

LAWS OF SOUTH SUDAN

**ANTI-MONEY LAUNDERING AND COUNTER TERRORIST
FINANCING ACT, 2012**

Act No.29

ANTI-MONEY LAUNDERING AND COUNTER TERRORIST FINANCING ACT, 2012

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**ANTI-MONEY LAUNDERING AND COUNTER TERRORIST FINANCING 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 promulgate the following into law-

CHAPTER I

PRELIMINARY PROVISIONS

1. Title and Commencement.

This Act shall be cited as “The Anti-Money Laundering and Counter Terrorist Financing 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Any existing legislation governing the subject of this Act is hereby repealed; provided that any orders issued or regulations made thereunder, except to the extent they are cancelled by or are otherwise inconsistent with provisions of this Act shall continue in force and effect until repealed or amended by this Act.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 establish the measures and institutions responsible for the prevention and control of money laundering and financing of terrorism in South Sudan.

4. Authority and Application.

This Act is drafted in accordance with Articles 52 and 182 of the Transitional Constitution of the Republic of South Sudan, 2011, which grants the Government and the President the exclusive legislative and executive competence to enact legislation relating to regulatory mechanisms for banking and monetary affairs at all levels of government of South Sudan.

5. Interpretations.

In this Act, unless the context otherwise requires:

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

“**bank**” means a legal person in gaiging in the businesses and recerving of money deposits or other payable funds from the public and making dreadits for its own account, and maybe:

- (a) a commercial bank

- (b) a saving bank
- (c) a mortgage bank
- (d) a merchant bank, and any other specialized banks; but doesn't include a deposit microfinance institutions;

“cash dealer ” means:

- (a) a person who carries on the business of an insurance, and intermediary insurance broker, a securities marketing or a futures broker;
- (b) a person who carries on a business of dealing in gold bullion, of issuing, selling or redeeming traveller's cheques money orders or similar instruments, or of collecting, holding and delivering or transmitting money;
- (c) an operator of a gaming activity
- (d) trustee or manager of collective investment scheme; and
- (e) an operator of a foreign exchange bureau

“Chairperson” means the Chairperson of National Committee

“Commissioner” means the Commissioner of the FIU;

“Comparable Body” means an overseas Government agency with functions similar to those of the FIU;

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

“customer” means a person seeking to established a business relationship, or conduct a transaction or series of transaction, with a reporting person;

“Financial institution” has the meaning assigned to it in the Banking Act, 2012, and also includes, for the purpose of the this Act, microfinance institution;

“FIU” means the Financial Intelligence Unit established in accordance with section 6 of this Act;

“Forfeiture” means the act of confiscating or taking a way somebody's property for having violated the law, regulation or local order;

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

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

“Minister” means the responsible for finance and economic planning;

“Ministry” means the ministry responsible for finance and economic planning,

“money laundering” means the offence of money laundering referred to in Section 14 of this Act,

“National Committee” means the National Multi-disciplinary Anti-Money Laundering Committee established by Section 10 of this Act,

“politically exposed person” means a foreign individual entrusted with prominent public functions, including heads of state or government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations or agencies,

“predicate offence” means:

- (a) any dealing which amounts to illicit drug trafficking under legislation related to narcotic drugs and psychotropic substances;
- (b) terrorism, including terrorist financing;
- (c) participating in an organised criminal group and racketeering;
- (d) trafficking in human beings and smuggling immigrants;
- (e) illicit arms trafficking;
- (f) sexual exploitation, including sexual exploitation of children;
- (g) illicit trafficking in stolen or other goods;
- (h) corrupt practice;
- (i) counterfeiting;
- (j) armed robbery;
- (k) theft;
- (l) kidnapping, illegal restraint and hostage taking;
- (m) smuggling;
- (n) extortion;
- (o) forgery;
- (p) piracy;
- (q) hijacking;
- (r) insider dealing and market manipulation; and
- (s) any other offence which the Minister may, by notice published in the Official Gazette, declare, whether committed within the national boundaries of South Sudan or outside the country;

