

LAWS OF THE NEW SUDAN

THE FINANCIAL INSTITUTIONS ACT, 2003.

**Printed and Distributed by Secretariat of Legal Affairs and Constitutional Development.
(PROVISIONAL ORDER)**

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An Act to provide for the establishment, regulation and control of financial institutions and other related matters.

CHAPTER ONE

PRELIMINARY.

1. Title and Commencement:-

This Act may be cited as the Financial Institutions Act, 2003 and shall come into effect on the date of signature.

2. Repeal and Saving:-.

- (i) the financial Institutions “Provisional Order” 2000 is hereby repealed.
- (ii) all acts, orders and regulations done or issued under the repealed provisional order shall remain in force till repealed or amended in accordance with the provisions of this Act.

3. Definitions:-

In this Act, unless the context otherwise requires, the following words and phrases shall carry the meanings Assigned to them:-

“Bank” means any company licensed to carry on banking business as its principal business and includes all the branches and offices of that company;

“Banking Business” means the business carried on as a principal business of:-

- (a) accepting deposits of money from the public repayable on demand or at the expiry of a fixed period or notice;
- (b) employing such deposits wholly or partly by lending or any other means for the account and at the risk of the person accepting such deposits; and
- (c) presenting to another bank, for payment, cheques, drafts or orders received from customers in the capacity of a banker.

“Board” means the Board of Directors of the Central Bank;

“Building Society” means a society formed for the purpose of raising, by the subscriptions of members, a stock or fund from which to make advances to the members and registered in accordance with the law;

“FOREX” means Foreign Exchange Bureau.

“Central Bank” means the Central Bank of New Sudan (CBNS) established under the Central Bank of New Sudan Act, 2003;

“Company” means a company incorporated or registered under the Companies Act, 2003 and it includes, Commercial Banks; Co-operative Banks; Development Banks; Building Societies, FOREX and any other institution classified as a financial institution under this Act.

“Core Capital” means permanent shareholder’s equity in the form of issued and fully paid-up shares plus all disclosed reserves, less good will or any other intangible assets;

“Credit Institution” means any company licensed to carry on credit institution business as its principal business and any other body specified by the Central Bank to be a credit institution, for the purposes of this Act, and includes all branches and offices of that company or body;

“Credit Institution Business” means the business of accepting deposits of money from the public repayable after a fixed period or after notice and of employing such deposits wholly or partly by lending or any other means for the account and at the risk of the person accepting such deposits;

“Demand Deposits” means deposits which are repayable on demand and are withdrawable by cheque, draft, order or by any other means;

“Disclosed Reserves” includes all reserves created or increased through share premiums, retained profits (after deduction of expenses, provisions, taxation and dividends) and general reserves if such disclosed reserves are permanent and unencumbered and thus able to absorb losses;

“Demand Liabilities” means the total deposit liabilities of a bank or credit institution which are denominated in any currency and payable upon demand;

“Draft” means a banker’s draft payable on demand drawn by or on behalf of a bank upon itself whether payable at the head office or branch or any other office of the bank;

“Financial Institution” includes bank, credit institution, a building society, FOREX and any other institution, classified as a financial institution, by the Central Bank;

“Foreign Company” means a company which is not a national company;

“licence” means a licence issued under this Act;

“National Company” means a company registered or incorporated under the Companies Act, 2003, in which the majority of shares and actual controlling interest are held by the nationals of the New Sudan.

“Commissioner” means the Commissioner for Finance and Economic Planning;

“Off Balance Sheet Items” means all items not shown on the balance sheet but which constitute credit risk; and such risks include guarantees, acceptances, performance bonds, letters of credit and any other off balance sheet items deemed to constitute credit risk by the CBNS;

“Officer” includes a person who carries out or is empowered to carry out functions relating to the direction of a financial institution;

“Order” when used in conjunction with the word “cheque” or “draft” means an unconditional order in writing constituting a bill of exchange;

“Supplementary Capital” means general provisions which are held against future and presently unidentified losses, that are freely available to meet losses which subsequently materialized, and revaluation reserves on banking premises which arise periodically from independent valuation of such premises and any other form of capital as may be determined from time to time by the Central Bank;

“Time Deposits” means deposits repayable after a fixed period or after notice and includes saving deposits;

“Time Liabilities” means deposit liabilities other than demand liabilities of a financial institution which are denominated in any currency and are subject to payment after a period or notice;

“Total Capital” means the sum of core capital and supplementary capital;

“Unsecured Advances or Unsecured Credit Facilities” means advances or credit facilities made without security or, in respect of any advance or credit facility made with security or any part of it which at any time exceeds the market value of the assets constituting that security as where the CBNS is satisfied that there is no established market value, on the basis of a valuation approved by the CBNS;

“SPLM” means the Sudan People’s Liberation Movement.

“LC” means the Leader Council of the SPLM and CANS.

“CANS” means the Civil Authority of New Sudan.

“Chairman” means the Chairman of the SPLM and CANS.

“NLC” means the National Liberation Council;

“Commission” means the Commission for Economic Production, Human Resource Development and Physical Infrastructure;

“Person” means real or legal person;

4. Application of the Act.

- (1) The provisions of this Act shall apply to any financial institution as defined in section 3 of this Act.

