

**LAWS OF SOUTH SUDAN**

**PETROLEUM REVENUE MANAGEMENT BILL, 2012**

Bill No. 61

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Petroleum Revenue Management Bill, 2012

<b>CHAPTER I.....</b>	<b>4</b>
<b>PRELIMINARY PROVISIONS.....</b>	<b>4</b>
1. TITLE AND COMMENCEMENT .....	4
2. REPEAL AND SAVINGS.....	4
3. PURPOSE.....	4
4. AUTHORITY AND APPLICATION .....	4
5. INTERPRETATIONS .....	5
<b>CHAPTER II.....</b>	<b>7</b>
<b>PETROLEUM REVENUE ACCOUNT .....</b>	<b>7</b>
6. ESTABLISHMENT OF THE PETROLEUM REVENUE ACCOUNT.....	7
7. PAYMENTS INTO THE PETROLEUM REVENUE ACCOUNT .....	8
8. MANAGEMENT OF THE PETROLEUM REVENUE ACCOUNT .....	8
9. TRANSFERS FROM THE PETROLEUM REVENUE ACCOUNT .....	9
<b>CHAPTER III .....</b>	<b>9</b>
<b>TRANSFERS TO THE CONSOLIDATED FUND .....</b>	<b>9</b>
10. NATIONAL BUDGET FUNDING AMOUNT .....	9
11. PROCEDURES AND REQUIREMENTS.....	9
12. REVIEW .....	10
<b>CHAPTER IV.....</b>	<b>10</b>
<b>RESERVE FUNDS .....</b>	<b>10</b>
13. ESTABLISHMENT OF THE RESERVE FUNDS .....	10
14. TRANSFERS TO THE RESERVE FUNDS.....	10
15. WITHDRAWALS FROM THE RESERVE FUNDS .....	11
<b>CHAPTER V .....</b>	<b>12</b>
<b>INVESTMENT AND PROTECTION OF THE RESERVE FUNDS .....</b>	<b>12</b>
16. MANAGEMENT OF THE RESERVE FUNDS.....	12
17. INVESTMENT POLICY .....	13
18. QUALIFYING INSTRUMENTS .....	13
19. EXTERNAL INVESTMENT MANAGERS .....	14
<b>CHAPTER VI.....</b>	<b>15</b>
<b>INVESTMENT BOARD.....</b>	<b>15</b>
20. RESPONSIBILITY OF THE INVESTMENT BOARD .....	15
21. ORGANISATION OF THE INVESTMENT BOARD .....	15

22. CONFLICT OF INTEREST.....	16
23. REMOVAL OF MEMBERS OF THE INVESTMENT BOARD.....	16
24. RESIGNATION OF INVESTMENT BOARD MEMBERS.....	17
25. VACANCIES ON THE INVESTMENT BOARD.....	18
26. RELEASE OF ADVICE FROM THE INVESTMENT BOARD.....	18
<b><u>CHAPTER VII.....</u></b>	<b>18</b>
<b><u>ENCUMBRANCES.....</u></b>	<b>18</b>
27. PROHIBITED USE OF PETROLEUM REVENUE.....	18
<b><u>CHAPTER VIII.....</u></b>	<b>18</b>
<b><u>TRANSFERS TO PETROLEUM PRODUCING STATES AND COMMUNITIES.....</u></b>	<b>18</b>
28. PAYMENTS TO THE PETROLEUM PRODUCING STATES AND COMMUNITIES.....	18
<b><u>CHAPTER IX.....</u></b>	<b>19</b>
<b><u>TRANSPARENCY AND ACCOUNTABILITY.....</u></b>	<b>19</b>
29. TRANSPARENCY AS A FUNDAMENTAL PRINCIPLE.....	19
30. DECLARATION OF CONFIDENTIALITY.....	19
31. RECORDS OF PETROLEUM REVENUE.....	20
32. QUARTERLY REPORTS.....	21
33. ANNUAL REPORTS.....	21
34. ANNUAL DISCLOSURE AND PUBLICATION OF PAYMENTS.....	22
35. PUBLICATION OF INFORMATION.....	23
<b><u>CHAPTER X.....</u></b>	<b>23</b>
<b><u>SUPERVISION.....</u></b>	<b>23</b>
36. MAINTENANCE OF THE ACCOUNTS AND RECORDS OF THE PETROLEUM REVENUE ACCOUNT AND RESERVE FUNDS.....	23
37. INTERNAL AUDIT.....	23
38. EXTERNAL AUDIT.....	24
39. ANNUAL AUDIT.....	24
40. SPECIAL AUDITS.....	24
<b><u>CHAPTER XII.....</u></b>	<b>24</b>
<b><u>MISCELLANEOUS MATTERS.....</u></b>	<b>24</b>
41. OWNERSHIP.....	24
42. LEGAL PROTECTION OF ASSETS AND OFFICERS.....	25
43. IMMUNITY FROM PREJUDGMENT ATTACHMENT.....	25
44. TRANSITIONAL AND FINAL PROVISIONS.....	25
45. REGULATIONS.....	25
46. ADMINISTRATION OF THE BILL.....	25
<b><u>SCHEDULE A.....</u></b>	<b>26</b>

## **Petroleum Revenue Management Bill, 2012**

In exercise of powers conferred upon me under Article 86 (1) of the Transitional Constitution of the Republic of South Sudan, 2011, I hereby issue the following Bill:

### **CHAPTER I PRELIMINARY PROVISIONS**

#### **1. Title and Commencement**

This Bill shall be cited as “Petroleum Revenue Management Bill, 2012” and shall come into force on the date of its signature by the President.

#### **2. Repeal and Savings**

Any existing legislation governing the subject of this Bill 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 Bill shall continue in force and effect until repealed or amended by this Bill.

