

# The Banking Business Act, 2003

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In the Name of Allah, the Gracious, the Merciful

## The Banking Business (Organization) Act, 2003

Be it hereby made, by the President of the Republic, and passed, by the National Assembly, in accordance with the provisions of Article 90, of the Constitution of the Republic of the Sudan , 1998, the following Act:

### Chapter I

#### Preliminary

#### Provisions

##### Title and commencement

This Act may be cited as the, “Banking Business ( Organization) Act, 2003”, and shall come into force, as from the date of Signature.

##### Repeal and saving

The Banking Business (Organization) Act, 1991 shall be repealed; provided that all the regulations, decisions and measures, made under the provisions thereof shall remain in force, until revoked, or amended under this Act.

##### Provisions of the Act to prevail

In case of existence of inconsistency, between the provisions of this Act, and any other law, the provisions of this Act shall prevail, to the extent of removing the inconsistency, between both of them.

##### Interpretation

In this Act, unless the context otherwise requires:

“**Bank**”: means the Bank of Sudan, established under the provisions of section 4, of the Bank of Sudan Act, 2003;

“**bank**”: means any company, registered under the provisions of the Companies Act, 1925, or an institution , or corporation, established by law, or any foreign bank, licensed to practise banking business, under the provisions of this Act;

“**Banking business**”: means opening accounts, of the types thereof, accepting deposits, conducting remits, opening letters of security, of the types thereof, and what relates thereto of procedure, issue of letters of credit, payment and collection of bonds, orders, payment vouchers and otherwise of stocks for value, and dealing in foreign exchange, investment, providing financing, to clients, and otherwise of the business of banks, as the Bank may specify, and may not be inconsistent with a Sharia ordinance;

“**Banks owned by the State**”: mean the banks owned by the Government, and the Bank of Sudan jointly, or severally;

“**Branch, or subsidiary office**”: means the branch, or subsidiary office of any bank, whether called agency, or any other name, which practises banking business;

“**Certified auditor**”: means the person, qualified by a professional association, internationally recognized, and enrolled, in the Certified Auditors Roll, who are permitted to practise the profession, in the Sudan, and the auditor subordinate to the General Audit Chambers;

**“Commission”**: means the Sharia Control Higher Commission, established in accordance with section 15, hereof;

**“Controler”**: means the person assigned by the Governor, on full, or part time basis, to control the performance of any bank, as to such conditions and period, as the decision may specify;

**“Convertible currency”**: means any currency capable of circulation, or remission, without a term, or condition, at the international currency exchanges, as the Bank may specify;

**“Financing”**: means employment of money, in accordance with Islamic forms;

**“Financial institution”**: means any company for employment of money, or for purposes of investment, or a corporation, or institution, which practises any one of the banking business;

**“Foreign bank”**: means any bank, registered , or instituted outside the Sudan, and practises banking business, in the Sudan, in accordance with the provisions of this Act;

**“General manger”**: means the general manager of every bank, or whoever may take his place;

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

**“Loan”**: means effecting ownership, by another, of money, or thing; provided that he shall restitute the specie thereof, in amount, type and character , to the lender, upon the expiry of the loan period;

**“Minister”**: means the Minister of Finance and National Economy;

**“Obligations at sight”**: mean the total obligations of any bank, which are due for payment, upon demand;

**“Obligations for a term”**: mean any obligations, other than obligations at sight;

**“Person”**: means any natural, or corporate person;

**“Representation office”**: means the office representing the bank;

**“Sufficient interest”**: means acquiring, by a person, his spouse, son, son-in-law, or partner, or whoever may take their places, of a share, not less than 10% , of the capital of any company, partnership or business;

**“Supervisor”**: means the person appointed by the Governor, at the head of any bank, to administer the executive business thereof, as to such conditions, powers and period, as the decision may specify.

## **Chapter II**

### **Bank Licensed**

#### **Licence to practise banking business**

1. No person shall practise banking business, or any part thereof, in the Sudan, unless he is in possession of a final written licence, issued under the provisions of the Bank of Sudan Act, and this Act, and satisfies all the conditions, provided for in the licence, this Act and the regulations made thereunder.
2. The provisions of this Act shall apply to all banks and financial institutions, licensed to practise banking business, or any part thereof, without exclusion of a branch of foreign bank, or agency .

#### **Conditions of banks reconciled**

1. The Governor, from time to time, by circulars issued thereby, may bind the banks and financial institutions, existing at the time of coming into force of this Act, to reconcile their conditions, in

accordance with the provisions of this Act, and as to such manner, and period, as he may specify

2. The Bank, from time to time, may bind banks and financial institutions, or any one thereof, to reconcile their conditions, as it may deem fit, and as to such manner and period, as it may specify

### **New banks**

No person (save upon a written licence from the Governor) shall perform the following, to:

1. practise banking business, or any part thereof;
2. register any company, to practise banking business, or any part thereof.