“President” means the President of the Republic of South Sudan;

“property” means anything (immoveable or moveable) that is owned by a person or entity, whether real property such as any interest in land or estate, or personal property of value that can be converted into money;

“regulator” means the Bank of South Sudan or any other public authority that the Minister may, by publication in the Official Gazette, specify;

“reporting person” means a:

- (a) bank
- (b) financial institution;
- (c) cash dealer;
- (d) accountant, real estate agent, dealer in precious stones or metals;
- (e) regulator;
- (f) customs officer;
- (g) attorney, notary and other independent legal professional when:
 - (i) assisting clients in preparing or executing transactions involving;
 - (ii) the purchase or sale of real property or commercial enterprises;
 - (iii) management of funds, securities or other assets which belong to a client;
 - (iv) the opening or management of bank accounts, saving accounts or portfolios;
 - (v) the organisation of contributions required to create, manage or direct corporations or legal entities;
 - (vi) the creation, management or direction of corporations or legal entities; and
 - (vii) the buying, or selling of business entities;
 - (viii) acting on behalf of a client in any financial or real estate transaction;
- (h) any other person who the Minister may, by notice published in the *Official Gazette*, specify;

“suspicious transaction” means an activity or transaction that a reporting person suspects, or has reasonable grounds to suspect:

- (a) involves funds or property that are proceeds of crime;
- (b) funds or property that are related or linked to or are to be used for commission or continuation of a predicate offence, or
- (c) may be an indication of money laundering or predicate offence;

“Terror” means extreme fear;

“Terrorist” means a formidable and troublesome person who uses or favours violent or extreme fear and intimidating methods of coercing a government or community;

“Terrorism” means the use of organized intimidation or extreme fear to coerce a government or community;

“Terrorist financing” means:

- (a) the provision of or making available such financial or other related services to a terrorist, group or entity which is concerned with terrorist activity; or

- (b) entering into or facilitating, directly or indirectly, any financial transaction related to dealing in property owned or controlled by or on behalf of any terrorist or any entity owned or controlled by a terrorist.

CHAPTER II

FINANCIAL INTELLIGENCE UNIT AND THE NATIONAL COMMITTEE

6. Establishment of the Financial Intelligence Unit.

- (1) The Financial Intelligence Unit shall be established by the Minister as an inter-ministerial department under the Ministry.
- (2) The FIU shall be responsible for receiving, analysing and disseminating suspicious transaction reports and other information regarding potential money laundering or terrorist financing.

7. Appointment of the Commissioner.

- (1) The Commissioner of the FIU shall be appointed by the President and shall be a person with knowledge and experience in economics, monetary affairs, finance, law, financial crimes or other field relevant to the execution of this Act.
- (2) The Commissioner shall be responsible for the administration of the FIU.

8. Powers and Duties of the FIU.

The FIU shall:

- (a) receive and analyse reports of suspicious transactions;
- (b) disseminate any such reports to the appropriate law enforcement agencies if the FIU has reasonable grounds to suspect that the transaction involves money laundering or any other predicate offence;
- (c) instruct any reporting person to take appropriate steps to facilitate any inspection ordered by the FIU;
- (d) disseminate to the appropriate law enforcement agencies any information derived from an inspection carried out pursuant to paragraph (c), if the FIU has reasonable grounds to suspect that a transaction involves the proceeds of crime or financing of terrorism;
- (e) compile statistics and records, disseminate information within South Sudan or elsewhere, make recommendations arising out of any information received, and advise the National Committee as appropriate;
- (f) in consultation with the regulatory authorities of the relevant reporting persons, issue guidelines to reporting persons regarding their obligations under this Act;
- (g) create training requirements and provide such training for reporting persons, judicial officers and law enforcement officers;

- (h) consult with any relevant person, institution or organisation for the purpose of discharging its duties under this section;
- (i) exchange information with overseas financial intelligence units and comparable bodies; and
- (j) liaise with the relevant investment and business registration and licensing authorities tasked with assessing genuine investors.

