



DECREE No 2015-1036

Repealing decree n° 2007-510 on June 04, 2007 and on the establishment, organization and functioning the "Sampanjarahaha Malagasy Iadiana amin'ny Famotsiambola sy ny famatsiambola amin'ny fampihorohoroana" called "SAMIFIN"

THE PRIME MINISTER, HEAD OF GOVERNMENT,

Considering the Constitution,

Considering Law No 2004-020 of August 19, 2004 on Laundering, Search, confiscation and international cooperation in crime occurs,

Considering Law No 2014-005 of May 28, 2014 against Terrorism and Transnational Organized Crime,

Considering the decree No 2015-021 of 14 January 2015 appointing the Prime Minister, Head of Government;

Considering the decree No 2015-030 of January 25, 2015 appointing the members of the Government

Considering the decree No 2015-141 of February 17, 2015 establishing the powers of the Minister of Justice and the general organization of his ministry

On the proposal of Minister of Justice,

In the Council of Government,

DECREES:

FIRST CHAPTER

CREATION

Article I - Pursuant to section 16 of Act No. 2004-020 of August 19, 2004 on Laundering, Search, confiscation and international cooperation in crime products, it is created a Financial Intelligence Unit called "Sampantraharaha Malagasy Iadiana amin'ny Famotsiambola sy famatsiam-bola ny fampihorohoroana called "SAMIFIN " for short.

It has independence and operational autonomy and management.

Art. 2 - The SAMIFIN has jurisdiction over the entire national territory.

Art. 3 - The SAMIFIN's mission is to:

- receive suspicious transaction reports which are required persons and organizations referred to in Article 3 of Law No. 2004-020 of August 19, 2004 on laundering, search, seizure and international cooperation-related products the crime;
- analyze and process the STR;
- receive any other useful information, including those provided by the judicial authorities and the various services of the public administration, including the Customs Administration on the transport and import of funds at the border;
- conduct research and collection of additional information;
- enter the prosecution of facts that may constitute money laundering offenses and the terrorist financing;
- to cooperate with ministries, national and international organizations concerned with the study of measures to be implemented to counter illegal financial channels, money laundering and terrorist financing;

It also receives all other information required to establish the origin of the funds or the nature of the operations covered laundering or suspected terrorist financing;

Art. 4 - The SAMIFIN advises the Government on all matters within its competence.

CHAPTER II

ADMINISTRATIVE ORGANIZATION AND OPERATION

Art. 5 - The SAMIFIN includes:

- A General Management;

- Technical Directions:

1. Research and Financial Analysis Department;

2. Legal Department;

3. Information Technology Department;

4. Studies and Strategy Department

- An administrative and financial Department

SECTION I

The General Direction

SUBSECTION 1

Composition of the General Direction

Art.6- General Director is composed of a cabinet and a related service, led by the Director General.

§ 1. From the Cabinet:

The Cabinet is composed of:

1. Two Technical Advisers;

2. A Chargé de mission;

3. a Secretary Department.

Cabinet members are appointed by decision of the Director General of SAMIFIN after an open call for applications and morality investigation.

§ 2. From the attached Service:

- A Service Data Base Management and Archiving.

SUBSECTION 2

General Director

Art. 7 - The General Director is appointed for a renewable term of four years once a decree of the Council of Ministers from a list of three candidates proposed by an ad-hoc committee recruitment following a recruitment process initiated by the "Comité de Sauvegarde de l'Intégrité"

The operation, functions and composition of the Search Committee are determined by order of the Minister of Justice.

The recruitment is based on an open call for applications launched within two months before expiry of the term of the outgoing General Director General. The reappointment for a second term will be established by decree. The outgoing Director General can be a candidate for a second term in the same recruitment conditions provided in the preceding paragraph.

The functions of the General Director are incompatible with any elective public office, any other gainful employment and any activity within a political party or organization, except for teaching, research, literary and artistic, cultural, to the extent that these activities are compatible with the proper functioning of SAMIFIN.