#### **3. Purpose**

This Bill shall provide for the management of Petroleum Revenue in the Republic of South Sudan, for the establishment and management of the Petroleum Revenue Account and the Reserve Funds, for transfers and withdrawals to and from these accounts and for related matters thereto.

#### **4. Authority and Application**

- (1) This Bill is drafted in accordance with Articles 52, 177 and 178 of the Transitional Constitution, which grant the Government the authority to manage the national oil revenue and establish and maintain the Oil Revenue Stabilization Account and the Future Generation Fund.
- (2) The provisions of this Bill shall apply to all government revenue derived from any petroleum activity within the territory of South Sudan, including any activity in, under and upon its land.
- (3) If there is any conflict between the provisions of this Bill and
  - (a) any other Act or Regulation; or
  - (b) the terms of any agreement authorising petroleum activities;the provisions of this Bill shall prevail.

## 5. Interpretations

In this Bill, unless the context otherwise requires:

**“Administrative and Transportation Costs”** mean expenses associated with administration and transportation of petroleum, including transit fees, and fees and charges associated with the pipeline, refineries and the port;

**"Annual Benchmark Revenue"** means Petroleum Revenue estimated in accordance with Schedule A;

**“Appropriation”** means legal authority to spend as granted by an Appropriation Act or a Supplementary Appropriation Act as defined in the Public Financial Management Act, 2012;

**“Appropriation Act”** means an Act of the National Legislative Assembly authorizing government expenditures within a national budgetary framework;

**“Audit Chamber”** means the South Sudan Audit Chamber established under the South Sudan Audit Chamber Act, 2011;

**“Auditor General”** means the Auditor General as defined in the South Sudan Audit Chamber Act, 2011;

**“Bank of South Sudan”** means the Central Bank of South Sudan established under the Bank of South Sudan Act, 2011;

**“Benchmark Oil Price”** means the oil price used to calculate Annual Benchmark Revenue and is defined in Schedule A;

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

**“Consolidated Fund”** means the Consolidated Fund of South Sudan established in the Public Financial Management and Accountability Act, 2012;

**“Contractor”** means a company or group of companies that has entered into a Petroleum Agreement with the Government;

**“Extractive Industries Transparency Initiative”** means the international initiative that provides a standardized and internationally recognized procedure for transparency in natural resource management;

**“Financial Year”** means the period of twelve months to which the National Budget applies, as defined in the Public Financial Management and Accountability Act, 2012;

**“Future Generation Fund”** means the fund established by the Minister in accordance with Article 178 of the Transitional Constitution to provide savings for the long-term period and support the welfare of future generations;

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

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

**“Investment Board”** means the body established under Section 20 of this Bill;

**“Investment Guidelines”** mean the investment guidelines as defined in Section 16(4) of this Bill;

**“Investment Management Agreement”** means the agreement entered into between the Bank of South Sudan and any external investment manager under Section 19 of this Bill;

**“Investment Policy”** means the investment policy provided in Section 16(2) of this Bill;

**“Licensee”** means a person, firm or other entity, or a group of persons, firms or other entities, that has been granted a reconnaissance license or a license to install and operate a transportation system, pursuant to the Petroleum Act, 2012;

**“Local Government Councils”** mean community governments that exist at the levels of government closest to the people in the states as provided for under Article 47(c) of the Constitution and established in accordance with the provisions of the Local Government Act, 2009.

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

**“Ministry”** means the Ministry responsible for finance and economic planning;

**“National Budget”** means the budget provided in the Appropriation Act and Supplementary Appropriation Acts, if any, for the allocation of resources and revenue for the Government for the Financial Year;

**“National Investment Strategy”** means the strategy developed by the Government and approved by the National Legislature prioritising investment projects eligible for funding from the Future Generation Fund under Section 15 of this Bill;

**“National Legislative Assembly”** means the National Legislative Assembly of the Republic;

**“National Petroleum and Gas Corporation”** means the National Petroleum and Gas Corporation established under the Petroleum Act, 2012;

**“Net Petroleum Revenue”** means Petroleum Revenue less Administrative and Transportation Costs and transfers to the Reserve Funds;

**“Oil Revenue Stabilization Account”** means the account established by the Minister in accordance with Article 178 of the Transitional Constitution to protect the economy against volatility in the Petroleum Revenue;

**“Petroleum”** means petroleum as defined in the Petroleum Act, 2012;

**“Petroleum Activities”** mean petroleum activities as defined in the Petroleum Act, 2012;

**“Petroleum Agreement”** means a petroleum agreement as defined in the Petroleum Act, 2012;

**“Petroleum Producing State”** means a state in the Republic where extraction of Petroleum takes place;

**“Petroleum Revenue”** means petroleum revenue as defined in Section 7 of this Bill;

**“Petroleum Revenue Account”** means the account established in Section 6 of this Bill, into which all Petroleum Revenue shall be paid;

**“President”** means the President of the Republic;

**“Quarter”** means a period of three months ending September 30<sup>th</sup>, December 31<sup>st</sup>, March 31<sup>st</sup> and June 30<sup>th</sup>;

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

**“Reserve Funds”** mean the Oil Revenue Stabilization Account and the Future Generation Fund established under Section 13 of this Bill;

**“Sales Contract”** means a contract between the Government and the buyer determining the terms and conditions for which the Republic’s Petroleum is sold;

**“Santiago Principles”** means Generally Accepted Principles and Practices for Sovereign Wealth Funds adopted by the International Working Group of Sovereign Wealth Funds in Santiago, Chile, in October 2008, and any amendments made later;

**“Supplementary Appropriation Act”** means an Act passed by the National Legislative Assembly, the purpose of which is to supplement the appropriation already granted by an Appropriation Act;

**“Transitional Constitution”** means the Transitional Constitution of the Republic of South Sudan, 2011.

## CHAPTER II

### PETROLEUM REVENUE ACCOUNT

#### 6. Establishment of the Petroleum Revenue Account

- (1) The Ministry shall establish a Petroleum Revenue Account at the Bank of South Sudan.
- (2) Any Petroleum Revenue due to the Government shall be paid into the Petroleum Revenue Account for subsequent transfers in accordance with provisions in this Bill.
- (3) No other revenue shall be paid into the Petroleum Revenue Account.

