or associated enterprise will not result in close links with other persons that would impair the ability of the Bank to perform its functions under this Act.
- (6) The Bank has the right not to allow a bank holding company to establish or acquire a subsidiary or associated enterprise, or, by order, to require the termination of that relationship, if, in the opinion of the Bank, the conditions set forth in subsections (3) or (5) are not satisfied.
- (7) Each bank holding company shall keep at its head office a copy of the current financial statements of each of its subsidiaries and associated enterprises.

- (8) The procedures for issuing orders under Section 120 of this Act shall apply to orders issued under this section.

**106. Foreign Subsidiaries and Associated Enterprises of Bank Holding Companies.**

- (1) A bank holding company must obtain the prior written approval of the Bank before establishing or acquiring a foreign subsidiary or associated enterprise. An application for approval must include the information prescribed by the Bank as referenced in Section 105 of this Act and, in addition, if the proposed foreign subsidiary or associated enterprise is a supervised financial institution, information concerning the financial supervisory regime in the relevant foreign jurisdiction in question.
- (2) If the proposed foreign subsidiary or associated enterprise is, or will be, a supervised financial institution, the Bank shall consult with the relevant foreign competent authority promptly following receipt of the application.
- (3) The Bank may deny an application under subsection (1) for the same reasons specified in Section 105 of this Act, or if, in the opinion of the Bank:
- (a) the legislation of the home state of such enterprise does not require, or the relevant competent authority does not exercise, effective supervision on a consolidated basis; or
  - (b) effective cooperation with the relevant foreign competent authority is not feasible.
- (4) The Bank may attach any conditions to an approval under subsection (1) that it deems appropriate to fulfil its obligations under this Act.
- (5) The Bank shall coordinate responsibility and the principles of supervision of such subsidiary or other associated enterprise with the relevant foreign competent authority.

**107. Reports by Bank Holding Companies.**

- (1) In addition to the reports required by Section 31 of this Act, each bank holding company shall submit an annual report to the Bank containing:
- (a) the structure of the group of which the bank holding company is a member, including the name and principal business activity of each member of the group and the amount of the bank holding company's beneficial ownership;
  - (b) the bank holding company's assessment of the effectiveness of its group's risk management, internal controls and corporate governance practices for the previous year; and
  - (c) such other information as the Bank deems necessary to fulfil its obligations under this Act.
- (2) A bank holding company must notify the Bank, without delay, of:
- (a) any facts or circumstances that may materially affect the financial situation of the bank holding company or any of its subsidiaries or associated enterprises;

- (b) any significant changes in the structure of the group of which it is the ultimate parent company; and
  - (c) any information that the Bank may require regarding significant participants in the bank holding company.
- (3) The Bank may require the submission of other reports or information from bank holding companies and other enterprises in bank holding companies' groups, as it deems necessary to fulfil its obligations under this Act.
- (4) If a group contains more than one bank holding company, the reporting requirements of this section may be satisfied by the submission of data by the bank holding company that is the ultimate parent company of the group. All enterprises of the group are responsible for providing the ultimate parent company with information sufficient to ensure that this requirement can be satisfied.

**108. Significant Participation in Bank Holding Companies.**

The provisions of Chapter III of this Act shall apply with regard to bank holding companies in the same manner as to banks, as deemed appropriate by the Bank in order to carry out its functions under this Act.

**109. Inspections of Bank Holding Companies.**

The provisions of Section 97 of this Act shall apply to bank holding companies, their subsidiaries and associated enterprises in the same manner as they apply to banks, their subsidiaries and associated enterprises.

**110. External Audits of Bank Holding Companies.**

- (1) The provisions of Sections 85 through 94 of this Act apply to bank holding companies in the same manner as they apply to banks.
- (2) In the case of a group that contains more than one bank holding company, the provisions of subsection (1) may be satisfied by the ultimate parent bank holding company of the group, to the extent deemed appropriate by the Bank.

**111. Enforcement Measures Regarding Enterprises in Banks' Groups, and Persons with Significant Participation in Banks.**

- (1) The provisions of Sections 115, 117 and 118 of this Act apply, in the same manner as to banks, to:
  - (a) subsidiaries and associated enterprises of banks;
  - (b) bank holding companies, their subsidiaries and associated enterprises;
  - (c) other persons having significant participation in banks and bank holding companies, and enterprises that these persons control; and
  - (d) other persons participating in the conduct of the affairs of banks and bank holding companies, and enterprises that these persons control.
- (2) In taking action under subsection (1), the Bank must consider whether the violation, practice, transaction or condition in question has had, or is likely to

have, a detrimental effect on the financial stability of the relevant bank, or has endangered or is likely to endanger the interests of the bank's depositors.

- (3) In connection with any action referenced under subsection (1), the Bank may, as it deems fit:
- (a) suspend or prohibit further investments by the bank in any subsidiary or associated enterprise of the bank;
  - (b) suspend or prohibit direct or indirect transactions between the bank and any enterprise in the bank's group;
  - (c) suspend or prohibit any participation in the affairs of the bank or bank holding company concerned by any significant participant thereof, or any other person participating in the conduct of the affairs thereof;
  - (d) suspend or prohibit direct or indirect transactions between the bank or bank holding company and any significant participant thereof, or any other person participating in the conduct of the affairs thereof, or enterprises controlled by such person;
  - (e) require the bank to reduce its investment in any enterprise to the extent to which the enterprise is no longer a subsidiary or associated enterprise of the bank;
  - (f) revoke its approval for the bank holding company's control of the bank;
  - (g) require the bank holding company to terminate its control or thirty percent participation in any subsidiary or associated enterprise thereof, or its control of the bank;
  - (h) revoke its authorisation for any person to have a significant participation in the bank or bank holding company.
- (4) If a non-bank enterprise in a group is subject to supervision by a financial sector supervisory body under the legislation of South Sudan, the Bank shall, before taking action against such entity under this section, consult with that supervisory body in accordance with Section 112 of this Act.

#### **112. Cooperation Between Financial Sector Supervisors.**

- (1) If a bank is part of a group that includes one or more enterprises that are subject to supervision by another financial sector supervisory body under the legislation of South Sudan, the Bank and such other supervisory body or bodies shall jointly agree on a plan for comprehensive supervision of the group, taking into consideration the dominant business entity in the group. Such plan shall entail sharing of information between the Bank and such other supervisory body or bodies for supervisory purposes.
- (2) If a bank has close links with another enterprise that is subject to supervision by another financial sector supervisory body under the legislation of South Sudan, but such bank and other enterprise do not constitute a group of enterprises as defined in this Act, the Bank and such other supervisory body shall mutually cooperate and exchange information for purposes of supervision of such entities.



