

Official Journal Special Edition - 40 May 2044 CLIMATE business ties

424

- *The increase and diversification of investments across the territory the national credit for that will become more accessible to all;*
- *The increase of Gross Domestic Product by increasing and diversifying investments;*
- *Control and a stronger exchange rate of the national currency and induced increase in the purchasing power of the population;*
- *The essential support to the political and administrative decentralization following the financial decentralization that will arouse the promotion of microfinance;*
- *Improving revenue consistent state to increased domestic product Gross.*

For all these reasons, the Democratic Republic of Congo who could no longer afford to ignore this reality, initiated since 2000 a reform of the Microfinance Sector.

This reform aims include the establishment of a specific legal framework sufficiently clear, flexible, innovative and structural that may promote the professionalization and consolidation of the microfinance sector and especially encourage banking to the masses, from the perspective of the establishment of an inclusive financial system operating eventually in real time.

The microfinance activity is open to everyone without discrimination including women, accordance with prescribed under Article 14 of the Constitution.

Finally, the essential articulations of this Act include four titles hereinafter:

- *Title one on general provisions.*
- *Title 2 relative to specific provisions for Microfinance Institutions*
- *Title 3 deals with the Sanctions mainly drawn from the banking law;*

Title 4 deals with the transitional and final provisions. Such is the general scheme of this Act.

Lof

The National Assembly and the Senate have adopted; The President of the Republic promulgates law which reads as follows:

Official Journal Special Edition - May 10, 2044 Business Climate

125

I TITLE: GENERAL DISPOSITIONS

Chapter TER: OBJECT AND SCOPE

iron Article

This law lays down the provisions relating to the activity of Microfinance in the Democratic Republic of Congo in accordance with Articles 122 and 123 point 8 point 4 of the Constitution.

Article 2

Without prejudice to the banking law on the activities and supervision of institutions credits, this Act applies to legal persons, irrespective of their legal form, to realize as their regular business operations Microfinance Sightings Articles 6 and 7.

Article 3

Without prejudice to the banking law on provisions applicable to savings and credit cooperatives, savings and credit cooperatives perform microfinance operations,

Licensed banks may perform microfinance operations. They remain governed by the Banking Act.

The provisions of this Act, relating to the principle of non-discrimination, the safeties, the pursuit of privileges, regulations, competition and customer protection apply to banks and savings and credit cooperatives when they realize microfinance operations.

Article 4

Non-profit associations are not allowed to perform microfinance operations.

Chapter 2: DEFINITIONS

Article 5

Under this Act, the term:

1. Abuse of dominance: the abuse of his personal status to impose its rules on the market;
2. Public aid distorting competition: the facilities granted by the state UNDER quelqueforme whatsoever, which could distort competition between firms;
3. Leader: any member of the microfinance institution that participates in decision decision in administrative and / or management bodies;

Journai Officiei Special edition - 40 May 2014 Business Climate

126

4. Right of retention: nuclear safety by which a creditor can legitimately hold any property of SCN debtor, having a nexus, since it is not disinterested in what is due to him until full payment, regardless of other safety.

5. Agreements restrictive of competition; all agreements between undertakings, decisions by associations of undertakings and concerted practices between companies, the object or effect of restricting or distorting competition;

6. savings: funds raised by the microfinance institution to the public in the form of deposits with the right to dispose of part of its activities and the charge to return to the request of the applicant, as agreed terms;

7. Group: a set of physical or legal persons, each one generating financial interdependence of a legal bond of solidarity;

8. Microfinance Institution: legal person who manufactures, as a regular occupation

Microfinance operations;

9. Banking Act: Bank loi on the activity and supervision of credit institutions;

10. Microfinance: supply, other regular financial services including people

without access to the traditional banking system;

11. Nantissement professional equipment: acte by which a client of a microfinance institution is in favor of it, a warranty for a material belonging to him, unencumbered and for the exercise of his profession. This guarantee is achieved without dispossessing the client, well;

12. Opération Leasing: the transaction by which a microfinance institution acquires, at the request of his client, the ownership of movable and immovable equipment, professional or personal use, to give to it, in rent for a specified period, in return for payment deredevance or rent;

13. Opération direct credit: the loan transaction made without previous savings, subject to a possible deposit required at time of loan release;

Microcredit 14. Opération: any act by lequel a Microfinance institution offers or promises to make funds available to the customer as well as any act by which she makes a commitment to the benefit of its customers by signing such an endorsement, a caution.