## **7. Payments into the Petroleum Revenue Account**

- (1) Any company carrying out Petroleum Activities in South Sudan shall pay any Petroleum Revenue due to the Government into the Petroleum Revenue Account.
- (2) Petroleum Revenue due to the Government shall include:
  - (a) any amount deriving from the sale of the Government's oil and gas entitlement;
  - (b) any amount, including surface rental fees, signature bonuses and other cost-based fees and charges, received by the Republic in accordance with the Petroleum Act, 2012, any license authorizing Petroleum Activities, or any Petroleum Agreement;
  - (c) any amount received from the direct participation of the Government, including participating interests held by the National Petroleum and Gas Corporation on behalf of the Government, in Petroleum Activities;
  - (d) any amount payable by the National Petroleum and Gas Corporation as tax, royalty, dividend or any other payment due in accordance with applicable law;
  - (e) any amount payable as tax on income from Petroleum Activities;
  - (f) interest deriving from the Petroleum Revenue Account; and
  - (g) any amount received by the Government relating directly to Petroleum Activities not covered in paragraphs (a) to (f) above.
- (3) Petroleum Revenue shall be paid by direct transfer into the Petroleum Revenue Account by the due date.
- (4) Petroleum Revenue shall be paid by the entity liable to make such payment into the Petroleum Revenue Account in accordance with the terms set out in the Sales Contract.
- (5) Any cost associated with the management of the participating interest under paragraph (2)(c) of this Section shall be financed through the National Budget.
- (6) If the payment under subsection (2) of this Section is not discharged by the due date, the responsible party shall pay a default rate as prescribed in the regulations to this Bill.
- (7) A payment shall not be considered discharged until such payment is received into the Petroleum Revenue Account.

## **8. Management of the Petroleum Revenue Account**

- (1) The Bank of South Sudan shall hold any Petroleum Revenue received in foreign currencies at interest-bearing current accounts abroad with financial

institutions with the highest security.

- (2) The Ministry and the Bank of South Sudan shall enter into a management agreement on the management of the Petroleum Revenue Account.

## **9. Transfers from the Petroleum Revenue Account**

- (1) Subject to subsection (2) of this Section, the Bank of South Sudan shall only make transfers from the Petroleum Revenue Account to:
  - (a) the Consolidated Fund in accordance with sections 10 and 11 of this Bill; and
  - (b) the Reserve Funds in accordance with section 14 of this Bill.
- (2) In the event of overpayment of Petroleum Revenue under Section 7 of this Bill, the Ministry is exceptionally permitted to request the Bank of South Sudan to make a transfer from the Petroleum Revenue Account to refund such overpayment of Petroleum Revenue.

## **CHAPTER III**

### **TRANSFERS TO THE CONSOLIDATED FUND**

## **10. National Budget Funding Amount**

- (1) Every Financial Year the Government shall propose, and the National Legislative Assembly shall approve, as a part of the Appropriation Act, the amount of Petroleum Revenue that, during the Financial Year, may be transferred to the Consolidated Fund to finance the National Budget.
- (2) The amount shall be determined after taking into account:
  - (a) the objectives of the national development plan;
  - (b) the medium and long-term fiscal sustainability of the Republic;
  - (c) the macroeconomic outlook and the economy's absorptive capacity;
  - (d) the capacity to execute public expenditures in a sound and cost-effective manner; and
  - (e) the need for building up buffers to cushion volatility in future Petroleum Revenues.
- (3) The amount under subsection (1) of this Section, less Administrative and Transportation Costs, shall not exceed the Annual Benchmark Revenue.

## **11. Procedures and Requirements**

- (1) The Bank of South Sudan shall transfer Petroleum Revenue from the Petroleum Revenue Account to the Consolidated Fund upon the written request of the Ministry.
- (2) No funds may be transferred by the Bank of South Sudan without prior written request of the Ministry signed by two authorised officials.
- (3) The total amount transferred from the Petroleum Revenue Account and the

Reserve Funds, as the case may be, to the Consolidated Fund for a Financial Year shall not exceed the total amount of Petroleum Revenue required to fund Government expenditure as approved by the National Legislative Assembly in the Appropriation Act for the Financial Year.

## **12. Review**

The Government shall review the provisions of Section 10 of this Bill, and any proposed changes thereof shall be approved by the National Legislative Assembly no later than five years after this Bill has entered into force.

## **CHAPTER IV RESERVE FUNDS**

### **13. Establishment of the Reserve Funds**

- (1) The Reserve Funds shall constitute the only savings of the Government.
- (2) The Ministry shall establish at the Bank of South Sudan:
  - (a) the Oil Revenue Stabilization Account; and
  - (b) the Future Generation Fund.
- (3) The purpose of the Oil Revenue Stabilization Account is to act as a financial buffer to cushion the economy against volatility in petroleum revenue and to finance any unexpected shortfall in Petroleum Revenue during a Financial Year.
- (4) The purpose of the Future Generation Fund is to provide savings for the long-term and support the welfare of future generations.