9. Employees of the FIU.

- (1) Employees of the FIU shall be persons with experience in law, finance, customs and law enforcement.
- (2) The employees of the FIU shall hold office for a term of five years only, but shall be eligible for re-appointment for another term.
- (3) The employees of the FIU shall be required to disclose periodically their financial position as prescribed under the regulations.

10. Establishment and Composition of the National Committee.

- (1) There shall be established a National Multi-Disciplinary Committee on Anti-Money Laundering.
- (2) The National Committee shall be composed of:
 - (a) one representative of the Bank of South Sudan, who shall be the National Chairperson;
 - (b) one representative of the Ministry;
 - (c) one representative of the Ministry of Justice;
 - (d) one representative of the Ministry of the Interior;
 - (e) one representative of the Ministry of Foreign Affairs and International Cooperation;
 - (f) the Commissioner;
 - (g) one representative of the National Security Service.
- (3) The National Committee may consult any person with special knowledge or experience in investigation of matters relating to money laundering.
- (4) Members of the National Committee established under subsection (1) shall be proposed by the respective ministries and appointed by the Minister.
- (5) The Minister shall appoint an employee from the public service to be the secretary of the National Committee.
- (6) The tenure of office for members of the Committee shall be three years but shall be eligible for re-appointment for one further term.

11. Functions of the National Committee.

The National Committee shall:

- (a) assess and make suggestions to improve the effectiveness of the policies and the measures to combat money laundering;

- (b) advise the Government on legislative, regulatory and policy reforms in respect of anti-money laundering and combating predicate offences;
- (c) generally advise the Government in relation to such other matters relating to anti-money laundering and predicate offences.

12. Meetings of the National Committee.

- (1) The members of the National Committee shall elect one from their number to be the Vice Chairperson.
- (2) The Chairperson shall preside at every meeting of the National Committee, and in the Chairperson's absence, the Vice-Chairperson shall preside at the same.
- (3) In the absence of both the Chairperson and Vice-Chairperson, the members present shall elect one of their members to preside at that meeting.
- (4) A majority of the members of the National Committee shall constitute a quorum at any meeting.
- (5) The National Committee may regulate its own procedure for the conduct of its meetings.

13. Allowances and Remunerations.

There shall be paid to the members of the National Committee such allowances or remunerations and other payments as shall be determined by the Minister.

CHAPTER III

PROHIBITION OF MONEY LAUNDERING

14. Offence of Money Laundering.

A person who:

- (a) engages, directly or indirectly, in a transaction that involves property that such person knew or should have known was the proceeds of a predicate offence;
- (b) converts, transfers, transports or transmits property that such person knew or should have known was the proceeds of a predicate offence in order to conceal or disguise the illicit origin of the property or assist any person who is involved in the commission of such of offence to evade the legal consequences of those actions;
- (c) conceals, disguises or impedes the establishment of the true nature, source, location, disposition, movement or ownership of, or rights with respect to, property that such person knew or should have known was the proceeds of a predicate offence;
- (d) acquires, possesses, uses or administers property that such person knew or should have known at the time of receipt was the proceeds of a predicate offence; or

- (e) participates in, associates with, conspires to commit, attempts to commit, aids and abets, or facilitates and counsels the commission of any of the acts described in paragraphs (a) to (d) of this section, commits an offence of money laundering.

