



PRESIDENCE OF THE REPUBLIC

Law No. 2017-026 On Microfinance

EXPLANATORY STATEMENT

The banking sector is governed by Law No. 95-030 of February 22, 1996, which notably defines banking operations, credit institutions, the supervisory authority (Banking and Financial Supervision Commission or CSBF), and sanctions in case of non-compliance with legal provisions.

The banking profession is thus a regulated profession insofar as the Law sets the following objectives:

- protecting depositors;
- preventing systematic risk (failure of the banking sector having repercussions on the economy in general).

Hence special provisions in terms of approval, legal form, prudential rules and standards, supervision and liquidation.

Due to its specificity, microfinance was the subject of a Law in 2005 (Law No. 2005-016 of September 29, 2005). This Law has made it possible to develop the sector but currently has its limits. Several microfinance institutions (MFIs) are bankrupt. The volume of business has stabilized and has not changed significantly in recent years. An institution has turned into a bank for regulatory constraints.

This Law on microfinance therefore deserves an overhaul.

The objectives pursued within the framework of this overhaul aim to ensure a healthy and resilient banking sector (including microfinance), which contributes to the financing of the economy.

In this sense, the general economy of this new Law on microfinance particularly consists in:

- modernising the legal framework of the microfinance sector in relation to the vision of inclusive finance and developments in technology or innovations in the distribution of digital financial services;
- providing secure development of the microfinance sector in order to ensure the consolidation of achievements for the supervision function and to support the professionalisation of microfinance institutions (MFIs);
- putting in place a specific resolution mechanism for MFIs to fill the gaps in terms of dealing with MFIs in difficulty.

The reform of the Law on microfinance is based on four (4) strategic axes, namely:

1. strengthening the stability of the sector;
2. promoting financial inclusion;
3. modernising the microfinance sector;
4. creating a consumer-friendly legal environment and develop financial education.

The new legal framework thus introduces provisions allowing in particular to achieve the following objectives and innovations:

- reframe the landscape of the microfinance sector: classification as deposit-taking MFIs “Deposit MFI” and MFI not taking deposits or “Credit MFI”;
- modulate the intervention of the supervisory authority according to the level of risk: application of prudential rules for deposit MFIs and proportionate non-prudential rules for Credit MFIs;
- expand product and service offerings: introduction of digital financial services and insurance products among the operations authorised to MFIs;
- using new technologies: distribution of digital financial services through distribution channels and distribution agents;
- access to financial infrastructures that comply with international standards: consultation of the Central Risk Office for the evaluation of credits and membership of the national system of payment to promote interoperability;
- adopt policies and procedures ensuring consumer protection: financial education, instilling values and practices related to the use of financial services;
- prevent and manage risks: introduction of a crisis resolution framework which includes in particular the strengthening of the authorities of the CSFB in terms of prevention and treatment of MFIs in difficulty;
- put in place a safety net: introduction of a deposit guarantee and resolution fund.

This law includes 178 Articles around 10 Titles:

- Title 1. Preliminary provisions
- Title 2. Conditions of practice and regulation of the profession
- Title 3. Supervision and resolution of microfinance institutions
- Title 4. Organisation of the profession
- Title 5. Consumer Protection
- Title 6. Prevention, recovery and resolution of fragile microfinance institutions
- Title 7. Liquidation of microfinance institutions
- Title 8. Deposit Guarantee Fund
- Title 9. Disciplinary Sanctions and Penal Sanctions
- Title 10. Transitional and final provisions

This is the purpose of this Law.

REPOUBLIC OF MADAGASCAR
Fitiavana-Tanindrazana-Fandrosoana

PRESIDENCE OF THE REPUBLIC

**Loi n°2017-026
on Microfinance.**

The National Assembly and the Senate adopted in their respective plenary sessions on November 30, 2017 and December 7, 2017,

THE PRESIDENT OF THE REPUBLIC,

- Having regard to the Constitution;
- Having regard to Decision No. 08HCC/D3 of January 31, 2018 of the High Constitutional Court,

ENACTS THE LAW WHOSE TERMS FOLLOWS:

TITLE 1: INTRODUCTORY PROVISIONS

CHAPTER 1: SCOPE AND DEFINITIONS

Application domain

Article 1. This law applies to microfinance institutions abbreviated as “MFI” and to distribution agents defined below.

Microfinance institutions are defined as all legal persons approved by the Banking and Financial Supervision Commission (CSBF) who regularly carry out microfinance activities.

Are considered as distribution agents, all persons designated by a microfinance institution to offer microfinance services on behalf of the said institution under a mandate contract.

Non-subject Entities

Article 2. The following are not subject to this Law:

1. all public or private entities which carry out, on an ad hoc basis, operations to manage funds reimbursable or not by the final beneficiaries for humanitarian reasons or social actions;
2. all groups of natural persons without legal personality brought together on a temporary basis to constitute a common fund by means of contributions for the

purpose of granting credits in favor of members. Distributed credits are reimbursable by members

3. all private entities having adopted the legal form of association or non-governmental organisation which carry out, in an usual manner, reimbursable credit operations by members or customers.

The Minister in charge of Finance sets by order the conditions for the exercise of operations by the entities not subject to the aforementioned and the criteria applicable to them. It maintains and publishes the list of these entities on its website.

When the criteria set by the Ministry in charge of Finance are met, these entities:

- suspend the granting of credit upon notification by the Ministry in charge of Finance;
- present, within three (3) months from the said notification, an application file for approval as a microfinance institution in accordance with the provisions of Article 14 of this Law.

The CSBF is consulted on any draft order applicable to these entities.

Definitions

Article 3. For the purposes of this Law, the following terms mean:

1. Provisional administrator: any person appointed by the CSBF for the purpose of carrying out the recovery measures for a fragile microfinance institution provided for in Articles 112 to 121 of this Law.

2. Resolution administrator: any person appointed by the CSBF for the purpose of carrying out the resolution actions of a microfinance institution provided for in Articles 124 to 135 of this Law.

3. Distribution channels: any means such as a microfinance institution's own distribution networks or its distribution agents or any electronic, magnetic, biometric or computer instrument enabling it to distribute microfinance services.

4. Collection of deposits: any receipt of funds from a natural or legal person by microfinance institutions, with the right to dispose of them for their own account. These institutions return the funds at the request of the depositors according to the terms and conditions set out in the contract.

Are not considered as “deposits”:

- **security deposits** or sums deposited by customers with the microfinance institution as part of the granting of credits as a guarantee for the repayment of the credits received;
- **capital contributions**, membership fees and non-refundable contributions.

5. Banking and Financial Supervision Commission (CSBF): regulatory and supervisory authority for credit institutions established by the banking Law.

6. Granting of credit: any act by which a microfinance institution:

- makes or promises to make, against payment, funds available to a natural or legal person who is responsible for repaying them on the due date agreed in the contract;
- makes a payment commitment, in the interest of a person, by signature such as an endorsement, a bond or guarantee.

Leasing is assimilated to a credit transaction.

7. Politically Exposed Person (PEP):

- any natural person who exercises or who has exercised important public functions in Madagascar, in particular, Heads of State or Government, Senior officials within the public authorities, high-ranking soldiers, Head of political party;
- any natural person who exercises or has exercised important public functions in a foreign country, or within or on behalf of an international organisation;
- anyone known to be closely associated with a PEP, including any close person, family member in direct line or by marriage, or anyone linked by business relations.

The duration of the status of Politically Exposed Person is 5 years after cessation of function or title.

8. Prudential rules: set of prudential rules set by the CSBF to guarantee, in particular, the solvency and liquidity of microfinance institutions for the purposes of protecting depositors and preventing systemic risk.

9. Non-prudential rules: set of rules set by the CSBF aimed at:

- ensuring the smooth running of operations carried out by microfinance institutions, the regularity of their accounting register and their control;
- supervising the conduct of the market, in particular competition, consumer protection, transparency and the fight against money laundering and the financing of terrorism.

10. Resolution: any action taken by a Resolution Administrator with a view to the liquidation of a fragile microfinance institution.

11. Systemic risk: any risk of the failure or bankruptcy of a microfinance institution spreading to the financial sector.

12. Digital financial services: any microfinance services provided by microfinance institutions or their distribution agents through digital distribution channels.

13. Management Information System or MIS: set of devices, procedures and actions allowing the microfinance institution to collect, store, use, disseminate, preserve the

integrity and ensure the reliability of the data in accordance with the needs required by the CSBF in terms of control.

CHAPTER 2: MICROFINANCE SERVICES

Mainly offered services

Article 4. Microfinance institutions are authorised to offer microfinance services on a regular basis mainly to natural or legal persons with little or no access to financial services. Microfinance services include collection of deposits, credit granting, the distribution of insurance products and digital financial services including money transfer and payment services.

For the distribution of insurance products and digital financial services, microfinance institutions comply with the regulations in force on insurance, foreign exchange and electronic money.

Related services

Article 5. Microfinance institutions are authorised, incidentally to their main activity, to:

- offer consulting, education and training services;
- provide safety deposit box rental;
- make payment in *Ariary* of funds received from abroad or from any person residing outside the national territory through an approved intermediary;
- make payment of funds received from other entities under an agreement with the entities concerned. The conclusion of the said agreement is subject to the prior authorisation of the CSBF.

The CSBF sets by instruction the conditions for carrying out the operations referred to in Articles 4 and 5 of this Law.

Unauthorised services

Article 6. Microfinance institutions are not authorised to carry out the following operations:

- issuance of cheques;
- the transfer of money abroad;
- transactions denominated in foreign currencies and foreign exchange transactions;
- the financing of international trade through documentary credit operations;
- issuing or managing securities.

Article 7. Microfinance institutions are classified according to the nature of their activity:

- microfinance institutions that collect deposits and grant credits called “Deposit and Credit MFIs”;
- microfinance institutions that grant loans called “Credit MFIs”. They are not authorised to collect deposits.

Microfinance institutions can only provide services authorised for their classification.

They cannot create any related confusion.

Article 8. Microfinance institutions benefiting from the individual approval provided for in Article 16 of this Law take the legal form of public limited company.

The microfinance institutions constituted in a network provided for by Article 56 of this Law and having the collective approval provided for by Article 16 of this Law are formed by:

- an umbrella structure having the legal form of a public limited company;
- mutual microfinance institutions affiliated to this umbrella structure, each having the legal form of a cooperative.

CHAPTER 4: PROHIBITIONS

Illegal practice of microfinance activity

Article 9. It is prohibited for any person, other than a microfinance institution, to offer microfinance services under penalty of the application of the penal sanctions provided for by the banking Law.

The Chairman of the CSBF orders the closure of the entity and is empowered to bring civil proceedings in the context of the related penal proceedings. It immediately notifies its decision to the Minister in charge of Finance and informs the public by all means about the illegal exercise of a microfinance activity by an unauthorised entity.

The decision of the Chairman of the CSBF is subject to an appeal for annulment before the Council of State. This appeal is not suspensive.

The prohibition cited in the first paragraph does not apply to the distribution agents defined in Article 1 of this Law. These agents are governed by Articles 49 to 52 of this Law.

Corporate name or advertisement

Article 10. It is prohibited for any person other than a microfinance institution to use a corporate name, to carry out an advertisement or expressions making believe that it is approved as a microfinance institution or to create confusion on this subject. .