### **14. Transfers to the Reserve Funds**

- (1) The Bank of South Sudan shall transfer Petroleum Revenue from the Petroleum Revenue Account to the Reserve Funds at the written request of the Minister.
- (2) No funds can be transferred by the Bank of South Sudan without the prior written request of the Ministry signed by two authorised officials.
- (3) The amount transferred to the Reserve Funds during a financial year shall equal the Petroleum Revenue less the amount authorized to be transferred to the Consolidated Fund in accordance with sections 10 and 11 of this Bill.
- (4) The amount transferred to the Reserve Funds shall be allocated to the Oil Revenue Stabilization Account and the Future Generation Fund as follows:
  - (a) any amount transferred to the Reserve Funds shall be allocated to the Oil Revenue Stabilization Account until that Account's balance reaches a level equal to fifty percent of Government annual expenditures; and

- (b) after the Oil Revenue Stabilization Account has reached its target balance, any additional transfers shall be deposited in the Future Generation Fund.
- (5) The maximum level of the Oil Revenue Stabilization Account under paragraph (4)(a) of this Section shall be calculated based on the National Budget for the current Financial Year. Any excess balance due to a decline in Government total expenditures shall be transferred to the Future Generation Fund.
- (6) Any amount, which has been received into the Petroleum Revenue Account during a Quarter and which has not been transferred to the Consolidated Fund by the fifteenth day of the month following the end of that Quarter, shall be transferred to the Reserve Funds in accordance with subsection (4) of this Section.
- (7) Further procedures shall be specified in the management agreement referred to in Section 8(2) of this Bill.

## **15. Withdrawals from the Reserve Funds**

- (1) If the amount received in the Petroleum Revenue Account during a Quarter is less than twenty-five percent of the Petroleum Revenue required to fund the National Budget for the Financial Year, a withdrawal from the Oil Revenue Stabilization Account may be made to finance any unexpected shortfall in the quarterly Petroleum Revenue.
- (2) Any transfer from the Oil Revenue Stabilization Account to the Consolidated Fund shall only be made to finance an unexpected shortfall in Petroleum Revenue during a Financial Year.
- (3) No withdrawals from the Future Generation Fund shall be made during the five years following the entry into force of this Bill.
- (4) After the period set forth in subsection (3) of this Section, any withdrawal from the Future Generation Fund to the Consolidated Fund shall only be made if:
  - (a) the amount proposed for withdrawal in a given Financial Year does not exceed five percent of the balance of the Future Generation Fund on the last day of the previous Financial Year;
  - (b) the amount is approved by the National Legislative Assembly in the National Budget;
  - (c) the amount is allocated to fund capital development projects that can be demonstrated to benefit future generations and foster long-term economic growth;
  - (d) economic appraisals, demonstrating that the estimated financial return of the investment exceeds the expected financial return if that sum remained in the Future Generation Fund, are provided to the National Legislative Assembly prior to approval of the amount;
  - (e) economic appraisals are conducted in accordance with technical guidance issued by the Ministry applying best international practice; and

- (f) the proposed project is deemed to be a priority investment by a National Investment Strategy approved by the National Legislative Assembly.
- (5) Any withdrawal from the Reserve Funds by the Ministry in a Financial Year shall only take place after the relevant Appropriation Act enters into force.

## **CHAPTER V**

### **INVESTMENT AND PROTECTION OF THE RESERVE FUNDS**

#### **16. Management of the Reserve Funds**

- (1) The Ministry is responsible for the overall management of the Reserve Funds and shall oversee transfers into and withdrawals from the Reserve Funds.
- (2) The Ministry shall determine the Investment Policy, which shall include the return objectives and acceptable levels of risks, as indicated by eligible asset classes in which the funds can be invested, and by acceptable ratings for the instruments in these asset classes.
- (3) The Investment Board shall determine the Investment Guidelines that shall govern the implementation of the Investment Policy.
- (4) The Investment Guidelines shall include:
  - (a) benchmarks and acceptable ranges for interest risk, exchange risk and credit risk;
  - (b) credit risk ranges for each eligible instrument class; and
  - (c) maximum counterparty risk exposures.
- (5) The Bank of South Sudan shall be responsible for the operational management of the Reserve Funds and shall have operational autonomy to execute investments in accordance with the Investment Guidelines.
- (6) In the exercise of their respective duties and functions, the Minister, Investment Board and Bank of South Sudan shall comply with the Santiago Principles.
- (7) The Ministry shall enter into an agreement with the Bank of South Sudan on the operational management of the Reserve Funds after consultation with the Investment Board.
- (8) The assets of the Reserve Funds shall be invested in accordance with the requirements set out in Section 17.
- (9) The investment return of the Oil Revenue Stabilization Account and the Future Generation Fund shall be added to the balance of each of the two Reserve Funds respectively.

## **17. Investment Policy**

- (1) The Investment Policy shall apply the principle of diversification to maximize the risk-adjusted financial returns of the Reserve Funds and shall take into account:
  - (a) the purposes for which each Reserve Fund has been established;
  - (b) the constraints under which each Reserve Fund operates; and
  - (c) The Republic's ability to bear risk.
- (3) The Investment Policy shall provide sufficient liquidity in the portfolio to ensure that funding is available whenever required for any transfer to the Consolidated Fund or for rebalancing investments within the policy exposure.
- (4) The Investment Board and the Bank of South Sudan shall develop and maintain any strategy, system and procedure necessary to ensure that the identification, monitoring and management of any risk associated with the implementation of the investment policy.
- (5) The management of the Reserve Funds shall be conducted in compliance with all applicable regulatory and disclosure requirements of the countries in which investments are made.

## **18. Qualifying Instruments**

- (1) Eligible investments under this Section shall be any investment issued and held in, and governed by the law of, an internationally recognized jurisdiction other than South Sudan, in the form of cash deposits or debt instruments that bear interest or a fixed amount equivalent to interest, provided that:
  - (a) any debt instrument shall be issued or guaranteed by a sovereign government;
  - (b) both the debt instrument referred to in paragraph (a) of this subsection and the issuer shall hold an investment grade credit rating by at least one of the most internationally recognized rating firms; and
  - (c) any deposit shall be held with:
    - (i) the central bank of a sovereign state, other than the Bank of South Sudan;
    - (ii) the Bank for International Settlements;
    - (iii) the European Central Bank; or
    - (iv) a commercial financial institution with a minimum credit rating in accordance with paragraph (b) of this subsection.