- (2) Notwithstanding the general effect of subsection (1) of this section, the provisions, which shall apply to a building society are, chapters two, four, five, six and sections 13, 14, 15, 35, 37, 39, 42, 43 and 51 of this Act.
- (3) This Act shall not apply to a co-operative society registered under the Co-operative Societies Act, 2003, save a co-operative society established for the purpose of accepting deposits from the public.

CHAPTER TWO LICENSING.

5. Licensing of Financial Institutions.

- (1) No person shall transact banking business, credit institutions business or building societies business or FOREX without a valid licence granted for the purpose under this Act.
- (2) No person shall be granted a licence unless a company within the meaning of this Act.

6. Application for a Licence.

- (1) Any company proposing to transact banking, building societies credit institution business or FOREX shall apply, in writing to the CBNS for a licence under this Act and the application shall be considered by the Board.
- (2) The application referred to in subsection (1) of this section shall contain the following:-
 - (a) The name and address of:-
 - (i) the proposed financial institution;
 - (ii) the directors;
 - (iii) the shareholders.
 - (b) Nationality of directors;
 - (c) Nationality and shareholding of any shareholders;
 - (d) Proposed location from where the financial institution will operate;
 - (e) The estimated number of persons to be employed;
 - (f) The qualifications, experience, nationality and other relevant particulars of the proposed management and staff;
 - (g) The capital structure and earning prospects of the financial institution;

- (h) Business financial plans and earnings forecasts for the next three years, at least;
 - (i) Any other information relating to the viability of the financial institution or other matters as the applicant considers relevant to his application.
- (3) An application under subsection (1) of this section shall be accompanied by a Memorandum and Articles of Association or rules and certificate of incorporation.
- (4) Where an application under subsection (1) of this section does not provide all the relevant information or if clarification is necessary, the applicant may be called upon to provide that information or clarification to complete the application.

7. Factors to be Considered for Grant of Licence.

The CBNS, in the consideration of an application for a licence under Section (6) of this Act, shall require satisfaction on:-

- (a) The financial condition and history of the applicant;
- (b) The nature of the business of the applicant;
- (c) The competence and integrity of the proposed management;
- (d) The adequacy of the applicant's capital structure, earning prospects, business plans, financial plans...etc.
- (e) The convenience and needs of the community to be served;
- (f) Whether public interest will be served by granting of the licence.

8. Processing of Applications.

- (1) The Central Bank shall within four months after receipt of an application or of the additional information or clarification under subsection (3) of section 6 of this Act investigate and prepare a detailed report in respect of each application.
- (2) The CBNS shall, for the purpose of considering and making a report on the application under this section, appoint a committee of three or more members of the Board who shall present, their recommendations to the Board.
- (3) The CBNS shall within fourteen days from the submission of the report to the Board, consider the application and the report, and shall grant the licence, if it is satisfied that the application is in accordance with the provisions of this Act.

- (4) The CBNS shall within seven days after its decision under subsection (3) of this section:-
- (a) inform the applicant of its decision in writing;
 - (b) in the event of refusal to grant the licence, the aggrieved applicant may appeal to the Commissioner who shall deal with the appeal in consultation with the Commission, within fifteen days.
- (5) Where the CBNS grants the licence, it may grant it upon such conditions as are deemed necessary.

9. Licence Fee.

The applicant shall, upon being granted a licence under this Act, pay a licence fee to be prescribed by the CBNS and the holder of the licence shall thereafter pay a fee to be prescribed by the CBNS on or before each anniversary of the granting of the licence , as renewal fee.

10. Duration of Licence.

- (1) A licence granted under section 8 of this Act shall remain in force until revoked.
- (2) A licence granted under section 8 of this Act shall be kept displayed in a conspicuous place in the premises in which the financial institution carries on it's lawful business, and copies of it shall be similarly displayed in each of its branch offices.

11. Failure to Commence Operations.

A licenced financial institution which fails to commence operations within twelve months from the date of issue of the licence, shall have its licence revoked.

12. Revocation of Licence.

The Central Bank may, at any time, in consultation with the Commissioner, revoke the licence of a financial institution if it is satisfied that the financial institution:-

- (a) Ceased to carry on business;
- (b) Has been declared bankrupt;
- (c) Is being liquidated;
- (d) Has been wound up;
- (e) Has been dissolved;

- (f) Is carrying on business in a manner detrimental to the interests of the depositors;
 - (g) Failed to comply with any condition stipulated by the CBNS under subsection of section 8 of this Act.
- (5)

CHAPTER THREE
CAPITAL REQUIREMENTS.