During his term of office, the Director General may be a candidate for any elective office.

Art. 8 - The General Director is responsible for:

- manage the activities of SAMIFIN within the overall framework of its missions;
- oversee the activities of SAMIFIN in the implementation of the policy and the national strategy against money laundering and terrorist financing;
- represent SAMIFIN to justice, with the authorities and all public and private administrations, in all acts of civil life, to international bodies.

SUBSECTION 3

The Director General and his structure

Art.9 - The Technical Directors are elected from a list of two persons per room, proposed by the Director General on the basis of an open call for candidature, jointly initiated by a search committee composed of representatives of the administrations and authorities public involved in the detection and suppression system in money laundering and terrorist financing.

Technical directors are appointed by decree of the Council of Ministers based on their expertise and competence, particularly in the financial, banking, legal, Informaion Technology, customs, tax, police and gendarmerie, as well as in other areas or specialties appropriate to the needs of the development of control system against money laundering and terrorist financing.

Art. 10 - The administrative and financial Director is chosen from a list of two persons nominated by the Chief Executive on the basis of an open call for candidature, jointly initiated by a search committee.

He is appointed by decree of the Council of Ministers.

Art. 11 - The head of service in SAMIFIN are appointed by decision of the Director General SAMIFIN on the basis of an open call for applications.

The other categories of SAMIFIN staff are appointed by decision of the Director General.

§1. Technical departments

1.1-The Research and Financial Analysis Department

Art. 12 - The Research and Financial Analysis Department is responsible for:

- to analyze, from a financial and accounting perspective, the suspicious transaction reports received;
- manage relationships and support occupations the DNFPB (Designated Non-Financial Business or Profession) by strengthening their capacities in the fight against money laundering and terrorist financing.

The Department of Research and Financial Analysis is comprised of Financial Analysts who rank of department head whose number is specified by the preset chart and attached hereto.

1.2- The Legal Department

Art. 13 - The Legal Department is responsible for:

- to analyze, from a legal perspective, the suspicious transaction reports received;
- to collect general information on suspicious transaction reports;
- to conduct investigations and conduct criminal and judicial analysis of financial records to find significant evidence such as to constitute the offense of money laundering or terrorist financing;
- establish operational and strategic relations with administrative and judicial structures;
- to conduct legal studies to improve the national system to combat against money laundering and terrorist financing.

The position of General Counsel is run by a jurist, holds at least a master's degree in Law from the judiciary on secondment, with experience in handling crimes and economic crimes and folders Financial.

The Legal Department is composed of Legal Analysts who head waiter service and intelligence agents whose number is specified by the preset chart and attached hereto.

1.3- The Information Technology Department

Art. 14 - The Information Technology Department is responsible for:

- develop a security policy to the standard required in the fight against money laundering and financing of terrorism;
- to design, administer and protect all infrastructure related to the management of information technology and communications;
- ensure the technological monitoring of information systems to respond to internal and external requirements SAMIFIN.
- ensure any technological device and intra-department information between the service and the partners.

The Information Technology Department includes:

- A service of the Administration System and Networks;
- A service of Database Managing and the Software

1.4- The Research and Strategies Department

Art. 15 - The Research and Strategies Department is responsible for:

- use the information available to identify risks and trends in money laundering and terrorist financing
- to contribute to the development of different policies and strategies and the monitoring of the actions developed for the implementation of strategies;
- to draw laundering typologies cases on suspicious transaction reports processed;
- getting annual and quarterly work plans according to the strategy;
- develop projects for submission to the level of technical and financial partners to support the priorities and goals;
- to develop the SAMIFIN activity reports;
- ensure the periodic monitoring:
 - The implementation of work plans and their evaluation;
 - The implementation of projects developed in the framework of the fight against money laundering and terrorist financing.

The Research and Strategies Department includes:

- Study a service and strategic analysis;
- a Monitoring and Evaluation of Programming Service and Communication.