- (2) A derivative instrument shall qualify as an eligible investment only if:
  - (a) such investment is used to reduce the risk to the Reserve Funds from the underlying instrument or instruments or to facilitate the efficient implementation of asset exposure;
  - (b) the risk from the derivative instrument shall not be higher than that deriving by direct exposure to the underlying assets in accordance with this Bill;
  - (c) the issuer holds an investment grade credit rating by at least one of the most internationally recognized rating firms; and
  - (d) the Investment Board has established conditions with respect to the operational use of the derivative instrument.
- (3) The Investment Board shall determine the period within which the Bank of South Sudan shall dispose of instruments if they cease to be eligible investments because of a change in the rating of the financial instruments or the issuer of the instruments.
- (4) The Government shall review the qualifying instruments under this Section, and any proposed changes thereof shall be approved by the National Legislative Assembly, no later than three years after this Bill has entered into force, having regard to the size of the Reserve Funds and the level of institutional capacity.

## **19. External Investment Managers**

- (1) The Bank of South Sudan, subject to the approval of the Investment Board, may select and appoint one or more external investment managers to be responsible for managing part or all of the assets of the Reserve Funds.
- (2) The external investment manager shall invest the funds under its management within the limits of the Investment Policy, the Investment Guidelines and in accordance with the Investment Management Agreement entered into with the Bank of South Sudan.
- (3) The external investment manager shall:
  - (a) be a legal person with sufficient equity capital and adequate guarantees and insurances against operational risks;
  - (b) have a sound record of operational and financial performance; and
  - (c) possess references and a reputation in the field of asset management of the highest international standard.
- (4) No appointment under subsection (1) of this Section shall take place with a private sector investment manager without an open, transparent, non-discriminatory and competitive public tender process to be conducted by the Bank of South Sudan and in accordance with the provisions of this Bill and applicable legislation concerning public procurement.

- (5) The Investment Board shall determine the procedures for selection, appointment and removal of external investment managers.

## **CHAPTER VI INVESTMENT BOARD**

### **20. Responsibility of the Investment Board**

An Investment Board is hereby established and shall:

- (a) determine the Investment Guidelines in line with the Investment Policy established under Section 17 of this Bill;
- (b) approve any external investment manager selected under Section 19 of this Bill and associated Investment Management Agreements;
- (c) conduct a regular assessment of the investments of the Reserve Funds against benchmarks for risks and targets for performance;
- (d) oversee the internal and external auditing activities and the Bank of South Sudan's risk management and control systems related to the Reserve Funds;
- (e) advise the Minister on the Investment Policy and any required changes thereof;
- (f) advise the Minister on the performance of the Reserve Funds; and
- (g) review the quarterly reports from the Bank of South Sudan and the audit reports.

### **21. Organisation of the Investment Board**

- (1) The Investment Board shall be composed of a chairperson, deputy chairperson, and five additional members to be appointed by the Minister in consultation with the Bank of South Sudan and approved by the majority of the members of the National Legislative Assembly, taking into consideration that:
- (a) at least two shall be women; and
  - (b) a majority of the members shall be South Sudanese.
- (2) A member of the Investment Board shall:
- (a) not be part of the Government or National Legislature;
  - (b) not be an official, employee, or agent/advisor of any ministry of the Government, the Bank of South Sudan or any external investment manager;
  - (c) be a person of recognized integrity and proven competence in finance, investment, economics, business management or law; and

- (d) not have been convicted for a crime involving honesty or moral turpitude, even if pardoned.
- (3) The terms of the members of the Investment Board shall be three years, except that the first time the Investment Board is appointed, three members shall be appointed for a period of two years in order to ensure that the terms of the Investment Board do not expire simultaneously.
- (4) Investment Board members shall be eligible for reappointment, except in those cases provided for under Section 23 of this Bill.
- (5) The Investment Board shall be allowed to hire external experts, in accordance with applicable legislation concerning public procurement, to bring in the necessary expertise to enable the Investment Board to exercise its duties.
- (6) The Investment Board shall determine the rules and procedures under which it operates.
- (7) The Bank of South Sudan shall provide the secretariat for the Investment Board and any support required by the Investment Board to carry out its functions.
- (8) The Minister shall determine the remuneration for the members of the Investment Board.

## **22. Conflict of Interest**

- (1) A member of the Investment Board or its secretariat, or any person with whom he or she has family, business or financial connections, shall not accept any gift or credit for himself or herself, if the acceptance of such gift or credit would result in diminishing such member's impartial devotion to his or her duties.
- (2) A member of the Investment Board who has an interest in a matter for consideration by the Investment Board shall:
  - (a) disclose the nature of that interest, and such disclosure shall form part of the record of the consideration of the matter; and
  - (b) refrain from participating in the deliberations of the Investment Board in respect of such matter.
- (3) Any member of the Investment Board and the chairperson of the secretariat shall, upon assumption of their offices and annually thereafter, make a confidential declaration of their assets, liabilities and business and financial interests, including those of their spouses and children.