13. Minimum Capital Requirements.

- (1) A national of the New Sudan proposing to transact banking business in the New Sudan shall have a minimum paid up capital of not less than one million pounds invested in such assets in the New Sudan or as the CBNS may approve.
- (2) A non-national of the New Sudan proposing to transact banking business in the New Sudan shall have a minimum paid-up capital of not less than five million pounds invested in such assets in the New Sudan or as the CBNS may approve.
- (3) A person proposing to transact credit institution business shall, in the case of:-
 - (a) a national of the New Sudan, have a minimum paid-up capital of not less than two hundred and fifty thousand pounds; and
 - (b) a non-national of the New Sudan, have a minimum paid-up capital of not less than one million pounds, invested in such assets in the New Sudan or as the CBNS may approve.
- (4) A person proposing to transact a building society shall have a minimum paid-up capital of not less than two hundred and fifty thousand pounds invested in such assets in the New Sudan or as the CBNS may approve.
- (5) A person proposing to transact in a foreign exchange business (FOREX) shall have a minimum paid-up capital of not less than two hundred and fifty thousand pounds or as the CBNS may approve.

14. On-going Capital Adequacy Requirements.

A financial institution shall at all times maintain:-

- (a) a core capital of not less than five percent of total risk adjusted assets plus risk adjusted off balance sheet items as may be determined by the CBNS.

- (b) a total capital of not less than ten per cent of its total risk adjusted assets plus risk adjusted off balance sheet items as may be determined by the CBNS.

15. Review of Minimum Capital Requirements.

The Central Bank may, with the approval of the Commissioner, from time to time, review the minimum capital requirements, as circumstances warrant.

16. Minimum Holdings of Liquid Assets.

- (1) A financial institution shall maintain a minimum holding of liquid assets as determined by the CBNS in accordance with subsection (2) of this section.

- (2) A minimum holding of liquid assets under this section shall be expressed as a proportion of the demand and time liabilities of a financial institution not exceeding thirty percent of such demand and time liabilities, but:-

- (a) different proportions may be determined for demand liabilities and time liabilities and for various types of financial institutions; and
- (b) demand or time liabilities due by a financial institution to its head office or to any bank situated outside the New Sudan, may at the discretion of the CBNS, be included wholly or in part.

- (3) The CBNS shall allow reasonable time after a minimum holding is prescribed or increased under subsection (1) of this section, to enable the financial institutions comply with the requirement.

- (4) Any financial institution which contravenes this section shall be liable to pay, on being called upon to do so by the CBNS, a fine not exceeding one tenth of one percent of the amount of deficiency for every day on which the deficiency continues.

- (5) For the purposes of this section “liquid assets” means all or any of the following:-

- (a) notes and coins which are legal tender in the New Sudan and any other currency prescribed by the CBNS;
- (b) balances held at the CBNS including any balances in accordance with the Central Bank of New Sudan Act, 2003;
- (c) balances at banks in the New Sudan other than the CBNS and other moneys at call;

- (d) the Secretariat of Finance and Economic Planning Bills, maturing within a period of not more than ninety one days;
- (e) CANS stock maturing within a period not exceeding five years;
- (f) balances of banks abroad with-drawable on demand, and money at call abroad, provided that the balances and money at call are in currencies which are freely negotiable and transferable in international exchange markets consistent with the articles of agreement with the International Monetary Fund;
- (g) commercial bills and promissory notes which are eligible for discount by the CBNS under the Central Bank of New Sudan Act, 2003;
- (h) any other assets approved by the CBNS.

17. Computation of Liquid Assets.

- (1) The Central Bank shall prescribe the minimum amount of liquid assets to be held by financial institutions, including the off setting of general or specified liquid assets against demand and time liabilities.
- (2) In computing the minimum amount of liquid assets to be held by a financial institution operating in the New Sudan and elsewhere, all the offices and branches of that financial institution in the New Sudan shall be deemed to constitute one financial institution.

18. Control of Foreign Exchange Holdings.

- (1) The Central Bank may fix or prescribe manner of determination of the maximum working balances which financial institutions may respectively hold in foreign currencies generally or in any specified foreign currency, and may at any time, require any financial institution to sell to the Central Bank all or any specified part of the surplus in excess of such maximum amount.
- (2) The CBNS shall regulate and control the functions, duties and operations of the Foreign Exchange Bureaus.

CHAPTER FOUR

RESTRICTIONS AND PROHIBITIONS ON FINANCIAL INSTITUTIONS.

19. Advances, Credits and Guarantees.

- (1) No financial institution, without the prior approval of the Central Bank, shall:-
 - (a) grant any advance or credit against security of its own shares or those of a company affiliated to it;
 - (b) grant or permit to be outstanding advances or credit facilities which in the aggregate exceed twenty-five percent of its core capital, to any of its directors or of their immediate families or business enterprises in which they have substantial interests, whether such advances or facilities are obtained by its directors jointly or severally;
 - (c) grant or permit to be outstanding in respect of anyone of its officers or employees, unsecured advances or unsecured credit facilities which in the aggregate exceed one year's emolument of such officer or employee;
 - (d) grant to a single person any advance or credit facility which is more than twenty-five percent of its core capital.

- (2) For the purposes of this section, advances or credit facilities made to several persons sharing a common interest shall be deemed by the CBNS to be a single advance or credit facility for the purposes of this section.