## CHAPTER X

### PROMPT CORRECTIVE ACTION AND ENFORCEMENT MEASURES

#### 113. Capital Deficiencies.

- (1) In the event that a bank becomes undercapitalised, significantly undercapitalised, or critically undercapitalised, the bank must immediately inform the Bank of this fact.
- (2) The Bank may also determine that a bank is undercapitalised, significantly undercapitalised, or critically undercapitalised based on the Bank's own calculation. In this event, the Bank shall promptly inform the bank of its determination.
- (3) An undercapitalised or significantly undercapitalised bank must:
  - (a) submit to the Bank for its approval a capital restoration plan, or to revise any previously submitted capital restoration plan to the satisfaction of the Bank, and
  - (b) adhere to any restrictions prescribed by the Bank with a view toward restoring its capital adequacy.
- (4) The procedures for submission and approval of capital restoration plans under this section shall be determined by the Bank.

#### 114. Measures Relating to Critically Undercapitalised Banks.

- (1) If a bank becomes critically undercapitalised, the Bank shall, without delay and in no event more than thirty days after being notified or making the determination that the bank is critically undercapitalised, revoke the bank's banking licence.
- (2) Until a critically undercapitalised bank's banking licence is revoked, the bank shall be subject to all restrictions that apply to significantly undercapitalised banks, and to any additional restrictions that the Bank may deem fit in the interest of the bank's depositors and the financial system of South Sudan.

#### 115. Measures in Cases of Violations or Practices Endangering Banks.

- (1) The Bank may take one or more of the measures set forth in this section with respect to a bank or any member of the bank's board of directors, senior management, significant participant in a bank, or any other person participating in the conduct of the affairs of a bank, if it determines that the bank or person has:
  - (a) violated any provision of this Act, or any regulation or written order of the Bank, or written agreement with the Bank made pursuant to this Act;

- (b) violated any condition or restriction attached to the banking licence of the bank or to an authorisation issued to the bank or person by the Bank (including the development of facts which would warrant refusal of the licence or authorisation); or
  - (c) engaged or participated in any unsafe or unsound practice relative to the bank.
- (2) In the event of any of the circumstances set forth in subsection (1), the Bank may:
  - (a) enter into a written agreement with the bank or person on remedial measures to be taken;
  - (b) issue a written order requiring the bank or person to take any action the Bank deems necessary to remedy the situation; or
  - (c) issue a written order imposing a monetary fine or penalty.
- (3) A fine imposed under paragraph (2)(c) shall:
  - (a) take into account:
    - (i) the seriousness of the violation or practice;
    - (ii) the impact or potential impact of the violation or practice on the bank or its depositors;
    - (iii) the extent to which the violation or practice was intentional or repeated; and
    - (iv) the financial capability of the bank or person in question; and
  - (b) be limited to the following amounts per violation or practice, for each day that the violation or practice continues:
    - (i) in the case of a natural person, not more than ten thousand South Sudanese Pounds;
    - (ii) in the case of a legal person, not more than twenty thousand South Sudanese Pounds.
- (4) The Bank may, in connection with the imposition of a fine upon a natural person, prohibit a bank or any enterprise in the same group as the bank from paying such fine on behalf of such person.
- (5) The amount of any civil penalty imposed on a bank under this Act shall constitute a debt due from the bank to the Bank. If any part of any such penalty remains unpaid after a time period specified by the Bank, the Bank may:
  - (a) debit the outstanding amount of the civil penalty to the account of the bank with the Bank;
  - (b) bring an action in a competent court for the recovery of any outstanding amount of the civil penalty; or
  - (c) by written notice, direct that any such unpaid amount shall constitute a debt payable by any members of the board of directors, senior management or other officials of the bank specified in the notice. The Bank is entitled to sue those directors, managers and other officials jointly and severally for the amount due.

- (6) Any amount recoverable as a debt under this section shall be paid subject to such interest as is payable in respect of a judgment debt calculated from the date on which the debt became due.

**116. Enhanced Supervision.**

- (1) In connection with an order issued under Section 115 of this Act, the Bank may appoint an administrator to oversee the management of the bank and the implementation of any such order, for a period not exceeding six months. The order containing such appointment shall specify the authorities of the administrator and what banking activities or transactions are subject to the approval of the administrator. The six-month period referenced herein may be extended one time, for a period not exceeding six months. Expenses associated with such administration shall be paid by the bank concerned.
- (2) The administrator may be an employee of the Bank, or a person engaged by the Bank for the purposes referenced in subsection (1). A person appointed as administrator must:
  - (a) be a fit and proper person; and
  - (b) be independent of the bank as defined by criteria established by the Bank.
- (3) The Bank may, on its own initiative or at the request of the administrator, appoint subordinates to assist the administrator. Such subordinates must meet criteria established by the Bank, taking into account subsection (2).
- (4) All members of the board of directors and senior management of a bank for which an administrator has been appointed, as well as employees, agents, significant participants and shareholders of any such bank, are obliged to cooperate with the administrator, and with any subordinates of the administrator, and to provide the administrator and subordinates with any information that the administrator or the subordinates may request to perform their functions under this Act.
- (5) In connection with the duties and responsibilities under subsection (1), the administrator may:
  - (a) make arrangements for the purchase of assets and/or assumption of liabilities of the bank by another bank or financial institution;
  - (b) solicit offers for the sale or reorganisation of the bank, and discuss terms and conditions for such a sale or reorganisation with potential purchasers or merger partners; and
  - (c) propose to the general meeting of shareholders, and submit to the Bank for its approval, a plan for sale or reorganisation of the bank.
- (6) In considering a plan under paragraph (5) (c), the Bank shall take into consideration the factors referenced in Section 135(1) of this Act.
- (7) If the general meeting of the shareholders rejects a plan proposed by the provisional administrator, the Bank may take any action it deems appropriate

in accordance with this Act, including revoking the bank's banking licence and appointing a receiver for the bank.

