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# YOUTH ENTERPRISE DEVELOPMET FUND BILL, 2020

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#### LAWS OF SOUTH SUDAN

# THE YOUTH ENTERPRISE DEVELOPMENT FUND BILL, 2020

In accordance with the provisions of Article 55 (3) (b), read together with the provisions of Article 40 of the Transitional Constitution of the Republic of South Sudan, 2011 (as amended), the Transitional National Legislature hereby enacts the following:

#### **CHAPTER I**

#### PRELIMINARY PROVISIONS

#### 1. Title and Commencement

This Bill may be cited as the "Youth Enterprise Development Fund Bill, 2020" 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Any existing legislation governing the subject of this Bill is hereby repealed, provided that all appointments, proceedings, orders and regulations made under the repealed legislation shall remain in force until repealed or amended according to the provisions of this Bill.

#### 3. Purpose

The purpose of this Bill is to provide for the establishment and governance of the Youth Enterprise Development Fund.

#### 4. Authority and Application

- (1) This Bill is drafted in accordance with the provisions of Article 201A of The Transitional Constitution of the Republic of South Sudan, 2011 (as amended) which grants the Government of the Republic of South Sudan authority over the Youth Enterprise Development Fund and activities provided for in this Bill.
- (2) The provisions of this Bill shall apply to the following:

- a) The establishment and administration of the Youth Enterprise Development Fund;
- b) The promotion of enterprise development among youth; and
- c) The framework for investing in, and facilitating growth of, the micro and small enterprise sector in the Country to spur economic growth.

# 5. Interpretation

In this Bill, unless the context otherwise requires:

- "Assembly" means the Transitional National Legislative Assembly of South Sudan established under the Constitution;
- "Appropriation" means legal authority to spend, as granted by the Transitional National Legislative Assembly through an Appropriation Act or a Supplementary Appropriation Act;
- "Commission" means the Commission established under section 9 of this Bill;
- "Constitution" means the Transitional Constitution of the Republic of South Sudan, 2011 (as amended);
- "Enterprise" means small and micro businesses owned by youth;
- **"Financial year"** means the government financial year established under the Public Financial Management and Accountability Act, 2011;
- **"Fund"** means the Youth Enterprise Development Fund established under section 6 of this Bill;
- "Government" means Government of the Republic of South Sudan;
- "Managing Director" means the Managing Director appointed under section 13 of this Bill:
- "Minister" means the Minister of Youth and Sports;
- "Youth" means any young man and young woman between the age of 18 and 35 years;
- "President" Means the President of the Republic of South Sudan;
- "Recruitment" means the process of actively seeking or recruiting officials in a vigorously competitive process under this Bill; and

"Loans" Means sum of money lent out to youth in exchange of future repayments with lowest minimal interest rate as provided for under this Bill.

# **6. Guiding Principles**

The management of the Youth Enterprise Development Fund shall be guided by the following principles:

- (1) Promotion of Transparency, efficiency and accountability;
- (2) Effectiveness and commitment to the fight against corruption;
- (3) Honesty, integrity and respect for public property;
- (4) Promotion of the principles of equity in the Fund allocations and disbursements;
- (5) Commitment to devolution of resources to the lowest levels of government; and
- (6) Encouragement of public participation in Funds management.

#### **CHAPTER II**

# ESTABLISHMENT AND PURPOSE OF THE YOUTH ENTERPRISE DEVELOPMENT FUND

#### 7. Establishment of the fund

- (1) There is established a Fund to be known as the "Youth Enterprise Development Fund" hereinafter known as the Fund.
- (2) The fund shall consist of:
  - a) at least 10% of the National Budget Funds appropriated by the Transitional National Assembly;
  - b) any lawful grants, gifts, donations, loans or other endowments granted to the Fund;
  - c) Such funds as may vest in or accrue to the Fund in the course of the Commission exercise or performance of its functions under this Bill; and
  - d) monies from any other lawful source accruing to the Fund.