15 Operations or microfinance services: banking activities following the techniques to Microfinance;

16. Réglementation prudentielle: a set of specific rules for surveiller the financial solvency of the authorized institutions and the protection of the entire financial system and that of depositors;

17. Non-Prudential Regulation: a set of rules for credit institutions authorized by the Central Bank of Congo that are not aimed at preventing insolvency; -

Journal Officiel special N° - May 10, 2014 (Business Climate

431

Section 3: Governance Section I: General principles

Article 22

The legal form and the rules of organization and operation of a microfinance institution is determined by its statutes.

Article 23

Any microfinance institution acquires respectively separate bodies responsible for administration and management,

Article 24

Combining the functions of management and control by the same person is prohibited.

Article 25

Anyone with ensuring the administration or the everyday management of a microfinance institution must justify the reputation, competence and experience are necessary for the exercise of this function,

Paragraph 2: the body responsible for the administration

Article 26

The body responsible for the administration of the microfinance institution has the most extensive powers to include:

4. define the strategic objectives of the microfinance institution and ensure their implementation

in (elJWre;

2. formulate guidelines and ethical rules to guide the staff conduct;

3. Surveiler managing microfinance institution, including efficient use of internal audit, external audit and internal control function;

4. preserve the solvency of the institution of Microfinance and implement

effective mechanisms for better risk management;

5. ensure is implementation of policies prohibiting activities, relationships or situations that may affect the quality of governance of the institution of imicrofinance:

6, take any measure to promote transparency and good

Governance Microfinance institution.

7, legal proceedings; 8. ensure the representation of the microfinance institution from third parties,

Official Journal spéciai number - May 10, 2014 Climate of affaires

132

Article 27

The body responsible for the administration delegate, within the limits set by the constitution, the powers necessary to ensure the management of the microfinance institution,

The body responsible for the administration to microfinance institution is composed of at least five members,

Sub-section 3: the management body

Article 28

The body responsible for the management ensures the organization, direction and internal control assessment. It uses the external audit for independent monitoring.

| reports periodically to the body responsible for administering the financial situation of the microfinance institution and all aspects necessary for accomplishing His tasks.

Article 29

The body responsible for the ongoing management of a microfinance institution has two individuals at least, designated according to the rules established by the institution statutes.

Paragraph 4: Specialized Committees

Article 30

A microfinance institution, where necessary, equip itself with specialized committees in particular credit, internal control and fight against money laundering and terrorist financing, according to regulations issued by the Central Bank of Congo.

Section 4: external control and supervision Section 1: From external control

Article 31

The certification of financial statements of a microfinance institution is performed by one or two auditors, natural or legal persons appointed for a term of three years.

In accordance with the Banking Act, the auditor may proceed with the verification of Microfinance Institution of accounts in which it holds an interest.

This certification can be supported where necessary by external audit.

Official Journal spécial number - May 10, 2014 Business Climate

133

Article 32

The auditors are licensed by the Central Bank of Congo.

lilies are chosen by microfinance institutions on a list published by the Central Bank of Congo.

The microfinance institution shall inform the Central Bank of Congo, in writing and with acknowledgment of receipt within 48 hours of the termination of service of an auditor,

Paragraph 2: supervision

Article 33

The Central Bank of Congo provides supervision of microfinance institutions. To this end, it conducts their checks on the spot and on.

It is entitled to request, from any person or entity, any information deemed useful for the proper completion of inspections it carries out.

Article 34

When the Central Bank of Congo found that:

- Operations of Microfinance institution are conducted in a manner contrary to the

This faith, laws and regulations;

- The management structures of a microfinance institution, its administrative

and accounting procedures or internal control have serious shortcomings;

-

{ "Microfinance institution refuses to submit to control or otherwise impedes This control,

-

the financial statements do not reflect the reality according to the report of the auditors or external audit,

And depending on the seriousness of the facts, it can be:

1. send him a warning after putting its leaders on notice to submit explanations within a reasonable time;
2. him to issue directions to the particular to take, within a specified period,

Corrective all appropriate measures;

3. take any safeguard measure deemed necessary including the designation,

for a period not exceeding six months, a temporary representative;

put under administrative management of the Central Bank of Congo; 5. withdraw the approval.