## **23. Removal of Members of the Investment Board**

- (1) A member of the Investment Board shall be removed from office by the Minister if:
  - (a) the conditions of Section 21 of this Bill are no longer satisfied;

- (b) such member has been convicted of an offense for which he or she was, or could have been, sentenced to imprisonment;
  - (c) such member has been declared bankrupt or unable to pay his or her debt by a court decision;
  - (d) during the immediately preceding five years, his or her actions, job performance, or breach of fiduciary duty as a member of the Investment Board or in any similar capacity, contributed to a company being subject to bankruptcy, conservatorship or receivership, or equivalent legal proceedings;
  - (e) such member has, on grounds of personal misconduct, incompetence, or violations of legal or regulatory provisions or any code of conduct, been removed or suspended from duty, or suspended or prohibited from practicing a profession, by a competent authority;
  - (f) such member has been unable to perform the functions of his or her office for more than six months because of an infirmity of body or mind;
  - (g) during membership of the Investment Board, he or she has engaged in significant violations of any duty imposed by the law, or has engaged in partisan political activities, or has engaged in serious misconduct or demonstrated gross incompetence in the office, substantially prejudicing the interests of the Reserve Funds; or
  - (h) such member has been absent without good cause from three successive meetings of the Investment Board.
- (2) In the event of the discovery of any of the circumstances set forth in subsection (1) of this Section, the chairperson of the Investment Board shall immediately notify the Investment Board and the Minister in writing and shall include his recommendation as to whether the member in question should be removed from the Investment Board. In the event that the circumstances pertain to the chairperson, such notification and recommendation shall be made by the deputy chairperson. In the event that the circumstances pertain to both the chairperson and the deputy chairperson, such notification and recommendation may be made by any member of the Investment Board.
- (3) The procedures for the submission of recommendations in accordance with subsection (2) of this Section shall be determined by the Investment Board and shall give the affected member the opportunity to submit representations on the matter.
- (4) The decision on the question of removal of an Investment Board member shall lie with the Minister after consultation with the Bank of South Sudan and the National Legislative Assembly.

## **24. Resignation of Investment Board Members**

A member of the Investment Board may resign from his or her position by written notice to the Minister of:

- (a) at least three months in the case of the chairperson or deputy chairperson;
- (b) at least one month in the case of any other member of the Investment Board, or such period of time as the Minister may deem necessary.

**25. Vacancies on the Investment Board**

Any vacancy on the Investment Board shall be filled by the appointment of a new member of the Investment Board in accordance with Section 21 of this Bill, who will serve the remaining period of the term of the member to be replaced.

**26. Release of Advice from the Investment Board**

Upon request of the National Legislative Assembly, the Minister shall immediately provide it with any advice given by the Investment Board.

**CHAPTER VII  
ENCUMBRANCES**

**27. Prohibited Use of Petroleum Revenue Funds**

(1) Assets of the Future Generation Fund and the Oil Revenue Stabilization Account, may not be used as collateral for Government borrowing or repayment of debts, guarantees, or any other liabilities not associated with the management of these funds.

(2) Without prejudice to sub-section (1), the government may use other petroleum revenue streams or gas as collateral for debts, guarantees or any other commitments with the approval of the national legislative Assembly.

**CHAPTER VIII  
TRANSFERS TO PETROLEUM PRODUCING STATES AND LOCAL  
GOVERNMENT COUNCILS**

**28. Transfers to the Petroleum Producing States and Local Government Councils within these States**

- (1) The Ministry shall allocate shares of the Republic's Petroleum Revenue to the Petroleum Producing States and Local Government Councils, which shall be paid out of the Consolidated Fund, as follows:
  - (a) the Petroleum Producing States shall receive two percent of the Net Petroleum Revenue; and
  - (b) the Local Government Councils within the Petroleum Producing States shall receive three percent of the Net Petroleum Revenue.

- (2) The Ministry shall transfer the amount provided in subsection (1) of this Section to the Petroleum Producing States.
- (3) A Petroleum Producing State shall transfer the amount provided in paragraph (1)(b) of this Section based on transparent, equitable and objective criteria.
- (4) The amount transferred to a Petroleum Producing State pursuant to subsections (2) and (3) of this Section shall be distributed proportionally according to the production output of each Petroleum Producing State, and shall be included in the annual budget of each such Petroleum Producing State.
- (5) The Ministry shall transfer the amount due each month to the Petroleum Producing States no later than by the fifteenth day of the ensuing month.
- (6) A Local Government Council shall include the amount received under subsection (3) of this Section in such Local Government Council's annual budget and allocate the funds to capital development projects in accordance with the planning of such Local Government Council. The respective communities shall participate in such Local Government Council's planning process.
- (7) Any revenue spent by the Petroleum Producing States and Local Government Councils and any report made on such expenditure shall be in accordance with the Public Financial Management and Accountability Act, 2012 and any other law and regulation applicable in such state or Local Government Council.
- (8) Regulations shall detail rules and procedures for the implementation of this Chapter.

## **CHAPTER IX**

### **TRANSPARENCY AND ACCOUNTABILITY**

#### **29. Transparency as a Fundamental Principle**

- (1) The management of the Petroleum Revenue Account and the Reserve Funds, and any related duty of any relevant party, shall be carried out in an open and transparent manner.
- (2) In the exercise of their functions and competencies, and as provided for in this Bill, the National Legislative Assembly, Government, Ministry, Bank of South Sudan and Investment Board shall take all necessary measures to ensure free access to public information.
- (3) The Minister shall issue regulations governing access to information by the public.

#### **30. Declaration of Confidentiality**

- (1) Information or data may be declared confidential and not to be disclosed to the public if such information:

- (a) significantly prejudices the performance of the Reserve Funds;
  - (b) jeopardizes the independence of the Investment Board, any of its members, or both;
  - (c) prejudices the freedom of discussion within or among the Ministry, the Bank of South Sudan, or the Investment Board; or
  - (d) may lead to unfair competition, improper gains or advantage for a third party or unfair disadvantage for the parties involved.
- (2) The declaration of confidentiality shall be made by the Ministry, Bank of South Sudan or the Investment Board and shall provide:
- (a) a justification based on one or more grounds detailed in subsection (1) of this Section; and
  - (b) the period in which such information shall be declared confidential.
- (3) Without prejudice to subsection (1) of this Section, and unless the parties agree to disclose such communication, internal communications within the Ministry, the Bank of South Sudan or the Investment Board shall be kept confidential.
- (4) Any party affected by the disclosure of information on grounds detailed in subsection (1)(d) of this Section may request a declaration of confidentiality of such information to the Ministry, the Bank of South Sudan or the Investment Board.
- (5) The Ministry, the Bank of South Sudan or the Investment Board shall issue a decision on the request for declaration of confidentiality under subsection (4) of this Section.
- (6) In case of denial, the interested party may appeal to the Competent Court within fifteen days from the date in which the decision under subsection (5) of this Section was communicated to him or her.
- (7) The Minister shall issue regulations to further detail procedures under subsections (4), (5), and (6) of this Section.
- (8) The justification on the confidentiality of information shall be made available to the public upon request.
- (9) Upon expiration of the period referred to in paragraph (2)(b) of this Section, and if any grounds on which the declaration of confidentiality was based no longer exists, information shall be disclosed to the public.