Where the Governor is convinced, from the inquiries and studies he conducts, of the feasibility of the licence application, and that the licence achieves public interest, licence may be granted, as to such conditions, as he may deem fit, and he may likewise, at any time, add, or amend such conditions, as he may deem appropriate.

No foreign bank shall be granted licence, to work in the Sudan, save upon recommendation of the Bank, and approval of the Minister.

The Governor may levy fees, on licensing to practise all, or part of banking business, or part thereof, as he may deem fit. He may also levy services fees, on all the bodies, which practise banking business, or part thereof.

No bank, instituted in the Sudan, shall amend its basic rules, or regulations, save upon the written approval of the Governor .

Where any bank does not satisfy the licensing conditions, it shall be wound up, in the way set out in this Act, or any other law in force, having connection .

### **Supervision and control**

The Bank shall assume supervision and control of all banks and financial institutions, and any other person, who practices all, or any part of banking business, within the limits of his practice of banking business.

The Governor, or whoever he may authorize, shall have the power of the issue of instructions and directions, to any person, who practises banking business totally, or partially, and such person shall abide by such instructions and directions, and execute the same.

### **The word bank used**

No person, without the written approval of the Governor, shall:

1. use, or continue to use the word, "bank", or one of the derivatives thereof, in any language, or any other word, or meaning signifying banking business, by name, character or address, under which such person works in the Sudan;
2. refer, or continue to refer, to the word, mentioned in paragraph (a), in bills of exchange, notifications and notices, or by any other means .

### **Foreign banks branches**

1. No foreign bank shall open a branch in the Sudan, for practice of banking business, save after obtaining a licence, from the Bank, and remitting such amount, as the Bank may specify for this

end, to the Sudan. The Governor may amend the amount, required to be remitted, from time to time.

2. A branch of every foreign bank shall be required to present an undertaking, from the headquarters thereof, to the Bank, under which it binds itself to meet and satisfy all the obligations and undertakings, pertaining to their branch, or branches in the Sudan .
3. The Bank, upon the approval of the Minister, may revoke any licence, issued under the provisions of sub-section (1), where the bank concerned contravenes the conditions, set out in the licence, or contravenes the provisions of this Act.
4. The Bank, in case of winding the mother bank up, may attach the assets of the branch licensed in the Sudan, as to such amount, as may meet the obligations of the branch in the Sudan .

### **Representation offices opened**

1. No foreign bank shall open a branch, or representation office, in the Sudan, to practise banking business, save after obtaining a licence, from the Bank of Sudan .
2. A representation office shall be required to present an undertaking, from its headquarters, under which it binds itself to meet and satisfy all the obligations, pertaining to its office in the Sudan .
3. The Bank may revoke any licence, issued under the provisions of sub-section (1), where the representation office contravenes the provisions of this Act, or the conditions, set out in the licence.

### **Branches opened, sites thereof changed and closed**

The Governor may subject opening of branches, inside and outside the Sudan, and change of the sites thereof, and closing the same, to his prior approval .

### **Other banking business practised**

Without prejudice , to the generality of banking business, in accordance with the interpretation specified therefor in section 4, any bank may practise any of the following banking business, to:

1. accept deposits, grant financing and lending, draw, accept endorse and collect stock and deal therein, in any from, in accordance with the provisions of this Act;
2. draw travelers cheques, credit cards, bank cheques and certified cheques, purchase and sell foreign exchange, purchase and sell shares and financing bills, subscribe thereto, and manage the same, and deal therein at Stock Exchanges, receive shares certificates, financing bills and precious things, keep them and provide secure safes for this work and otherwise;
3. practise agency business for others;
4. acquire estates and movables, possess and dispose thereof, by sale, mortgage and lease, and possess mortgage deeds, or any deed of interest in estates, or movables, and sell the mortgaged thing, or the subject of interest, to satisfy the rights of the bank concerned; on condition of obtaining the written approval of the Governor thereof;
5. promote banking business, by all the possible means of technology ;
6. strive to support, co-ordinate and promote economic and commercial co-operation, between the Sudan and other states;
7. any other business, as the Governor may specify, or allow.

### **Merger**

Notwithstanding the provisions of the companies Act, 1925, or any other law, as may replace the same, no bank, operating in the Sudan, shall be merged, or joined to any other bank, or banks, save after the approval of the Governor

## **Chapter III**

## **Higher Sharia Control Commission Establishment of the Commission**

1. There shall be established an independent part time commission, to be known as the, “ Higher Sharia Commission of Control on Banks and Financial Institutions”, to be appointed by a decision of the President of the Republic, in consultation with the Minister .
2. The Commission shall consist of a number, not less than seven, and not more than eleven persons, from Sharia scientists, and experts of economics , exchange and law; provided that the majority thereof shall be from Sharia scientists.
3. The decision shall specify the President of the Commission, his deputy and Secretary General.
4. The term of membership of the Commission shall be five years, subject to renewal.

