

# **EAST AFRICAN COMMUNITY SECRETARIAT**



## **TERMS OF REFERENCE (TOR)**

**PROVISION OF INDIVIDUAL CONSULTANCY SERVICES TO BANK OF  
SOUTH SUDAN IN DRAFTING THE NATIONAL PAYMENT SYSTEMS  
(NPS) LEGAL AND REGULATORY FRAMEWORK**

**REFERENCE: EAC/PSSIP/IC/2020/31**

**EAC PAYMENT AND SETTLEMENT SYSTEMS INTEGRATION PROJECT  
(EAC-PSSIP)**

**EAC SECRETARIAT  
Arusha, Tanzania  
April, 2020**

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## 1. Introduction

The development of a safe and efficient national payment system is important to the implementation of monetary policy, financial stability and overall economic development in a country. The payment system by definition is the ecosystem, comprised of institutions, instruments, rules, procedures, standards, and technical means, established to uphold the transfer of monetary value between parties discharging mutual obligations. This function makes payment systems critical to the effective functioning of financial systems worldwide and South Sudan in particular. Its failures can result in inept use of financial resources, systemic risk among financial institutions, resulting to loss of confidence in the financial system and in the use of money.

To build confidence and avoid payment systems shock within the domestic and international financial market, such systems must have among other things the risk mitigation measures, the legal basis which provides a high degree of certainty for each material aspect in all relevant jurisdictions including specific rules governing the authorization and the regulation, supervision, and oversight; rights and interests in financial instruments; settlement finality; netting, etc.

The Bank of South Sudan (BSS) is empowered under the BSS Act 2011 section 6 No 4 (d) which stated that BSS to oversee the development and sound functioning of the payment systems and systems for transfer of securities issued by the Government or the Bank, and for clearing and settlement of payment transactions and transactions such as securities. However, specific law that governs payment system is not in existence except E-Money Regulations, 2017 and other applicable laws such as: The Banking Act, 2012; Foreign Exchange Business Act, 2012; Anti-money laundering and Counter of Terrorist Financing Act, 2012; Financial Institution Act, 2003; The Investment Promotion Act, 2009; Agency Act, 2008; Consumer protection Act, 2011; National Communication Authority Act, 2012.

Given that payment systems are very dynamic, there is a need for the regulator like BSS to review and adapt legal and regulatory framework and align to its current developments of National Payment Systems (NPS) as well as the regional monetary union agenda. BSS is currently striving towards achieving its economic development, socioeconomic inclusion and payment sustainability to ensure an improved and sustained quality of life to the current and future generation. From that perspective, the BSS is embarking on institutional reforms to facilitate the integration of payment aspects in the region and beyond. Additionally, the BSS is closely monitoring its progress towards the fulfilment of the regional integration of payment systems giving special attention to the harmonization of legal and regulatory framework in the EAC. As for now, the BSS has established a "Payment System Division" to provide technical assistance service for various emerging payment system issues.

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## 2. Project Background

The EAC Payment and Settlement Systems Integration Project (EAC-PSSIP) is funded by the African Development Bank (AfDB) and aims at enhancing convergence and regional integration of payment and settlement; strengthening a harmonized legislative and regulatory framework on financial sector; and capacity building in the Partner States. The Project is an integral part of the EAC Financial Sector Development and Regionalisation Project's (FSDRP) higher objective of broadening and deepening the financial sector and is aimed at complementing the integration of the regional financial market infrastructure to facilitate the undertaking of cross border funds transfer in support of the economies of the region as a whole. The Project is structured under the following components: *Component 1*: Integration of Financial Market Infrastructure; *Component 2*: Harmonization of Financial Laws and Regulations; and *Component 3*: Capacity Building.

At the time the Project was designed and approved in 2012, the Republic of South Sudan (RSS) was not a member of the EAC. The RSS was admitted as a full Member of the EAC in 2016 and the AfDB has given a No Objection to utilize funds from the ongoing Project to support the BSS to initiate implementation of institutional framework and capacity building activities. One of the priority activities for the Project in RSS is procurement of a Legal Consultant to support BSS to develop National Payment System (NPS) Legal and Regulatory Framework in South Sudan.

It is in this regards that the Bank of South Sudan with the help of African Development Bank (AfDB) through East Africa Community (EAC) would like to recruit an individual consultant to work in collaboration with the legal administration of BSS in drafting laws and regulations as per requirements provided under these terms of reference.

## 3. Objectives

The terms of reference aim at establishing the requirements for procuring the consultancy services for drafting or developing legal and regulatory framework in the areas of payment and settlement systems for the Republic of South Sudan (RSS).