Shareholders or members of governance and control structures

Article 11. No one may, directly or through an intermediary, be a shareholder or member of an administrative or management body of a microfinance institution, nor have the authority to sign on behalf of such an institution, if the person:

1. has been dismissed as an officer or director of a credit institution by the CSBF;
2. has headed or was a member of a corporate body of a credit institution put into compulsory liquidation as provided for in Article 163 of this Law;
3. is the subject of a conviction for a crime or offense by a judicial decision which has become final;
4. has been sentenced as a director, de jure or de facto manager of a company, under the legislation on collective proceedings for the settlement of liabilities, except rehabilitation in his favour;
5. is the subject of a removal order as a ministerial officer by virtue of a judicial decision;
6. is disposed of doubtful or contentious debts recorded at the level of the Central Risk Office and information systems created at the national level;
7. has been excluded or removed from the list maintained by a competent authority under specific regulations.

The aforementioned prohibitions apply in the event of dismissal, liquidation, conviction for a crime or misdemeanor or expulsion pronounced by a foreign jurisdiction or administration.

Politically Exposed Persons

Article 12. Any person having the status of "Politically Exposed Person" defined in Article 3 of this Law as well as any legal person placed under its control cannot assume the function of administrator, manager or control of a microfinance institution.

The prohibition continues to apply for a period of five (5) years from the cessation of the status of "Politically Exposed Person".

This prohibition does not apply to directors who represent the State on the Board of Directors of a credit institution.

Article 13. Microfinance institutions shall ensure that the members of the administrative, management and control bodies of a microfinance institution do not have the status of "Politically Exposed Person" defined by this Law.

Persons who have become "Politically Exposed Persons" resign from their administrative, management and control functions within a microfinance institution within one (1) month of their appointment. The institution concerned immediately informs the General Secretariat of the CSBF by any process leaving written record. The acts passed before their resignation remain valid.

TITLE 2 : OPERATING CONDITIONS AND REGULATION OF THE PROFESSION
CHAPTER 1 : OPERATING CONDITIONS
Section 1. Approval

Application for approval

Article 14. The exercise of microfinance activity is subject to prior approval by the CSBF.

Any promoter who submits an application for approval to the General Secretariat of the CSBF :

- demonstrates its ability to comply with the requirements for an MFI set out in this Law and its implementing texts;
- pays the application fee for the approval application, the amount and payment terms of which are set by order of the Minister in charge of Finance upon proposal of the CSBF. These application fees are not refundable.

The application fee is intended to cover the operating costs of the CSBF as provided for in Article 65 of this Law.

Any existing private entity other than a credit institution wishing to engage in microfinance activity shall create a subsidiary with a separate legal personality and its own governance and control structures.

Examination of the application for approval

Article 15. The General Secretariat of the CSBF shall examine the application for approval, which shall contain the elements enabling it to verify in particular:

- the requirements in terms of governance and control structures by this Law and its implementing texts;
- the origin of the funds
- the viability and sustainability of the project to create a microfinance institution.

The CSBF shall determine by instruction the content, the procedures for processing the application for approval, the time limits for closing the file, the decision and notification of the decision and the refusal of the application for approval.

Approval decision

Article 16. The CSBF grants approval when the promoter meets the conditions required by this Law and its implementing regulations. The Chairman is empowered to take decisions relating to approval on behalf of the CSBF. He shall report to the CSBF at its next meeting.

The decision to grant approval is notified by the Secretary General of the CSBF to the promoter. It specifies the classification and name of the institution as well as the authorised microfinance services.

Microfinance institutions may only carry out the microfinance services provided for in their approval decision.

The CSBF shall issue an individual license for the microfinance institutions referred to in Article 8 paragraph 1 or a collective license for the microfinance institutions constituted in a network provided for in Article 8 paragraph 2 of this Law.

Refusal of the application for approval

Article 17. The CSBF shall refuse an application for authorisation when:

- the governance and control structures, the anti-money laundering mechanism do not comply with the requirements of this Law or its implementing texts;
- the origin of the funds is not justified in accordance with the regulations on the fight against money laundering and terrorist financing;
- when the Secretary General of the CSBF finds that the information and management system does not meet the needs required by the CSBF for control purposes;
- the business plan does not demonstrate the viability, soundness and sustainability of the institution or the projected financial statements are based on unjustified or unrealistic parameters;
- the preventive recovery plan provided for in Article 93 of this Law is not adapted to the risks associated with the nature of the activity in the event of the institution's failure;
- the approval file has repeated gaps or inconsistencies reflecting the promoter's lack of professionalism.

The Secretary General of the CSBF notifies the promoter of the refusal decision, with reasons.

In the event that the promoter intends to maintain his project, he shall submit a new application with new elements required by this Law and its implementing texts. However, where the reason for the refusal of approval is based on repeated deficiencies or inconsistencies in accordance with the CSBF's instruction, the promoter may not submit a new application for approval.

Conditions precedent

Article 18. The CSBF shall include in the approval decision one or more conditions precedent with a deadline for the promoter to fulfil them.

The Secretary General of the CSBF shall notify the promoter of the lifting of the conditions precedent.

The approval is made effective after the notification of the lifting of the conditions precedent.

Where the conditions precedent have not been fulfilled by the end of the period set by the decision and if no request for a reasoned extension is made before the end of this period, the CSBF shall declare and publish the lapse of the approval decision in the same manner as provided for in Article 19 below. If the promoter intends to maintain his project, he must submit a new application in accordance with Article 14 of this Law.

The time limit for the fulfilment of the conditions precedent shall not exceed one (1) year.

Publication of the approval decision

Article 19. The Secretary General of the CSBF shall send a copy of the approval decision to the Ministry in charge of Finance for publication in the Official Gazette and publish the said decision on the website of Banky Foiben'i Madagasikara.

It maintains and publishes the list of microfinance institutions. To this end, it assigns them a registration number after the lifting of the conditions precedent to their approval.

Microfinance institutions shall publish the approval decision at their own expense in at least two (2) legal gazettes and post a copy of the said decision at the head office and in the places where the institution operates.

Article 20. Microfinance institutions shall register with the Trade and Companies Register and join the professional association referred to in Article 68 of this Law within one (1) month of notification of the lifting of conditions precedent to their approval.

They shall mention in all acts, documents, commercial correspondence and various publications, the compulsory mentions inherent to their legal form, the reference of the approval decision, the classification and the registration number in the list of approved microfinance institutions maintained by the General Secretariat of the CSBF.

Modification of the elements of approval

Article 21. Any modification of the elements or information provided at the time of application for approval is subject either to prior authorisation by the CSBF or to notification to the General Secretariat of the CSBF in accordance with the procedures defined by instruction of the CSBF.

Share capital of microfinance institutions

Article 22. On the date of their incorporation, microfinance institutions shall have paid-up share capital, the minimum amount of which shall be determined by Decree upon proposal by the CSBF.

They shall justify at any time that the equity capital, as defined by CSBF instruction, contributed by the shareholders exceeds the minimum capital amount referred to in the preceding paragraph.

Section 2. Governance and supervisory structures of microfinance institutions

Generalities

Article 23. Microfinance institutions shall define clear policies in accordance with the principles of good governance that guarantee the soundness and sustainability of the

institution. In particular, they shall put in place any structure, mechanism or system to ensure :

- the prevention and management of risks according to the nature of the activity ;
- the allocation of responsibilities of the administrative, management and supervisory bodies;
- the independence and effectiveness of the control system;
- the transparency of the administration and management of the institution.

The CSBF shall establish by instruction the authorities, composition, organisation and operation of the governance and control structures made up of the administrative, management and supervisory bodies, and the conditions of good repute, competence and experience of the members of these structures. The latter exercise their duty of diligence and loyalty to the institution.

Appointment of the members of the governance and control structures

Article 24. The appointment of members of the institution's administrative, management, internal and external control bodies is subject to the prior authorisation of the Secretary General of the CSBF in accordance with the conditions laid down by instruction of the latter. In this regard, the Secretary General shall refuse, by reasoned decision, the appointment of persons who do not meet the conditions laid down by this law and its implementing regulations.

Incompatibilities of members of governance and control structures

Article 25. Members of the administrative, management and internal control bodies may not hold any remunerated position with another microfinance institution or credit institution.

Members of the CSBF and the staff of the CSBF General Secretariat may not become members of the administrative, management and supervisory bodies of microfinance institutions. This incompatibility shall continue to apply for a period of five (5) years after they cease to be members of the CSBF or to hold office in the General Secretariat of the CSBF.

Civil liability of members of governance and control structures

Article 26. Members of the administrative, management and internal and external control bodies are civilly liable, both to the microfinance institution and to third parties, for the harmful consequences of the faults or negligence they commit in the exercise of their functions.

Liability action shall be barred after five (5) years from the date of the harmful event or from its knowledge if it was concealed.

Administrative body of microfinance institutions

Article 27. The administrative body defines, among others, the policy, strategy, main authorities and responsibilities, the separation of functions within the institution and

supervises the general management of the institution. The administrative body shall include among its members non-shareholder directors within the limits set by the regulations on commercial companies. Non-shareholder directors shall have no relationship of any kind with the institution or the group to which the institution belongs, nor shall they be related to any member of the governance and control structures of the microfinance institution.

The administrative body may delegate some of its functions under the conditions set by CSBF instruction, if necessary.

Management body of microfinance institutions

Article 28. The general management of the microfinance institution is ensured by at least two (2) directors residing in the place of the registered office. They shall be responsible, inter alia, for determining the direction of the institution's activities in accordance with the policy defined by the administrative body.

Supervisory bodies of microfinance institutions

Control system

Article 29. Microfinance institutions shall ensure the existence of a control system that corresponds to the nature of the risks inherent in their activity. The internal control body is in particular responsible for verifying the effectiveness and consistency of the control system in place in order to detect shortcomings and propose measures to remedy them.

The CSBF sets out the authorities, organisation and operation of the supervisory body in instructions.

Auditors

Article 30. The General Assembly shall appoint an auditor whose mission is to :

- certify the annual accounts of the institution or network provided for in Article 8 of this Law ;
- ensure and certify the regularity and sincerity of the information processed by microfinance institutions intended for the competent authorities and the public;
- verify compliance with prudential, non-prudential and anti-money laundering and anti-terrorist financing standards set by instruction of the CSBF.

The CSBF sets the conditions for the appointment of the auditor by instruction.

When the balance sheet total reaches a threshold set by CSBF instruction, the intervention of two (2) auditors is required.

Article 31. The Chairman of the CSBF shall dismiss and replace the statutory auditor in the event of failure to comply with any of its obligations under this law in accordance with the procedures set out in Article 172 of this law. It informs the Ordre des Experts Comptables et Financiers de Madagascar, abbreviated to "OECFM". The Order

communicates to the President of the CSBF the decisions taken against the auditor concerned.

The dismissed auditor may no longer exercise the function of auditor within a credit institution for a period of three (3) years.

Article 32. The Secretary General of the CSBF may request from the auditors any information on the activity and financial situation of microfinance institutions. The auditors may not oppose him/her on the grounds of professional secrecy.

In addition, the Secretary General shall forward written observations to the auditors, who shall provide answers in the same manner.

Section 3. Transformation of microfinance institutions

Merger, demerger, partial contribution of assets

Article 33. Extraordinary General Meetings of microfinance institutions decide on merger, demerger or partial contribution of assets upon prior authorisation by the CSBF.

The CSBF refuses operations when the financial situation of the institutions concerned jeopardises or is likely to jeopardise their financial equilibrium and their overall operation.

When the planned operation leads to the creation of a new institution, the latter shall apply for approval in accordance with Article 14 of this Law before starting its activity.

Microfinance institutions shall comply with the regulations on commercial companies and cooperatives when carrying out the abovementioned operations.