## **Seat of the Commission**

The Governor, in consultation with the Minister , shall assume preparing the appropriate seat of the Commission, and providing the funds necessary for performance of the business thereof.

## **Remuneration of the President and members of the Commission**

The Minister, in consultation with the Governor, shall specify the remuneration of the President and members of the Commission, and terms of service of the Secretary General thereof .

## **Objects of the Commission**

The Commission shall have the following objects, to:

1. pass Sharia edicts, recommendations and consultancy, for unifying the Sharia bases and ordinances, upon which the banking and financial activity is based;
2. follow-up the policies and performance of the Bank, activity of banks and financial institutions, for the purpose of subjecting the same to the ordinances and values of the Islamic Sharia ;
3. purify the laws, regulations and guides of the Bank, and the banks and financial institutions, and the activity thereof, of usury transactions, and the open and hidden stratagems thereof, and all such as by nature lead to consuming people’s property in falsehood;
4. strive, with the competent bodies, to lay down for execution, Islamic forms of transactions, and devise such forms, as may be appropriate to all the needs and instruments of financing, and promote the same, in such way, as may be suitable for the primary and secondary stock exchanges.

## **Functions of the Commission**

The Commission shall have the following functions, to:

1. consider, and express opinion, in such matters, as may be submitted thereto, by the Minister, the Governor, any of the bank managers or employees of the banks and financial institutions, and pass edicts, recommendations and consultancy;
2. aid the technical control organs at the Bank and banks and financial institutions, in performing the tasks thereof, in accordance with the ordinances of Islamic Sharia;
3. assist the Bank and banks and financial institutions, to lay down and execute qualification and training programmes, in such way, as may enable such bodies, to make the employees thereof reach the status of jurist cashier;
4. aid the researches administrations and sections to promote scientific research, and encourage publication, in such way, as may serve the objectives and functions;
5. consider such Sharia disputes, as may arise between the bodies subject to the provisions of this Act, and those who deal therewith, and pass edicts and recommendations, with respect thereto;

6. any other functions, as the Commission may deem necessary for achievement of the objectives thereof; on condition of approval of the Minister thereof.

The Commission shall not consider the matters submitted before the courts, or in which a judgement has been passed by a competent court .

### **Powers of the Commission**

The Commission shall have the following powers , to:

1. call any of the banks and financial institutions employees, or those dealing therewith, whenever it may deem fit;
2. require and peruse documents, inspect the business of banks and financial institutions, directly, or through the Bank .

### **Edict of the Commission binding**

A Sharia edict, passed by the Commission, in any dispute, relating to banking activity, shall be binding to the Bank, banks and financial institutions, and of mandatory execution, unless others contest the same, before the courts.

An edict, passed by the Commission, in any dispute on jurisprudential matters, shall be binding to the Bank, and the banks and financial institutions.

## **Chapter IV**

### **Bases of Banks Work**

#### **Capital**

1. Every bank shall have a capital, as the Bank may specify .
2. Any bank, after the written approval of the Bank, may amend its capital, by increase, or decrease; however no decrease shall be made, before obtaining the prior permission of the competent court.
3. The Bank may order any bank, or financial institution to increase the capital thereof, to secure the safety of banking performance.
4. The Bank may specify the maximum percentage owned by one subscriber in the capital of any bank.
5. All banks and financial institutions, registered in the Sudan, shall be public companies, save such banks and institutions, as may be established by law.

#### **Reserves and appropriations**

1. Every bank shall keep a reserve balance, and remit, to such balance, a percentage of the annual profits, as to such manner and percentage, as the Bank may specify, from time to time .
2. The Governor may require banks and financial institutions to allocate appropriations, to meet bad and doubtful debts, as to such manner, as he may specify .
3. Notwithstanding the provisions of taxation laws, the appropriations, allocated under sub-section (2) above, shall be exempted from taxes, by consultation, between the Bank of Sudan and the Taxation Chambers, and the approval of the Minister .
4. A bank may form any other reserves, or appropriations, as it may deem necessary .

#### **Restrictions on possession of shares**

1. No bank shall possess, or own the shares of any company, or partnership in the primary exchange, for what exceeds such percentage, as the Bank may specify , with respect to the

capital of the company, with the exception of possession of shares, to secure transactions, or pay debts; provided that such shares shall be disposed of, within such period, as the Bank may specify.

2. The size of any shares purchased by the bank, from the secondary stock exchange, and the time necessary for disposal thereof, shall be subject to such, as the Bank may specify from time to time.
3. No bank shall subscribe, or attempt the procedure of registering any company, in accordance with the provisions of sub-section (1), before obtaining the prior approval of the Bank
4. The provisions of sub-section (1) shall not apply to the shares possessed by the bank, upon approval of the Bank, concerning any company, public institution, or corporation, the basic field of the business of which is any of the production sectors, or infrastructure
5. No bank shall subscribe to any company, or own a share in any bank, or institution, registered outside the Sudan, save after the prior approval of the Bank
6. Any bank, which owns any shares, or any portion in the Capital of any company, partnership, bank or institution inside, or outside the Sudan, shall notify the Bank of such ownership, and the percentage thereof.