#### 8. Purpose of the Fund

The purpose of the Fund shall be to:

a) provide access to capital and financial facilities to micro and small enterprises owned by the youth;

- b) attract and facilitate investment in micro and small enterprises oriented commercial infrastructure;
- c) Support youth oriented micro and small enterprises to develop linkage with large enterprises;
- d) provide technical assistance in product and market development;
- e) facilitate training, mentorship and the provision of business development services to youth entrepreneurs;
- f) Facilitate technology acquisition, adoption and utilization for beneficiaries under this Bill; and
- g) Carryout any activity as may be prescribed by law.

#### 9. Limitation on Use of the Fund:

- (1) There shall be paid from the Funds account expenses pursuance of the objects and purpose for which the Fund is established.
- (2) Notwithstanding the provision of sub-section (1) above:
  - (a) not more than five percent of the total monies consisting of the fund shall be utilized for administration of the fund;
  - (b) not less than twenty percent shall be utilized for funding activities under this Bill; and
  - c) the remaining 75 percent of the total monies appropriated by the Assembly, grants or donations shall be allocated to financing or servicing the Loans.
- (3) The Assembly may appropriate specific amount of money to be allocated to the Fund.
- (4) The amount set aside for disbursement as loans under section 8 (2) (b) shall be as provided for in this Bill.

#### **CHAPTER III**

#### **ADMINISTRATION OF THE FUND**

#### 10. Powers and Functions of the Minister

- 1) The Minister shall be responsible for supervising and overseeing the performance of the Commission.
- 2) Shall formulate policies, strategies, plans and programmes for the Youth Fund and forward them to the Commission.
- 3) The Minister shall write to the respective institutions or bodies under section 11 (1) above to nominate their representative to the Commission.
- 4) The Minister shall, recommend to the President, competent and qualified members to be appointed to the Commission.
- 5) Shall mobilize resources for the Commission.
- **6)** Shall perform any other function as may be prescribed by law.

#### 11. Establishment of the Commission

- (1) There shall be established an independent body to be known as the "Youth Enterprise Development Fund Commission".
- (2) The Commission shall:
  - (a) be a body corporate with perpetual succession and a common seal;
  - (b) be capable of suing and being sued;
  - (c) be capable of acquiring, holding and disposing of movable and immovable properties for the purposes of this Act; and
  - (d) perform any such things or acts as may be lawfully done by a corporate body.
- (3) The Commission shall be responsible for the management and administration of the Fund.

#### 12. Composition of the Commission

- (1) The Commission shall consist of:
  - (a) A chairperson, not being a public officer who shall be recruited by the Public Service
  - (b) Deputy Chairperson, who shall be a representative from the Ministry of Finance and Planning;
  - (c) A representative from the Ministry of Youth and Sport;
  - (d) A representative from the Ministry of Trade and Commerce;

- (e) A representative from the Ministry of Agriculture;
- (f) A representative of the National Youth Union;
- (g) A representative from Civil Society;
- (h) A representative of persons with Disabilities;
- (i) The Managing Director who shall be an ex-officio Member and Secretary to the Council;
- 2) No fewer than thirty-five per cent of the members of the Commission shall be young women.
- 3) The Commission Members shall be appointed by the President upon recommendation by the Minister.
- 5) All Members of the Commission shall be on a Part-Time basis except for the Managing Director.

#### 13. Functions of the Commission

- (1) The Commission shall be responsible for the following:
  - a) managing the Fund in order to achieve the purpose of its establishment;
  - b) coordinating other relevant state governments and administrative areas in the implementation of this Bill;
  - c) advising the Managing Director on the appropriate guidelines and procedures for implementation of the Bill and for better management of the Fund;
  - d) reviewing and considering applications;
  - e) approving disbursements for loans and utilization of the Fund;
  - f) approving annual reports of the Fund; and
  - g) performing any other duty conferred by this Act or any other law.