20. Trade Investments and Immovable Property.

- (1) No financial institution shall:-
 - (a) engage on its own account, alone or with others, in whole or retail trade, including import or export trade, except in the course of the satisfaction of debts due to it in which case all interests in such trade shall be disposed of at the earliest moment, suitable to that financial institution;
 - (b) acquire or hold any part of the share capital of, or make any other capital investment or otherwise have a direct interest in any commercial, agricultural, industrial or other undertaking exceeding twenty-five percent of its core capital, except such shareholding, capital investment, or interest as the financial institution may acquire in the course of the satisfaction of debts due to it, which shall be disposed of at the earliest moment suitable to that financial institution but any shareholding approved by the Central Bank, in any corporation set up for the purpose

of promoting development in the New Sudan, shall not be included in any of the said percentages;

- (c) purchase or acquire any immovable property or any right on it except as may be reasonably necessary for the purpose of conducting its business or of housing or providing amenities for its staff, but this paragraph shall not prevent a financial institution from :-
 - (i) letting part of any building which is used for the purpose of conducting its business; or
 - (ii) securing a debt on any immovable property and in the event of default in payment such debt, from holding such immovable property for realisation at the earliest moment suitable to that financial institution.

- (2) Notwithstanding the provisions of subsection (1) of this section, the Central Bank may permit a financial institution to engage in a commercial, agricultural, industrial or other undertaking upon such conditions as it may deem fit, provided that such undertaking is not likely to impair the viability and efficiency of the financial institution.

21. Dividends.

- (1) No financial institution shall at anytime pay any dividend or make any transfer from profits or capital if such payments result in such financial institution meeting the requirements of section 14 of this Act.
- (2) Any financial institution which contravenes the provisions of this section, commits an offence and shall be liable, on conviction, to a fine of ten percent of the dividends paid out contrary to this section.

**CHAPTER FIVE
SUPERVISION.**

22. Accounts.

- (1) A financial institution shall keep accounts and records which:-
 - (a) show a clear and correct state of its affairs;
 - (b) explain its transactions and financial position to enable the CBNS to determine whether or not the financial institution has complied with the provisions of this Act.

- (2) A financial institution shall preserve the accounts and records referred to in this section for a period of not less than ten years.

23. Books and Accounts.

All entries in any books and all accounts to be kept by a financial institution shall be kept and recorded in the English language using the system of numerals employed in the CANS accounts.

24. Appointment of Auditor.

- (1) A financial institution shall appoint annually a person qualified as an auditor under the Companies Act, 2003 and approved by the CBNS, whose duty shall be to make a report upon the annual balance sheet and accounts of the financial institution.
- (2) A financial institution shall ensure that a report under this section is submitted to the CBNS within a period of four months after the closure of the financial year.
- (3) Any financial institution, which contravenes subsection (2) of this section, commits an offence and shall be liable to a fine prescribed by the CBNS under section 49 of this Act.

25. Appointment of Auditors by the CBNS.

Where a financial institution fails to appoint an auditor under section 24 above, or fails to fill a vacancy for such auditor or where the CBNS is not satisfied with the audit report in respect of a financial institution, the CBNS may appoint an auditor for, and shall fix the remuneration to be paid to the auditor by that financial institution.

26. Accessibility to Books ... etc.

An auditor appointed under section 24 or 25 shall have a right of access at all times to such books, accounts, vouchers and securities of the financial institution and shall be entitled to receive from the officers, and staff of the financial institution, such information and explanations as he may require to perform his duties.

27. Responsibilities of Auditor to the CBNS.

- (1) If the CBNS is dissatisfied with the result of the audit, it may reject the result and call for a new audit at the expense of the financial institution concerned.

- (2) Before annual accounts are finalised, dividends paid, and the capital requirements of sections 13 and 14 are met, the CBNS must be satisfied that:-
- (a) provisions for bad debts are sufficient; and
 - (b) a proper policy of non-accrual is in place and being enforced.
- (3) External audits are to be prepared in accordance with generally accepted accounting standards and such other regulations, directives, policies or guidelines as the CBNS may issue.
- (4) The CBNS may impose any or all of the following duties on an external auditor:-
- (a) a duty to submit such additional information in relation to his audit as the CBNS deems necessary;
 - (b) a duty to carry out any other investigation or establish any procedure in any particular case;
 - (c) a duty to verify the accuracy of returns and other reports submitted to the CBNS;
 - (d) a duty to submit a report to the CBNS on the matters referred to in paragraphs (a), (b) and (c) and the financial institution concerned shall remunerate the auditor in respect of the discharge by him of all or any of these additional duties.
- (5) The CBNS, if it considers it necessary, may arrange from time to time, trilateral meetings with each financial institution and its auditors, to discuss matters relevant to the CBNS supervisory responsibilities which have arisen in the course of the audit of that financial institution, including relevant aspects of its business, its accounting and internal control systems and its annual balance sheet and profit and loss accounts.
- (6) The CBNS may, if it considers it desirable or necessary in the interest of depositors, arrange from time to time, bilateral meetings with the auditors of financial institutions.
- (7) No duty or confidentiality to which an auditor may be subject, shall be regarded as contravened by reason of the auditor's communication in good faith with CBNS, whether in response to a request by it or not, and this includes any information or opinion which is relevant to the CBNS functions under this Act.