**117. Removal Orders.**

- (1) The Bank may, by order, require the removal of a person from such person's position as a member of the board of directors or senior management of a bank, if the Bank determines that the person is not suitable to hold that position because the person:
  - (a) does not meet the requirements set forth in this Act to hold the given position;
  - (b) has violated any fiduciary duty in fulfilling such person's responsibilities; or
  - (c) has engaged in any violation or other actions specified in Section 115(1) of this Act.
- (2) In making a determination under subsection (1), the Bank must consider the seriousness of the factors set forth in that subsection, and whether the interests of the depositors and creditors of the bank have been, or are likely to be, adversely affected by the person's continuing to hold a position as a member of the board of directors or senior management.
- (3) In any order issued under subsection (1), the Bank may, in addition:
  - (a) prohibit the person from further participation in any manner in the conduct of the affairs of the bank;
  - (b) prohibit the person from direct or indirect exercise of voting rights in the bank;
  - (c) require the person to dispose of all or any part of such person's direct or indirect ownership in the bank; and
  - (d) prohibit the person from holding any position in, or participating in any manner in the conduct of the activity of, any bank or any enterprise in the same group as the bank, without the prior written approval of the Bank.
- (4) Any order under this section may be issued against any person, even after such person has ceased to be a member of the board of directors or senior management of a given bank.
- (5) The provisions of this section and Section 118 of this Act apply to members of board of directors and senior management of enterprises in the same group as a bank, in the same manner as they apply to managers and board members of banks. In taking action under this subsection, the Bank must consider whether the interests of the depositors and creditors of the bank or banks in the group have been, or are likely to be, adversely affected by the person's continuing to hold the position.
- (6) If the Bank removes or suspends one or more directors from the board of a bank, and as a result the number of board members falls below the minimum prescribed in this Act, the Bank shall immediately assume the powers of the board of directors and shall, within fourteen days, summon a meeting of the

shareholders for the purpose of electing a new board of directors, which shall be required to satisfy the provisions of this Act relating to the appointment of directors.

**118. Suspension of Persons Charged with Criminal Offences.**

- (1) If any person referred to in Section 117 of this Act, or any employee or significant participant of the bank, or other person participating in the conduct of the affairs of the bank, is officially charged with any criminal offence (other than an offence based on the person's religious or political views or activities), or is officially charged with any offence entailing money laundering or terrorist activities, the Bank may issue a written order suspending such person from such person's position in the bank, and prohibiting such person's participation in any manner in the conduct of the affairs of the bank, pending the determination of the criminal case.
- (2) If any person referred to in subsection (1) is convicted of any such offence, and the conviction is not subject to further appellate review, the Bank shall issue a written order removing such person from such person's position in the bank, and, may include in such an order any or all of the items set forth in Section 117 of this Act.
- (3) A determination of not guilty in the criminal proceeding does not preclude the Bank from taking any other action regarding the person authorised by this Act.

**119. Disposal of Shares Pursuant to Enforcement Orders.**

In the event that any person is required to sell or dispose of voting shares of a bank pursuant to an order issued in accordance with Sections 117 or 118 of this Act, and does not do so within the prescribed period of time, the Bank may order the sale of such voting shares at public auction or in any other manner it deems appropriate.

**120. Procedures for Enforcement Orders.**

- (1) Before the Bank issues an order in accordance with Sections 115 or 117 of this Act, it shall provide the affected bank or person with at least fifteen days prior written notice and an opportunity to submit written representations to the Bank, unless the bank or person consents to the issuance of the order.
- (2) The procedures for submission and consideration of representations in accordance with subsection (1) shall be determined by regulation of the Bank.

**121. Temporary Orders.**

- (1) This section shall apply if the Bank determines, based on the allegations set forth in the written notice referred to in Section 115 of this Act, that:
  - (a) the violations or practices so specified are likely, prior to the conclusion of the process referred to in that subsection, to lead to:
    - (i) insolvency of the bank;
    - (ii) a significant dissipation of assets or earnings of the bank;
    - (iii) a weakening of the condition of the bank; or

- (iv) other danger to the interests of the bank's depositors or to the public interest; or
  - (b) the books or records of the bank are so incomplete or inaccurate that the Bank is unable, through the normal supervisory process, to determine the financial condition of the bank or the details of any transaction that may have a material effect on the financial condition of the bank.
- (2) In the circumstances described in subsection (1), the Bank may issue a temporary order:
- (a) in the case of a notice relating to Section 115 of this Act, requiring the bank to take any action the Bank deems appropriate to prevent any of the circumstances described in paragraph (1) (a), or to correct record-keeping deficiencies described in paragraph (1) (b); or
  - (b) in the case of a notice relating to Section 117 of this Act, suspending any person to whom the notice pertains from such person's position, and prohibiting such person's further participation in any manner in the conduct of the affairs of the bank.

**122. Temporary Asset Freezes.**

- (1) In connection with a written notice referred to in Section 115 of this Act, or a suspension referred to in Section 118 of this Act, if the Bank determines that it is necessary to preserve any assets, funds, or other property belonging to, or under the direct or indirect control of, any person subject to such a notice or suspension pending a determination whether to issue a final order in accordance with Sections 115 or 117 of this Act, or pending a determination in the criminal proceeding, the Bank may issue a temporary order:
- (a) prohibiting any such person, or any enterprise controlled by any such person, from taking any action to withdraw, transfer, remove, dissipate, or dispose of any such funds, assets or other property; and
  - (b) appointing one or more representatives of the Bank to administer such temporary order.
- (2) In connection with a temporary order issued pursuant to subsection (1), the Bank may issue a written instruction to any bank or other financial institution to freeze summarily any account or accounts at such bank or institution that are maintained by, or under the control of, any person subject to such temporary order, or any enterprise controlled by that person, and to retain all moneys in any such account, pending the further instructions of the Bank.

**123. Effectiveness of Temporary Orders and Asset Freezes.**

- (1) A temporary order issued under Sections 121 or 122 of this Act shall remain in effect:
- (a) pending a determination by the Bank in accordance with Sections 115 or 117 of this Act on whether to issue the proposed final order;
  - (b) pending a determination in the referenced criminal proceeding;
  - (c) subject to subsection (2), until it is dissolved, limited, or suspended by a competent court in accordance with Section 124 of this Act; or

- (d) in the case of an order based on a determination specified in Section 121(1)(b), upon a determination by the Bank, by inspection or otherwise, that the bank's books and records are accurate and reflect the true financial condition of the bank.
- (2) If the Bank appeals against a decision of the court dissolving, limiting or suspending a temporary order pursuant to Section 124 of this Act, the temporary order shall remain in effect pending a decision on the appeal.

**124. Judicial Review of Temporary Orders.**

- (1) Within ten days after a bank or other person has been served with a temporary order in accordance with Sections 118, 121 or 122, such bank or person may submit a petition to a competent court for review of the temporary order. The filing of such a petition for review has no postponing effect on the temporary order.
- (2) The court may dissolve, limit, or suspend the enforcement, operation, or effectiveness of such temporary order, pending the completion of the proceedings specified in Sections 115, 117, or 118 of this Act, only if the court determines that:
  - (a) there is a substantial likelihood that the petitioner will prevail on the merits of the case;
  - (b) the petitioner will suffer irreparable injury if the petition is not granted;
  - (c) granting the petition will not result in harm to the Bank or the bank in question; and
  - (d) it is in the public interest to grant the petition.