Article 34. Mergers and demergers shall result in dissolution without liquidation. In the event of a merger, the CSBF shall withdraw the approval of the merged microfinance institution(s). The split operation entails the withdrawal of the split institution's approval.

The CSBF shall issue an instruction setting out the terms and conditions for mergers, demergers and partial contributions of assets.

Dissolution of a microfinance institution

Article 35. Extraordinary General Meetings of microfinance institutions shall decide on early dissolution upon prior authorisation of the CSBF in the following cases:

- cessation of activity ;
- expiry of the duration of the institution as set out in the Articles of Association.

The CSBF shall pronounce the early dissolution:

- when the losses exceed half of the own funds defined by instruction of the CSBF in the absence of recapitalisation within a period set by the CSBF;

- at the request of a shareholder in the event of non-performance of the obligations of one or more shareholders or of a disagreement between them preventing the normal operation of the institution.

In case of urgency, the Chairman of the CSBF is empowered to set a deadline for the recapitalisation referred to in the previous paragraph and to order the dissolution of microfinance institutions when their situation so warrants.

Withdrawal of approval

Article 36. The CSBF shall withdraw the approval of a microfinance institution at the request of the latter or at the initiative of the CSBF when the institution:

- has not started its activity within six (6) months from the lifting of the conditions precedent ;
- has not carried out the project in accordance with the application file ;
- has ceased its activity for a period of six (6) months for whatever reason;
- has decided on the early dissolution provided for in Article 35 above;
- is unable to recover or re-establish its situation despite the resolution actions referred to in this Law.

The decision to withdraw approval shall be taken by a majority of two (2) thirds of the members of the CSBF acting as an administrative court. This decision may be appealed before the Council of State. However, this appeal has no suspensive effect unless otherwise ordered by the Council of State in exceptional cases where a request for a stay of execution is filed.

In case of urgency and when justified by particular circumstances, the Chairman of the CSBF is empowered to withdraw the approval on the above-mentioned grounds. He reports to the CSBF at its next meeting.

Article 37. The Secretary General of the CSBF shall notify the institution concerned of the decision to withdraw approval, with reasons, and shall publish it in the Official Gazette and on the website of Banky Foiben'i Madagasikara. The institution shall publish the decision in at least two (2) legal gazettes at its own expense. A copy of the decision is posted in all the institution's operating premises.

The institution shall immediately cease activity and enter into liquidation in accordance with the provisions of Article 141 of this Law. The institution is removed from the list of microfinance institutions referred to in Article 19 paragraph 2 of this Law.

CHAPTER 2: REGULATION OF THE PROFESSION

Rules governing microfinance institutions

Article 38. The CSBF shall lay down by instruction the rules governing microfinance institutions, aiming in particular at :

- ensuring the proper functioning and soundness of these institutions;
- preventing systemic risk and preserving the stability of the financial sector ;
- protecting consumers of microfinance services;
- combating money laundering and terrorist financing;
- ensuring transparency of operations and healthy market competition in the microfinance sector.

Microfinance institutions shall ensure compliance with the provisions of this Law and its implementing texts in accordance with the risks associated with the nature of their activities.

Deposit and Credit MFIs are subject to the prudential and non-prudential standards defined in Article 3 of this Law.

Credit MFIs are subject to the prudential standards defined in Article 3 of this Law in a manner proportionate to the risks.

Microfinance institutions shall take out loans to refinance their credit operations, with the prior authorisation of the CSBF, from credit institutions and any other body.

Legal reserve

Article 39. By way of derogation from the constitution of the legal reserve provided for by the Law on commercial companies, the rate applicable to microfinance institutions is set at 15% of the net result defined by the CSBF's instruction on the Accounting Plan for Credit Institutions.

Financial transparency

Article 40. Microfinance institutions shall put in place policies, procedures and a management information system as defined in Article 3 of this Law.

They shall ensure that the management information system is adapted to the size and development prospects of the institution's activity to ensure in particular the production and communication of the following data :

- accounting documents ;
- internal and external audit reports ;
- prudential ratios;
- financial and social performance indicators;
- general and statistical information.

Article 41. Microfinance institutions shall make declarations to the information systems created at national level under the conditions provided for by the regulations in force.

Article 42. Microfinance institutions shall make available to the public, by any means, updated general information about them, including:

- governance and control structures;
- the main shareholders;
- organisational structures such as the organisational chart, locations and main activities.

Combating money laundering and terrorist financing

Article 43. Microfinance institutions shall comply with the regulations relating to the fight against money laundering and terrorist financing. They shall put in place an internal system for the prevention and detection of money laundering and terrorist financing.

Rules on competition

Article 44. Microfinance institutions shall comply with the provisions of the competition regulations. If the CSBF considers that an institution is violating the legal or regulatory provisions in force with respect to competition, the Chairman of the CSBF shall refer the matter to the competent competition authority provided for in the relevant regulations. The CSBF shall impose one of the disciplinary sanctions provided for in Articles 172 and 173 on the basis of the decision of the competent authority referred to above.

Article 45. Pursuant to the provisions relating to refusal to sell and economic dependence provided for in the competition regulations, any company providing technical solutions, any operator running telecommunication networks or providing a telecommunications service may not:

- refuse to provide their services to microfinance institutions offering digital financial services ;
- abuse the situation of dependence of the said microfinance institutions on the services provided by these companies for the exercise of their activity;
- set discriminatory conditions in their relationship with these microfinance institutions;
- use information from microfinance institutions for other purposes not provided for in their agreement.

The contract for the operation of telecommunication networks concluded between microfinance institutions and licensed telecommunication operators or operators providing telecommunication services within the meaning of the telecommunications

regulations shall contain clauses aimed at ensuring healthy and fair competition and avoiding any form of monopoly between the contractors.

Article 46. Any act of unfair competition and any individual or collective anti-competitive practice provided for by the regulations on competition shall be prohibited in the exercise of the activities of microfinance institutions.

Access to the Payment System

Article 47. Microfinance institutions shall have access to the payment system set up at the level of Banky Foiben'i Madagasikara in accordance with the terms and conditions set out in the regulations governing the said system.

Recourse to arbitration

Article 48. Microfinance institutions may resort to arbitration procedures provided for by the Law on arbitration in the context of disputes with their customers for the recovery of their debts.

CHAPTER 3: DISTRIBUTION AGENTS

Designation of distribution agents

Article 49. Microfinance institutions may entrust the distribution of microfinance services to the distribution agents defined in Article 1 of this Law. The distribution agents act in the name and on behalf of the microfinance institutions by virtue of a contract of mandate.

The agency agreement shall define, inter alia, the rights and obligations of the parties and the nature and conditions of the operations that the distribution agents are entitled to carry out.

Microfinance institutions shall submit a standard mandate contract to the General Secretariat of the CSBF for validation before any relationship with their agents.

They publish by any means an official list of their distribution agents, their geographical location and the services they provide. This list is updated monthly.

The CSBF sets out in an instruction the selection criteria, the conditions for appointing and revoking distribution agents, the contractual relations between microfinance institutions and their distribution agents, and the compulsory mentions in the mandate contract, as well as the conditions for publication by microfinance institutions of their agents.

Obligations of microfinance institutions towards their distribution agents

Article 50. Microfinance institutions shall ensure that their distribution agents comply with applicable distribution agents of the applicable rules on consumer protection, the fight against money laundering and the financing of terrorism, electronic money, competition, electronic transactions, personal data protection and cybercrime. In particular, they shall ensure that any system or means are put in place to prevent, detect fraud or theft and ensure the security and availability of funds to distribution agents.

Microfinance institutions are responsible for :

- ensuring a periodic control of their agents and communicating to the General Secretariat of the CSBF a report on the matter
- providing training, supervision and continuous monitoring of the activities of distribution agents.

They shall periodically report on the operations carried out by their agents to the General Secretariat of the CSBF in accordance with the modalities established by instruction of the CSBF.

Microfinance institutions shall take all measures provided for in the mandate contract provided for in Article 49 of this Law in the event of failure by distribution agents to comply with the provisions of this Article.

Article 51. As part of the provision of digital financial services, microfinance institutions shall provide their distribution agents with tools enabling them to :

- perform transactions in real time ;
automatically limit unauthorised transactions ;
- regularise incomplete transactions due to error, system failure, power failure or other technical faults;
- produce any documents or evidence of transactions in any form.

Obligations of distribution agents towards the mandating microfinance institutions

Article 52. Within the framework of the exercise of their mandate, distribution agents :

- comply with the provisions of the regulations relating to consumer protection, the fight against money laundering and the financing of terrorism, electronic money, electronic transactions, personal data protection and cybercrime;
- comply with the terms of the mandate agreements referred to in Article 49 above;
- devote and maintain at all times, within their premises, a space adapted and reserved for the marketing of the microfinance services entrusted to them;

When distribution agents offer digital microfinance services, they comply with the provisions of the regulation on electronic money.

CHAPTER 4: DISTRIBUTION CHANNELS

Traditional distribution channels

Article 53. Microfinance institutions offer digital financial services through their own distribution networks or agents.

Digital distribution channels

Article 54. In addition to the traditional distribution channels provided for in Article 53 above, microfinance institutions shall distribute digital financial services through any electronic, magnetic, biometric or computerised instrument.

The latter allow, in particular, the following operations to be carried out: obtaining and repayment of loans, payment and withdrawal of deposits, transfer of money, payment of insurance premiums and indemnities, consultation of the balance and statements of deposit accounts.

Microfinance institutions shall submit to the prior authorisation of the Regulatory Authority in charge of telecommunications, any terminal equipment defined by the telecommunications regulations in force, used by the microfinance institution to serve as digital distribution channels, in accordance with the telecommunications regulations.

Microfinance institutions shall comply with the regulations on electronic money in the context of digital financial services.

Article 55. An electronic contract governed by the regulation on electronic transactions binds the microfinance institution and its customers in the context of the use of distribution channels.

This contract defines in particular the rights and obligations of the parties.

CHAPTER 5: SPECIFIC PROVISIONS FOR MUTUAL MICROFINANCE INSTITUTIONS

Organisation and operation of mutual microfinance institutions

Article 56. The mutual microfinance institutions provided for in Article 8 paragraph 2 of this Law are based on the principles of cooperation, solidarity, mutual aid and equality of rights and obligations of members; each member has the right to one vote and one vote only, regardless of the number of shares he or she holds. Any distribution of profit at the level of these mutual microfinance institutions is prohibited.

The affiliated mutual microfinance institutions benefit from the collective license issued to the network. They are equipped with the governance and control structures required by Articles 23 to 32 of this Law.

The conditions for the application of this article are set by regulation.

Role of the umbrella structure with regard to affiliated microfinance institutions

Article 57. The apex structure is responsible for the proper functioning of the affiliated mutual microfinance institutions. In this respect, it is responsible in particular for :

- representing the network with regard to third parties;
- ensuring that the financial structure of the mutual microfinance institutions and of the network as a whole remains balanced;
- organising financial solidarity in accordance with Article 59 below;
- taking all measures to limit acts detrimental to the sound and prudent management of the network;
- ensuring the integrity of the integrated information system defined in Article 3 of this Law;
- carrying out the consolidation of accounts in accordance with the provisions of the relevant CSBF instruction.

Article 58. The apex body ensures that affiliated mutual microfinance institutions comply with the regulations in force, the statutes, the internal regulations and the Code of Ethics. In this regard, it takes all appropriate measures and, if necessary, one of the following sanctions against affiliated mutual microfinance institutions that do not respect the statutes, internal regulations and code of ethics:

- financial penalties ;
- suspension of all or part of the activities ;
- dismissal of managers on the basis of a reasoned decision;
- the placing under supervision or exclusion of mutual microfinance institutions.