28. Information to be Furnished by the Financial Institutions.

- (1) A financial institution shall furnish the CBNS at such times in such form as the CBNS may require, with all the information and data of its operations in the New Sudan including periodic returns called for by the CBNS and the audited balance sheet and profit and loss account and those of any company or body affiliated to it which the CBNS may require for the proper discharge of its functions under this Act.
- (2) A financial institution shall prepare and cause to be submitted to the CBNS an audited balance sheet within a period of two months after the end of its financial year.
- (3) A financial institution shall exhibit throughout the year, in a conspicuous place each of its offices and branches, a copy of its last audited balance sheet with the full and correct names of all the persons who are directors of the financial institution, and a copy of the balance sheet shall be published in a local newspaper of wide circulation.
- (4) The CBNS may publish in whole or in part at such time as it may determine, any information or data furnished under subsection (1) of this section, except that no information or data shall be published which might disclose the affairs of a financial institution or of a customer of a financial institution unless the consent of that financial institution or customer has been obtained.
- (5) Any financial institution which fails to comply with subsection (1) of this section, shall be liable to a fine of 0.5 percent of the total deposit liabilities of the financial institution for each month in default.

29. Inspection of Financial Institutions.

- (1) The CBNS may periodically or at any time at its discretion, cause an inspection to be made by an officer of the CBNS or other person appointed by the CBNS, of any financial institution and of its books and accounts on the premises of such financial institution, and shall supply to that financial institution a copy of the report on the inspection.

- other
- (2) It shall be the duty of a financial institution, to produce to the officer making an inspection under subsection (1) of this section, all such books, accounts and documents, as well as assets including cash, notes and securities held by the financial institution in its custody or power and to furnish that officer with such statements or information relating to the affairs of the financial institution, as that officer may require, within such reasonable time as he may specify.
- (3) Any officer of a financial institution, who fails to furnish any document in his custody or power, as may be required under subsection (2) of this section, commits an offence and shall on conviction be liable for a penalty to be determined by the CBNS from time to time.

30. Powers of the CBNS to Issue Orders after Inspection.

- (1) If the CBNS finds upon an inspection under section 29 of this Act, that the affairs of a financial institution are conducted in a manner detrimental to the interests of the depositors or prejudicial to the interests of the financial institution or in contravention of this Act or any other law, the CBNS may, without prejudice to any other course of action:-
- (a) require that the financial institution takes necessary measures to rectify the situation; the measures may include signing an agreement between the directors and management of the financial institution and the CBNS;
- (b) appoint a competent person to advise the financial institution on the measures to be taken to rectify its situation and shall fix his remuneration which shall be paid by the financial institution;
- (c) prohibit the declaration of dividends until the situation is rectified;
- (d) withhold approvals for the establishment of new branches or other expansion of operations;
- (e) initiate a legally binding cease and desist order, of either temporary or indefinite duration, requiring the financial institution and its management to stop the unacceptable practice or take affirmative action to rectify the undesirable situation;
- (f) initiate the legal removal or suspension of a person from the management of the affairs of the financial institution;
- (g) impose fines on a member of the management for contravention of this Act.

- (2) The CBNS may, upon presentation made to it or on its own motion, modify or cancel any order issued under this section, and in so modifying or canceling any order, may impose such conditions as are necessary subject to which the modification or cancellation shall have effect.

CHAPTER SIX
LIQUIDATION, SEIZURE AND RE-ORGANIZATION.

31. Liquidation.

- (1) A financial institution may, with the approval of the Central Bank, voluntarily liquidate its operations.
- (2) Subject to subsection (1) of this section, a financial institution shall forthwith cease all activities except those which are incidental to the orderly realization, conservation and preservation of its assets and the settlement of its obligations.
- (3) In case of a liquidation under this section:-
 - (a) the liability of the shareholders for uncalled subscriptions to the capital stock of the financial institution shall continue until the end of the liquidation process;
 - (b) the depositors shall be entitled to first claim and thereafter all other creditors shall be ranked in accordance with the provisions relating to insolvent companies under the Companies Act, 2003;
 - (c) the Board of Directors of the financial institution shall, before paying creditors holding direct claims and with the approval of the Central Bank, make arrangements as are necessary to ensure a pro rata distribution among holders of claims that are likely to be reduced to judgment in the court.
- (4) Where the Central Bank is satisfied that the assets of a financial institution which has voluntarily liquidated its operations under this section are not sufficient to discharge its obligations or that the completion of the liquidation of its operation is unduly delayed, the Central Bank may, if it deems it fit, take possession of the financial institution and take proceedings leading to compulsory liquidation in conformity with this Act..

32. Seizure.

- (1) The Central Bank may take possession of financial institution:-
 - (a) which is insolvent;
 - (b) which is conducting its business in a manner contrary to the provisions of this Act;
 - (c) when the continuation of its activities is detrimental to the interests of depositors;
 - (d) that refuses to submit itself to inspection by the Central Bank as required by this Act; or
 - (e) whose licence has been revoked under section 12 of this Act.