**125. Issuance, Effect and Termination of Orders.**

- (1) Each order or temporary order given to a bank or other person pursuant to this Act shall be in writing.
- (2) Each such order or temporary order given to a bank shall be served upon the head office of the bank; if the orders and temporary orders concern a domestic branch or representative office of a non-resident bank, they may be served upon that office. Each such order or temporary order shall be accompanied by a copy of the text of the decision of the Bank to give the order or temporary order, stating the grounds for the order or temporary order, reasons why the order or temporary order is given, and the provision of the law authorising the Bank to give the order or temporary order.
- (3) Each such order or temporary order shall enter into force at the time of its service upon the bank or other person concerned, unless it specifies a later date for its effectiveness. The order or temporary order remains in effect and shall be fully complied with until it:
  - (a) terminates in accordance with its terms;
  - (b) is replaced by another order or temporary order of the Bank;
  - (c) is annulled upon review by competent court; or

(d) is rescinded by the Bank by notice in writing to the bank or other person concerned.

The Bank may rescind an order or temporary order if the Bank determines that it is no longer necessary.

- (4) An order or temporary order by the Bank overrides any provision of the memorandum of association or articles of association of the bank concerned, any licence, permit or authorisation issued to the bank by the Bank, and any contract or arrangement to which the bank is a party, whether taking effect before or after the order or temporary order, if such provision presents an impediment to compliance with the order or temporary order; however, payment or transfer of money pursuant to an order of a court or a process of execution shall be an exception to this rule.

#### **126. Judicial Review of Final Enforcement Orders.**

- (1) Any person against whom a final order is issued pursuant to the procedures referenced in Section 120 of this Act (other than an order issued with the consent of that person) may file a petition for review of the order by a competent court within thirty days of the date of service of the order.
- (2) The court, based on the record of the decision of the Bank, may affirm or annul the order, in whole or in part, or may remand the matter to the Bank for further proceedings. The court may annul an order of the Bank only if it determines that there was no factual basis for the order, or that the Bank manifestly misapplied the applicable legal provisions.
- (3) The commencement of proceedings for review under subsection (1) does not postpone the effect of the order or any requirements set forth in the order.

### **CHAPTER XI**

#### **RECEIVERSHIP**

#### **127. Inapplicability of Insolvency Act and Other Winding-up Provisions to Banks.**

The Insolvency Act, 2012, and other legislation relating to the bankruptcy or winding up of enterprises shall not apply to banks.

#### **128. Appointment of Receiver for a Bank.**

- (1) Immediately upon revoking a bank's banking licence in accordance with Section 21 of this Act, the Bank shall appoint a receiver for the bank.
- (2) The receiver may be an official of the Bank.
- (3) A person appointed as receiver for a bank must:



- (a) be a fit and proper person;
- (b) not be a related person of the bank, or of any enterprise in the same group as the bank, or a close relative of any such person;
- (c) not have a business relationship with any person referred to in paragraph (b) that could, in the opinion of the Bank, impede the performance as receiver.

**129. Legal effects of Appointment of Receiver.**

- (1) Immediately upon appointment of a receiver for a bank:
  - (a) all rights, powers and duties of the shareholders, board of directors and senior management of the bank relating to the bank, or shares therein, are terminated, except that:
    - (i) the shareholders have the right to receive any residual value of their shares in the bank upon completion of the receivership process, in the event that there is positive value in such shares; and
    - (ii) the bank, through the board of directors, may submit a petition for judicial review of the revocation of the bank's banking licence and appointment of the receiver in accordance with Section 131 of this Act; and
  - (b) the receiver shall become the sole legal representative of the bank, and shall succeed to all rights, powers and duties referenced in paragraph (a), except as specifically provided otherwise by this Act, including the power to operate and to liquidate the bank, subject to any instructions, directions or guidelines that the Bank may deem appropriate;
  - (c) all current judicial proceedings against the bank are stayed, and no new judicial proceeding against the bank may be commenced, except with the leave of the receiver;
  - (d) no attachment or lien, except a lien created by the Bank under any provision of this Actor the Bank of South Sudan Act, 2011, shall attach to any property or assets of the bank so long as the receivership continues;
  - (e) neither interest nor any other charge shall accrue on liabilities of the bank;
  - (f) any term, whether statutory, contractual or otherwise, on the expiration of which a claim or right of the bank would expire or be extinguished, shall be extended by six months from the date of appointment of the receiver; and
  - (g) any transfers of shares of the bank, except for transfers made with the prior written consent of the Bank, shall be void.
- (2) A party to a contract with a bank shall not be relieved of such party's obligations on the ground that the bank is in receivership.

**130. Taking Control of the Bank.**

- (1) Immediately upon appointment, the receiver shall take appropriate steps to secure the assets, offices, books and records of the concerned bank. Immediately upon the request of the receiver, law enforcement officials shall, if necessary by use of force, assist the receiver to gain access to the premises

of the bank and to gain control over and to secure any such assets, offices, books or records.

- (2) Any person who deliberately interferes with the receiver's access to the bank, its assets, books, records, premises or offices, or otherwise interferes with the receiver in carrying out the functions under this Act, shall be subject to a fine not exceeding fifty thousand South Sudanese Pounds, or imprisonment not exceeding five years, or both.

### **131. Judicial Review of Licence Revocation and Receivership Appointment.**

- (1) Within ten days from the date of service of the Bank's decision revoking a bank's banking licence and appointing a receiver for such bank, the bank may file a petition for judicial review of such decision by a competent court. Failing such petition, the bank shall be deemed to have consented to the decision.
- (2) The court shall schedule a hearing on the bank's petition within three business days of receiving it. The hearing shall commence within ten days thereafter. Written notice of the hearing date shall be served upon the bank and the Bank.
- (3) The court, based on the record of the decision of the Bank to revoke the bank's banking licence, may either affirm or set aside that decision. The sole question for the court shall be whether one or more grounds for such decision existed at the time the decision was taken. The court may set aside the decision of the Bank only if it determines that:
  - (a) the decision had no basis in fact; or
  - (b) the Bank manifestly misapplied the applicable legal provisions.
- (4) If the court sets aside the decision of the Bank, the appointment of the receiver is terminated, and the receiver shall return control of the bank and its assets, books and records to the board of directors of the bank, subject to subsection (5).
- (5) Any appeal of a decision of the court under this section does not stop or postpone the receivership process.