### **31. Records of Petroleum Revenue**

- (1) The Ministry shall publish the records of Petroleum Revenue in accordance with Section 6 of this Bill no more than six weeks after the end of each Quarter.
- (2) The records of Petroleum Revenue published under subsection (1) of this Section

shall be disaggregated by type of revenue and individual transaction.

- (3) In addition to the records of Petroleum Revenue, the information shall include transfers from the Petroleum Revenue Account to the Reserve Funds and the Consolidated Fund, transfers from the Consolidated Fund to the Petroleum Producing States and the balance of the Petroleum Revenue Account and the Reserve Funds.
- (4) The information shall be published simultaneously in the official gazette and in at least two national daily newspapers.

### **32. Quarterly Reports**

- (1) The Bank of South Sudan shall present to the Minister and the Investment Board quarterly reports on the in- and outflow and the performance of the Petroleum Revenue Account and the Reserve Funds during the Quarter and the value of the assets and where the assets are held at the end of the Quarter, no later than by the end of the ensuing month.
- (2) The Bank of South Sudan shall make the quarterly reports publicly available no later than six weeks after the end of the Quarter.
- (3) The Bank of South Sudan shall ensure that in releasing, or allowing access to, such reports, measures are taken to prevent the disclosure of confidential information.

### **33. Annual Reports**

- (1) The Minister shall submit an annual report for the Petroleum Account and the Reserve Funds to the National Legislative Assembly no later than six months after the end of the Financial Year.
- (2) The annual report shall be prepared in such manner that makes it readily adaptable for dissemination to the public and shall contain the following information for the Financial Year for which the report is prepared:
  - (a) a report signed by the Minister describing the Investment Policy and performance of the Reserve Funds, any advice received from the Investment Board, and any other matter related to the management of Petroleum Revenue and the Reserve Funds that may be of concern or interest to the National Legislative Assembly;
  - (b) a report signed by the Investment Board describing the Investment Guidelines and any changes made during the Financial Year, a comparison of the performance of the Reserve Funds against the established benchmark indices of the investments and against the performance of the Reserve Funds for the previous three years, and any other matter relevant for the implementation of the Investment Policy and performance of the Reserve Funds, including, but not limited to, an assessment of the internal and external audits and risk management and control systems in place by the Bank of South Sudan;

- (c) the Auditor General's report, including the audited financial statements with notes of the Petroleum Revenue Account and the Reserve Funds and any report from the independent auditor;
- (d) a list of all payments of Petroleum Revenue made to the Petroleum Producing States, and payments of Petroleum Revenue by the Petroleum Producing States to each applicable county, for the Financial Year;
- (e) the liabilities of government borrowings in a manner that provides an accurate representation of the past and expected future development of the net financial assets of government and the rate of savings; and
- (f) a list of names of persons holding positions relevant for the operation and performance of the Reserve Funds, including:
  - (i) the Minister;
  - (ii) the director general of accounts of the Ministry;
  - (iii) the chairperson, deputy chairperson and members of the Investment Board;
  - (iv) the Governor;
  - (v) the external investment manager(s), if any; and
  - (vi) the designated signatories that are authorised to request transfers from the Petroleum Revenue Account and the Reserve Funds.
- (3) The sources of the information described in subsection (2) of this Section, in whatever form, including the reports and statements, shall be annexed to the annual report in unedited form.
- (4) The annual report shall be published by the Ministry within fifteen days of its submission to the National Legislative Assembly.

### **34. Annual Disclosure and Publication of Payments**

- (1) Licensees, contractors and sub-contractors shall annually disclose information on all payments, monetary or in kind, made to Government agencies in connection with Petroleum Activities. The Government shall disclose the revenue received in connection with Petroleum Activities without regard to any provisions of confidentiality.
- (2) Any disclosure under this Section shall be reported to an independent entity, selected and appointed for this purpose, and the information shall be published and verified in accordance with the principles of the Extractive Industries Transparency Initiative as prescribed in the regulations.
- (3) Confidentiality sections or other sections in a Petroleum Agreement that prevent disclosure of information on any payments made and revenues received in connection with Petroleum Activities conducted in South Sudan shall be void to

the extent required for disclosure of such information as set out in subsection (1) of this Section.

- (4) The Ministry shall issue regulations respecting all matters relating to disclosure and publication of information under this Section, including orders to administrative agencies requiring them to provide information relating to payments and revenues.

### **35. Publication of Information**

- (1) The Ministry shall ensure that this Bill and any of its regulations, the Investment Policy, the Investment Guidelines, the operational management agreements provided in Section 8 and 16(7) of this Bill, and the rules and procedures of the Investment Board provided in Section 21(6) of this Bill, are readily available to the public not later than thirty days after their respective enactment or adoption.
- (2) Appointment of the Investment Board shall be published in the Official Gazette.
- (3) Information required to be made public under this Chapter shall also be published online on the website of the Ministry, the Bank of South Sudan and the National Legislative Assembly.
- (4) The Ministry shall also make copies of the information available at its headquarters.