- (2) Where a financial institution is seized under this section the following shall apply:-
 - (a) any term whether legal, contractual or otherwise on the expiration of which a claim of right of the financial institution would expire or be extinguished, shall be extended for six months from the date of seizure;
 - (b) any attachment or lien existing for six months prior to seizure of the institution shall be vacated and no attachment or lien except a lien created by the Central Bank, shall attach any property or assets of the financial institution as long as the Central Bank continues to possess the financial institution; and
 - (c) any transfer of assets of a financial institution made six months before the insolvency or seizure of the institution with intent to effect a performance, shall be void.

33. Management of Seized Financial Institution.

- (1) The Central Bank shall, upon possessing a financial institution under section 32 of this Act, be vested with exclusive powers of management and control of the affairs of the financial institution.

- (2) The powers referred to in subsection (1) of this section shall include power to:-
 - (a) continue or discontinue its operations as a financial institution (notwithstanding the revocation of its licence);
 - (b) stop or limit the payment of its obligations;
 - (c) employ any necessary staff;
 - (d) execute any instrument in the name of the financial institution;

- (e) initiate, defend and conduct in its name any action or proceeding to which the financial institution may be a party;
- (f) re-organize or liquidate the financial institution in accordance with the provisions of this Act; and
- (g) do any other act which is necessary to enable the Central Bank carry out its obligations under this section.

(3) The Central Bank shall, as soon as possible after taking possession of a financial institution, make an inventory of the assets of the financial institution and shall transmit a copy of it to the LC.

(4) Where, as a result of its inventory under this section the Central Bank determines that a financial institution is insolvent, the Central Bank may, in consultation with the Commissioner, close the financial institution on account of its inability to meet its obligations to its depositors and other creditors.

34. Receiver.

(1) The Central Bank or an appointee of the Central Bank, upon a financial institution becoming insolvent, shall be the receiver of the financial institution.

(2) The Central Bank may, in carrying out its duties as receiver, either arrange a merger with another financial institution in which case the acquiring financial institution will assume all recorded deposit liabilities of the insolvent financial institution or proceed with liquidation of the insolvent financial institution.

(3) The Central Bank, in making a decision under subsection (2) above, shall take into consideration:-

- (a) the estimated cost of the Central Bank with regard to shortfalls to be covered through acquisition of all deposit liabilities by the acquiring financial institution;
- (b) the impact on and loss to depositors as a result of liquidation; and
- (c) the overall impact on public confidence in and the stability of the financial sector in general as a result of acquisition or liquidation.

- (4) Where the Central Bank arranges an acquisition under subsection (2) above, it shall negotiate with the acquiring financial institution the terms and conditions of acquisition.
- (5) Where the Central Bank decides to liquidate a financial institution, it shall:-
 - (a) realize the assets of the insolvent financial institution;
 - (b) enforce the individual liability of the shareholders and directors of the financial institution;
 - (c) wind up the affairs of the insolvent financial institution; and
 - (d) in winding up the affairs of the insolvent financial institution, eliminate the interests of shareholders and may purchase, sell, or transfer assets in order to recover the maximum amount of a pro rata distribution to depositors and creditors of the insolvent financial institution.

**CHAPTER SEVEN
THE DEPOSIT PROTECTION FUND.**

35. Establishment of Fund.

- (1) There shall be established in the Central Bank a Fund, to be known as the Deposit Insurance Fund.
- (2) The Fund shall be managed and controlled by the Central Bank, into which shall be paid all contributions and other payments required by this chapter to be paid into the Fund and out of which shall be made, the payments required by this chapter to be made out of the Fund.
- (3) The Commissioner may from time to time, in consultation with the Central Bank, and by notice in the Gazette, fix the size of the Fund sufficient to protect the interests of the depositors to be made up by the contributions under and may authorize the Central Bank to borrow any amount as it may require for temporary purposes of making up deficiency in the Fund pending collection of contributions.
- (4) The Fund shall consist of:-
 - (a) moneys contributed by financial institutions under section 36 of this Act;
 - (b) income credited to the Fund under sub-section (5) of this section;

(c) money borrowed for purposes of the Fund under subsection (3) of this section.

(5) The money constituting the Fund shall be placed in an account with the Central Bank, to be invested in such a manner as the Central Bank shall deem appropriate and any income from the investment shall be credited to the Fund.

(6) There shall be chargeable to the Fund the administrative expenses of the Central Bank, repayment of money borrowed by the Fund and payments made in respect of protected deposits.

36. Contributors and Contributions to the Fund.

(1) Every financial institution shall be a contributor to the Fund and shall pay into the Fund such annual amount, and at such times, as the Central Bank may determine.

(2) The Central Bank shall serve upon a financial institution, a notice specifying the amount and the period, which shall not be later than twenty one days from the service of the notice, within which the amount shall be paid into the Fund by the financial institution.

(3) The amount of contribution to the fund under this section shall not be less than one percent of the average of the financial institution total deposit liabilities during the period of twelve months prior to the date of notice served under subsection (2). The Governor may, after consultation with the Commission by order, amend the minimum and maximum amounts of contributions prescribed by this subsection.

(4) Any financial institution which, for any reason, fails to pay its contribution to the Fund within the periods specified in a notice issued under subsection (2) shall be liable to pay to the Fund a penalty interest charge not exceeding one half percent of the unpaid amount for every day outside the notice period, on which the amount remains unpaid.

being (5) If it appears to the Central Bank that the affairs of a financial institution are conducted in a manner detrimental to its own interests or to the interests of the depositors, the Central Bank may increase the contributions of that financial

institution beyond the maximum set out under subsection (4) of this section, or terminate the protection of the deposits of such financial institution.