Financial solidarity

Article 59. The umbrella structure shall, from the time of its creation, set up a financial solidarity fund intended to cover the management and insolvency risks of affiliated mutual microfinance institutions. The latter shall contribute to the constitution of the fund under the conditions laid down in the statutes of the umbrella structure.

In the event of failure of the affiliated mutual microfinance institutions, losses are charged first to the solidarity fund, then to any provisions or reserves, and then to the other elements of equity.

The management, operation and conditions of use of the fund are determined by the statutes of the umbrella organisation.

Affiliation of mutual microfinance institutions

Article 60. The affiliation of new mutual microfinance institutions is subject to prior authorisation by the CSBF. They shall comply with the conditions of approval required by this Law and its implementing regulations.

The CSBF shall issue instructions on the content of the application file and the conditions and procedures for applying for membership.

Article 61. The Chairperson of the CSBF shall refuse affiliation of a new mutual microfinance institution when:

- the umbrella structure has failed to meet its obligations under Article 57 above;
- the new mutual microfinance institutions do not meet the conditions for approval provided for by this law and its implementing texts.

Disaffiliation of mutual microfinance institutions

Article 62. The disaffiliation of a mutual microfinance institution occurs either at the request of the institution or as a sanction taken by the umbrella structure pursuant to Article 58 above. This operation is subject to the prior authorisation of the CSBF, which may ask the umbrella structure to propose any measures to preserve the overall financial balance of the network and not to endanger the functioning of the said network.

When the financial situation of an affiliated mutual microfinance institution jeopardizes the financial equilibrium and the overall functioning of the network, the Chairman of the CSBF orders its disaffiliation.

The disaffiliation shall lead to the dissolution and liquidation of the institution concerned in accordance with the provisions of the Articles of Association. In the event that it continues to operate, it shall apply for a new approval as provided for in Article 14 of this Law.

TITLE 3: SUPERVISION AND RESOLUTION OF MICROFINANCE INSTITUTIONS

CHAPTER 1: OVERSIGHT AND RESOLUTION

Supervisory and resolution authority

Article 63. The CSBF ensures the supervision of microfinance institutions and the resolution of crises encountered by fragile microfinance institutions defined in Article 88 of this Law.

As such, it:

- sets the prudential and non-prudential rules applicable to microfinance institutions;
- carries out documentary and on-site checks through its General Secretariat in order to verify compliance with the regulations applicable to microfinance institutions;
- takes preventive measures, recovery and resolution actions in order to remedy weaknesses, any dysfunction and any risk of default promptly;
- takes all disciplinary sanctions provided for by Articles 172 and 173 of this Law.

Use of external skills

Article 64. The General Secretariat of the CSBF may call upon external expertise on the basis of an agreement between the parties to clarify its opinion on specific questions within the framework of documentary and on-site inspection. The remuneration and expenses incurred by the experts are borne by Banky Foiben'i Madagasikara.

CSBF operating costs

Article 65. Microfinance institutions shall contribute to the operating costs of the CSBF, the rate and conditions of deduction of which, as well as the modalities of constitution of the said costs, shall be fixed by order of the Ministry in charge of Finance upon proposal of the CSBF.

CHAPTER 2: DELEGATED SUPERVISION

Use of delegated supervisors

Article 66. The Secretary General of the CSBF may call on a delegated supervisor to carry out a mission with a microfinance institution in his name and on his behalf. The conditions and methods of intervention of the delegated supervisor are determined in an agreement signed between the Chairman of the CSBF and the delegated supervisor.

The delegated supervisor can be a natural or legal person. In the case of a legal entity, a head of mission is appointed to ensure the conduct of the mission and serve as interlocutor of the CSBF.

The delegated supervisor is subject to the control of the General Secretariat of the CSBF in the performance of his duties. He reports on his mission to the General Secretariat according to the periodicity provided for in the agreement.

The Chairman of the CSBF may replace the delegated supervisor at any time in the event of a breach of the provisions provided for in the agreement referred to in the first paragraph of this article.

The delegated supervisor is bound by professional secrecy during and at the end of his mandate. The microfinance institution concerned cannot oppose professional secrecy.

***Obligations of microfinance institutions
with respect to delegated supervisors***

Article 67. Microfinance institutions facilitate the access of the delegated supervisor to any premises of the institution, promote the conditions for the exercise of his mission and make available to him all documents, correspondence as well as the necessary information.

TITLE 4: ORGANISATION OF THE PROFESSION

Article 68. The Association Professionnelle des Institutions de Microfinance, abbreviated as "APIMF", is constituted at the national level, under the regime of civil associations, whose essential mission is to:

- promote financial inclusion or access to financial services;
- encourage cooperation between microfinance institutions;
- ensure the representation and defense of the collective interests of microfinance institutions, particularly with public authorities;
- intervene in court in any instance where a microfinance institution is a party and where it considers that the general interests of the profession are at stake;
- define, in consultation with the CSBF, ethical rules for the profession aimed in particular at ensuring the protection of consumers, the preservation of the image of the profession and the practice of healthy competition;
- provide training for members on the above-mentioned ethical rules;
- contribute to the financial education of citizens provided for in Article 85 of this law;
- issue its opinion on the regulations applicable to microfinance institutions;
- identify entities carrying out the microfinance activity illegally and immediately inform the Chairman of the CSBF.

Article 69. Microfinance institutions adhere to this professional Association. Membership takes place within the period of six (6) months following the lifting of the conditions precedent provided for in Article 18 of this Law, under penalty of the application by the CSBF of the pecuniary sanctions provided for in Article 173 of this Law.

Article 70. The articles of association and the rules of procedure of the Association determine the composition, organization and operation. The statutes and their modification are subject to the approval of the CSBF before their approval by the General Assembly.

The resources of the Association consist of membership fees, subsidies, donations and remuneration for its activities.

Article 71. The Association prepares and sends each year to the Ministry in charge of Finance and to the CSBF an activity report within three (3) months from the end of the financial year.

Article 72. In the event of dissolution of the Association, the goods and assets are devolved according to the provisions fixed by its statutes by decision of an Extraordinary General Meeting.

TITLE 5: CONSUMER PROTECTION

CHAPTER 1: ATTRIBUTIONS OF THE CSBF

Article 73. The CSBF is empowered to set the rules relating to the obligations of microfinance institutions to guarantee the protection of consumers of microfinance services and to ensure the control of compliance with these rules. In the event of a breach by the microfinance institutions of the said rules, the CSBF takes one of the disciplinary sanctions provided for in Articles 172 and 173 of this Law.

The CSBF ensures compliance by microfinance institutions with rules and ethics aimed at guaranteeing consumer protection, in particular:

- the offer of products and services adapted to the needs and repayment capacity of customers;
- the freedom of informed choice on the products offered;
- respectful and fair treatment of customers;
- transparency of pricing, conditions of contracts with customers and procedures and handling of appeals;
- the confidentiality of customer data;
- rectification of any inaccurate information;
- the reflection period or the validity of the offer for eight (8) hours in the event of the provision of digital financial services;
- the application of the right of withdrawal within seven (7) days from the signing of the contract free of charge except those related to the expenses incurred set out in the agreement;
- the rights of recourse offered to customers.

The right of withdrawal does not apply to offers of microfinance services through digital distribution channels, whose operations are carried out in real time.

Any form of waiver of the aforementioned rights is deemed unwritten.

CHAPTER 2: RULES AND ETHICS

Respectful and fair treatment of customers

Article 75. Microfinance institutions treat customers with honesty, fairness and respect for human dignity. They ensure respectful treatment of consumers by their employees and distribution agents and train them on how to behave towards customers.

Article 76. Microfinance institutions define a Code of Conduct approved and periodically updated by the administrative body and distributed to employees and distribution agents. This Code indicates in particular the ethical standards to which their staff and distribution agents comply in their relations with customers.

Microfinance institutions monitor compliance with the said code of conduct by employees and distribution agents and sanction breaches. To this end, they regularly carry out internal audits and checks on distribution agents to:

- identify breaches of the code of conduct;
- detect and correct any act of corruption and any aggressive or abusive behavior on the part of employees and distribution agents.

They are responsible towards their customers for the acts carried out by the employees and the distribution agents.

Pricing rules

Article 77. Microfinance institutions put in place pricing procedures that take into account the needs and repayment capacities of customers. As such, they carry out:

- the continuous evaluation of their financial products and services and the practices related to their provision;
- analysis of the financial situation, needs and capacities of customers before agreeing to provide them with a product, service or advice.

Prior to granting credit to their customers, microfinance institutions consult any information system provided for by the regulations in force allowing them to assess the payment capacities and habits of the customers concerned.

Microfinance institutions cannot under any circumstances levy either account closure fees upon breach of contract or fees on inactive accounts.

Information and transparency ***Customer information***

Article 78. Microfinance institutions communicate free of charge and regularly to their customers clear, simple, exact, complete information related to the services provided. Information intended for illiterate and disabled customers is transmitted by suitable means, in particular oral, legible or imaged.

Microfinance institutions provide consumers with a customer service that welcomes, advises, informs and directs customers.

They make available to their customers by display or other visible and accessible means all information relating to the products and services provided.

They immediately inform customers of any major incident related to service disruptions.

The agency contract provided for in Article 49 of this Law specifies the obligation for distribution agents to put in place any legible means allowing the public to identify them as agents of microfinance institutions.

Conclusion of agreement

Article 79. A written agreement, related to the services provided, is established between the microfinance institutions and the customers. This determines the rights and obligations of the parties, the consumer protection measures and the conditions agreed between the parties.

The agreement is written in Malagasy and/or French in clear, easily understandable and readable terms.

Microfinance institutions notify customers of the acceptance or rejection of a credit application by any process leaving a written record.

In the event of the conclusion of an electronic contract, the provisions of the regulations on electronic transactions are applicable.

Interest rate transparency

Article 80. The conventional interest rate applicable to credit operations of microfinance institutions is governed by this Law and its implementing texts.

Microfinance institutions bring to the attention of customers the overall effective rate linked to credit operations. The composition and methods of calculating this rate are set by Decree issued on the proposal of the CSBF. The procedures relating to the publication of this rate are set by instruction of the CSBF.

Microfinance institutions send the General Secretariat of the CSBF the overall effective rate and the conditions related to microfinance products and services. The General Secretariat publishes this information on the Banky Foiben'i Madagasikara website.

Article 81. Microfinance institutions shall take all measures to ensure the protection, conservation and confidentiality of customer data in accordance with the provisions of the Law on the protection of personal data. They shall make available to their customers all means enabling them to rectify inaccurate or erroneous data.

Article 82. The confidentiality of data may not be invoked against the CSBF, Banky Foiben'i Madagasikara, the Ministry in charge of Finance, any other authority acting under a specific law, or the judicial authority acting in the context of legal proceedings.

Appeals and handling of complaints

Article 83. Microfinance institutions provide consumers with a dedicated function to collect and process any customer complaints. This function is accessible and operational at all times.

Microfinance institutions put in place appropriate mechanisms for processing customer complaints or claims and reparation for any damages suffered in accordance with the deadlines provided for by decree. Microfinance institutions communicate to customers by posting or other visible and accessible means all information relating to these procedures.

The mechanism takes into account the specific difficulties encountered by illiterate or disabled customers.

Article 84. Customers make their complaint to microfinance institutions orally or in writing within a time limit set by Decree. In the event of an oral complaint, this is subject to confirmation by any process leaving a written record. To do this, microfinance institutions make available to customers the necessary means to confirm the complaint and provide them with proof attesting to the receipt and registration of the complaint.

