

ACTS SUPPLEMENT

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Act 11

Agency Act

2008

LAWS OF SOUTHERN SUDAN

THE AGENCY ACT, 2008

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LAWS OF SOUTHERN SUDAN**THE AGENCY ACT, 2008**

In accordance with the provisions of Article 59(2)(b) read together with Article 85(1) of the Interim Constitution of Southern Sudan, the Southern Sudan Legislative Assembly, with the assent of the President of the Government of Southern Sudan, hereby enacts the following—

**CHAPTER I
PRELIMINARY PROVISIONS****1. Title and Commencement**

This Act may be cited as “The Agency Act, 2008” and shall come into force on the date of its signature by the President.

*Signed on
28th
November,
2008*

2. Repeal and Saving

- (1) Any provisions of an existing legislation in force in Southern Sudan which are governed by this Act, are hereby repealed or cease to operate in Southern Sudan; provided that, all proceedings orders issued, actions taken or made thereunder, except to the extent they are expressly cancelled by the provisions of this Act, shall remain in force or effect, until they are repealed or amended in accordance with the provisions of this Act.

- (2) Where any suit relating to any provision of the repealed or legislation that has ceased to operate was pending before the court prior to the coming into force of this Act, that suit shall continue to be heard by that court in accordance with the provisions of that legislation.

3. Purpose

The purpose of this Act, is to codify the law relating to agency and other related matters.

4. Authority and Application of the Act

- (1) This Act is drafted in accordance with the provisions of Article 55, paragraphs 9 and 19(1) of Schedule B, and paragraph 2 of Schedule D of the Interim Constitution of Southern Sudan, 2005 which grants the Government of Southern Sudan authority over commerce and trade matters relating to businesses and their conditions of operation.
- (2) This Act shall apply to all contracts of agency in Southern Sudan and where it may be invoked, as an applicable law.
- (3) The provisions of this Act shall apply to contracts of agency made on or after the date of its coming into force.
- (4) In relation to contracts of agency made before this Act, the provisions of this Act shall apply subject to modification of those contracts.
- (5) The law on contract save in so far as it is inconsistent with the express provisions of this Act, and in particular the rules relating to the effect of fraud, misrepresentation, duress or coercion, mistake or other invalidating cause, shall apply to contracts of agency.

5. Interpretations.

In this Act, unless the context otherwise requires, the following words and expressions shall bear the meanings assigned to them respectively—

“agent” means a person employed by a principal to do any act for that principal or to represent the principal in dealing with a third person;

“principal” means a person who employs an agent to do any act for him or her or to represent him or her in dealing with a third person;

“sub-agent” means a person employed by and acting under the control of an agent in the business of the agency;

“consideration” means any valuable material moveable or immovable that can be passed in response to a service or services.

CHAPTER II CAPACITY OF AGENTS

6. Capacity to Employ an Agent.

A person may employ another person as an agent if that person—

- (a) is eighteen years of age or above;
- (b) is of sound mind; and
- (c) is not disqualified from appointing an agent by any law to which that person is subject.

7. Capacity to Act as an Agent.

A person may act as an agent where that person—

- (a) is eighteen years of age or above;
- (b) is of sound mind; and
- (c) is not disqualified from acting as an agent by any law to which he or she is subject.

8. Consideration not Necessary.

Consideration is not necessary to create an agency.

**CHAPTER III
AUTHORITY OF AGENTS**

9. Authority of an Agent.

- (1) The authority of an agent may be express or implied.
- (2) Authority is express where it is given by spoken or written words and implied where it is to be inferred from the circumstances of a case.
- (3) Any words, spoken or written, in the ordinary course of dealing or transaction may be taken into account, depending on the circumstances of the case.

10. Extent of Authority of Agent.

- (1) An agent with authority to perform an act has authority to do any lawful thing which is necessary to perform the act.
- (2) An agent with authority to carry on a business has authority to do anything which is necessary for the purpose of carrying on the business or which is usually done in the course of conducting the business.

11. Authority of Agent in an Emergency.

In an emergency, an agent has authority to do any act for the purpose of protecting his or her principal from loss, as would be done by a person of ordinary prudence, under similar circumstances.

12. Power to Delegate.

- (1) An agent shall not employ another to perform an act which the agent expressly or impliedly undertook to perform personally.
- (2) Notwithstanding the provisions of sub section (1) above, where the ordinary custom of a trade allows, a sub-agent may be employed to perform an act which the agent expressly or impliedly has undertaken to perform personally.