# 14. Eligibility for Appointment

- 1. A person shall be eligible for appointment as a member of the Commission if such a person is:
  - a) of high moral character and proven integrity;
  - b) has 3 years experience in matters related to financial management; and
  - c) Is a holder of at least a Bachelors degree in finance, accounts or any other relevant field from a recognized University.

- 2. Without prejudice to sub-section (1), above, a person shall be eligible for appointment as a Member of the Commission if he or she fulfils the following requirements:
  - (a) be a South Sudanese citizen;
  - (b) be of sound mind;
  - (c) be of high moral character and proven integrity;
  - (d) be at least thirty-five years of age;
  - (e) have relevant working experience of at least 3 years;
  - (f) not be an undischarged bankrupt or insolvent; and
  - (g) not have been convicted of a criminal offence.

#### 15. Term of Office

The Chairperson and members appointed under section 10 shall serve for a term of Four years non-renewable.

#### 16. Vacancy of a Member

The office of the Chairperson or a member of the Commission shall become vacant if the holder:

- (a) dies:
- (b) resigns from office by notice in writing addressed to the President;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment;
- (d) term of office expires;
- (e) is absent from three consecutive meetings of the Council without good cause; and
- (f) physical or mental incapacity to perform the functions of office.

#### 17. Removal from Office;

A member of the Commission may be removed from office by the President upon satisfactory recommendation by the Disciplinary Committee established by the Commission on any of the following grounds:

- a) violation of this Act;
- b) gross misconduct, whether in the performance of the member's functions or otherwise;
- c) physical or mental incapacity to perform the functions of office; or
- d) incompetence; and
- e) neglect of duty.

# 18. Meetings of the Commission

- (1) The Commission shall meet at least four times in every financial year and not more than six times.
- (2) The quorum at the meeting of the Commission is five members or a greater number determined by the Commission in respect of an important matter as provided for in the regulations.
- (3) The Chairperson shall convene and preside over the meetings of the Commission.
- (4) The proceedings of the Commission shall not be invalidated by reason of a vacancy among the members.

# 19. Disciplinary Committee

- 1) The Minister shall establish a disciplinary committee to deal with disciplinary issues arising from the violations of this Act and regulations.
- 2) The Disciplinary Committee shall consist of at least five (05) members which comprise of representatives from; Anti-Corruption Commission, Audit Chamber, Ministry of Justice, Ministry of Youth and Sport and Civil Society.
- 3) The Disciplinary Committee shall assist in resolving disputes arising from Commission.
- 4) The Disciplinary Committee shall investigate any misconduct, misuse of funds and violation of this Act by the Commission.

#### 20. Credit Sub-Committee of the Commission

(1) The Commission may from time to time establish the Credit Sub-committee for

evaluating applications and the better carrying out of the Commission functions.

- (2) The Commission may co-opt into the membership of credit sub-committee established under subsection (1) a person whose knowledge and skills are necessary for the functions of the Commission.
- (3) The Commission may by resolution either generally or in any particular case establish and delegate to any sub-committee of the Council or to any member, officer, employee or agent of the Commission the exercise of any of the powers, functions or duties of the Commission.

#### 21. Oath of the Commission

To assume office, the Commission, shall take the following oath before the President:

"I.....,do hereby swear by the Almighty God/solemnly affirm/, that as Commission member of the Youth Enterprise Development Fund, I shall be faithful, and shall bear true allegiance to Republic of South Sudan and shall diligently and honestly discharge my duties and responsibilities and strive to foster the development and welfare of its people; that I shall diligently and honestly discharge my duties and responsibilities and strive to exercise the powers and functions vested in me by the Constitution and the Youth Enterprise Fund Act, with integrity and dignity in the best interests of the people of South Sudan; so help me God/God is my witness".

# 22. Appointment of the Managing Director

- (1) There shall be a Managing Director to be recruited by the Commission and appointed by Minister.
- (2) The Managing Director shall be recruited from persons of high moral reputation and integrity and shall possess the necessary qualifications, expertise and experience in matters related to management.
- (3) The term of office of the Managing Director shall be Four (4) years renewable for one additional term upon satisfactory performance.
- (4) The Managing Director shall be entitled to emoluments, allowances, privileges and post service benefits as determined by the Commission in the rules and regulations.