Customers send the CSBF a copy of the said complaint.

The complaints handling process is free. However, the agreement may provide for costs when expenses are incurred.

Microfinance institutions send the Secretary General of the CSBF periodic reports containing all statistical information on the complaints received, the procedures, the processing times and their outcome according to the conditions set by instruction of the CSBF.

Microfinance institutions ensure that clients who have made complaints are not subject to retaliation by its employees.

Financial education

Article 85. Financial education aims in particular to:

- explain consumer rights and obligations;
- inculcate certain values and practices related to the use of microfinance services;
- transmit basic knowledge of financial products and risks in order to enable them to make relevant choices, better manage their budgets and make the best use of financial services.

Article 86. The Ministry in charge of Finance, the Ministry in charge of Basic Education, the Ministry in charge of Higher Education, Banky Foiben'i Madagasikara, the CSBF, the Professional Association of Microfinance Institutions and any other entity involved in financial education as well as microfinance institutions ensure the financial education of citizens.

A national strategy drawn up by the competent authorities defines the strategic orientations, the objectives, the various stakeholders and their role in terms of financial education.

Consumer protection prohibitions

Article 87. Microfinance institutions cannot:

- discriminate in particular on the basis of race, gender, political opinion, religion or physical condition in the context of the provision of microfinance services;
- make the offer of a microfinance service subject to the subscription of another service;
- make offers of services in the form of tied selling or discriminatory selling;
- make any advertisement containing, in any form whatsoever, allegations, indications, or presentation that is false or likely to mislead, when it relates to one or more of the following elements: existence, nature, quantity, terms of commitment, price and conditions of sale of service which are the subject of the advertisement, result which can be expected, reason or process of the offer, scope of the commitments made by the advertiser;
- Insert unfair terms into contracts concluded with consumers, the purpose or effect of which is to create a significant imbalance between the obligations of the parties to the contract to the detriment of the consumer. The unfairness of a clause is assessed by referring, at the time of the conclusion of the contract, to all the circumstances surrounding its conclusion, as well as to all the other clauses of the contract. It is also assessed with regard to those contained in another contract when the conclusion or performance of these two contracts are legally dependent on each other;
- carry out canvassing at a consumer's home, at his residence or at his place of work in order to offer him a credit offer except at his request or under the conditions set by a regulatory text.

TITLE 6: PREVENTION, RECOVERY AND RESOLUTION OF FRAGILE MICROFINANCE INSTITUTIONS

CHAPTER 1: GENERALITIES

Definition of fragile microfinance institutions

Article 88. “Fragile microfinance institutions” in this Law are characterised in particular by:

- non-compliance with the authorisation conditions and the prudential standards set by this law and its implementing texts;
- the liquidity and solvency provided for by instruction of the CSBF are threatened immediately or in the future;
- the absence of a coherent strategy, poor governance, deficiencies in the control systems, which risk endangering the interests of depositors and the stability of the financial sector as a whole.

Responsibilities of the CSBF

Article 89. The purpose of this Title is to lay down the preventive recovery measures and crisis resolution actions applicable to Deposit and Credit MFIs provided for in Article 7 of this law for the purpose of detecting any failure in order to avoid any closure or proceed with the orderly liquidation of these institutions in the event of a crisis and ensure the stability and soundness of the financial sector as well as the protection of depositors.

The CSBF is authorised to take one or more preventive measures, recovery and crisis resolution actions with regard to the "Credit MFI" when the situation justifies it.

She is responsible for:

- Setting and taking preventive measures in order to anticipate any failure of microfinance institutions from the approval phase and during documentary and on-site checks;
- Implementing recovery measures and crisis resolution actions to manage and deal with fragile microfinance institutions.

CHAPTER 2: GENERAL PRINCIPLES APPLICABLE TO FRAGILE MICROFINANCE INSTITUTIONS

Article 90. The following general principles are respected for the prevention, recovery and resolution of crisis encountered by fragile microfinance institutions:

- the promptness of the corrective actions provided for in Article 102 of this Law intended to remedy or correct the weaknesses identified and deal with fragile microfinance institutions;
- the implementation of corrective actions adapted to the circumstances and the extent of the problem;
- the application of CSBF prerogatives;
- the clarity and consistency of preventive, recovery and resolution actions;
- the establishment of healthy competition in the selection of the buyer of the fragile institution;
- the transparency and cooperation at institutional level and between competent authorities.

CHAPTER 3: PREVENTIVE MEASURES

Section 1. CSBF preventive roles

In terms of accreditation

Article 91. During the examination of the approval application file, the Chairman of the CSBF is empowered to:

- oppose the appointment of members of the administrative, management and supervisory bodies who do not meet the conditions of good repute, skills and experience required by CSBF instruction;
- require and evaluate the preventive recovery plan provided for in article 93 of this law drawn up by the microfinance institution to deal with the difficulties in the event of possible failure of the institution;
- ask the promoter to modify the governance and control structures, if necessary.

The Chairman of the CSBF oversees the establishment of a functional management information system or MIS prior to approval by the microfinance institutions. To this end, the General Secretariat of the CSBF carries out an on-site check before the start of the activity to verify the existence of all the technical parameters necessary for the operationalisation of the MIS and the elements required by the conditions of approval provided for by this Law.

Article 92. Within the framework of his mission of control, the Secretary General of the CSBF:

- verifies, in particular, compliance by microfinance institutions with licensing conditions, rules relating to the authorisation of new activities, acquisitions or investments; prudential and non-prudential rules with a view in particular to guaranteeing their liquidity, their solvency and the balance of their financial structure;
- implements any mechanism to identify or detect the fragility of microfinance institutions at an early stage.

In terms of preventive recovery plan

Article 93. The CSBF shall ensure the existence, upon approval, of a preventive recovery plan drawn up by each microfinance institution indicating in particular:

- the measures likely to be taken by the institution in the event of default;
- the appropriate conditions and procedures to ensure the rapid implementation of these measures;
- the indicators triggering the implementation of these measures;
- the financing program and a return to liquidity and a recapitalisation plan;
- financial crisis exit scenarios depending on the particular situation of the institution;
- the conditions under which the institution can resort to strengthening its financial position;
- any element making it possible to maintain or restore the viability and financial situation of the institution.

The preventive plan is drawn up according to a model defined by instruction from the CSBF.

Article 94. During the examination of the preventive plan, the Secretary General evaluates and verifies in particular the corrective actions proposed, the implementation of these actions in a rapid and effective manner in the event of a crisis and the capacity of the institution to maintain or to restore its viability.

The Secretary General orders the modification of the said plans when shortcomings are noted.

Article 95. The preventive plan is updated at least once a year or after each modification of the administrative, management and control bodies, of the activity or of the financial situation likely to have a significant effect on the planes. The Secretary General requires more frequent updates when the situation warrants it.

In terms of resolution plan

Article 96. The CSBF shall draw up the resolution plan, which shall provide for resolution actions that can be implemented rapidly in the event of a crisis. The plan shall include, inter alia, mechanisms for resolution actions, methods for determining the value and assessing the disposal of the institution's assets or business lines, arrangements for financing the various resolution options and a plan for communication with the media and the public.

The resolution plan is updated at least once a year or when changes are required.

In terms of governance

Article 97. The President and the Secretary General of the CSBF carry out regular exchanges with the administrative, management and control bodies of the microfinance institutions to discuss in particular the strategies, the programs of activities, the deviations from the plans of activity or changes in the management of the institution, the regulations governing the activity of microfinance and the macroeconomic environment in general. The frequency of meetings is set by instruction of the CSBF according to the risks related to the nature of the activity.

In terms of detecting embezzlement

Article 98. The General Secretariat of the CSBF shall carry out or cause to be carried out, by a delegated supervisor provided for in Article 66 of this Law, the necessary checks or investigations in the event of suspected fraud or embezzlement committed by one or more members of the administrative, management and control body or an employee. The delegated supervisor is responsible for collecting all useful evidence enabling the CSBF to initiate proceedings before the competent courts.

The Secretary General of the CSBF immediately informs the administrative body of the institution of any fraud or embezzlement committed by one or more members of the management body observed during the on-site inspection or by the delegated supervisor. The administrative body immediately takes a special deliberation in relation to this situation and the anomalies detected.

Article 99. When fraud or embezzlement is committed by one or more members of the administrative, management and control body of a microfinance institution, the Chairman of the CSBF informs the auditor of the institution. In addition, he is empowered to:

- initiate legal proceedings on the initiative of the supervisory body, which takes legal action for criminal acts prejudicial to the institution;
- take legal action against the above-mentioned persons for acts prejudicial to the sector;
- make a request to the judicial authorities to carry out the seizure, confiscation and taking of all precautionary measures and the restitution of all movable or immovable property acquired by the above-mentioned persons in the context of fraud and embezzlement within the institution;
- become a civil party for criminal proceedings against the above-mentioned persons;
- appoint a Provisional Administrator provided for in Article 112 of this Law when the situation justifies it.

Article 100. The Chairman of the CSBF enjoins the administrative body to:

- take all measures intended to improve the governance of the institution;
- revoke and replace managers, dismiss responsible persons in compliance with legal and regulatory procedures;
- appoint a person, among the agents of the institution on the advice of the Secretary General of the CSBF, to take care of day-to-day business, whose powers are limited by the Secretary General pending the appointment of the new manager;
- recruit the new manager(s) within a period determined by the Secretary General of the CSBF;
- submit to the prior authorisation of the Secretary General of the CSBF the appointment of the new manager(s).

In terms of corrective actions

Article 101. The CSBF has full latitude to act preventively or promptly and to take any corrective action when the situation of the institution justifies it. The CSBF may delegate its powers to take corrective action to its Chairman and to the Secretary General of the CSBF, subject to the latter reporting immediately at the next meeting of the CSBF.

The CSBF ensures compliance by fragile microfinance institutions with the corrective actions taken against them and applies sanctions on the breaches observed.

Article 102. When any deficiency or failure is identified, the President or the Secretary General of the CSBF implements one or more of the corrective actions below to correct the deficiencies or to prevent the deterioration or degradation of institution:

1. On the institution
 - a. the restriction or cessation of certain activities;
 - b. limiting the development of checkouts or service points;
 - c. the subjection to the prior authorisation of any major investment;
 - d. the injunction to improve the strategy, the governance, the control system, the MIS and to reduce the credit risk;
 - e. the raising of capital and liquidity ratios, the immediate or reinforced provisioning of assets of dubious quality fixed by instruction of the CSBF;
 - f. the cessation of any practice detrimental to the institution;
 - g. the dismissal of the auditor;
 - h. the appointment of a Provisional Administrator provided for in Article 112 of this law.

2. On the shareholders
 - a. demand for liquidity injection to strengthen equity;
 - b. the partial or total suspension of rights, in particular voting rights;
 - c. the prohibition of the distribution of profits or of any outflow of funds.

3. On directors and officers
 - a. removal of directors and officers;
 - b. limitation of the amount of compensation, including attendance fees and bonuses.

Regarding access to information

Article 103. The CSBF is empowered in particular to access all reports or documents or correspondence emanating from the control functions. Thus, it is the direct recipient of the report of the internal audit function.

The CSBF may request from microfinance institutions, any competent authority and any person, any information enabling it to analyse and assess the situation of microfinance institutions, or even to detect and measure the impact of the failure of the institution on the banking system.

Section 2. Roles of Microfinance Institutions

In terms of preventive recovery plans

Article 104. Microfinance institutions draw up preventive recovery plans provided for in article 93 of this Law.