### **Acquiring and possession of estates**

1. 26.(1) Subject to the provisions of section 13(d), any bank may acquire, or possess any estates, whatever the origin thereof may be, for the purposes of trade and investment, within such limits, as the Governor may specify. (2) Any bank, or financial institution may acquire, or possess any estate, in payment of a debt; on the condition of disposal thereof, during such period, as the Governor may specify.

### **Fees and profits margins specified**

1. The Bank may specify profits margins, commissions and fees, and the manner of calculating distribution of profits.
2. Notwithstanding the provisions of sub-section (1), the Bank, where it is convinced that there is reasonable ground, may specify, for any bank, such profit margin, commission or fee, as may pertain thereto.

### **Fluid assets kept**

Every bank shall keep, in the form of fluid assets, as is set forth in sub-section (2) below, an amount not less, at the end of any day, than a percentage of the obligations, as the Governor may specify from time to time.

For the purposes of this section, "fluid assets", include all, or any of the following:

1. the paper money, or coinage, which are legal tender, in the Sudan, and also foreign currencies;
2. the net balances, deposited with the Bank, including the reserve, required to be kept, under the provisions of section 28(1), of the Bank of Sudan Act, 2003;
3. the net balances, deposited with other banks, in the Sudan, and subject to withdrawal, upon demand;
4. the net balances, deposited with banks abroad, and subject to withdrawal upon demand abroad, bank cheques and traveller cheques; provided that such balances and amounts, which are subject to payment, shall be valued by currencies subject to remittance. Such balances, or amounts shall not be more than a particular percentage of the fluid assets, which have to be kept in pursuance of the provisions of this section, as to such amount, as the Governor may prescribe, from time to time;
5. financing bills and certificates.

Notwithstanding the provisions of sub-section (2), the Governor may, from time to time, amend, omit or add to such items, as may be fluid assets.

### **Restrictions on financing**

No bank shall:

1. grant, without approval of the Governor, any financing, or advance any securities, or incur any other financial obligations, on behalf, or to the benefit of any person, declared bankrupt, wound up, or there are obligations upon him, to the benefit of such bank, or the benefit of another bank, and has failed in the payment, or settlement thereof;
2. grant any financing, upon the security of the shares of the client in the bank;
3. grant, or enter into any agreement, to grant any financing, without the prior permission of the Governor for any :
  1. of its directors;
  2. company, partnership or person, with any of its directors there is sufficient interest, with the exception of a public company;
  3. company, or partnership, any of the directors of which is a director, agent of, or employed thereby, or guarantor thereof , in which he has sufficient interest;
  4. individual, with whom any of directors of the bank is a partner, or guarantor thereof, or with whom he has sufficient interest;
  5. company owned by the bank, or in which it has sufficient interest;
4. advance any securities, or incur any other financial obligations, on behalf , or for the benefit, of the person, mentioned in paragraph (c) , without the prior approval of the Governor .

In this section, the word, “director”, includes the chairman, or member of the board of directors of any bank, its general manager, his deputy, assistants, its legal counsel, certified auditor, members of the Sharia Control Commission and its Secretary General, and branch managers, and whoever may be in the position thereof .

### **Banks financed**

The Bank may grant financing, to banks, as to such manner, as it may deem fit, and such terms and conditions, as it may prescribe.

## **Chapter V**

### **Annual Account and Audit**

#### **Accounts and balance sheet**

1. Every bank shall prepare the balance sheet, and the profits and losses account, at the specified time, as to such accountancy systems and standards, as the Governor may specify .
2. The Governor, after giving sufficient grace, may direct any bank to amend the way of preparing and submitting the balance sheet, whenever he may deem that necessary .
3. The balance sheet and the profits and losses account shall be signed by:
  1. the general manager , and any two members of the board of directors;
  2. the director, or agent of the main centre, in case of the branch of a foreign bank.
4. Notwithstanding the provisions of any other legislation, no profits shall be divided among subscribers, which exceed what the Bank has approves.

### **Audit**

The balance sheet and the profits and losses account, at the banks to which the General Audit Chambers Act, 1999 does not apply, shall be audited by a certified auditor, to be appointed by the bank, after obtaining the written approval of the Bank; provided that the certified auditor, appointed under the provisions of this Act, shall not audit the balance sheet and the profits and losses account

of more than two banks, at the same time, save for such exceptional circumstances, as the Bank may approve.