## **CHAPTER X SUPERVISION**

### **36. Maintenance of the Accounts and Records of the Petroleum Revenue Account and Reserve Funds**

- (1) The Bank of South Sudan shall keep proper books of accounts and records on the Petroleum Revenue Account and the Reserve Funds in accordance with International Financial Reporting Standards.
- (2) The director general of accounts of the Ministry shall submit to the Minister quarterly management information reports and analyses on the performance and activities of the Petroleum Revenue Account and Reserve Funds no later than forty days after the end of each Quarter.

### **37. Internal Audit**

Any account, record and other document related to the Petroleum Revenue Account and the Reserve Funds shall be audited by the internal audit department of the Bank of South Sudan, and a quarterly report shall be submitted by the Governor to the Investment Board, the Auditor General and the independent auditor and any other person required by law to receive the report.

### **38. External Audit**

- (1) The Audit Chamber shall appoint an independent auditor to conduct audits of the Petroleum Revenue Account and the Reserve Funds in accordance with International Auditing Standards.
- (2) The independent auditor shall be an internationally recognized auditing firm selected under an open, transparent, non-discriminatory and competitive public tender process under applicable law concerning public procurement.
- (3) The independent auditor shall, within two months after the close of the Financial Year, provide the Audit Chamber with a statement on the management of the Petroleum Revenue.
- (4) The independent auditor appointed under this Bill shall continue throughout the contracted period, unless the contract is terminated for serious misconduct or serious breach of contract, or if the independent auditor's conduct otherwise prejudices the management of the Petroleum Revenue.
- (5) The Bank of South Sudan shall provide the Audit Chamber and the independent auditor with such assistance as they may require.
- (6) The Audit Chamber and the independent auditor shall have access to any account, books, minutes, records and any other document, information and data related to the management of the Petroleum Revenue Account and the Reserve Funds.

### **39. Annual Audit**

The Bank of South Sudan shall, within four months after the close of the Financial Year, submit to the Ministry a copy of the financial statements for the Petroleum Revenue Account and the Reserve Funds, certified by the Audit Chamber, and any audit report prepared by the independent auditor.

### **40. Special Audits**

- (1) The Audit Chamber may carry out special audits or reviews of the Petroleum Revenue Account and Reserve Funds, or request the independent auditor to do so.
- (2) The special audit reports shall be submitted to the Ministry, the Bank of South Sudan and the National Legislative Assembly.

## **CHAPTER XII**

### **MISCELLANEOUS MATTERS**

### **41. Ownership**

- (1) The Petroleum Revenue Account, the Reserve Funds, and assets established or held under this Bill at the Bank of South Sudan are owned by the Government.
- (2) Under this Bill, the Bank of South Sudan shall act as depository and cashier for the Government.

#### **42. Legal Protection of Assets and Officers**

In any court or arbitration proceeding against the Bank of South Sudan, the Investment Board, the secretariat of the Investment Board, or a current or former official, staff or an agent of any of these entities, related to the exercise of their duties under this Bill:

- (a) the court or arbitration panel, in reaching its decision, may examine whether the defendant acted unlawfully or in an arbitrary or capricious manner in light of the facts and the relevant law and regulations;
- (b) any such person shall not be liable for losses and damages or otherwise liable for acts or omissions performed pursuant to and in the course of the duties and responsibilities exercised under this Bill, unless it has been proven that such acts or omissions constitute intentional wrongful conduct or gross neglect.

#### **43. Immunity from Prejudgment Attachment**

No attachment or execution shall be issued against the Petroleum Revenue Account or the Reserve Funds before the issuance of a final judgment in any legal action.

#### **44. Transitional and Final Provisions**

- (1) The appointments necessary for the effective functioning of the Investment Board shall be made within three months after the commencement of this Bill.
- (2) The Ministry and the Bank of South Sudan shall enter into the management agreements referred to in Sections 8 and 16 of this Bill, within three months after the commencement of this Bill.

#### **45. Regulations**

The Ministry may issue regulations for the effective implementation of the provisions of this Bill.

#### **46. Administration of the Bill**

The administration of this Bill shall be the responsibility of the Ministry.

**SCHEDULE A**

**CALCULATION OF ANNUAL BENCHMARK REVENUE**

(1) The Annual Benchmark Revenue for the Financial Year shall be calculated as follows:

Annual Benchmark Revenue = Estimated Revenue from Export Sales of Oil +  
Estimated Revenue from Export Sales of Gas + Estimated Other Petroleum Revenue  
pursuant to Section (6),

where:

- (a) Estimated Revenue from Export Sales of Oil shall be calculated in accordance with the petroleum fiscal regime based on the expected quantity of the Government’s entitlements of oil for that Financial Year and the Benchmark Oil Price determined in sub-section (2);
- (b) Estimated Revenue from Export Sales of Gas shall be calculated on the basis of expected gas revenue for the Financial Year; and
- (c) Estimated Other Petroleum Revenue shall be calculated on the basis of the expected Petroleum Revenue according to Section (6) other than the revenue in (a) and (b) above.

(2) The Annual Benchmark Revenue for the Financial Year shall be calculated on the basis of the following Benchmark Oil Price:

*10 years rolling historical average of the Brent blend crude oil price ending with the previous calendar year.*

(3) The calculation of the Annual Benchmark Revenue shall take account of the estimated differential in the Brent blend crude oil price and the actual oil prices achieved on the Government’s sales of oil.

(4) All assumptions upon which the calculations made pursuant to subsections (1), (2) and (3) shall be clearly identified and explained, and any changes made in these assumptions in subsequent calculations shall be clearly pointed out.

(5) All assumptions applied shall be prudent and reflect international best practice of providing Petroleum Revenue forecasts.

(6) A reputable independent expert appointed in accordance with applicable law concerning public procurement shall certify the calculation of the Annual Benchmark Revenue and the underlying assumptions.

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Assent of the President of the Republic

Issue under my hand in Juba on this \_\_\_\_\_ day of \_\_\_\_\_ in the year, 2012

Gen. Salva Kiir Mayardit  
President of the Republic