Official Journal Special Edition - May 10, 2014 Business Climate

134

Section 5: From régiermentation and ia financial disclosure

Paragraph 1: In prudential regulation

Article 35

Microfinance institutions are obliged to respect the prudential management standards set by the Central Bank of Congo.

Paragraph 2: In the non-prudential regulation

Article 36

Any microfinance institution is required to have an internal control system for

4. ensure the protection of assets of the microfinance institution;
2. assess its financial policies and practices;
3. to ensure the reliability of its financial statements;
4. to ensure compliance with laws and regulations in force;
5. ensure the compliance of its operations and its organization: a, professional and ethical forms and uses; b, with the guidance of its organs executive délibérantet

Article 37

Microfinance institutions are complying with the law on the result against money Laundering and Terrorist Financing.

A statement of the Central Bank of Congo sets specific rules for identifying clients of microfinance institutions and the monitoring of their operations. -

Paragraph 3: Rules on financial disclosure

Article 38

The accounts of the microfinance institutions are bound by the rules laid down by a specific chart of accounts. These rules must be consistent with national and international standards.

Article 39

The provisions on annual accounts under the Banking Act shall apply *mutatis mutandis* to microfinance institutions,

Official Journal Special Edition - May 30, 2014 Cliffat business

135

Section 6: Dissolution and liquidation Article 40

The dissolution of a microfinance institution can be voluntary or forced.

Dissolution is called voluntary when it is decided by the extraordinary general meeting of shareholders or members of the microfinance institution, after consultation with the Central Bank of Congo.

It is called forced when performed by the Central Bank of Congo or of competent jurisdiction,

Article 41

The dissolution decision entails the liquidation of the microfinance institution.

It is accompanied by the appointment of one or more liquidators by the extraordinary general meeting where dissolution is voluntary, and the Central Bank of Congo *for* it is forced.

When dissolution is decided by the competent court This loads the Central Bank of Congo to appoint a liquidator.

Article 42

The liquidation of microfinance institutions is in accordance with the rules set by the Banking law.

In case of liquidation of a microfinance institution, customer savings are repaid in preference to any other creditor, even privileged.

CHAPTER 2: Incentives

1st Section: Security interests

Article 43

Without prejudice to the provisions of the General Law of property, land tenure and real estate and securities scheme, as amended to date, the loans from their clients to microfinance institutions may be secured by collateral below after:

4. solidarity; 2. Lien; 3. the pledging of professional equipment.

Microfinance Institutions can also use the goodwill pledge under the laws or force on nantissementet safety.

Official Journal Special Edition - 40 May 2014 Business Climate

436

Paragraph ser: From solidarity

Article 44

Several clients of a microfinance institution can form a group in order to obtain credit and become debtors of a solidary debt.

The bond of solidarity of law resulting from the merger is governed in accordance with the laws on contracts and treaty obligations,

Paragraph 2: The right of retention

Article 45

A microfinance institution shall exercise its right of retention when legitimately holds the property of a client who received a credit until full payment of what is due to him, regardless of any other security.

Article 46

The right of retention can only be exercised if: 1. the thing lawfully detained is not subject to any attachment;

2. the claim is certain, liquid and due;

3. there is a Connectivity link between the birth of the claim and the thing detained.

The Connectivity is deemed established where the holding of the asset and the debt are the result of business relationships between the microfinance institution and its customer,

Article 47

When it receives no payment or equivalent security, the microfinance institution that exercises the right to withhold, after service by bailiff and demand made after the client, if appropriate, to a third party if the property belongs to him exercise their rights immediately, preferably in accordance with regulations on the pledge.

Article 48

When retention is about the deposit made by a client as collateral for a loan obtained from the microfinance institution, the rules relating to compensation will apply automatically. In this case, the compensation is realized after deducting fees payable by the client.