13. Representation of Principal by Sub-agent.

- (1) Where a sub-agent is properly appointed by the agent, the principal shall be represented by the sub-agent and shall be bound by and be responsible for the acts of the sub agent, as if the sub-agent was the agent originally appointed by the principal.
- (2) An agent shall be responsible to the principal for the acts of a sub-agent.
- (3) A sub-agent shall be responsible for his or her acts to an agent, but not to a principal.
- (4) A sub-agent shall not delegate his or her authority to another sub-agent.

14. Sub-agent Appointed Without Authority.

Where an agent, appoints a person to act as a sub-agent and stands towards that person in a relation of a principal to an agent and is responsible for the actions of that person to both the principal and a third person; the principal shall not be represented by or be responsible for the acts of the person so employed as sub-agent and that person shall not be responsible to the principal.

15. Relation Between Principal and Person Appointed by Agent.

Where an agent, holding an express or implied authority to name another person to act for the principal in the business of agency, names a person to act for the principal, that person shall not be a sub-agent of the principal but an agent, for the part of the business of the agency that is entrusted to him or her by the agent.

16. Duty of Agent in Naming Another Agent.

In naming another agent for the principal, an agent shall exercise the same amount of discretion as a person of ordinary prudence would exercise in a similar case; and where the agent does this, he or she shall not be responsible to the principal for the acts or negligence of the agent who is named.

17. Ratification of Acts.

(1) Where an act is done by one person on behalf of another—

- (a) without the knowledge or authority of that other person; or
- (b) with the knowledge of the person but outside the scope of the authority,

the person on whose behalf the act was done may ratify or disown the act.

- (2) Where a person on whose behalf an act is done, ratifies the act, the effect shall be as if the act was performed under his or her authority.

18. Ratification may be Express or Implied.

- (1) Ratification may be express or implied by the conduct of the person on whose behalf an act was done.
- (2) Only a person on whose behalf a contract was made can ratify a contract.
- (3) A person can only ratify an act or contract which he or she had capacity to do personally or to enter into.
- (4) For ratification to be effective, it must be done within a specified time.

19. Knowledge Requisite for Valid Ratification.

A valid ratification of an act may be made by a person whose knowledge of the facts of the case and of the agency is effective and complete.

20. Effect of Ratifying Unauthorised Act.

Subject to the provisions of section 19 above, where a person ratifies an unauthorised act done on his or her behalf, the whole of the transaction of which the act forms a part, shall be deemed to had been accordingly ratified.

21. Ratification of Unauthorised Act not to Injure a Third Person.

An act done by one person on behalf of another without the authority of that other person, which if done with authority would have the effect of subjecting a third person to damages or of terminating any right or interest of a third person, shall not by ratification, be made to have such effect.

CHAPTER IV
TERMINATION OF AGENCY

22. Termination of Agency.

An agency shall be terminated where—

- (a) a principal revokes his or her authority;
- (b) an agent renounces the business of the agency;
- (c) the business of the agency is completed;
- (d) a principal or an agent dies;
- (e) a principal or an agent becomes of unsound mind;
- (f) a principal is adjudicated an insolvent under the law;
- (g) the principal and agent agree to terminate; or
- (h) the purpose of the agency is frustrated.

23. Termination of Agency Where Agent Has Interest in Subject Matter.

Where the agent has an interest in the property which forms the subject matter of an agency, the agency shall not, in the absence of an express contract, be terminated to the prejudice of that interest.

24. Revocation of Authority of Agent by Principal.

Subject to the provisions of section 23 above, the principal may revoke the authority given to an agent at any time before the authority is exercised to bind the principal.

25. Revocation Where Authority is Partly Exercised.

The principal may not revoke the authority given to an agent after the authority is partly exercised, with respect to acts and obligations that arise from acts already done under the agency.

26. Compensation for Revocation by Principal or Renunciation by Agent.

Where an agency is revoked or renounced, without reasonable cause, contrary to an express or implied contract that the agency shall continue for a given period of time, the principal or the agent, as the case may be, shall be liable to compensate the other party, for the revocation or renunciation of the agency.

27. Notice of Revocation or Renunciation.

Any party who revokes or renounces an agency shall give reasonable notice to the other party to the agency and make good any damage suffered.

28. Revocation and Renunciation may be Express or Implied.

Revocation or renunciation may be express or implied by the conduct of the principal or agent, as the case may be.

29. Termination of Authority of Agent.

- (1) The termination of the authority of an agent does not take effect before it is communicated to the agent or with regard to a third party, before its communication to the third party.
- (2) A third party shall be entitled to enforce against the principal, any contract made with the agent after the termination of the agent's authority unless the third party had received actual or constructive notice of the termination of the agency prior to the conclusion of the contract.