The preventive recovery plans and their modification are subject to the approval of the administrative body of the institution. They are sent immediately to the General Secretariat after their approval.

In terms of alert procedures

Article 105. Members of administrative, management and control bodies and staff of microfinance institutions:

- alert the General Secretariat of the CSBF to any acts detrimental to the institution, with the responsibility for the General Secretariat to analyse the scope or basis of the information received;
- report to the General Meeting any irregularities and breaches of the regulations in force of which they become aware in the performance of their duties;
- reveal to the Public Prosecutor the criminal acts detrimental to the institution of which they have become aware in the exercise of their function and inform the General Secretariat of the CSBF.

Article 106. The management body communicates to the administrative body all information useful for the exercise of its function, in particular:

- changes in operational strategy and risk management procedures;
- the financial situation of the institution;
- shortcomings in the internal control system;
- concerns about matters relating to the regulations in force;
- the recommendations, corrective actions and sanctions taken by the CSBF.

Article 107. Microfinance institutions ensure the existence of regular reports within the various administrative, management and control bodies.

In addition, they ensure that the articles of association, internal regulations and internal procedures manuals include provisions presenting mechanisms for sanctioning members of governance and control bodies who have committed acts detrimental to the institution.

Section 3. Roles of the supervisory body

Article 108. Microfinance institutions shall ensure that the members of the internal control body have the skills necessary for the performance of their duties, as determined by instruction from the CSBF.

The control body immediately reports to the General Secretariat of the CSBF any violation of the regulations on microfinance, any criminal act with fraud or dishonest conduct by directors, managers, employees and any problem that could harm the interests of depositors or any fact likely to weaken the institution.

CHAPTER 4: RECOVERY ACTIONS AND RESOLUTION

Article 109. The provisions of this chapter apply within the framework of the recovery and resolution of fragile microfinance institutions which derogate from those provided for by the Law on collective procedures for the clearance of liabilities.

Section 1. Powers of the CSBF in matters of recovery and resolution

Article 110. The CSBF organises and coordinates the recovery and resolution of fragile microfinance institutions. As soon as a deficiency or failure of microfinance institutions is identified, the CSBF immediately takes and implements corrective, recovery and resolution actions to restore or strengthen their financial balance or correct their governance methods.

The President or the Secretary General of the CSBF is empowered to:

- take all measures aimed at preventing, reducing and eliminating any facts and/or circumstances that could impede the implementation of recovery and resolution actions;
- enjoin the fragile institution to seek potential buyers in order to prepare the implementation of a resolution procedure in compliance with the rules of confidentiality.

Section 2. Recovery and resolution objectives

Article 111. When the CSBF implements recovery and resolution actions, it takes into account the following objectives:

- maintaining financial stability;
- the protection of depositors;
- consolidation with a view to the continuation of the institution's activity;
- the effectiveness of the actions implemented;
- control of the costs of the measures initiated;
- the clarity, simplicity and consistency of the procedures for implementing actions.

Section 3. Recovery actions

Provisional administrator

Appointment of the Provisional Administrator

Article 112. The CSBF appoints a Provisional Administrator to whom all powers of administration, management and representation of the institution are transferred.

The Provisional Administrator is responsible for taking and implementing all measures necessary for the recovery of an institution in the following cases:

- at the request of managers when they feel they are no longer able to perform their duties normally;

- at the request of shareholders holding the majority of the share capital or voting rights when the situation of the institution justifies it;
- at the initiative of the CSBF when one or more of the following situations arise:
 - a. the conditions of approval are not respected;
 - b. the management of the institution can no longer be ensured under normal conditions;
 - c. the leaders are unable to provide concrete solutions to the problems facing the institution that could lead to the deterioration of the financial situation;
 - d. the institution does not offer rescue measures to guarantee a lasting recovery towards the profitability of its operations and preserve the interests of depositors;
 - e. acts of embezzlement have taken place at the level of the administrative, management and control body;
 - f. the control body cannot perform its mission normally;
 - g. the recurrent non-compliance with the provisions of this Law and its implementing texts despite the injunctions issued by the CSBF or the Chairman of the CSBF;
 - h. the financial situation of the institution requires it.

In the event of an emergency, the Chairman of the CSBF is empowered to appoint a temporary administrator himself. He reports on it at the next CSBF meeting and immediately informs the Coordination Committee provided for in Article 137 of this law.

The General Secretariat of the CSBF publishes the decision to appoint the Provisional Administrator on the Banky Foiben'i Madagasikara website and in at least two (2) legal notice newspapers. A copy of this decision is displayed at the head office and in all branches of the microfinance institution.

Procedures for selecting the Provisional Administrator

Article 113. The selection of the Provisional Administrator is made on the basis of a call for tenders organized by the General Secretariat of the CSBF.

In the absence of expression of interest within ten (10) days following the publication of the call for tenders, the selection is made by mutual agreement.

In the absence of a candidate for this function, the President of the CSBF chooses the Provisional Administrator from among the trustees or chartered accountants who are members of the Ordre des Experts Comptables et Financiers de Madagascar, abbreviated to "OECFM". In this context, the Order proposes at least three (3) chartered accountants registered in the list of chartered accountants within fifteen (15) days following the request made by the President of the CSBF. The proposed chartered accountants have at least five (5) years of professional experience.

Mandate of the Provisional Administrator

Article 114. Depending on the situation, the Provisional Administrator is provided with the following mandates:

- manage, administer and represent the institution in place of the dismissed directors;
- establish the active and passive situation of the institution on the date of taking office;

- carry out the reorganization of governance including the appointment of new directors and officers;
- carry out the necessary checks or investigations to initiate legal proceedings in the event of fraud or embezzlement identified;
- analyse the situation of the institution as a whole, in particular its organization, its structure, its financial statements, its activities and detect deficiencies;
- submit to the Chairman of the CSBF a report containing rescue measures with a view to restoring financial solidity and guaranteeing a lasting recovery of the institution towards the profitability of its operations and safeguarding the interests of depositors;
- draw up a recovery plan based on the preventive recovery plan referred to in Article 93 of this law and taking into account the above-mentioned rescue measures;

The Provisional Administrator exercises his powers under the control of the CSBF, which may modify the mandate of the Provisional Administrator at any time when the situation of the institution justifies it.

Microfinance institutions facilitate the access of the Provisional Administrator to any premises of the institution, provide any assistance required and make available to him the MIS, all human and material resources, all documents, correspondence and necessary information.

Term of office of the Provisional Administrator

Article 115. The duration of the mandate of the Provisional Administrator is six (6) months, renewable for a period fixed by decision of the President of the CSBF if the situation of the institution justifies it.

He reports on it at the next meeting of the CSBF.

The Chairman of the CSBF may at any time terminate the term of office of the Provisional Administrator by reasoned decision in the event of breach of the provisions of the agreement referred to in Article 117 below and of the institution's recovery plan.

At the end of his mandate, the Provisional Administrator submits the report of his mission to the CSBF. The latter decides on the discharge of the management of the Provisional Administrator.

Limitation of the powers of the Provisional Administrator

Article 116. The decision appointing the Provisional Administrator sets the limits of the mandate of the Provisional Administrator and certain decisions subject to the prior authorisation of the Chairman of the CSBF.

The authorisation of the Chairman of the CSBF is required for all transactions or operations not provided for in the recovery plan referred to in Article 119 of this Law when the situation of the institution justifies it. All transactions or operations carried out by the Provisional Administrator without prior authorisation or approval of the Chairman of the CSBF, when these are expressly required, are null and void.

Terms of intervention of the Provisional Administrator

Article 117. An agreement is established between the Chairman of the CSBF and the Provisional Administrator to fix in particular the terms of his intervention, the remuneration, the rights and obligations of the parties.

The CSBF General Secretariat and the Provisional Administrator hold regular meetings according to the frequency set out in the agreement.

The Provisional Administrator may call, at his own expense and within the framework of an agreement that he enters into for this purpose, to outside experts to help him in carrying out his mission.

Article 118. The remuneration of the Provisional Administrator is borne by the fragile institution.

Obligations of the Provisional Administrator

Article 119. The Provisional Administrator submits to the General Secretariat of the CSBF a recovery plan which includes in particular the description of the following elements:

- the strategy, the range of options and scenarios for emerging from the crisis;
- the advantages and disadvantages of the proposed scenarios and the resulting costs;
- analysis of the impact of the plan on the staff of the institution;
- the indicators enabling the CSBF to put the institution into liquidation;
- liquidation procedures, if any;
- implementation of the Guarantee Fund in the event of liquidation;
- the schedule for implementing the recovery plan;

Article 120. The Provisional Administrator submits the recovery plan to the prior authorisation of the Chairman of the CSBF within a period of two (2) months from the date of notification of his appointment decision. The Secretary General of the CSBF oversees the execution of the said plan by the Provisional Administrator.

Article 121. The Chairman of the CSBF decides on the execution of the recovery plan proposed by the Provisional Administrator. Before taking such a decision, the Secretary General of the CSBF presents this recovery plan to the shareholders and creditors. In this respect, the Secretary General of the CSBF may ask the Provisional Administrator to assist him. The recovery plan is enforceable against shareholders and creditors.

Completion of the turnaround process

Article 122. The recovery process ends when the recovery actions have been carried out.

Section 4. Resolution Actions

Resolution Administrator

Appointment of the Resolution Administrator

Article 123. The CSBF appoints a resolution administrator under the same conditions as the appointment of a provisional administrator provided for by articles 112 to 118 of this Law.

The Resolution Administrator is responsible for implementing the resolution actions indicated in the resolution plan provided for in Article 96 of this Law.

Individual suits by creditors, payment of claims and withdrawal of deposits are suspended from the appointment of the Resolution Administrator.

Article 124. The CSBF mandates the Resolution Administrator to implement the following operations in particular:

1. about the institution
 - a. the sale of all or part of the institution;
 - b. merger-acquisition;
 - c. the creation of a new institution that takes over sound assets;
 - d. treatment of unsold assets;
 - e. all measures necessary to cover losses;
2. on the shareholders
 - a. the transformation or consolidation of claims into shares;
 - b. the concession to promote the sale of the institution;
 - c. recapitalization;
3. on governance
 - a. the initiation of legal proceedings against any person involved in the fraud or embezzlement;
4. on Creditors
 - a. the waiver of all or part of the receivables;
 - b. financial support from technical and financial partners;
 - c. the concession to promote the sale of the institution.

Any other transaction or operation that contributes to the resolution of the fragile institution.

Article 125. The Chairman of the CSBF decides on the execution of the resolution plan provided for in Article 96 of this Law. Before taking such a decision, the Secretary General

of the CSBF presents this resolution plan to the shareholders and creditors. As such, the Secretary General of the CSBF may request the Resolution Administrator to assist him. The resolution plan is enforceable against shareholders and creditors.

The Secretary General of the CSBF oversees the execution of the resolution plan by the Resolution Administrator.

Global and partial transfer of the institution

Article 126. The overall transfer of the institution is the transmission of all of its assets and liabilities to a sound and solid credit institution or to any potential acquirer.

Article 127. The partial transfer of the institution is the transmission of part of its assets and its liabilities to a sound and solid credit institution or to any potential acquirer. This operation may include the sale of performing loans and other quality assets. Unsold assets are transferred in accordance with Article 134 of this Law.

Article 128. The Chairman of the CSBF decides on the total or partial transfer of the institution within the framework of the resolution. The Resolution Administrator implements the procedures related to the transfer and ensures the control of this operation and its outcome.