37. Protection of Deposits and Payment out of Fund.

- (1) The amount, being the aggregate credit balance of any accounts maintained by a customer at a financial institution, less any liability of the customer to the financial institution, shall be a protected deposit to the extent determined by the Governor, from time to time, by order published in the Gazette.
- (2) A customer of a financial institution may upon the financial institution becoming insolvent, lodge a claim with the Central Bank in such form as the Central Bank may approve for payment to him out of the Fund of any protected deposit which he would, but for the insolvency, have been paid had he demanded payment from the insolvent financial institution.
- (3) The Central Bank may, before paying any claim lodged under subsection (2), require the claimant to furnish it with such documentary proof to show that he is entitled to payment out of the Fund. The Central Bank may decline to make any payment under this section, to a person who, in the opinion of the Central Bank, had any responsibility for or might have profited directly or indirectly from the circumstances leading up to the financial institution becoming insolvent.
- (4) Without prejudice to the provisions of subsection (3) of this section, the Central Bank may carry out inspections under section 29 and ascertain the type, values, and number of the protected deposits which, but for the insolvency, would be payable by an insolvent financial institution.
- (5) Upon payment of a protected deposit, the Fund shall be entitled to receive from the financial institution or liquidator, as the case may be, an amount equal to the insolvency payment paid by the Fund on account of its subrogation to the claims of any customer or depositor.
- (6) For the purposes of this section “customer” includes persons entitled to a deposit as trustees or persons holding any deposits jointly.

38. Power of the Central Bank to Lend.

If the Central Bank considers it desirable to reduce risk or avert threatened loss to the Fund, it may, on such terms and conditions as it may prescribe lend, place a deposit or issue a guarantee, or purchase the assets of a financial institution.

39. Annual Report of the Central Bank's Activities.

- (1) The Central Bank shall, within three months after the closure of each financial year, submit an annual report, to the LC, on the operations of the Fund.
- (2) The financial year of the Fund shall be the same as that of the Central Bank.

**CHAPTER EIGHT
MISCELLANEOUS.**

40. Branches.

- (1) No financial institution shall open a new place of business or change the location of an existing place of business or change its working hours, without the approval of the Central Bank.
- (2) Before granting any approval in respect of opening a new place of business or change of location of an existing place of business or working hours, the Central Bank may require to be satisfied by an inspection of the financial institution or otherwise as to:-
 - (a) the history and financial condition of the financial institution;
 - (b) the general character of its management;
 - (c) adequacy of its capital structure and earning prospects;
 - (d) the convenience and needs of the community to be served; and
 - (e) whether public interest will be served by the opening of a new place of business or changing of the location of or hours of business, as the case may be.
- (3) No financial institution shall close an existing place of business unless it has given a six months notice to the Central Bank, or such other shorter

period of notice as the Central Bank may deem reasonable; of its intention to close
the place of business.

- (4) Any financial institution which contravenes the provisions of this section, commits an offence and shall be liable to a fine to be fixed by the Central Bank, from time to time by an order.

41. Mergers.

(1) No financial institution operating in the New Sudan shall be merged or consolidated with or taken over by any other institution or individual and no interest in the capital of any financial institution, with a voting share exceeding ten percent shall be acquired by any other financial institution, without the approval of the Central Bank.

- (2) In considering any application for approval under this section, the Central Bank shall have power to call for the relevant information.

- (3) Any financial institution which contravenes the provisions of subsection (1) of this section, commits an offence, and shall be liable to a fine of one million pounds for every day during which the offence continues; and any officer who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand pounds and in default of payment, to one year imprisonment.

42. Restrictions on Transfer of Shares.

(1) No person shall transfer shares, in a financial institution, representing more than fifteen percent of either capital stock or voting rights, without the prior approval of the Central Bank.

- (2) Where the Central Bank refuses to allow a person to transfer shares under this section, he may appeal to the High Court and its decision shall be final.

- (3) A financial institution shall, as may be required by the Central Bank, make periodic returns in respect of persons, holding more than fifteen percent of the total shares of the financial institution.

43. Mortgages, Liens.

For the avoidance of doubts a financial institution may accept lien on crops, animals or other chattels as collateral security for loans and overdrafts.

44. Unclaimed Balances.

- on
- (1) Whenever any or savings account has not been operated for a period of five years or a current/time account has not been operated for a period of two years after the date of maturity of the deposit, no withdrawals shall be allowed such account except with the permission of two officers of the financial institution, out of a number of signatories authorised to grant such permission.
 - (2) An account referred to in subsection (1) of this section shall be transferred to a separate register of dormant accounts in the books of the financial institution and a notice in writing of such action shall be given to the depositor at his last known address.
 - (3) Where any account which is transferable under subsection (2) of this section, is subject to a service charge, such charge may continue to be levied up to the date on which the account have been transferred to the separate ledger of dormant accounts except that no charge shall be levied beyond two years.
 - (4) Where an account is transferred to a register of dormant accounts an advertisement shall be published after a period of ten years of which an account having been on the register of dormant accounts and thereafter after ten years and the cost of advertisement shall be charged on the respective accounts on a pro rata bases.
 - (5) Any accounts may be transferred out of the register of dormant accounts if the depositor, or if he is dead, and his legal representative, makes such a request.
 - (6) Unclaimed balances shall after a period of twenty years be employed by the Central Bank to off set costs of supervising financial institutions or as may be prescribed.