### **132. Powers of the Receiver.**

- (1) The receiver shall be an agent of the Bank for purposes of winding up the affairs of the concerned bank, and shall report to the Bank and be subject to such directions, instructions and guidelines as the Bank may determine.
- (2) In connection with the functions referenced in subsection (1), the receiver shall have the power to:
  - (a) continue or discontinue operations of the bank that the receiver deems appropriate to conduct the receivership process, notwithstanding that its banking licence has been revoked;
  - (b) stop or limit the payment of its obligations;
  - (c) employ any necessary staff;

- (d) discontinue employment of any staff of the bank;
  - (e) hire outside experts, including attorneys, accountants, and appraisers as necessary, to assist in fulfilling tasks under this Act;
  - (f) execute any instrument in the name of the bank;
  - (g) initiate, defend and conduct any legal action or proceeding to which the bank may be a party;
  - (h) merge the bank with another bank or financial institution;
  - (i) carry out a purchase-and-assumption transaction;
  - (j) reorganise the bank in accordance with the provisions of this Act; or
  - (k) liquidate the bank in accordance with the provisions of this Act.
- (3) The receiver shall conduct the affairs and business of the bank and discharge such receiver's duties with diligence and in accordance with sound banking and financial principles, and, in particular, with due regard to the interests of the bank's depositors and other creditors.
- (4) The receiver shall take necessary steps to:
- (a) trace and preserve all the property and assets of the bank;
  - (b) recover all debts and other sums of money due to and owing to the bank; and
  - (c) obtain from any members of the board of directors, senior management, employees, agents, shareholders, and significant participants of the bank any documents, record, accounts, statements or information relating to its business.

**133. Termination of Current Contracts.**

- (1) All current contracts or portions of contracts of a bank in receivership, including contracts for the delivery of goods or services, contracts of sale, rental and lease contracts, hire purchase contracts and employment contracts, may be terminated unilaterally by the receiver within a reasonable time after the receiver's appointment.
- (2) The counterparty to a contract or portion of a contract that is terminated under subsection (1) may file a lawsuit for compensation for breach of contract.

**134. Feasibility Analysis of the Receiver.**

- (1) Within sixty days of the receiver's appointment, unless this period is extended by the Bank, the receiver shall present to the Bank a written report of the receiver's analysis of the financial condition and future viability of the concerned bank. The report shall include the receiver's recommended plan for:
- (a) arranging a merger with another financial institution;
  - (b) arranging a purchase and assumption transaction;
  - (c) selling the bank, in whole or in part; or
  - (d) liquidating the bank.
- (2) The receiver's report shall:
- (a) include a calculation of deposit liabilities of the bank;

- (b) evaluate the alternatives referenced in subsection (1) on a present value basis, using a realistic discount rate; and
  - (c) 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.
- (3) If the receiver's report recommends a plan entailing paragraphs (1) (a), (b) or (c), it may also recommend continuing the receivership of the bank for a period not to exceed one year in order to accomplish these objectives.

**135. Decision of the Bank of South Sudan.**

- (1) Within thirty days of the receipt of the report described in Section 134 of this Act, the Bank shall make a decision on the receiver's recommended plan. The Bank shall consider whether the plan:
- (a) is based upon a realistic and prudent valuation of the bank's assets;
  - (b) gives precedence to the interests of the bank's depositors and other creditors over those of the shareholders;
  - (c) ensures the stability of the financial sector;
  - (d) improves competitiveness in the financial sector; and
  - (e) in the case of a plan referenced in Section 134 (1) (a), (b) or (c) of this Act, can be successfully carried out within one year.
- (2) If the Bank rejects the receiver's recommended plan, it may direct the receiver to implement an alternative plan entailing any of the items specified in Section 134 (2) of this Act.
- (3) The Bank may amend the receiver's recommended plan in any way it deems appropriate, prior to or during the implementation of the plan.
- (4) The Bank may terminate the plan and direct the receiver to liquidate the bank at any time, if it determines that successful implementation of the plan is no longer feasible.
- (5) The receiver shall provide periodic (at least quarterly) progress reports to the Bank during the implementation of any plan undertaken in accordance with this section.
- (6) If the Bank decides to liquidate a bank in receivership, it shall publish notice to this effect in at least two official newspapers of general circulation in South Sudan within three business days following such decision.

**136. Moratorium.**

If required to protect the financial condition of a bank in receivership, the Bank may, at any time, declare deposits and investments by the public in the bank, other than deposits and investments in segregated fiduciary accounts, to be totally or partially blocked for a maximum period of three months. The moratorium shall:

- (a) include measures to preserve the approximate value of such deposits and investments, together with interest accrued before and during the moratorium;
- (b) be applied equally and without discrimination to all classes of creditors, provided that the Bank may offset the deposits or other liabilities owed by the bank to any depositor or other creditor against any loans or other debts owed by that depositor or creditor to the bank;
- (c) limit the maximum rate of interest that shall accrue on deposits and other debts payable by the bank during the period of the moratorium to the minimum rate as may be prescribed by the Bank by notice for the purposes of this section, except that this subsection shall not be construed so to impose an obligation on the bank to pay interest or interest at a higher rate to any depositor or creditor than would otherwise have been the case;
- (d) suspend the running of time for the purposes of any law of limitation in respect of any claim by any depositor or creditor of the institution; and
- (e) cease to apply, upon the termination of the receiver's appointment pursuant to Section 131 of this Act at a time determined by the Bank, in which case the rights and obligations of the bank, its depositors and creditors shall, except to the extent provided in subsections (2) and (3), be the same as if there had been no declaration under this subsection.

**137. Blocking Orders.**

- (1) If the receiver for a bank reasonably believes that a depositor has caused a loss to the bank, or owes an obligation to the bank and there are serious doubts as to the ability or willingness of the depositor to repay that obligation, the receiver may announce a partial or complete suspension of the bank's liabilities regarding deposits or investment accounts of that person in the bank. The receiver shall notify the depositor in writing within three business days of any blocking order issued pursuant to this subsection.
- (2) Notwithstanding the three-month limitation referenced in Section 136 of this Act, such a blocking order shall remain in effect pending a determination whether the depositor has caused a loss to the bank, or that a depositor owes an obligation to the bank.
- (3) When a blocking order is declared, the receiver shall take measures aimed at preserving the approximate value of these deposits and investments in the bank, together with interest accrued before and during the effective time of the blocking order.
- (4) A depositor whose account is blocked pursuant to an order issued under this section may, within ten days of receipt of such order, seek judicial review of such order before a competent court. The provisions of Section 124 (2) of this Act shall apply to review by the court of such orders.