The certified auditor of any bank shall abide by such accountancy standards and systems, as the Bank may issue, with respect to preparing and audit of the balance sheet and the profits and losses account .

The certified auditor, before commencing audit, shall peruse all the systems, tables and forms, prepared with respect to the periodical data, required by the Governor, and any laws, or decisions, pertaining thereto .

The Bank may appoint a certified auditor, for any bank, and specify the remuneration, payable by the bank concerned, where the bank does not appoint a certified auditor, within such period , as the Bank may specify .

No bank shall appoint any certified auditor, for a period, exceeding three consecutive years, save upon approval of the Bank.

The Governor may call for a joint meeting including those responsible for any bank, and their certified auditor.

The certified auditor, who is appointed for the audit of the balance sheet and profits and losses account of any bank, shall prepare a report, on the accounts he has audited, and deliver a copy of such report, within a maximum period of four months, of the end of the financial year, pertaining to the report, to the Governor and the Auditor-General also ( in case of the banks owned , or subscribed to by the State); provided that the report, in addition to such subjects, as may be required by any other law, shall contain the following:

1. whether the information and data, presented thereto by the bank, are sufficient;
2. whether the balance sheet gives a real picture of the financial position of the bank;
3. whether the profits and losses account represents real profit, or loss, for the period covered by the account;
4. whether the operations, he has audited, contravene any of the provisions of this Act, the Bank Act, or the laws organizing dealing in exchange, or the regulations, or decisions made thereunder;
5. the extent of competence of the system of internal control and accountancy system, in use, and the extent of the bank being restricted thereby;
6. the drawbacks and weakness aspects of work of the bank, his recommendations, to the administration, with respect thereto, and the extent of the administration being bound by applying the recommendations and remarks of the certified auditor, in the previous years;
7. the way of keeping documents, records and books, their regularity and comprehensiveness of the bank operations, and completion of the cycle thereof, in such way, as may enable achievement of the audit task, and the internal and external inspection ;
8. the extent of accuracy of periodical data, sent to the Bank, and their being identical to the contents of records, books and the systems and customs in use, and directions of the Bank, in this respect;
9. the competence of performance of the board of directors, and the executive management, and any employee, with respect to protection of the bank and depositors funds, as to such conditions and safeguards, as the Bank may specify;
10. any other subjects, as the Governor, or the certified auditor, may deem that it is necessary to include them in the report.

There shall be no responsibility, upon the certified auditor, as to the disclosure of the secrets of clients, with respect to such data, or information, as he may obtain, during his work, and notify the Governor thereof, in accordance with the provisions of this Act, or set out in his report .

### **Balance sheet published**

Every bank shall publish the balance sheet, and the profits and losses account, referred to in section 31, together with the report of the certified auditor, in at least two local newspapers. Three copies of the balance sheet and the profits and losses account, and one copy of both newspapers, shall likewise be presented to the Governor, within four months, of the end of the financial year; provided that the Governor, for reasons considered thereby, may extend the period, specified for presenting such documents, as he may deem fit.

### **Balance sheet exhibited**

Every bank shall exhibit, in a conspicuous site, at all its branches, a copy of the last balance sheet, and the profits and losses account, which have been audited and prepared by the certified auditor, in accordance with the provisions of section 31, until the same is substituted by the copy of the balance sheet, and the profits and losses account of the next year .

### **Special audit**

1. The Governor, in consideration of public interest, the interest of the bank, or the interest of depositors, may appoint a certified auditor, to audit the accounts of the bank , with respect to any specific operation, or operations. The certified auditor shall prepare a report, on the audit, to the Governor, and give a copy to the bank.
2. The bank concerned shall bear the expenditure of the audit , set out in sub-section (1).
3. The certified auditor, appointed under sub-section (1), shall have all the powers, pertaining to requiring documents and books, and perusal thereof, and shall be subject to all the obligations, in the same way, as the certified auditor of the bank .

### **Monthly and other statements**

1. Every bank, within two weeks, of the end of every month, shall present, to the Governor, as to such form and way, as may be prescribed, an account statement, showing the assets and liabilities, on the last working day of every month .
2. Notwithstanding the provisions of sub-section (1), the Governor, at any time, may require, within such period, as he may specify, the data and information, relating to the work, or affairs of the bank, as he may deem fit.
3. The Governor may require any financial institution, practising banking business totally, or partially, to supply him with any information, data or documents, as to such manner, and on such date, as he may specify .

## **Chapter VI**

### **Inspection of Banks**

#### **Inspection**

1. The Bank shall conduct inspection of the accounts and records of every bank, or financial institution, company, partnership or institution, owned by any bank, with a percentage, not less than 50%, after written notification of the general manager, branch manager, or whoever may stand in their position .
2. The official, authorized by the Bank, to inspect, shall in writing notify the general manager, branch manager or whoever may depute therefor, of the intention to inspect. Upon such notification, it shall be mandatory, upon every general manager, branch manager, official or employee , to present, for inspection, all the books, accounts and documents, under his custody, and furnish the inspector with such data and information, about the bank , as he may require, within such period, as he may specify .