30. Termination of Agency by Death or Insanity of Principal.

An agent shall take all reasonable steps to protect and preserve the interests entrusted to him or her, where—

- (a) an agency is terminated by the death of a principal; or
- (b) the principal becomes insane.

31. Termination of Authority of Sub-agent.

Subject to the provisions of section 36 of this Act, the termination of the authority of an agent causes the termination of the authority of a sub-agent appointed by the agent.

CHAPTER V DUTIES AND RIGHTS

32. Duty of an Agent in Conducting Business of Principal.

- (1) An agent shall conduct the business of his or her principal according to the directions given by the principal or, in the absence of any directions, according to the usage and customs which prevail, in doing business of the same kind, at the place where the agent conducts the business.
- (2) Where an agent acts contrary to the provisions of subsection (1) above, and any loss is suffered, the agent shall be liable to make good the loss to the principal and where any profit accrues, the agent shall account for that profit.

33. Skill and Diligence Required From Agent.

- (1) An agent shall act with reasonable diligence and conduct the business of the agency with as much skill as is generally possessed by a person engaged in similar business, unless the principal has notice of lack of skill by the agent.

- (2) An agent shall be liable to compensate the principal in respect of the direct consequences of his or her own neglect, lack of skill or misconduct but not in respect of loss or damage which is indirectly or remotely caused by the neglect, lack of skill or misconduct of the agent.

34. Accounts of an Agent.

- (1) An agent shall render proper accounts to the principal on demand.
- (2) An agent shall provide full information to his or her principal of his or her agency transactions and account to him or her for all moneys etc arising from these transactions.
- (3) An agent shall be under duty to keep the principal's money separate from his or her own and any mixed funds shall be presumed to be the principal's money unless the agent can prove otherwise.

35. Duty of an Agent to Communicate With Principal.

An agent shall, in case of difficulty, use all reasonable diligence to communicate with the principal and seek to obtain his or her instructions.

36. Right of Principal to Repudiate When Agent Deals Without Consent of Principal.

Where an agent deals on his or her own account in the business of the agency, without obtaining the consent of the principal and without acquainting the principal with all material circumstances which come to the knowledge of the agent on the subject, the principal may repudiate the transaction where the case shows that a material fact was dishonestly concealed from the principal by the agent or that the dealings of the agent were unfavourable to the principal.

37. Right of Principal to Benefit Gained by Agent Dealing on Own Account in Business of Agency.

- (1) Where an agent deals in the business of the agency without the knowledge and consent of the principal, the principal may claim from the agent any benefit which might have accrued to the agent from the transaction.
- (2) The agent owes a duty to his or her principal not to put himself or herself in a situation where his or her own interests will conflict with those of the principal.
- (3) The agent shall not make any secret profits for himself or herself.
- (4) For the purposes of this section, “secret profits” means any advantage obtained by the agent over and above his or her usual remuneration without the knowledge and consent of the principal.

38. Right of Agent to Retain Sums Received on Account of Principal.

- (1) An agent may retain, out of any sums received on account of the principal in the business of the agency, all sums due to the agent in respect of advances made or expenses incurred by the agent in conducting the business and any remuneration as may be payable to him or her as an agent.
- (2) An agent may retain sums received by him or her on account of goods sold, although the whole of the goods consigned to him or her for sale might not have been sold or the sale might not have been completed.

39. Duty of Agent to Pay Over Sums Received to Principal.

An agent shall pay to the principal, all sums received on the account of the principal, subject to deductions referred to under section 38(1) above.

40. Duties of a Principal.

- (1) The principal shall not prevent his or her agent from performing acts for which he or she is to receive remuneration.
- (2) The principal shall indemnify his or her agent for expenses legitimately incurred in the performance of his or her duties.
- (3) The agent shall be paid any agreed remuneration for services rendered to the principal.
- (4) Notwithstanding the provisions of section 38 (2) of this Act, in the absence of any special contract, payment for the performance of any act shall not be made to an agent until the completion of that act.

41. Agent not Entitled to Remuneration for Misconduct.

An agent who is guilty of misconduct in the execution of the business of the agency shall not be entitled to any remuneration in respect of that part of the business.

42. Lien of an Agent on Property of Principal.

In the absence of any contract to the contrary, an agent shall be entitled to retain the goods of the principal, whether movable or immovable, received by him or her, until the amount due to the agent for commission, disbursements and services in respect of the goods is paid or accounted for by the principal.