§2- From the Administration and Finance Department

Art. 16 - The Administrative and Financial Department is responsible for:

- to prepare and execute the budget SAMIFIN;

- keep accounts and prepare its financial statements;
- to provide logistical support for the functioning of the institution;
- implement SAMIFIN of the policy on human resources management.

The Administration and Finance include:

- a Service Accounting and Finance;
- a Service Personnel and Logistics.

Art.17 - Officials commissioned with the SAMIFIN are placed on secondment by the ministry or agency concerned.

CHAPTER III

TERMS OF FUNCTIONNING IN SAMIFIN

Art. 18. - The functions in the SAMIFIN are incompatible with any elective public office, any other gainful employment and any activity within a political party or organization.

However, this prohibition are excluded from teaching and research, literary and artistic to the extent that such activities are compatible with the proper conduct of those of SAMIFIN.

During the term of their mandate, agents SAMIFIN can not be candidates for any elective office.

Officials appointed to SAMIFIN cease to hold, where appropriate, the investigative powers which they could have under their original service.

Art. 19 - Before taking office, the Director General and the Directors SAMIFIN lend to the Supreme Court the oath in the following terms:

"Mianiana aho fa hanatanteraka an-an-sy tsakany davany araka ny ny lalana andraikitra. hitandro lalandava ny fahamarinana, tsy hijery tavan'olona, Hitana sy tsy hamboraka na na oviana oviana tsiambaratelon'ny ny asa, sy ny handala mandrakariva fahamendrehana takiana amiko ".

Before taking office, the other categories of staff SAMIFIN take the same oath before the Court of First Instance of Antananarivo.

They can not be removed from the oath.

Art. 20 - The SAMIFIN agents are required to maintain secrecy on information collected in the course of or in connection with the performance of their duties.

This information may not be used for purposes other than those provided for by the law on laundering, search, seizure and international cooperation on crime and products that relating to transnational organized crime.

All former officers SAMIFIN are also obliged to this duty of confidentiality.

CHAPTER IV

REVOCATION OF CONDITIONS, OF RESIGNATION,

PREVENTION OF FUNCTIONS OF THE DIRECTOR GENERAL AND DIRECTORS

Art. 21 - The Director General may be removed from office before the expiry of its mandate in case of revocation decision taken by the of council of ministry pursuant to a recommendation of the "Comité de Sauvegarde de l'Intégrité" deliberating a majority of two thirds of its members following the inability or behavior unworthy of it, including breaches of his duties, his obligations of integrity and probity related to his person.

The revocation of a director also follows the above procedure on the recommendation of the General Director.

Art. 22 - In case of dismissal, resignation or permanent incapacity of the General Director for any reason whatsoever, it has been replaced in the manner provided for the appointment. The mandate of replacing ends on the normal date of expiry of the mandate.

However, if the vacancy occurs in the three months preceding the expiry of the mandate, it is not to nominate a replacement.

CHAPTER V

**THE DECISION-MAKING PROCESS ON THE RECEPTION,
TREATMENT AND DELIBERATIONS OF SUSPICIOUS TRANSACTION REPORTS**

Art. 23 - The SAMIFIN has a College composed of the Director General and Technical Directors.

The General Director chairs the College.

The College is responsible for all matters relating to suspicious transaction reports, including the admissibility of suspicious statements sent to it, and to deliberate on the cases treated.

It can deliberate only if at least two-thirds of its members, including the General Director or, in his absence the oldest Member chairing, are present.

It takes decisions by a simple majority of members present at the meeting. In case of equality of votes, the General Director or in his absence one of the oldest, is dominating.

In urgent cases, decisions are taken by at least three members, including the General Director or in his absence the oldest.

Art. 24. - In accordance with Articles 19 and following of the law n ° 2004-020 of August 19, 2004 on the fight against money laundering, tracing, confiscation and international cooperation in criminal proceeds, STRs SAMIFIN are addressed to a suspicious transaction report form pre-established for this purpose, or alternatively, by electronic mail or by any other written means. The statements made through the phone must be confirmed by e-mail or any other means with written proof.