3. The official, authorized by the Bank, to conduct the inspection , may require, from any general manager, branch manager, or any other official or employee, a signed written declaration, on any fact, financial position or document included by the inspection .
4. The Governor may give any of the bodies, mentioned in sub-section (1), a copy of the inspection report, pertaining thereto .

### **Orders subsequent to inspection**

1. The Governor, after study of the inspection report, may direct the bank, or financial institution, or any other body having concern in the report, to take such corrective measures, as he may deem fit.
2. Notwithstanding the provisions of any other law, the Governor may inflict administrative, or financial sanctions, on any bank, or financial institution, or company in which the bank owns a share not less than 50%of the capital, as he may deem fit, under regulations, and decisions, to be made by the Bank for this purpose.

## **Chapter VII**

### **Control of Banks Management and Business**

#### **Banks owned by the State**

1. Notwithstanding any provision in any other law, general managers, or the deputies thereof, at the banks owned by the State, shall be appointed, or re-appointed, by consultation with the Governor; and the Bank, upon public interest, or the interest of depositors, may issue a decision suspending, or relieving any chairman, or member of the board of directors, general manager, or his deputy, from performing his tasks immediately, and recommend, to the Minister, to take the necessary measure.
2. The Bank, upon public interest, or the interest of depositors, may decide to terminate the service of any of the employees, below the scale of deputy general manager .

#### **Banks not owned by the State**

Notwithstanding the provisions of the Companies Act, 1925, the Governor shall have the power of administrative control of banks, not owned by the State, as follows:

1. the election, appointment, re-election or re-appointment of any chairman, or member of the board of directors, or general manager shall not be effective, unless the same is made, upon the written approval of the Governor;
2. the Bank, where it deems necessary, for public interest, or avoiding management of the bank affairs, in such way, as may be injurious to the interest of depositors, or national economy, may decide to terminate the service of any chairman, or member of the board of directors, any general manager, deputy general manager or any of the employees of the bank;
3. the Bank may specify the period of service of any general manager; on condition that extension of service shall not be made, save after obtaining the Bank approval;
4. no general manager , or deputy general manager shall be dismissed, save after notification of the Governor, and expressing the reasons demanding the same.

#### **Banking operations controlled**

The Governor, whenever he may deem that necessary, may:

1. prevent any person generally, or any bank, in particular, from entering a certain banking operation, or operations ;

2. order the non-permit of financing, or loans, above a certain amount, without prior permission thereof,
3. prescribe a maximum, or minimum limit , for the size of financing granted, for the various types of financing;
4. prescribe a maximum limit for the total value of financing and loans granted , from time to time;
5. issue his directions, to banks in general, with respect to the following:
  1. the purpose, for which the financing is granted, and the purposes , for which financing shall not be granted;
  2. the margin, which shall be kept, with respect to the various securities, in consideration of the granted financing;
  3. the maximum limit of such amount of financing, as can be granted, to any company, partnership, a group of persons or an individual;
  4. the maximum limit of such securities and undertakings, as can be given, on behalf of any company, partnership, a group of persons or an individual;
  5. the profit margin and such conditions, as under which financing, securities or undertakings may be granted ;
  6. any other matters, as he may deem necessary, or fit.

The Governor may prohibit banking dealing totally, or partially, with any person, whatever his capacity may be, at any, or all the banks and financial institutions; and the prohibited person shall not manage an account, or banking operations, on behalf of others ; provided that the Governor may remove the prohibition, whenever the reasons thereof are removed, as to such conditions, as he may deem fit .

#### **Banks administrative charts**

1. Every bank, or financial institution existing, or to be established, after the promulgation of this Act, shall prepare such administrative chart , as may give due regard to the objectives and functions of the bank, or financial institution, upon the approval of the Bank .
2. The Governor may direct any bank , or financial institution, to amend the administrative chart thereof, in such way, as may achieve public interest, and the interest of clients.
3. Banks, in co-ordination with the Bank, shall provide an annual balance sheet, to be allocated to train the employees, and raise their technical abilities, through regular training courses .

#### **Supervisor, or controller appointed**

1. Notwithstanding the provisions of any other law, the Governor may, where it transpires to him that any bank has fallen in the case of insolvency, or his financial, or administrative position is subjected to danger, or there is, in its continued activity, prejudice to the depositors rights, or commits a grave contravention , or contraventions, appoint a supervisor, to assume management of such bank, as to such powers and conditions, as he may deem fit.
2. The Governor may appoint a controller to any bank, as to such conditions and period , as he may deem fit .
3. The Governor may direct any bank to appoint one, or two persons, from those possessed of competence, experience and good reputation and know how of banking business, as a member of the board of directors of such bank.
4. The Governor, whenever vacancy in the board of directors of any bank occurs, and it is not possible for the board to play its role, for any of the reasons, may constitute an administrative committee, from those of qualification, to carry out the burdens of the board of directors, as the constitution decision may specify, and pending call of the general assembly, and selection of a new board of directors.