Offer of transfer

Article 129. The Resolution Administrator provides potential buyers with all complete and accurate information concerning the transfer. These purchasers respect the confidentiality of the documents provided to them under the penalties provided for in this regard by the Criminal Code.

Article 130. The Resolution Administrator launches a transfer offer containing the information and documents enabling the purchasers to make a decision.

In the absence of an acquisition offer, the Resolution Administrator proceeds to the over-the-counter market within one (1) month of the launch of the sale offer.

Acquisition offer

Article 131. The potential buyers communicate to the Resolution Administrator their acquisition offers within one (1) month from the launch of the sale offer. The acquisition offers indicate in particular the acquisition price and the terms of payment as well as the date of completion of the sale.

Any family member or spouse of the Resolution Administrator, any entity owned, managed or controlled by the Resolution Administrator cannot submit an acquisition offer.

Purchasers are bound by their offer until it is approved by the Chairman of the CSBF.

Purchaser Selection Procedures

Article 132. The Resolution Administrator analyses the quality of the acquirers and the recovery prospects mentioned in the takeover offer within one (1) month of receipt of the takeover offer according to the selection criteria set beforehand with the Chairman of the CSBF.

The Chairman of the CSBF chooses the purchaser, upon expiry of the period of one (1) month referred to in the first paragraph, on the basis of the assessment of the offer made by the Resolution Administrator and relatively to the previously established selection criteria and approves the acquisition offer selected.

The Resolution Administrator notifies the purchasers of the result of the selection within fifteen (15) days of the selection referred to in paragraph 2 above.

The Chairman of the CSBF refuses the acquisition offer when he deems that the conditions provided for in paragraph 2 of this Article are not met or in the event of conflicts of interest referred to in Article 131 paragraph 2 above.

Execution of the offer

Article 133. The Resolution Administrator ensures the execution of the successful offer. He carries out any act necessary for the realisation of the transfer. He sends a report on the completion of the transfer to the General Secretariat of the CSBF.

The transfer price is distributed by the Resolution Administrator among the creditors according to their rank, with the authorisation of the Chairman of the CSBF. The remainder of the transfer price is allocated to the shareholders.

Absence of buyer

Article 134. In the absence of a buyer, the CSBF informs Banky Foiben'i Madagasikara with a view to the implementation of the Deposit Guarantee Fund within the framework of the reimbursement of depositors and pronounces the forced liquidation of the institution provided for by the Article 141 of this Law.

The Resolution Administrator provides Banky Foiben'i Madagasikara and the CSBF with a list of depositors for the reimbursement of deposits provided for in Article 170 of this Law.

Compromised Asset Management

Article 135. The sale of compromised assets is carried out as follows with a view to their sale at the best price:

- the creation of a dedicated department within the institution;
- recourse to the purchaser for consideration;
- the management of assets not sold by any other public or private entity;
- the liquidation of unsold assets initiated by the liquidator.

The disposal of the compromised assets carried out by the purchaser is the subject of an agreement drawn up between the Chairman of the CSBF and the purchaser in return for payment. A periodic report of the transfer operation is sent to the Chairman of the CSBF.

The Chairman of the CSBF may transfer the property, rights or obligations of the institution to any other public or private entity responsible for managing the assets when one of the following conditions is met:

- the liquidation of the assets concerned risks having negative effects on the banking system;
- the transfer is necessary to ensure the proper functioning of the institution which is subject to resolution proceedings.

Completion of the resolution process

Article 136. When the CSBF finds that the financial soundness of the microfinance institution cannot be restored despite the implementation of the corrective and resolution actions provided for by this Law, it informs the Coordination Committee and decides to :

- the institution's dissolution and withdrawal of approval;
- the forced liquidation provided for in Article 141 of this Law;
- the immediate implementation of the Deposit Guarantee Fund provided for in Article 167 of this Law.

CHAPTER 5: COORDINATION COMMITTEE

Article 137. A Coordinating Committee is created and composed of representatives of the Ministry in charge of Finance, of Banky Foiben'i Madagasikara, of the Ministry of Justice, of the CSBF, of the entity in charge of the fight against money laundering and the financing of terrorism, the Professional Association of Microfinance Institutions and any other entity that may be concerned by the situation.

Article 138. The mission of the Committee is to study the choice of the moment and the scope of the communication vis-à-vis the public within the framework of the resolution of a fragile microfinance institution provided for in Article 88 of the this Law. The Committee immediately carries out any communication deemed appropriate with the objective of maintaining financial stability and protecting depositors when rapid intervention is required.

The Chairman of the CSBF may sign any Memorandum Of Understanding with the other members of the Committee for the purpose of exchanging useful information for the investigation, detection, treatment of the weaknesses of microfinance institutions and the prosecution of offences.

Article 139. The Chairman of the CSBF immediately informs the members of the Committee when a microfinance institution has been the subject of a resolution action.

He communicates to the members of the Committee all resolution actions taken against fragile microfinance institutions.

CHAPTER 6: PROFESSIONAL SECRECY

Article 140. All persons who have knowledge of confidential information related to the implementation of the corrective, recovery and resolution actions provided for by this Law are bound by professional secrecy.

Professional secrecy does not apply when the authority or the person who communicated this confidential information has given his express and prior consent to this disclosure and for the sole purposes for which he has given his consent.

Professional secrecy is not enforceable against the Provisional Administrator or the Resolution Administrator in the performance of their duties. They are bound by professional secrecy under the conditions and under the penalties provided for in this respect by the Penal Code.

TITLE 7 – LIQUIDATION OF MICROFINANCE INSTITUTIONS

CHAPTER 1: GENERAL PROVISIONS

Reasons for liquidation

Article 141. Microfinance institutions are subject to liquidation under this title when:

- approval is withdrawn in accordance with the provisions of Article 35 of this Law or as a disciplinary sanction provided for in Article 172 of this Law;
- Resolution actions have not resulted in the recovery or recovery of the institution.

Liquidation can be voluntary or forced. Liquidation is voluntary when the withdrawal of authorisation is pronounced at the initiative of the institution. It is forced when the withdrawal of approval is pronounced by the CSBF as a disciplinary sanction and when the resolution actions undertaken with regard to the fragile institution have not succeeded.

Applicable rules

Article 142. The rules applicable to liquidation are those prescribed in:

- Articles 143 to 163 of this Law without prejudice to the application of the provisions of the law on commercial companies in the event of voluntary liquidation;
- Articles 143 to 160 and 164 to 166 of this Law in the event of forced liquidation.

Opening of liquidation

Article 143. Microfinance institutions enter into liquidation from the date of their dissolution. The list of microfinance institutions referred to in Article 19 of this Law specifies that they are in the process of being liquidated.

The mention "company in liquidation" as well as the name of the liquidator(s) appear on

all acts and documents emanating from the institution and intended for third parties, in particular on all letters, invoices, announcements and various publications.

Liquidation control

Article 144. For the duration of the liquidation, the company remains subject to the control of the CSBF.

It can only carry out operations that are strictly necessary to settle its situation.

It can only state its status as a microfinance institution by specifying that it is in liquidation.

The CSBF asks the liquidator at any time for all information and justifications on its operations and has on-site verifications carried out.

The auditor remains in office for the duration of the liquidation.

Appointment of liquidator

Article 145. The liquidator is appointed by the Extraordinary General Meeting in the event of voluntary liquidation and by the CSBF in the event of forced liquidation.

In the event of voluntary liquidation, the CSBF approves the appointment of the liquidator proposed by the microfinance institution. Failing appointment in the act of dissolution, the CSBF appoints the liquidator from among the trustees or chartered accountants who are members of the Order of Chartered Accountants and Financiers of Madagascar.

In the event of forced liquidation, the CSBF appoints the liquidator from among the trustees or chartered accountants who are members of the Ordre des Experts Comptables et Financiers de Madagascar OECFM.

The General Secretariat of the CSBF publishes the decision to appoint the liquidator on the Banky Foiben'i Madagasikara website and in at least two (2) of the legal announcement newspapers.

Mandate of the liquidator

Article 146. The term of office of the liquidator is five (5) years at most from the decision of liquidation.

Conditions of intervention

Article 147. The CSBF sets the conditions for the intervention and remuneration of the liquidator.

It can also replace him at any time by reasoned decision. The remuneration of the liquidator and the costs incurred by the liquidation procedure are borne by the institution in liquidation.

Powers of the liquidator

Article 148. All powers of administration, management and representation of the legal person are transferred to the liquidator upon his appointment. The liquidator implements precautionary measures and actions to recover outstanding debts.

The liquidator has the power to:

- sue for any action relating to movable or immovable property;
- sell furniture and buildings with the prior authorisation of the Chairman of the CSBF who approves the upset price. It carries out the advertising measures and the terms of transfer in accordance with the regulations in force;
- carry out the total or partial transfer of the institution and entrust the management of the compromised assets to a public or private entity in accordance with Articles 126 to 135 of this Law.

Advertising formalities

Article 149. The liquidator completes the various publicity formalities below:

- within one (1) month of the dissolution decision:
 - a) has. the filing at the registry of the deeds or minutes deciding on the dissolution;
 - b) the modification of the registration in the trade and companies register;
 - c) the insertion of the notice of dissolution in at least two (2) of the newspapers of legal announcements;
- the publication of the decision to withdraw authorisation in the Official Gazette and in at least two (2) of the newspapers of legal announcements within a period of one (1) month from the decision to withdraw authorisation;
- posting of the copy of the decision to withdraw approval in all operating premises open to the public as soon as it is notified;
- the publication of the act of appointment of the liquidator in at least two (2) newspapers of legal announcements within one (1) month from his appointment.

Liquidation plan

Article 150. The liquidator draws up a liquidation plan, which includes in particular the terms and conduct of the liquidation operation and a detailed statement of assets and liabilities.

The liquidator files the liquidation plan with the General Secretariat of the CSBF, which makes it available to the public on request.

Suspension of creditors' lawsuits

Article 151. From the date of liquidation, the individual suits of creditors are suspended, except for preferred creditors. However, the liquidator gives formal notice to the privileged creditors to take legal action with a view to realising their securities within one month from

the formal notice. If the latter do not do so within this period, the liquidator is authorised to act in the place of the privileged creditors, if this realisation makes it possible to preserve the interests of the unsecured creditors.

Invitation of creditors to produce their titles

Article 152. Within twenty (20) days following the publication of his appointment, the liquidator shall insert in the press or in at least two (2) newspapers of legal announcements an announcement inviting the creditors to produce their debt securities.

The liquidator informs, by registered letter with acknowledgment of receipt, the creditors who have not delivered their debt securities within the period of one (1) month from the publication referred to in the preceding paragraph, of the decision to withdraw accreditation of the institution. As such, it invites creditors to submit their debt securities by registered letter.

Verification of receivables

Article 153. The liquidator verifies the claims, in the presence of the legal representative of the creditor or in his absence after having summoned him by any process leaving a written record. If the supporting documents produced appear to him to be insufficient, he summons the interested creditor.

The liquidator automatically admits debts that are certain. It enters, subject to reservations, in liabilities the disputed claims if the creditors concerned have already seized the competent court.

After these verifications, the liquidator draws up a statement of admitted or disputed claims, which he files with the Registry of the Commercial Court of the institution's head office.

Opposition from creditors

Article 154. Within five (5) days from the filing of the statement of claims referred to in the last paragraph of Article 153 above, the liquidator invites the creditors and any interested person, in at least two (2) of the newspapers of legal announcements, to file an opposition, within a period of fifteen (15) days from publication, before the President of the Commercial Court under penalty of forfeiture of creditors' rights. The President of the Commercial Court rules as in matters of summary proceedings.