# 23. Eligibility for Appointment as Managing Director

- (1) The Managing Director shall be a person of high moral character and proven integrity and possess qualifications, expertise and experience in matters related to financial management.
- (2) The Managing Director shall have a minimum educational qualification of a Masters degree in finance, accounts or any other relevant field from a recognized university.
- (3) Without prejudice to sub-section (1), above, a person shall be eligible for appointment as the Managing Director if he or she fulfils the following requirements:
  - (h) be a South Sudanese citizen;
  - (i) be of sound mind;
  - (j) be of high moral character and proven integrity;
  - (k) be at least thirty-five years of age;
  - (1) have relevant working experience of at least 3 years;
  - (m) not be an undischarged bankrupt or insolvent; and
  - (n) not have been convicted of a criminal offence.
- (4) No person shall be appointed to serve as the Managing Director while serving in the public office or holding an elected office.

#### 24. Function of the Managing Director

The Managing Director shall:

- a) supervise and control the administration of the Fund in consultation with the Commission:
- b) prepare budgets and plans for better administration of the Fund in consultation with the Commission;
- c) impose conditions or restrictions on the use of any expenditure arising from the Fund with the approval of the Commission;
- (d) cause of be kept proper books of account and other books and records in relation to the Fund as well as to all the various activities and undertakings of the Fund;
- (e) prepare, sign and transmit to the Auditor-General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund

in accordance with the National Audit Act, 2011 and in such details as the Treasury may from time to time direct;

- (f) furnish such additional information as may be required for examination and audit by the Auditor-General or under any law; and
- (g) designate such staff as may be necessary to assist in the management of the Fund.
- 2) All monies received by the Fund shall be maintained in a separate bank account in the name of Youth Enterprise Development Fund, opened and administered in accordance with the provisions of the Public Financial Management and Accountability Act, 2011.
- 3) The balance of the Fund at the close of each financial year shall be retained in the Fund for purposes for which the Fund is established.
- 4) The Managing Director shall establish directorates upon approval by the Commission.
- 5) The Managing Director shall recruit the di rectors under section (7) upon the Commission approval under this Act.

# 25. Removal of the Managing Director from Office

The Managing Director may be removed from office by the Minister upon the recommendation of the Commission on any of the grounds provided under Section 17 of this Act.

#### 26. Appointment of Financial institutions

The Managing Director shall, with approval of the Commission appoint or enter into an agreement with financial institutions to administer the Fund on behalf of the Commission for the purposes of managing loan applications, disbursements, repayments and recovery on such terms and conditions as may be agreed upon by the Commission and the financial institutions.

#### 27. State Commission Office

- 1) There shall be established State Commission on Youth Enterprise Development Fund to assist the Commission in administering, coordinating, monitoring and managing the fund activities at the State level.
- 2) State Commission shall be recruited by the Managing Director with the approval of the Commission and reports to the Managing Director.

3) Perform any other function assigned to it by the Managing Director in consultation with the Commission under this Act, rules and regulations.

#### **CHAPTER IV**

#### ACCESS AND UTILIZATION OF THE FUND

# 28. Eligibility for accessing the fund

- (1) A person or enterprise shall be eligible for accessing a loan under this Bill, if such a person is:
  - (a) a youth;
  - (b) operating a micro or small enterprise;
  - (c) intending to start operating a business which is a micro or small enterprise; and
  - (d) Youth Cooperatives or groups compromising of 5-20 members.
- (2) Notwithstanding sub-section (1), a person who does not qualify under the category stipulated under sub-sections (1) (a) may be eligible for accessing a loan under this Act, if the person is unemployed, underemployed, operates a micro or small enterprise, or intends to commence operating a business which is a micro or small enterprise, Youth Cooperatives or groups compromising of 5-20 members and meets the prescribed conditions.