## **Chapter VIII**

## **Miscellaneous Banks holidays**

## **Provisions**

1. The Bank shall solely specify the banking business hours, and bank holidays, at the beginning of every Gregorian year; and no bank shall open, or perform any work, with the public, on any day, as may be declared as banks holiday; save upon a special permission from the Governor .
2. The Governor may solely declare, at any time, deeming any day as banks holiday .
3. No bank shall close, or suspend working, during ordinary days, save upon the approval of the Governor.

## **Banking business suspended**

1. In case of occurrence of such emergent event, as may require suspension of banking business, the Governor , in consultation with the Minister, may issue a decision, to banks, to close the doors thereof temporarily, and suspend the business of the same; provided that they shall resume practising their business, as the decision may specify .
2. In case of occurrence of an emergent event, at any bank, the Governor may decide to suspend work, at such bank, for such period, as the decision may specify; provided that the suspension decision shall forthwith be submitted, to the board of directors of the bank, for cognizance.

## **Work with more than one bank prohibited**

No person, who is a chairman, or member of the board of directors, general manager or legal counsel of any bank, or has direct, or indirect relation with the management of any bank, shall discharge, during his work with such bank, the burdens of any office, at any other bank, save upon permission of the Bank.

## **Loss of capacity**

1. No person shall work, or continue working, as a chairman, or member of the board of directors, general manager, deputy or assistant general manager, at any bank, or have a direct connection with the management of any bank, where he is:
  1. convicted of an offense, involving honour and honesty;
  2. bankrupt, suspends payment or enters into settlement with his creditors;
  3. a chairman, or member of the board of directors, general manager, deputy or assistant general manager of any bank, or financial institution, or of direct connection with any bank, or financial institution, as may have been wound up ; provided that the Governor shall exclude any person, upon objective reasons, where public interest requires the same.
2. Every person, from those mentioned in sub-section (1), shall inform the management of the bank, and the Governor, forthwith the occurrence of any of the incapacities, set out in sub-section (1) .

## **Documents destroyed**

No bank, or financial institution shall destroy the documents, pertaining to the business thereof, before the expiry of such period, as the Bank may specify, from time to time . Every bank, or financial institution, before destroying such documents, shall register and keep the same in electronic sets.

## **Licence revoked**

1. The Bank, in consultation with the Minister, may revoke any licence, held by any bank, or body licensed to practise banking business, or part thereof, where:
  1. the bank, or licensed body ceases to practise work;
  2. it fails, at any time, to be bound by the conditions, set out in the licence;

3. it practises banking business, in such way, as may prejudice the interests of depositors, or public interest;
  4. it transpires that the assets thereof are not sufficient, to cover its obligations, towards depositors, or creditors;
  5. it contravenes the provisions of this Act, the regulations, decisions and directions, made thereunder ;
  6. it fails in conciliating the conditions thereof, in accordance with the provisions of section 6 , hereof .
2. The Governor may revoke the preliminary approval, to practise banking business, within such period, as he may specify, where the promoters fail to satisfy the conditions of approval; and in such case the promoters shall bear all the obligations and burdens, resulting from revocation of such approval .

### **Banks wound up**

1. Notwithstanding the provisions of the Companies Act, 1925, or any other law in force, any bank whose licence is revoked by the Bank, shall be wound up. The Bank may present an application, to the competent court, to admit winding the bank up under its supervision , where:
  1. the licence, granted to the bank, under the provisions of this Act is revoked;
  2. the bank is finally prevented, from practice of banking business, under the provisions of this Act;
  3. the bank is prevented, from practice of banking business, for any reasons, under any other law.
2. Any bank may wind itself up voluntarily; on condition of obtaining the prior approval of the Bank, and as to such conditions, as it may specify .
3. No bank shall voluntarily be wound up, save under the supervision of the competent court .

### **Precedence of payment upon winding up**

1. Notwithstanding any contrary provision, in any other law, upon winding up any bank, or financial institution , as may accept deposits, the following amounts shall be paid, by way of precedence , according to the following arrangement:
  1. deposits of depositors, in their current accounts, and the obligations, at sight, saving accounts, margins of letters of security and credit, then investment accounts;
  2. employees rights;
  3. rights and debts of the Bank;
  4. letters of security and undertakings;
  5. all the debts, due to lessors, for estates, or movables;
  6. non-commercial debts, due to the Government, any of the ministries, units or institutions thereof, or companies;
  7. all the other debts and obligations, and they shall be equal in the grades and class thereof .
2. Previous debts shall forthwith be repaid, from the assets, as may be sufficient to satisfy the same, after seizure of such amounts, as may be necessary, for the expenses and expenditure of winding up .
3. The rights of subscribers, to the wound up bank, shall be wound up, on the basis of sharing the remaining property , at the proportion of the shares, or dividends, owned by each one of them, after satisfying all the obligations, set out in sub-sections (1) and (2).