## 4. Scope of Work

The "Legal Expert"(Consultant) shall support the BSS on a broad range of payment systems legal issues, i.e.i) conduct a comprehensive review of legal and regulatory framework to assess gaps; conduct consultations with stakeholders including reviewing the harmonised rules and regulations in EAC countries; drafting of regulations taking into consideration international best practices, with respect to the functioning of both large and retail payment and settlement systems especially the Principles for the Financial Market Infrastructure (PFMI) and developments in the EAC. During the drafting; it is important to refer to the Harmonised laws with in EAC to ensure that the laws in RSS in in synch with the rest of EAC countries.

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The scope of the consultancy services shall include:

- i) Perform a review of legal gap analysis;
- ii) Conduct consultative workshops with key stakeholders
- iii) Drafting Law and regulations in the area of payment and settlement systems;
- iv) Analysing other applicable laws in South Sudan and their alignment with the NPS Law and other regulations to be draft;
- v) Providing knowledge transfer on the drafted regulations.

## **5. Services to be provided**

The Consultant shall:

- i) Perform a legal gap analysis of the regulations in conjunction with the exiting legal and regulatory framework pertaining to payment systems;
- ii) The legal gap review to be performed in compliance with international best practices, in particular the Principles for the Financial Market Infrastructure (PFMI) and the recently developed harmonized principles in the EAC;
- iii) Identify key legal issues, concepts and principles necessary on NPS Law and implementing Regulations;
- iv) Prepare the diagnostic study report, organize stakeholders' validation workshop and deliver final Report with recommended principles for drafting the legal framework;
- v) Draft the NPS Law and NPS Regulations in collaboration with BSS Legal administration staff for review by BSS and other stakeholders;
- vi) Draft the regulation establishing the security standards of:
  - a. payment cards;
  - b. Payment channels including internet banking, mobile banking, ATMs, POS, and mobile payment.
- vii) Draft the regulation/rules governing remittance services, payment gateways, automated clearing house, RTGS and CSD;
- viii) Organize Workshop for validation of the proposed draft legal framework;
- ix) Incorporate the inputs and comments from BSS and other stakeholders.
- x) Deliver the final set of National Payment Systems Law, Payment Systems Regulations and Rules.
- xi) Provide training to the staff of the BSS as well as lead workshops with stakeholders, financial lawyers, legal advisors among others;
- xii) Providing advice on different legal issues;

## **6. Reporting obligation**

During the course of the assignment, the consultant will be required to develop adequate and satisfactory documentation and reports pertaining to successful implementation of the assignment. Approval of the documents and reports by the BSS as deliverables will be a prerequisite before any payment are made to the consultant. The consultant will report to a technical team within the BSS.

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## 7. Deliverables

The consultant will provide the following reports:

- i) Inception report;
- ii) Diagnostic Study report;
- iii) National Payment Systems (NPS) Law;
- iv) Payment Systems Regulations;
- v) Regulation/rules governing remittance services, payment gateways, automated clearing house, RTGS and CSD; and
- vi) Regulations establishing the security standards of payment cards and payment channels (e.g. internet banking, mobile banking, ATMs, POS, and mobile payment).

## 7. Qualifications

The consultant must possess qualification and expertise in the following Areas:

- i) The consultant shall have a minimum of Master's Degree in Law from a recognized and accredited University/Institution;
- ii) The consultant shall have a professional certificate in legal drafting from accredited University/Institution;
- iii) The consultant shall have at least 10 years professional experience in development of legal and regulatory frameworks in the banking sector with proven experience of similar domain.
- iv) The consultant shall have at least 5 years similar experience in development of payment and settlement systems legal and regulatory framework;
- v) The consultant shall have sound understanding, adequate technical and practical experiences of legal drafting in payment system sector;
- vi) Proven proficiency in the preparation of study report and ability to communicate legal issues with high ranking officials, and to resolve key issues;
- vii) The consultant shall have an understanding of the South Sudan legal and regulatory frame work and payment system development in South Sudan;
- viii) Strong skills and knowledge of international standards and best practices in legal and regulatory framework for payment systems and financial markets;
- ix) Knowledge of harmonizing regional financial sector legal and regulatory framework in regional blocks such as EAC, SADC, Euro Zone and other regional blocks;
- x) Excellent command of English language;

### Other prerequisites:

The consultant drafting the laws and regulations shall:

- i) Be accessible to participate in electronic discussions through emails, conference call or phone;
- ii) Be present in country to deliver legal knowledge transfer to the stakeholders;
- iii) Fulfil the tasks as agreed on time and in good quality;
- iv) Declare on each step whether they are in situation of conflict of interest.

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## **8. Duration of the Consultancy**

It is estimated that the work will require a maximum input of **90 working days**, spread within Six (6) calendar months. The work is anticipated to start in June 2020 and is expected to be completed by end of November 2020.

## **9. Drafting language**

All document required from the consultant shall be in English.

## **10. Restrictions**

The consultant should not have any material interest on any tangible or intellectual output created under this contract and anything should remain the sole property of the BSS who will make them available to the concerned development partners. The consultant should treat with strict confidentiality any of the information, which is not public that they received in the context of the work