# 29. Accessing the Fund

- (1) A person who qualifies for funding under Section 28 may apply to the Commission for a loan in the prescribed form and in accordance with the prescribed conditions.
- (2) The Managing Director shall, in consultation with the Commission, prescribe the limits of amounts that can be disbursed as loan to an applicant.
- (3) The Commission may, where an applicant meets the prescribed conditions:
  - a) approve the loan application; or

- b) reject the loan application and give reasons to the applicant.
- (4) The Commission shall submit the list of applications approved under sub-section (3) to the Managing Director for consideration and financial approval.
- (5) Where an application is rejected by the Commission, reasons shall be given for the rejection.
- (6) Notwithstanding sub-section (2), a loan shall not be disbursed to an applicant unless the applicant has undergone scrutiny and meets the required criteria stipulated in the rules and regulation.

#### 30. Loan Repayment

- (1) The Commission shall, in consultation with the Managing Director establish loan repayment conditions.
- (2) The Commission shall set the lowest, minimal interest rates chargeable on a loan disbursed under this Act and the rules and regulations.
- (3) In establishing the amount repayable, the applicant shall not be charged a fee for insuring the loan.
- (4) Where an applicant granted a loan under this Bill defaults on repayment, the Council or a financial institution appointed under this act may adopt such loan recovery measures as may be prescribed.

#### 31. Utilization of the loan

- (1) A loan granted under this Bill shall only be utilized for financing an enterprise or business undertaking that was approved by the Council at the time of application for the loan.
- (2) A person who utilizes the loan granted under Act in a non-entrepreneurial or business undertaking may be disqualified from accessing any other loan under this Bill and the Council may recall the loan disbursed.

(3) Notwithstanding sub-section (1), a person may, with the approval of the Council engage in any other enterprise or business other than the approved enterprise. The regulations shall prescribe the procedures for such change of business or enterprise.

#### 32. Strategic plan

- (1) The Managing Director shall prepare a five-year strategic plan for implementation of this Bill which shall be approved by the Commission.
- (2) The plan shall provide among others for:
  - a) projects, strategies and activities projected to be funded under this Bill and the estimated costs;
  - (b) estimated number of businesses or enterprises targeted to be funded under the Bill through loans;
  - (c) Strategies to be pursued in regard to mobilization of target group provided under this Bill; and
  - (d) any other matter that may be prescribed.
- (3) The strategic plan prepared under this section shall be in accordance with approved Government Development Strategy or plan.

# 33. Business Development Services

- (1) The Managing Director shall, in collaboration with other relevant states or national government or private sector, coordinate the provision of appropriate business development services to persons applying for loans or beneficiaries under this Bill.
- (2) The Managing Director may, subject to approval by the Commission, charge such fees for services rendered.

# 34. Funding of the Projects

The Commission shall not fund a project unless the project is provided for in the approved strategic plan or appropriated by the Assembly.

# 35. Partnership

The Commission may collaborate, consult, or enter into partnership with other government, International entity or private entity for the purposes of implementing this Bill.

#### 36. Annual Forum

- (1) The Managing Director shall in consultation with the Commission, convene annual forum for all beneficiaries and potential beneficiaries under this Bill which may be held at the various level of government.
- (2) The forum shall provide a platform for:
  - a) reviewing and evaluating the implementation of the Bill;
  - b) providing learning opportunities for business or enterprises; and
  - c) exposing beneficiaries under this Bill to investors.

# 37. Annual report

- (1) The Managing Director shall prepare and submit to the Commission for approval an annual report of the operations of the Fund.
- (2) The report shall provide among others for:
  - a) performance of the Fund against the set targets;
  - b) types of businesses or enterprises funded under this Bill which shall include the sector within which the business operates;
  - c) the number of beneficiaries as categories under this Bill which may be classified in relation to the various levels of government;

- d) the rate of repayment and default of loans disbursed and related reasons for either;
- e) challenges faced in the implementation of this Bill and mitigation measures taken;
- f) the success rate of businesses or enterprises funded under this Bill; and
- (g) any other matter that may be prescribed.
- (3) the Commission shall cause the report to be published within 14 days following approval.