### **Official liquidator**

Notwithstanding any contrary provision , in any other law, the Governor shall appoint the official liquidator of any bank, as may be decided to be wound up , or for any of winding up procedure. The Governor may request the competent court to approve such official liquidator.

### **Assets seized**

1. Where any bank becomes unable to meet its obligations, or ceases payment, it shall not dispose of such assets, and shall be seized by the Bank, to meet the obligations thereof.
2. Every chairman, or member of the board of directors, general manager or deputy general manager, who disposes of the bank assets, while he knows the inability of the bank, to meet its obligations, or ceases payment, shall be bound to reconstitute the real value of the assets, which he has disposed of .

### **Competent court**

Suits, provided for in this Act, shall not be tried before any court, below the General Court .

### **Secrecy**

1. Notwithstanding any contrary provision, in any other law, any member of the board of directors, general manager, deputy general manager or employee of any bank, or any other person, assigned to perform official business, under the provisions of this Act shall be prohibited to present, to any person, any information, or statistics, relating to the bank, clients accounts or the commercial, or financial transactions thereof, which he has obtained, in the course of performing his official business, under the provisions of this Act, or any other law.
2. The following shall be excluded, from the provisions of sub-section (1):
  1. such information and statistics, as the Bank may require, for the purpose of exercising its powers of control of banks. Such information and statistics shall not be revealed, or used other than for this purpose;
  2. such information and statistics, as may be required by the Minister of Justice, or by a competent court .
3. The information, provided for in this section, shall not be presented, to any body, other than the competent court , save after obtaining the approval of the Governor. Presentation of such information, and granting of the approval shall be within the framework of full secrecy of banking business .

### **Banks funds and employees**

1. Banks funds shall be deemed public funds, for the purposes of the Criminal Act, 1991, or any other criminal law, as may replace the same.
2. Any chairman, or member of the board of directors, general manager, deputy general manager, certified auditor, official, employee or liquidator of any bank, shall be deemed public servant, for the purposes of criminal trial .

### **The Bank intervention into suits**

The Governor may intervene, as complainant, or plaintiff, in any suit, concerning any bank, before justice organs. He may also institute criminal and civil suits, against any person, of the employees of banks, boards of directors thereof and those dealing therewith, where it transpires thereto, that public interest, rights of depositors or rights of the bank have been prejudiced .

### **Penalties**

1. Without affecting any other penalty, prescribed under any other law, every person, who contravenes the provisions of sections 5 and 9, shall, upon conviction, be punished, with imprisonment, for a term, not exceeding four years, or with fine, not less than five hundred thousand Dinars, or with both .
2. Whoever contravenes the provisions of section 55, shall, upon conviction, be punished, with imprisonment, for a term , not exceeding two years, or such fine, as the court may specify, or with both
3. Subject to the provisions of sub-sections (1) and (2), whoever contravenes the provisions of this Act, the regulations, decisions or rules, made thereunder, shall be punished, with imprisonment, for a term, not exceeding ten years, or with such fine, as the court may specify, or with both .
4. The provisions of Chapter II , of Part II , of the Criminal Act, 1991, or any other criminal law, as may replace it, relating to joint acts, criminal conspiracy, abetment , or assistance, in addition to the provisions of Part X , of the same Act, pertaining to offences, relating to public servants and employees.
5. Severer penalty shall apply, in case of inconsistency of the penalties, provided for in this Act, with the penalties, set out in any other punitive law.
6. Notwithstanding any penalty, provided for in this Act, or any other laid, the Governor may inflict an administrative, or financial sanction, or both together , on any bank, or person, who contravenes the provisions of this Act, the directions, instructions, regulations and decisions, made thereunder; provided that the administrative and financial sanctions shall be under regulations, to be made for this purpose .
7. Where it is proved, to the Governor, that any bank has issued a letter of security, undertakes or breaches any of the sound banking customs, and causes injury to any person, without justification, he may deduct, from the bank's account, and directly pay any amount, to the beneficiary or injured person, in addition to any other sanctions, as he may prescribe .

### **Sudanese Banks Union**

There shall be established, in the Sudan, a banks union, to be known as the, (Sudanese Banks Union), including, in the membership thereof, all the banks, in the Sudan; and the Bank shall strive to prepare the basic rules and general regulations thereof, in consultation with the banks.

### **Power to make regulations**

1. The Bank may make such regulations, as may be necessary, for the implementation of the provisions of this Act.
2. The Governor may make such orders, directions, instructions, rules and decisions, as may be necessary , for the implementation of the provisions of this Act .