15. Penalties for acts of Money Laundering.

- (1) A natural person who is convicted of an offence of money laundering shall be liable to a fine not exceeding twice the amount of the market value of the property that was the subject of the offence, or sentenced to a term of imprisonment not exceeding ten years and not less than seven years.
- (2) A body corporate that is convicted of an offence of money laundering shall be liable to a fine not exceeding three times the market value of the property that was the subject of the offence.
- (3) If an offence of money laundering is committed by a body corporate or an association of persons, every person who, at the time of the commission of the offence, was:
 - (a) a director, manager, controller or partner of such body corporate or association; or
 - (b) concerned in the management of the affairs of such body corporate or association;

may be convicted of that offence and be liable to the penalty specified in subsection (1), unless that person proves that the offence was committed without the consent or knowledge of such person, and that such person exercised due diligence to prevent the commission of the offence, having regard to such person's functions and the circumstances of the offence.

- (4) The persons provided in subsection (3) may be convicted of an offence of money laundering even if such body corporate or association has not been convicted of the offence.
- (5) A person shall be deemed to have committed an offence of money laundering if such an offence was performed by such person's agent or officer during the course of business or employment of such agent or officer, unless such person proves that the offence was committed without the knowledge or consent of such person and all reasonable precautions to prevent the act or omission were taken by such person.
- (6) If a pattern of money laundering offences by a corporate body, or the officers of a corporate body identified in subsection (3), can be established, the corporate body shall be subject to seizure and liquidation.

CHAPTER IV

ANTI-MONEY LAUNDERING SUPERVISION

16. Reporting Person to Verify Customer's Identity.

- (1) A reporting person shall:
 - (a) require a customer to produce an official record reasonably capable of establishing the true identity of such customer;
 - (b) in relation to customers who are politically exposed persons, in addition to performing normal due diligence measures:
 - (i) have appropriate risk management systems to determine whether the customer is a politically exposed person;
 - (ii) obtain senior management approval for establishing business relationships with such customers;
 - (iii) take reasonable measures to establish the source of wealth and source of funds of such customers; and
 - (iv) conduct enhanced on-going monitoring of the business relationship with such customers.
- (2) The official record referred to under subsection (1) shall, at a minimum, include:
 - (a) a birth certificate or an affidavit to that effect;
 - (b) a passport or other official means of identification;
 - (c) in the case, of a body corporate, a copy of the organisation's memorandum and articles of association, certificate of incorporation, and the latest annual reports certified by the Directorate of Business Registry of the Ministry of Justice; and
 - (d) any other document as may be prescribed by the Minister in the regulations.
- (3) If a customer requests a reporting person to enter into:
 - (a) a continuing business relationship; or
 - (b) in the absence of such a relationship, any transaction;

the other reporting person shall take reasonable measures to establish whether the customer is acting on behalf of another person.
- (4) If it appears that the customer referred to in subsection (3) is acting on behalf of another person, the reporting person shall take reasonable measures to establish the true identity of any person on whose behalf or for whose ultimate benefit the customer may be acting in the proposed transaction, whether as trustee, nominee, agent or otherwise.
- (5) In determining what constitutes reasonable measures for the purposes of this section, regard shall be had to all the circumstances of the case, and in particular to:

- (a) whether the customer is a person based or incorporated in a country in which there are in force provisions applicable to it to prevent the use of the financial system for the purpose of money laundering or terrorist financing; and
 - (b) custom and practice as may from time to time be current in the relevant field of business.
- (6) Nothing in this section shall require the production of any evidence of identity if:
- (a) the customer is a reporting person to which this Act applies; or
 - (b) the transaction or series of transactions is taking place in the course of a business relationship, in respect of which the customer has already produced satisfactory evidence of identity.