CHAPTER VI INDEMNITY AND LIABILITY

43. Indemnity of an Agent.

- (1) A principal shall be liable to indemnify an agent against the consequences of all lawful acts done by the agent in exercise of the authority conferred upon that agent.

- (2) Where the principal employs an agent to do an act and the agent does the act in good faith, the principal shall indemnify the agent against any loss, liability and other consequences of that act.

44. Non-liability of Principal to Agent in a Criminal Act.

Where the principal employs an agent to do an act which is criminal, the principal shall not be liable, either upon an express or implied promise, to indemnify the agent against the consequences of that act.

45. Compensation to Agent for Injury Caused by Principal.

The principal shall be liable to compensate an agent for any injury caused to the agent by negligence or lack of skill of the principal.

46. Enforcement and Consequences of Contract of Agent.

A contract entered into through an agent and any obligation arising from acts done by the agent under the contract shall be enforced in the same manner and have the same legal consequences as if the contract was entered into or done by the principal.

47. Liability of Principal Where Agent Exceeds Authority.

- (1) Where an agent does more than he or she is authorised to do, that part of what the agent does within his or her authority, can be severed from the part which is beyond his or her authority, and only what the agent did within his or her authority shall be binding between the agent and the principal.
- (2) Where an agent does more than he or she is authorised to do and what the agent does beyond the scope of his or her authority cannot be severed from what is within the scope of his or her authority, the principal shall not be bound by the transaction, unless the principal duly ratifies the said acts.

48. Consequences of Notice to Agent.

Any notice given to or information obtained by an agent in the course of the business transacted by the agent for the principal, shall, as between the principal and a third party, have the same legal consequences as if it were given or obtained by the principal.

49. Agent not to Enforce or be Bound by Contracts on Behalf of Principal.

In the absence of any contract to the contrary, an agent shall not enforce a contract entered into him or her on behalf of the principal and shall not be bound by the contract, except where—

- (a) the contract was made by the agent for the sale or purchase of goods for a merchant resident abroad;
- (b) the agent did not disclose the name of the principal; or
- (c) although the name of the principal was disclosed, the principal cannot be sued.

50. Right of Parties to a Contract Made by Agent Where Principal not Disclosed.

- (1) Where an agent enters into a contract with a person, who does not know or does not have reason to believe, that he or she is an agent, the principal may require the performance of the contract; but the other contracting party shall have, as against the principal, the same rights as he or she would have had against the agent, if the agent had been the principal.
- (2) Where the principal discloses himself or herself before a contract is completed, the other contracting party may refuse to execute the contract, where that other contracting party can show that he or she would not have entered into the contract—

- (a) if he or she had known whom the principal in the contract was; or
- (b) if he or she had known that the agent was not the principal.

51. Performance of Contract with Agent Acting as Principal.

Where a person makes a contract with another, without knowledge or reasonable ground to believe, that the other is an agent, the principal, if he or she requires the performance of the contract, may only obtain the performance of the contract subject to the right and obligations subsisting between the agent and the other party to the contract.

52. Joint liability of Agent and Principal to a Third Party.

Where an agent is personally liable, the person dealing with the agent may hold the agent or principal or both of them liable.

53. Consequence of Inducing Agent or Principal to Act on Belief That Either Will be Held Liable.

A person who, enters into a contract with an agent and induces the agent to act upon the belief that only the principal shall be held liable or who induces the principal to act upon the belief that only the agent shall be held liable, shall not hold that agent or principal, as the case may be, liable afterwards.

54. Liability for Fraudulently Holding out as Agent.

Any person who fraudulently represents himself or herself as an authorised agent of another person and induces a third party to deal with him or her as the agent, shall be liable to compensate the third party in respect of any loss or damage incurred, where the alleged principal does not ratify the acts.

55. Person falsely contracting as Agent not Entitled to Performance.

Any person who holds out as an agent shall not be entitled to require the performance of a contract, where he or she was not acting as an agent but on his or her own account.

56. Liability of Principal Inducing Belief That Unauthorised Acts of Agent Were Authorized.

Where an agent, without authority, does an act or incurs an obligation to a third party on behalf of the principal, the principal shall be bound by the act or obligation, if the principal by word or conduct had induced the third party to believe that the act or obligation was within the scope of the authority of the agent.

57. Misrepresentation or Fraud by Agent.

- (1) Misrepresentation or fraud made or committed by the agent acting in the course of business for a principal, shall have the same effect on the agreement made by the agent as if the misrepresentation or fraud was made or committed by the principal.
 - (2) Misrepresentation or fraud made or committed by an agent, in a matter which does not affect the authority of the principal, does not affect the principal.
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