Paragraph 3: The pledging of professional equipment

Article 49

Unencumbered equipment for a customer's equipment to the exercise of his profession may be subject to a pledge without delivery in favor of the Microfinance Institution.

Official Journal Special Edition - 40 May 2014 Business Climate

437

The hardware part of a business may be pledged at the same time as the other elements of the fund or separately.

Article 50

The nantissementest made paracte authentic or private instrument.

1. || Includes, on pain of nullity, the following information:

2. the names, surnames, professions and domiciles of the parties and, if applicable, third

requiring registration;

3. The description of hired equipment to identify the indication of its location and the mention, if necessary, that the equipment is likely to be moved;

4. the amount of the secured claim;

5, the repayment terms of the principal debt and interest.

Article # 5

The equipment trust is effective only if it is registered in the commercial register or an equivalent register

Registration shall preserve the rights of the creditor for five years from its date; its effect ceases if not renewed before the expiry of that period.

Article 52

The debtor may assign all or part of the collateral material of a mantissement without the prior consent of the creditor manti, or failing without permission of the President of the competent court of jurisdiction.

Any sale of the pledged material without such an agreement or such authorization makes immediately payable debts.

When the debt is not paid, the debtor is subject, as appropriate, to the bankruptcy or insolvency.

Prohibitions arising from the bankruptcy or insolvency and the penalties for the offense of breach of trust apply to the debtor or any person who, by fraud, depriving créancieranti of its rights or decreases,

Article 53

The créancieranti on professional equipment, has a right of preference.

If not paid on time, he exercises his right of pursuit and proceed to the realization of the equipment according to the Common Law.

Official Journal Special Edition - May 10, 2014 Business Climate

138

Section 2: Tax measures

Article 54

Microfinance institutions are subject to the tax system of common law.

However, interest and commissions charged by it for microfinance services to their customers are exempt from tax revenues,

Section 3: continued Privileges

Article 55

The leaders of microfinance institutions have no personal obligation when they engage in acts of current management or administration on behalf of the microfinance institution.

Nevertheless, they engagentieur personal liability for negligence, gross negligence or willful misconduct.

Article 56

The police officer who receives a complaint, denunciation or finds the existence of a dependent breach of an officer in charge of the daily management of a microfinance institution shall send its official Verbal directly to the prosecution service which notifies the Central Bank of Congo. This takes any action it deems necessary to protect clients' savings,

LIIIIIII OS LL OSL IIIIIIII IIIIII LL LL LL LLL 00zaazLLLLL LS PROTECTION OF CUSTOMERS

1st section: From the regulation of competition

Article 57

When a microfinance institution impair the credit of a competitor, takes away its customers or, in general, affect its ability to compete, the Central Bank of Congo ordered, ex officio or at the request of Institution of microfinance interested or interested customers, the cessation of any act contrary to honest practices accepted in the profession.

In accordance with legal provisions on unfair competition, the Central Bank of Congo establish a list of fair practice of the profession,

Article 38

Are prohibited as of right, restrictive competition acts below:

- The restrictive agreements when they are not justified by the technical progress or customer interest:

Official Journal Special Edition - 40 May 2014 Business Climate

139

- The abuse of dominant position;
- State aid liable to distort competition are not lorsqu'elles justified by technical progress or customer interest.

The instruction of the Central Bank of Congo makes the rules and principles set out in paragraph 1 of this article. -

Section 2: client protection

Article 59

The Central Bank of Congo enacts specific legislation capable of guaranteeing the information and protection of clients of microfinance institutions.

Article 60

Microfinance institutions are especially required to:

- 1, offer their customers products and services tailored to their abilities reimbursement to prevent any risk, especially over-indebtedness;
2. regularly provide full information on the cost and quality of products and services offered to customers;
- 3, publish their contractual terms; 4. preserve the confidentiality of personal data supplied by the customer.