#### 38. Winding up of the Fund

In the event of winding up of the Fund, the cash balances shall be transferred to the account designated by the Ministry of Finance and Planning while other assets of the Fund shall be transferred to the Government.

#### **CHAPTER V**

# REPORTS AND AUDITING OF THE FUND

#### 39. Annual Estimates

- (1) At least three months before the commencement of each financial year the Commission shall prepare or cause to be prepared estimates of the revenue and expenditure of the Fund for that financial year.
- (2) The financial estimates referred to under sub-section (1) shall:
  - a) differentiate between recurrent and disbursement expenditure; and
  - (b) Itemize every activity that the Commission intends to undertake in respect of the Fund in the coming financial year under a separate vote head.
- (3) Upon approval of the estimates by the Assembly, all monies appropriated for purposes of the Fund shall be paid into the Fund account established under this Bill.

#### **40. Financial Statements and Audits**

- (1) The Managing Director shall cause to be kept such books of accounts and other books in relation thereto of all its undertakings, funds, activities and property as the Council may from time to time approve and shall, within a period of three (3) months after the end of the financial year, cause to be prepared, signed and forwarded to the Auditor-General:
  - a) a financial statement of the Fund; and
  - b) such other statements of accounts as the Council may approve.
- (2) The accounts of the Fund shall be examined, audited and reported upon annually by the Auditor-General in accordance with the National Audit Act, 2011.
- (3) The Commission shall submit to the Auditor-General all books and accounts of the Council, together with all vouchers in support thereof, and all books, papers and writings in its possession or control relating thereto, and the Auditor-General shall be entitled to require from any member, officer, employee or agent of the Commission such information and explanation as he may consider necessary for the performance of his duties as Auditor-General.
- (4) The expenses incurred in and incidental to the auditing of the accounts of the Fund shall be met by the Commission.

#### 41. Annual Report and Publication

- (1) The Council shall, within a period of three (3) months after the end of each financial year, prepare and submit to the Minister a report of its operations and the yearly balance sheet and such other statements of account as the Minister shall require.
- (2) The Minister shall publish the report, balance sheet and statements submitted under subsection (1) in a specified manner.
- (3) The Minister shall lay before the Assembly the reports, balance sheet and statements submitted under subsection (1), and such statements of accounts as may be approved within a period of thirty (30) days of the receipt of the reports and statements or, if the Assembly is not sitting, within fourteen days of the commencement of its next sitting.

#### **CHAPTER VI**

#### MISCELLENEOUS PROVISIONS

#### 42. Official Seal and Logo

The Commission shall have a common seal and logo that shall be kept by the Managing Director. The common seal, when affixed onto any document shall be authenticated by two signatures of the Chairperson, the Managing Director or a Member of the Commission who is duly authorized.

#### 43. Offences

# (1) An applicant who:

- a) is granted a loan on the basis of false statements made in the loan application whether orally or in writing relating to any matter affecting a request for a loan; or
- b) upon being granted a loan and is subsequently required to answer any questions, furnish any information or particulars or produce any document or paper relating to the loan amount and use thereof, neglects or fails to do so without reasonable cause or furnishes false information or information aimed at misleading the Commission, commits an offence and is upon conviction liable to a fine not exceeding two hundred thousand South Sudanese Pounds.

#### 44. Regulations

The Minister in the consultation with the Commission shall issue rules and regulations appropriate and necessary for the effective and efficient implementation of this Bill.

# Assent of the President

In accordance with provisions of Article 85 (1) of the Transitional Constitution of the Republic of South Sudan, 2011(as amended), I, Salva Kiir Mayardit, President of the Republic of South Sudan, hereby assent to the Youth Enterprise Development Fund, 2020 Act, 2020 and sign it into law.

Signed under my hand in Juba this...... day of the month of ......in the year, 2020.

H.E. Salva Kiir Mayardit

President

Republic of South Sudan

Juba