17. Reporting Person to Maintain and Establish Customer Records.

- (1) A reporting person shall establish and maintain:
- (a) records of all transactions of such amount of currency, or its equivalent in foreign currency, as the Minister may, by order, publish in the Official Gazette; and
 - (b) a record that indicates the nature of the evidence obtained in accordance with Section 16(1) of this Act, which may be either a copy of the evidence or such information as would enable a copy of it to be obtained.
- (2) Records required under paragraph (1)(a) shall contain:
- (a) the name, address and occupation or, if appropriate, business or principal activity, of each person:
 - (i) conducting the transaction;
 - (ii) if known, on whose behalf the transaction is being conducted, as well as the method used by the reporting person to verify the identity of each such person;
 - (b) the nature and date of the transaction;
 - (c) the type and amount of currency involved;
 - (d) the type and identifying number of any account with the reporting person involved in the transaction;
 - (e) if the transaction involves a negotiable instrument other than currency, the name of the drawer of the instrument, the name of the institution on which it was drawn, the name of the payee, if any, the amount and date of the instrument, the number, if any, of the instrument and details of any endorsements appearing on the instrument; and
 - (f) the name and address of the reporting person, and of the officer, employee or agent of the reporting person who prepared the record.
- (3) A reporting person shall keep records required under subsection (1) for a period of at least five years from the date the relevant business or transaction was completed.
- (4) If a reporting person is required by law to release any document referred to in this section before the period of five years has elapsed, the reporting person

shall retain a copy of the document and shall maintain a register of released documents with such information as may be prescribed in the regulations.

18. Reporting Persons to Report Suspicious Transactions.

- (1) If a reporting person suspects, or has grounds to suspect, the existence of a suspicious transaction, such reporting person shall, within twenty four hours after forming that suspicion and, wherever possible, before any suspicious transaction is carried out:
 - (a) take reasonable measures to ascertain the purpose of the transaction or proposed transaction, the origin and ultimate destination of the funds or property involved, and the identity and address of any ultimate beneficiary; and
 - (b) prepare a report of the transaction or proposed transaction, in the manner prescribed by the regulations, and communicate the information to the FIU by any secure means as may be specified by FIU.
- (2) A reporting person who has reported a suspicious transaction or proposed suspicious transaction shall, if requested to do so by the FIU or a law enforcement agency investigating the suspicious transaction, give such further information in relation to such transaction.
- (3) Any person who contravenes the provisions of subsection (1) shall, on conviction:
 - (a) if the person is an individual, be liable to a fine up to twice the market value of the property that are the subject of the offence, or imprisonment for a term not exceeding two years;
 - (b) if the person is a body corporate, be liable to a fine three times the market value of the property that is the subject of the offence.

19. Reporting Person to Maintain Internal Reporting Procedures.

A reporting person shall establish and maintain internal reporting procedures:

- (a) by designating a person to whom its employees are to report to any suspicious transaction which comes to the employee's attention in the course of employment;
- (b) enabling the designated person to have reasonable access to information that may be relevant to determining whether sufficient basis exists to report the matter pursuant to Section 18(1) of this Act; and
- (c) requiring the designated person to report all suspicious transactions pursuant to Section 18 of this Act.

20. Additional Preventive Measures.

- (1) A reporting person shall, in addition to requirements provided for under Section 19 of this Act:
 - (a) take appropriate measures to make employees aware of domestic law relating to money laundering and terrorist financing, and its procedures and related policies established pursuant to this Act; and

- (b) provide its employees with appropriate training in the recognition and handling of transactions relating to money laundering or terrorist financing.

A reporting person shall ensure that no any person shall open or operate an account with a reporting person in a false, disguised or anonymous name.

- (2) A reporting person who commits an offence under this Chapter, for which no penalty is specified, shall on conviction:
 - (a) if the person is an individual, be liable to a fine twice the market value of the property that was the subject of the offence, or to imprisonment for a period of twelve months; and
 - (b) if the person is a body corporate, be liable to a fine not exceeding three times the market value of the property.
- (3) In determining whether a person has complied with any requirement of subsection (1), the court shall have regard to all the circumstances of the case, including such custom and practice as may from time to time be current in the relevant trade, business, profession or employment, and may take account of any relevant guidance adopted or approved by a public authority or other body that supervises, regulates or is representative of the trade, business, profession or employment carried on by that person.