**138. Nullification of Certain Pre-Appointment Transactions.**

- (1) The following transactions by a bank that damaged the interests of creditors of the bank, were consummated within the five years before the appointment of a receiver for the bank, and that the bank and its counterparty to the transaction knew or had reason to know would damage the interests of creditors of the bank, may be declared null and void by the receiver:
  - (a) any gratuitous transfer of bank assets;
  - (b) any payment or transfer to a related person or employee of the bank, unless such related person or employee shows to the satisfaction of the receiver that:
    - (i) the payment or transfer was made in the ordinary course of business;
    - (ii) concerned such person's employment by the bank;
    - (iii) was withdrawn from an account maintained with the bank and was not unusual in size; or
    - (iv) such person had no knowledge or reason to know that the payment or transfer would damage interests of creditors of the bank;
  - (c) a payment or transfer that was made before its due date, or the transfer of collateral that was made for a debt before the due date of the debt;
  - (d) the conclusion or performance of a contract imposing obligations on the bank that are more onerous than those imposed on other parties to the contract;
  - (e) an arrangement between the bank and one or more other persons permitting an offset between rights and obligations of the bank and the other parties that, without such arrangement, would not have been deemed to be permissible before the time of the appointment of the receiver for the bank;
  - (f) any repurchase by the bank of shares from any shareholder of the bank, unless the repurchase was approved by the Bank in accordance with this Act;
  - (g) any capital distribution, unless such distribution was approved by the Bank in accordance with this Act;
  - (h) any payment by the bank that substantially exceeded the value of the goods, services, or other assets received by the bank in return;
  - (i) any transaction with the apparent purpose of concealing or withholding assets from creditors of the bank or the receiver, or otherwise to impair their rights; or
  - (j) any transaction based on a fraudulent or forged document.
- (2) The recipient of any transaction that is declared void under subsection (1) must return the received money or other property to the receiver within a time period set by the receiver. If the property no longer exists, an equivalent amount of money, representing the value of the property as of the date of transfer by the bank, must be returned.
- (3) If a transferee of money or other property from the bank in a transaction that is declared void under subsection (1) has transferred such money or other property to another person, the receiver may recover such money, or other

property or its value, from such other person only if the other person did not give fair value in exchange, and knew or had reason to know that the initial transfer from the bank could be declared void under this Act. If the receiver cannot recover such money or other property from such other person under this subsection, it may recover an equivalent value from the original transferee.

- (4) In connection with a nullification undertaken under subsection (1), the receiver may:
  - (a) issue an order prohibiting any recipient of any transaction that is declared void under subsection (1), or any enterprise controlled by any such person, from taking any action to withdraw, transfer, remove, dissipate, or dispose of any such funds, assets or other property;
  - (b) in connection with any such order, issue a written instruction to any bank or other financial institution to freeze summarily any account or accounts at such bank or institution that are maintained by, or under the control of, any person subject to such temporary order, or any enterprise controlled by that person, and to retain all moneys in any such account, pending the further instructions of the receiver.
- (5) A person who is subject to a temporary order pursuant to paragraph (4)(a) may seek judicial review within ten days of receipt of such order. The provisions of Section 124 (2) shall apply to review by the court of such orders.

### **139. Forensic Investigations.**

- (1) A receiver shall have the authority to make a forensic investigation to determine the causes of the failure of the bank and report to the Bank on, in particular, significant transactions with related persons, violations of this Act, regulations or orders of the Bank, the bank's governing policies and procedures, and unsound banking practices. The receiver may designate one or more persons as representatives to assist in the conduct of such investigations.
- (2) In the exercise of its authority under subsection (1) , the receiver, or any designated representative of the receiver, may, by notice in writing, require any person who is or has at any time been a member of the board of directors or senior management, employee, agent, attorney, accountant or auditor of the bank, or any person who has relevant information or custody of any funds, records, or other assets of the bank, to:
  - (a) give to the receiver or such designated representative all reasonable assistance;
  - (b) appear before the receiver or such designated representative for examination concerning matters relevant to the investigation; or
  - (c) produce to the receiver or such designated representative any books, records or documents that relate to the affairs of the bank.
- (3) A person who:

- (a) refuses or fails to comply with a requirement of the receiver or designated representative that is applicable to such person, to the extent to which such person is able to comply with it;
- (b) obstructs or hinders a receiver in the exercise of the powers conferred under this Act;
- (c) furnishes information to the receiver or designated representative, or makes a statement to the receiver or designated representative, that such person knows to be false or misleading regarding any material fact; or
- (d) when appearing before a receiver or designated representative for examination in accordance with such requirement, makes a statement that such person knows to be misleading regarding any material fact;

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

- (4) Any person who, following any such investigation, is found to have significantly contributed to the failure of the bank through any of the actions referenced in subsection (1), shall be liable to make reimbursement to the estate of the bank for any damages thus caused.

**140. Negotiated Settlements and Compromises with Creditors.**

- (1) The receiver may enter into and carry out negotiated settlements of claims with any creditor and debtor of the bank. No such settlement shall be subject to review by, or appeal to, any court.
- (2) Except as provided by subsection (1), there shall be no compromise or other arrangement with groups of creditors concerning a bank in receivership.

**141. General Meeting and Committee of Creditors.**

- (1) There shall be no meeting of creditors concerning the resolution of a bank in receivership, unless the receiver, with the concurrence of the Bank, determines that such a meeting is:
  - (a) necessary; or
  - (b) desirable to represent and protect interests of one or more creditors.
- (2) The receiver shall specify the tasks and scope of activities of any meeting of creditors or committee of creditors convened under this section.

**142. Resolution of a Bank in Receivership without Liquidation.**

- (1) In connection with a decision of the Bank pursuant to Section 135 of this Act, the receiver is authorised to:
  - (a) make arrangements for the purchase of assets or assumption of liabilities of the bank under receivership by another bank or financial institution;



- (b) solicit offers for the sale or reorganisation of the bank under receivership, and discuss terms and conditions for such a sale or reorganisation with potential purchasers or merger partners; and
  - (c) propose to the Bank for its approval a plan for sale or reorganisation of the bank developed in connection with paragraph (b).
- (2) Any sale or reorganisation of a bank in receivership, developed in connection with subsection (1), is subject to the approval of the Bank and does not require the consent of such bank, or its former board of directors, senior management, shareholders, or existing creditors.
- (3) In considering a proposal by the receiver under subsection (1), the Bank shall apply the criteria referenced in Section 135(1) of this Act.