The order of the President of the Commercial Court may, on a provisional basis, grant all or part of the sum to the creditor subject to the constitution of guarantees in accordance with the provisions of the Code of Civil Procedure. This order is enforceable by the liquidator notwithstanding opposition or appeal.

Rejection of opposition by creditors

Article 155. The creditor whose opposition is rejected nevertheless retains the right to bring an action before the ordinary courts.

The Registrar delivers to the liquidator a copy of the statement of claims with an indication of the fate of any oppositions received or the certificate on the absence of opposition.

No opposition

Article 156. If the creditors fail to have validly seized the competent jurisdiction, within the time limit provided for by Article 154 above, the disputed or unknown claims will not be included in the distributions to be made.

For claims subsequently known and admitted, creditors cannot claim anything on the distributions already authorised by the CSBF, but they have the right to deduct from the assets not yet distributed their possible share in the first distributions.

Active and passive situation of the institution in liquidation

Article 157. The liquidator establishes, within three (3) months of the publication of his appointment, an active and passive situation of the institution in liquidation and submits it to the General Secretariat of the CSBF.

Within one (1) month from the date of delivery of the document mentioned in the previous paragraph, the liquidator convenes a General Meeting of shareholders for the purpose of informing them of his program of actions. The convocation is made by insertion in at least two (2) of the newspapers of legal announcements.

Distribution to creditors

Article 158. Within one (1) month from the filing with the General Secretariat of the CSBF of the active and passive situation, the liquidator makes the distributions in view of the statement of claims issued by the Registrar of claims admitted automatically and those admitted by the President of the Commercial Court ruling on opposition. The liquidator reports to the General Secretariat.

The liquidator takes into account the privileges of creditors

The proceeds from the realisation of the assets and the guarantees, less the expenses related to the liquidation, are distributed to the different categories of creditors in the following order:

1. Preferred creditors in order of priority;
2. the portion of deposits not reimbursed by the Deposit Guarantee Fund;
3. the Deposit Guarantee Fund for the amounts of the deposits reimbursed by the said Fund;
4. other ordinary creditors.

In the event of insufficient proceeds from the realization of the assets and the guarantees, between claims equal in law and between unsecured creditors, the distributions are made in proportion to their claims, to the marc le franc.

Deposit of funds and creditors' assets not withdrawn

Article 159. At the end of the liquidation, the funds not withdrawn by the creditors within the period of six (6) months are transferred to the deposit and consignment fund with the list of the creditors concerned.

Global transfer of assets

Article 160. The liquidator may, on the basis of the auditor's report, carry out the global transfer of the institution's assets to a credit institution with the authorisation of the CSBF. The liquidator carries out the necessary formalities.

CHAPTER 2: VOLUNTARY LIQUIDATION

Preliminary authorisation

Article 161. The voluntary liquidation of microfinance institutions is subject to the prior authorisation of the CSBF. As such, microfinance institutions communicate to the CSBF the identity of the liquidator, the liquidation plan and the report of the auditor on the capacity of the microfinance institution to fully execute its commitments with regard to its depositors and other creditors.

Decision of liquidation

Article 162. The CSBF orders the liquidation of the institution within two (2) months of receipt of the institution's request. His silence is worth refusing the request for liquidation.

The liquidation decision shall specify the following elements in particular:

- the opening of the liquidation;
- the identity of the liquidator;
- the period not exceeding five (5) years for the closing of operations.

The Secretary General immediately notifies the decision of the CSBF to the institution concerned.

The CSBF may ask the institution to set up additional guarantees to ensure full settlement of its commitments and any post-liquidation costs.

Closing of liquidation

Article 163. The liquidator convenes the General Meeting of shareholders or partners to rule on the final accounts, on the discharge of the liquidator's management and on the report of his mission submitted beforehand to the observations of the General Secretariat of the CSBF.

The General Meeting pronounces the closing of the liquidation when the distributions have been made to the creditors or when the operations are stopped for insufficiency of the assets.

If the General Meeting cannot validly deliberate or if it disapproves of the accounts of the liquidator, the Commercial Court is competent to rule on them and pronounces the closing of the liquidation operations.

The liquidator sends the CSBF the institution's liquidation report and the minutes of the meeting of the General Meeting of shareholders referred to in paragraph 1 of this Article. The said institution is removed from the list of microfinance institutions referred to in Article 19 of this Law.

CHAPTER 3: FORCED LIQUIDATION

Liquidation decision and appointment of liquidator

Article 164. When the CSBF finds that the financial soundness of the microfinance institution cannot be restored despite the implementation of the resolution actions provided for by this law or when the authorisation is withdrawn as disciplinary sanctions, the CSBF decides on the forced liquidation of the microfinance institution.

Operations authorised by the liquidator upon approval by the CSBF

Article 165. With the prior authorisation of the CSBF, the liquidator is authorised in particular to:

- carry out the operations necessary to settle the situation of the institution in liquidation, such as the settlement of liabilities on assets;
- initiating legal proceedings in place of the institution or defending it in any legal proceedings;
- use the services of outside experts;
- negotiate with creditors;
- sell movable and immovable property of the institution in liquidation, at public auction or by mutual agreement, in one or more lots;
- sell all or part of the institution in liquidation with a view to reimbursing creditors.

Closing of liquidation

Article 166. The closing of the liquidation is ordered by the CSBF in view of the liquidator's report when the distributions have been made to the creditors or when the operations are stopped for lack of assets. The liquidator sends the CSBF his report on the liquidation of the institution.

It is removed from the list of microfinance institutions referred to in Article 19 of this Law.

TITLE 8: DEPOSIT GUARANTEE FUND

Article 167. A “Deposit Guarantee Fund” or the “Fund” is constituted in an account opened with Banky Foiben'i Madagasikara, which is intended to reimburse depositors.

The operating methods of the Fund are set by regulation.

Article 168. “Deposit and Credit MFIs” periodically pay the Fund a non-refundable contribution proportional to the amount of deposits collected under the conditions set by decree on a proposal from the CSBF.

Article 169. The Fund is constituted by contributions from “Deposit and Credit MFIs” or any additional resources.

Article 170. The Fund guarantees depositors the payment of capital and interest up to an amount fixed by Decree on the proposal of the CSBF. Guaranteed deposits are reimbursable to the account holder or his beneficiaries.

Article 171. The Resolution Administrator provides Banky Foiben'i Madagasikara and the CSBF with the list of depositors. Banky Foiben'i Madagasikara publishes at least in two (2) newspapers of legal announcements the invitation of the depositors to present any justification of their deposits within one (1) month for the reimbursement of the guaranteed deposits in accordance with the Article 170 above.

Banky Foiben'i Madagasikara verifies the situation of deposits presented by depositors in relation to the list indicated in the previous paragraph. It reimburses guaranteed deposits through the Fund from the expiry of the period referred to in the first paragraph and this within a period not exceeding three (3) months.

TITLE 9: DISCIPLINARY AND CRIMINAL SANCTIONS

CHAPTER 1: DISCIPLINARY SANCTIONS

Section 1: Range of disciplinary sanctions

Article 172. When a microfinance institution has violated the legal or regulatory provisions relating to its activity, has not complied with an injunction or has ignored a warning, the CSBF pronounces one or more of the following disciplinary sanctions:

- the warning;
- blame;
- the prohibition to carry out certain transactions and all other limitations in the exercise of its activities;
- dismissal of managers;
- dismissal of the statutory auditor(s);
- the appointment of Provisional Administrator or Resolution Administrator provided for in Articles 112 and 123 of this Law;
- the withdrawal of the microfinance institution's license.

The CSBF pronounces one or more of the corrective actions provided for by Article 102 of this Law when the situation of the institution justifies it.

Article 173. In addition, the CSBF takes pecuniary sanctions against microfinance institutions which:

- will not have complied within the time allowed with the injunctions of the CSBF or its President;
- would not comply with requests for information from the CSBF or its General Secretariat;
- would obstruct in any way the exercise of on-site inspections;
- violate the instructions issued by the CSBF.

Microfinance institutions incur a fine of eight hundred (800,000) thousand *ariary* per day of delay or violation from the date of the breach. This amount is revised by order of the Minister in charge of Finance on the proposal of the CSBF.

The amount corresponding to the financial penalties is paid into an account opened with Banky Foiben'i Madagasikara and is intended to support the operating costs of the General Secretariat of the CSBF.

Section 2: Grounds for taking disciplinary sanctions

Article 174. The CSBF takes one or more disciplinary sanctions referred to in Articles 172 and 173 above, in particular in one of the following cases or facts:

- failure to comply with the provisions of this law and its subsequent texts, the statutory provisions, the professional code of ethics and the code of conduct referred to in Articles 68 and 76 of this Law;
- deterioration of the financial balance or abnormal management;
- non-fulfilment of the conditions required for approval;
- incomplete, incorrect or late declarations;
- non-involvement of the administrative body in strategic decisions;
- low participation of managers in the activities of the institution;
- non-compliance with the reporting and information mechanism between the administrative, management and control bodies;
- collusion between administrative, management and supervisory bodies;
- unjustified cash advances;
- embezzlement carried out by administrative, management and control bodies;
- the existence of a non-operational control system;
- the persistent unreliability of the MIS despite CSBF injunctions;
- failure of the control system;
- insufficient customer funds with distribution agents;
- the failure of microfinance institutions to fulfill their obligations towards their distribution agents.

Section 3: Procedures for taking sanctions

Article 175. When the CSBF pronounces a disciplinary sanction, the person in question, namely the shareholder or the director or the manager or the auditor, is duly summoned and invited to present his observations in writing to the CSBF. She may be assisted by a defender of her choice.

The CSBF notifies the summons to the person in question fifteen (15) working days before the date of the CSBF meeting. The invitation specifies the following elements:

- the alleged or invoked facts;
- the opportunity to make written observations in response to the alleged facts no later than seven (7) working days before the date of the meeting.

If the person concerned fails to appear, the CSBF rules validly.

CHAPTER 2: CRIMINAL SANCTIONS

Article 176. The provisions relating to criminal proceedings and sanctions provided for in particular by the banking law, the law on guarantees and consumer protection and the law relating to competition are applicable to microfinance institutions.

TITLE 10: TRANSITIONAL AND FINAL PROVISIONS

Obligation to comply with the provisions of this Law

Article 177. Microfinance institutions approved under Law No. 2005-016 of September 29, 2005 relating to the activity and control of microfinance institutions shall comply with the provisions of this law, within two (2) years from its publication.

Article 178. Level 1 microfinance institutions having obtained their license under the above-mentioned Law No. 2005-016 apply for approval as credit MFIs provided for in Article 7 or adopt the statutes of the entities provided for by Article 2 point 3 of this Law. To this end, the CSBF withdraws the license without liquidation of the institution.

Article 179. The CSBF fixes by instruction the conditions of application of Articles 177 to 178 above.

Repealed provisions

Article 180 All previous legal provisions contrary to this law are repealed, in particular Law No. 2005-016 of September 29, 2005 relating to the activity and control of microfinance institutions.

Coming into force

Article 181. Due to the urgency, and in accordance with the provisions of Articles 4 and 6 paragraph 2 of Ordinance No. 62-041 of 19 September 1962 relating to the general provisions of domestic law and private international law, this Law enters into force

immediately upon its publication by radio or television broadcast, independently of its insertion in the Official Gazette of the Republic.

This Law will be published in the Official Gazette of the Republic. It will be enforced as State Law.

Promulgated in Antananarivo, on February 08, 2018

RAJAONARIMAMPIANINA Hery Martial