Article 64

Microfinance institution should include:

1. set of ethical standards to which its staff will be required to comply in its relations with customers;
 2. take sufficient measures to detect and correct any act of corruption or mistreatment of customers;
 3. put in place appropriate mechanisms for rapid processing of complaints or customer complaints and redress for any damage suffered,
- T {TRE: IH: SANCTIONS

CHAPTER 1: { ES sanctions AI) isINSTRATIVES Article 62

If a microfinance institution violates any law or regulation relating to its business, will comply with an injunction or allows for a warning from the Central Bank of Congo, it imposes a set of disciplinary sanctions ioi by the bank.

Officiated Journal Special Edition - May 10, 2044 Business Climate

140

Article 63

Microfinance institutions are also liable to administrative fines and penalty under the Banking Act.

Chapter 2: CRIMINAL SANCTIONS

Article 64

Is punishable by penal servitude of one year to two years and a fine from 500,000 to 5,000.000 Congolese Francs or one of these penalties:

4. any person contravening the provisions of Articles 12 and 57 of this Act;
2. any person directly or indirectly involved in the administration, management, control or management of an institution of Microfinance:
 - a. contravenes the provisions of Articles 17 to 19;
 - b, obstructing the mission persons authorized by the Central Bank of Congo to conduct an inspection under section 33;
 - C. obstructing the mission of the temporary representative under Article 34.

Article 65

If convicted for an offense under this Act, if it is established that the condemned diverted savings cierts, the judge will also deliver:

- 1, confiscation of stolen funds and / or assets owned directly or indirectly without prejudice to the rights of proud sentenced to up to enrichment directed by him since the date of the earliest of the facts justifying the conviction, unless that it is established no link between the enrichment and offense

2, the final expulsion of the territory of the Democratic Republic of Congo after

the execution of the sentence if the convicted person is not Congolese.

Article 66

The agents of the Central Bank of Congo coated quality police officer with limited jurisdiction are competent to see if offenses under this Act or any other infringement harms the microfinance activity.

Article 67

Without prejudice to the provisions of the Criminal Procedure Code and the Law on the fight against money laundering and terrorist financing, the offenses under this Act are found and prosecuted in accordance with the Banking Act,

Official Journal Special Edition - May 10, 2014 Business Climate

144

[TIRE: V: TRANSITORES DISPOSITIONS AND FINAL

Chapter 2: DISPOSITIONS TRANSIT OF CREDITS

Article 68

In accordance with Article 53 of this Act, a statement of the Central Bank

Congo fixed registration details of the pledge of professional equipment

customers not registered microfinance institutions in the commercial register.

Article 69

Microfinance Institutions regularly licensed by the Central Bank of Congo before the enactment of this Act, provided they are in good standing with the tax, shall automatically be placed on the list of MFIs.

Nevertheless, they have a period of one year from the date of entry into force of this Act, to comply with its provisions.

Chapter 2: FINAL DISPOSITIONS

Article 70

This Act repeals all previous provisions are inconsistent with it. It shall enter into force on the date of promulgation.

Done at Kinshasa, September 15, 2011

Joseph Kabila Kabange

Journal officiel Special Edition - May 10, 2014 Climate business

£ 42

... INSTRUCTION No. 4 (BANKS TO)

Amendment No. 76, enacted on Re: Money Market Operations

(CHAPTER): CENTRAL BANK OF CONGO

TITLE I: GENERAL PROVISIONS

Article! :

Under the provisions of Article 8 of its statutes, the Central Bank of Congo provides two banks refinancing counters, ie counters of "short term loan" and "standing facilities".

Article 2:

The refinancing of banks to the Central Bank is subject to collateral effects and public and private investment grade.

Section 4: Collateral effects and public securities

Article 3:

By effects and public securities, means the effects and titles of varying maturities issued by the Trésorainsi the Central Bank,

it is : -

- Titles of Treasury debt; e Titles debt of the Central Bank (EIG ticket Treasury).

Article 4:

The mantissement effects and public securities is made to the Directorate of Banking Operations and Markets prior to any refinancing application. -

Article 5;

Ajinéa 1:

The collateral value of government securities and securities issued by the state corresponds to their

nominal amount decreased by 50%.

Paragraph 2:

The collateral value of notes and government securities issued by the Central Bank

corresponds to their par value.

To be admissible collateral, the debt securities of the Central Bank

must have a minimum initial maturity of 7 days and a number of days remaining greater than or equal to the duration of the loan requested.