21. Tipping Off.

- (1) No person shall disclose or warn any person involved in a suspicious transaction, or to an unauthorised third party:
 - (a) that a suspicious transaction report under Section 18 of this Act may be prepared, is being prepared or has been sent to the FIU; or
 - (b) any other information or matter, except so far as is required by this Act.
- (2) Any person who contravenes the provisions of subsection (1) shall, on conviction:
 - (a) if the person is an individual, be liable to a fine of not less than twice the market value of the property that is the subject of the offence, or to imprisonment for a term not less than five years;
 - (b) if the person is a body corporate, be liable to a fine not less than three times the market value of the property that is the subject of the offence.
- (3) In proceedings for an offence under subsection (1), it shall be a defence to prove that the person did not know or have reasonable grounds to suspect that the disclosure was likely to prejudice any investigation of money laundering or a predicate offence.

22. Secrecy Obligation Overridden.

The provisions of this Chapter shall have effect, notwithstanding any obligation as to secrecy or that restricts the disclosure of information imposed by any law or otherwise.

23. Protection of Reporting Persons.

Notwithstanding any other written law, no action, suit or other proceeding shall lie against a reporting person, or any director, officer, employee or representative of the reporting person, on grounds of breach of banking or professional secrecy, or by reason of any loss resulting from an investigation, prosecution or other legal action taken against any person, following a report or information transmitted in good faith under this Chapter, whether or not the suspicion proves to be well founded.

24. Obligation to Report Physical Cross-Border Transportation of Cash or Bearer Negotiable Instruments.

- (1) A person shall report to the customs authorities the amount of cash or bearer negotiable instruments if:
 - (a) such amount exceeds the amount prescribed by the Minister in the regulations; and
 - (b) such person:
 - (i) is entering or leaving the territory of South Sudan with such amount; or
 - (ii) has transported or intends to transport such amount into or out of the territory of South Sudan.
- (2) The customs authorities shall transmit such reported information to the FIU, and shall have the power to seize the entire amount of unreported cash or bearer negotiable instruments.
- (3) If any person fails to comply with the reporting obligation provided for under subsection (1), the competent authority may impose any administrative sanction against such person.

CHAPTER V

FINANCIAL PROVISIONS

25. Sources of FIU funds.

The funds of the FIU shall consist of:

- (a) such sums as may be appropriated by the National Legislative Assembly; and
- (b) grants and donations lawfully received by the FIU.

26. Accounts and Audit.

- (1) The FIU shall authorize, account for and report all transactions in accordance with the Public Financial Management and Accountability Act, 2011.
- (2) The Commissioner shall, as soon as practicable, but not later than ninety days after the end of the financial year of the Government, cause to be submitted to the National Auditor General the accounts and financial records of the FIU.

CHAPTER VI

MISCELLANEOUS PROVISIONS

27. Immunity.

No action shall be taken against the FIU, the Commissioner, members of the National Committee and employees of the FIU in respect of any act done or omission made by the FIU, Commissioner, members of the Committee or any employee of the FIU in good faith, in the exercise of the functions conferred on the FIU under this Act.

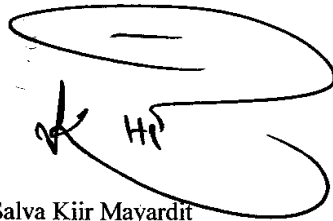
28. Regulations.

The Minister shall issue the regulations necessary for the implementation of this Act.

29. Disposal of Confiscated Money.

All money, property, assets and other funds seized or confiscated in the implementation of this Act shall be public funds as defined in the Public Financial Management and Accountability Act, 2011, and shall be transferred to the Ministry for inclusion in the revenues of the Government.

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

A large, stylized handwritten signature in black ink, consisting of several loops and a long horizontal stroke.

Gen. Salva Kiir Mayardit
President of the Republic