**143. Bridge Banks.**

- (1) The Bank may create a bridge bank for the purpose of taking over any or all of the assets and liabilities of a bank in receivership. Such a transfer of assets and liabilities does not require the consent of such bank, or its board of directors, senior management, shareholders or creditors.
- (2) The Bank shall be the owner of all of the equity of a bridge bank during the time of its existence. The requirement for initial capital set forth in Section 17 of this Act is not applicable to the establishment of a bridge bank.
- (3) If a bank in receivership has positive capital at the time of the transfer of assets and liabilities to the bridge bank, the shareholders shall receive such amount when the resolution of the bank is completed.
- (4) Notice of creation of the bridge bank and the transfer of assets and liabilities referred to in this section shall be published in at least two official newspapers of general circulation in the country.
- (5) A bridge bank may perform limited banking operations in accordance with a banking licence issued by the Bank and shall be managed by the Bank for not more than one year.
- (6) The Bank may undertake any action with regard to a bridge bank that it may undertake with respect to a bank in receivership.

**144. Invitation of Claims from Creditors.**

- (1) The receiver shall, within a period not exceeding forty-five days from the date of publication of the Bank's intention to liquidate a bank, publish in at least two official newspapers of general circulation a notice calling upon all creditors, secured and unsecured, other than depositors and employees subject to subsections (2) and (3), to submit to the receiver within one month from the date of publication, a statement of the amount claimed and the particulars of the claim.

- (2) Depositors of the bank shall be deemed to have filed their claims for the amount shown in the books of the bank as standing to their credit. Depositors do not need to file statements of claims pursuant to subsection (1) unless they disagree with the amount of their deposits as shown on the bank's books.
- (3) Employees of the bank shall be deemed to have filed their claims for any unpaid salary (exclusive of bonuses, amounts due upon severance, or any other payment due the bank's employees in excess of their base salaries) for the amount shown in the books of the bank as standing to their credit. Employees do not need to file statements of claims pursuant to subsection (1), unless they disagree with the amount of their outstanding unpaid salary as shown on the bank's books.
- (4) Any statement of claim, which is not received by the receiver before the expiry of thirty days from the date of publication of the notice referenced in subsection (1), shall not be treated as a claim eligible for payment under liquidation, but shall be treated as an ordinary debt due from the bank.
- (5) Any person who fails to file a claim with the receiver within the period prescribed in subsection (1) shall not be entitled to be paid in priority to other debts. Any amount due from the bank to such person shall be treated as an ordinary debt due from the bank.
- (6) The receiver shall be entitled to deduct from the amount owed by the bank to any depositor any amounts as may be due from the depositor to the bank.

**145. Admission of Claims.**

- (1) Claims recorded in the books or records of the bank by the receiver shall be admitted without further proof. Claims registered for an amount that is less than the amount recorded by the bank shall be admitted only for the lesser amount.
- (2) Claims with uncertain value may be admitted for a value estimated by the receiver.

**146. Secured Claims.**

- (1) All assets securing approved claims of creditors against the bank or securing claims of the bank against others shall be sold at public auction by the receiver, except that:
  - (a) securities, foreign currencies and other assets that can be readily sold at market may be sold in the markets where they are traded; and
  - (b) securities, foreign currencies and other assets of the bank that secure debts of the bank and that can readily be sold at market may be sold by the creditors holding the assets.
- (2) If the receiver determines that no reasonable price can be obtained for assets in a public auction, the receiver may sell the assets privately at a fair price as determined by the receiver.

- (3) The assets of a bank under receivership, other than the assets referred to in paragraph (1)(b), must be placed at the disposal of the receiver upon the receiver's request.
- (4) Any dispute between the receiver and a secured creditor as to the value of an asset securing a claim shall be resolved by a competent court. In the event that the asset is sold at market or at public auction, the sales price at market or at public auction shall be conclusive as to the value of the asset.
- (5) Proceeds from the sale of an asset in accordance with this section shall be used to extinguish those claims of creditors secured by such asset, in order of priority of creditors. The claim of the creditor with the highest priority shall be extinguished in full before the claim of the creditor with the next highest priority may be paid. Any funds remaining from the sale of such asset, after all such secured claims are extinguished, shall be paid out in accordance with Section 147 of this Act.

**147. Priority of Payments in Liquidation.**

- (1) The receiver shall, within two months after the deadline for submission of claims pursuant to Section 144 of this Act, commence the payment to depositors and creditors of the bank. Assets of the bank shall be distributed among its creditors in the following order of priority:
  - (a) all costs and expenses of the receivership;
  - (b) claims of depositors for the amount of their deposits that are not in the form of debt securities;
  - (c) claims of employees for unpaid salary, exclusive of bonuses, amounts due upon severance, or any other payment due the bank's employees in excess of their base salaries;
  - (d) amounts owed to the Bank;
  - (e) taxes due over a period of not more than two years preceding the date of the commencement of the receivership; and
  - (f) unsecured claims.
- (2) If there are not sufficient assets to pay all of the claimants in any category referenced in subsection (1) in full, each claimant shall be paid on a pro rata basis according to such claimant's proportionate share of such assets.
- (3) Remaining assets shall be transferred to the persons who were reflected in the records of the bank as shareholders of the bank on the date of the appointment of the receiver, pro rata to their respective ownership shares.
- (4) Amounts included in a distribution schedule that cannot be paid, because the creditors cannot be identified or contacted, shall be deposited in an account with the Bank. The receiver shall publish a notice in two newspapers of general circulation in the country inviting these creditors to come forward. The amounts so deposited shall remain available for payment to the creditors or their heirs until the statute of limitations for the claims has run out. After expiration of such period, any remaining unclaimed amounts shall be

transferred to the Ministry of Finance and Economic Planning for inclusion in the revenues of the Government.

**148. Authority to Pursue Claims against Persons Responsible for Causing Losses to a Bank.**

- (1) If it is determined that any member of the board of directors or senior management of a bank has caused losses to the bank through violations of applicable laws or regulations of the Bank or breaches of fiduciary duties, such persons shall be held personally liable to the extent of the damage they have caused to the bank.
- (2) If any violation or breach of fiduciary duty mentioned in subsection (1) has been committed at the direction, instigation or suggestion of any shareholder or significant participant in the bank, or other person participating in the conduct of the affairs of the bank, or in order to provide benefits to any such shareholder or person, whether directly or indirectly, the provisions of subsection (1) shall also be applied to such shareholder or person.
- (3) The Bank has the authority to commence and pursue lawsuits to recover losses caused to a bank by the actions of persons specified in this section before the appointment of the receiver for that bank. Such lawsuits may be commenced and pursued even after the receivership of the bank has been completed.
- (4) The Bank also may commence and pursue lawsuits to recover losses caused to a bank by the actions of independent contractors (including attorneys, accountants, and appraisers) who caused financial damage to banks through negligence, unlawful actions, or failure to act in connection with services provided to the bank prior to the appointment of the receiver.