45. Disqualification of Officers.

- (1) No person:-

- (a) who has been a director or officer of, or directly responsible for the mismanagement of a financial institution leading to its being compulsorily wound up by a court;
- (b) who has been convicted of an offence under section 53 of this Act; or
- (c) who is a bankrupt or suspends payment or compounds with his creditors;

shall without the express authorization of the Central Bank, act or continue to act as a director or officer, or be directly or indirectly involved in the management of a financial institution.

- (2) Any person convicted of an offence involving dishonesty or fraud, shall not act or continue to act in any way in the management of financial institution.

46. Officers Deemed Public Servants.

An officer or employee of a financial institution shall be deemed to be a public servant within the meaning of the provisions of the Penal Code, 2003.

47. Obligations Under the Companies Act, 2003.

Nothing in this law shall be deemed to relieve a financial institution from the provisions and obligations under the Companies Act, 2003, or any other law in force.

48. Use of the Word “Bank”.

- (1) No person, except a person licenced under this Act, without the consent of the Central Bank shall:-
 - (a) use the word “bank” or any of its derivatives in any language or any other word indicating the transaction of banking business in the name, description of title under which such person is transacting business;
 - (b) make or continue to make any representation indicating the transaction of banking business in any bill head, letter-paper, notice, advertising or in any manner whatsoever.
- (2) No company shall carry on the business of banking unless it uses as part of its name the word “bank” or one of its derivatives.
- (3) Any person who contravenes the provisions of this section commits an offence and shall on conviction be liable to a fine of fifty thousand pounds for every day during which the offence continues.

49. Examination of Suspected Banking Business.

Whenever the Central Bank has reasonable grounds leading it to believe that any person is transacting banking, credit institution or building society business without a licence, it shall have the power to examine the books of accounts and records of such person in order to ascertain whether or not such person has violated or is violating any provisions of this Act, and any refusal to submit such books, accounts and records shall be prima facie evidence of banking, credit institution business or building society business, without a licence, as the case may be.

50. Protection of Central Bank.

No suit or other legal proceedings shall lie against the Central Bank or any officer thereof for any thing which is done or is intended to be done in good faith pursuant to the provisions of this Act.

51. Declaration of Bank Holidays.

- (1) The LC may, at any time, by order, declare any day to be a bank holiday.
- (2) No financial institution shall transact any business with the public on a bank holiday.
- (3) A bank holiday declared under subsection (1) of this section shall not necessarily be a public holiday and nothing in this section shall be deemed to affect the provisions of any law in force relating to public holidays.

52. Regulations.

The Central Bank may in consultation with the Commissioner, make regulations:-

- (a) prescribing prudential norms on asset quality including bad debt provisions and write-off;
- (b) providing for the licensing of financial institutions;
- (c) providing for the minimum level of capital for financial institutions;
- (d) providing for the computation of on-going capital adequacy requirements for financial institutions;
- (e) providing for lending limits on credit extended to insiders;
- (f) providing for the limitations for advances or credit facilities to a single borrower;

- (g) providing for reporting requirements by financial institutions to the Central Bank;
- (h) giving effect to the provisions of this Act.

53. Offences and Penalties.

(1) Any person who carried on or is privy to the carrying out the business of a financial institution, which has been established, contrary to the provisions of this Act, commits an offence, and shall on conviction be liable to a fine of up to two million pounds or to two years imprisonment or both.

(2) Any person convicted of an offence under subsection (1) of this section, shall be disqualified from acquiring a licence under this Act for a period of five years and thereafter shall not, without approval of the Central Bank, be issued with a licence.

(3) Any person, being a director, manager or officer of a financial institution, who:-

- (a) fails to take any reasonable steps to secure compliance with the requirements of this Act;
- (b) makes any statement or gives any information which is false in answer to any request for information made under any provision of this Act;
- (c) is privy to the furnishing of any false information supplied under this Act,

to

commits an offence and shall, on conviction, be liable to a fine of one million pounds or two years imprisonment or both.

(4) Any financial institution which fails to comply with an order issued by the Central Bank under this Act, commits an offence and shall on conviction be liable to a fine to be determined by the Central Bank, by an order.

(5) Any financial institution which contravenes any provision of this Act, commits an offence, and where no specific penalty is provided, the financial institution shall be liable, on conviction, to a penalty prescribed by the Central Bank by an order.

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

54. Status of the Order.

For the purposes of banking, credit institutions and building societies business, this Act shall take precedence over any legislation relating to financial institutions and in case of conflict this Act shall prevail.

Given under my hand this..... day of Year 2003 A.D.

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Dr. John Garang de Mabior

Chairman,

SPLM/CANS.