The statements contain:

- the identity, address and signature of the report;
- those of the customer or the principal or party on whose behalf the customer is acting and if applicable, the beneficial owner of the transaction
- the nature and the title of the account;
- the nature, amount and type of the planned operation;
- the period within which the operation should be executed or why its implementation has been delayed;

- all documents regarding identified suspicious transactions and those concerning any connection with the operation or operations reported.

Art. 25. - The SAMIFIN can transmit to the Commission of Banking and Financial Supervision useful information for the application of Article 33 of the Law No. 2004-020 du 19 August 2004 on laundering, search, seizure and cooperation International concerning proceeds of crime.

When transmitting the Prosecutor of the Republic, pursuant to section 22 of the Act, a report on a money laundering offense or terrorist financing in connection with an offense within the jurisdiction of the Independent Anti-Corruption Bureau, it shall inform the latter of this transmission.

Art. 26. To optimize the research to substantiate the suspicions or to end it, the SAMIFIN puts in place, in compliance with the laws and regulations on protection of privacy and on computerized databases, a database of all relevant information concerning:

- STRs under Article 19 of the AML Act No. 2004-020 Act of 19 August 2004 on laundering, search, seizure and international cooperation proceeds from crime ,;

- The operations carried out;

- Anyone who makes such transactions directly or through interposed persons;

- Other information obtained pursuant to Article 3 of the law on money laundering. Law No. 2004-020 of 19 August 2004 on laundering, search, confiscation and international cooperation in criminal proceeds ,.

The information is kept for ten years unless the prescription of public action is not acquired.

CHAPTER VI THE ACTIVITIES REPORT

Art. 27- An annual report is established, no later than May 15 of the following year, by the SAMIFIN and submitted to the President of the Republic, the President of the Senate and the National Assembly, the Prime Minister, the Minister of Finance and the Minister of Justice

A copy of this report is addressed to the "Comité pour la sauvegarde de l'Intégrité", the Commission of Banking and Financial Supervision and the independent anti-corruption bureau.

The report is made available to the public within six months of its transmission, proceeds to the overall analysis of statements taken and the general policy on money laundering and terrorist financing, and all statistics referred.

CHAPTER VII THE FINANCIAL ORGANISATION

Art-28 - Pursuant to Article 16, paragraph 2, of the Act, the loans granted by the Finance Act are paid in deposit accounts opened in the name of SAMIFIN in the Public Treasury.

The SAMIFIN can open one or more bank accounts for the needs of external financing.

Art.29 - The fiscal year of SAMIFIN closed on December 31 of each year.

The SAMIFIN prepare its draft budget for the following financial year in the first half of the year. The project is then forwarded to the Ministry of Finance and Budget to its inclusion in the draft State Budget Law.

Art 30 - The General Director is designated to be the Chief Executive organizer of the SAMIFIN budget.

The SAMIFIN must submit an administrative account at the end each year.

Art 31 - The SAMIFIN send to the Court of Auditors no later than February 15 of the following year the Administrative Account for the past year, with supporting documents of expenditure. That court shall establish no later than April 15 of that year a report on the results of its control, which will be integrated into the annual report of SAMIFIN.

In addition, other audits may be conducted by any organization, public or private, accredited by the state, at the request of the General Director.

Art.32 - The SAMIFIN set and adopt his own Rules of Procedure.

Art.33 - is repealed the Decree No. 2005-086 of 15 February 2005 on the establishment, organization and functioning of the Financial Intelligence Service.

Art. 34 - The Minister of Finance and Budget and Minister of Justice are responsible regarding the execution of this decree to be published in the Official Journal of the Republic.

Antananarivo June 30, 2015

By the PRIME MINISTER,

Head of government

Général de Brigade Jean Ravelonarivo

The Minister of Justice

RAMANANTENASOA Noëline

The Minister of Finance and Budget,

Rakotoarimanana François Marie Maurice Gervais