**149. Prejudgment Attachment.**

- (1) In connection with any lawsuit referred to in Section 148 of this Act, the competent court may, upon the application of the Bank, issue a temporary order:
  - (a) prohibiting any defendant, or any enterprise controlled by any defendant, from taking any action to withdraw, transfer, remove, dissipate, or dispose of any funds, assets or other property;
  - (b) placing any such funds, assets or property under the control of the court; or
  - (c) appointing one or more persons to administer such temporary order.
- (2) A temporary order under subsection (1) may be issued if the court finds that:
  - (a) there is a substantial likelihood that the Bank will prevail on the merits of the case;
  - (b) granting the petition will not result in significant harm to any other party to the case; and
  - (c) it is in the public interest to grant the Bank's application.

- (3) In connection with a temporary order issued pursuant to subsection (3), the court may, at the request of the Bank, issue a written instruction to any bank or other financial institution to freeze summarily any account or accounts at such bank or institution that are maintained by, or under the control of, any person subject to such temporary order, or any enterprise controlled by that person, and to retain all moneys in any such account, pending the further instructions of the court.
- (4) A temporary order issued under subsection (1) shall remain in place pending a decision or other disposal of the case by the court.

**150. Maintenance of Records of Liquidations.**

- (1) The receiver shall keep proper financial ledgers and financial records, in a manner prescribed by the Bank, in which shall be recorded all financial transactions relating to the liquidation of a bank.
- (2) When the receiver has realised all the property of the bank, or so much of it as can, in the receiver's opinion, be realised without needlessly protracting the liquidation, and has made distribution to all depositors and creditors, the receiver shall cause audited financial statements to be submitted to the Bank.

**151. Cross-Border Receiverships.**

- (1) If the Bank appoints a receiver for a bank in accordance with this Act, it shall cooperate to the extent possible with the competent authorities of any foreign country in which that bank maintains one or more subsidiaries, branches or representative offices, taking into account the need to protect the interests of creditors of the bank concerned and the stability of the financial system of South Sudan. Such cooperation shall entail, at a minimum:
  - (a) notifying such competent authorities without delay of the decision to appoint the receiver; and
  - (b) taking steps to ensure that the decision to appoint the receiver is published in at least two official newspapers of general circulation of any such foreign country.
- (2) The notification referenced in paragraph (1) (a) shall:
  - (a) include the Bank's assessment of the practical effects that such appointment may have on such subsidiaries, branches or representative offices, to the extent that such reasonably can be determined; and
  - (b) if feasible, be provided before the Bank appoints the receiver; otherwise, it shall be provided as soon thereafter as practicable.
- (3) Any creditor of a domestic bank in receivership whose domicile, normal place of residence or head office is in a country other than South Sudan, including public authorities of such countries (hereinafter "foreign creditors") may submit claims in connection with the receivership of any such bank under the same conditions as creditors having their domiciles, normal places of residence, or head offices in South Sudan (hereinafter "domestic creditors"). Claims of all such foreign creditors shall be treated in the same way and

accorded the same ranking as claims of an equivalent nature that may be lodged by such domestic creditors.

- (4) If a creditor of a domestic bank in receivership has received partial payment on such creditor's claims in a foreign country, the balance of such creditor's claims may be presented for payment together with costs incurred in the domestic proceeding.
- (5) If a non-resident bank is in liquidation, receivership or any equivalent proceeding in the country where its head office is located or where it principally carries on business, the Bank may, if it deems advisable in the interest of the creditors of that bank, authorise the transfer to the liquidator, receiver, or equivalent official in that country of any assets of the non-resident bank located in South Sudan.
- (6) The Bank shall determine to what extent foreign decisions regarding conservatorship, receivership, liquidation, or any other measures concerning the resolution or other winding up of the affairs of non-resident banks should be recognised with respect to their branch offices and representative offices in South Sudan. In making this determination, the Bank shall take account of the need to protect domestic creditors of the non-resident bank, and the stability of the financial system of South Sudan.

#### **152. Termination of Receivership.**

- (1) The receivership of a bank shall be considered complete when:
  - (a) a plan recommended by the receiver and approved by the Bank in accordance with this Act has been fully implemented; or
  - (b) the conditions referenced in Section 150 (2) of this Act are present and the proceeds have been paid to the creditors of the bank or deposited with the Bank to remain available for payment to creditors of the bank pursuant to Section 147 (4).
- (2) Any assets of the bank that cannot be liquidated shall be deposited with the Bank, if practical to do so; otherwise, the Bank shall make arrangements for the safety and security of such assets. The Bank shall take appropriate steps to sell such assets as soon as practicable and the proceeds shall be deposited with the Bank under the procedure referenced in Section 147 (4).
- (3) When the affairs of a bank in receivership have been completely wound up, the Bank shall adopt a resolution that the bank shall be considered dissolved as of the date of the resolution. The resolution shall direct where the books and records of the bank and the receivership shall be deposited. The bank shall be removed from the registry of banks.

#### **153. Reports of Receiverships.**

- (1) The Bank shall maintain a full accounting of each receivership of a bank that it conducts under this Act.

- (2) With respect to each such receivership, the Bank shall make an annual accounting or report, as appropriate, available to the National Legislative Assembly and the Ministry of Finance and Economic Planning. A copy of any such report shall be made available by the Bank upon request to any member of the public.
- (3) The Bank shall retain the accounting records referred to in subsection (1) for a period of six years, unless directed otherwise by a competent court, authority mentioned in subsection (2) or otherwise required by law.

## **CHAPTER XII**

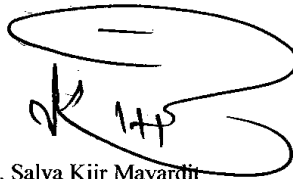
### **MISCELLANEOUS PROVISIONS**

#### **154. Regulations.**

The Bank shall issue regulations and guidelines necessary for the implementation of this Act.

---

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

A handwritten signature in black ink, consisting of a large, stylized 'K' followed by '145' and a large flourish.

Gen. Salva Kiir Mayardit  
President of the Republic