

decrees - laws

Decree-law n° 2011-117 dated 5 November 2011, organizing the activity of the micro finance institutions.

The President of the Republic by interim,

On a proposal from the Minister of Finance,

Having regard to organic law n° 99-67 dated 15 July 1999, relating to micro credits granted by the associations,

Having regard to organic law n° 2004-63 dated 27 July 2004, relating to the protection of personal data,

Having regard to the penal code promulgated by the beylical decree dated 9 July 1913, as amended and completed by subsequent texts,

Having regard to law n° 91-64 dated 29 July 1991, relating to the competition and prices, as amended and completed by the subsequent texts,

Having regard to the insurance code promulgated by law n° 92-24 dated the 9 March 1992, as amended and completed by subsequent texts,

Having regard to the commercial companies code promulgated by law n° 2000-93 dated 3 November 2000, as amended and completed by subsequent texts,

Having regard to law n° 2001-65 dated 10 July 2001, relating to the credit institutions, as amended and completed by subsequent texts,

Having regard to law n° 2003-75 dated 10 December 2003, relating to the support of international efforts of fight against terrorism and the repression of money bleaching,

Having regard to decree-law n° 2011-14 dated 23 March 2011, relating to the temporary organization of public authorities,

Having regard to decree-law n° 2011-88 dated 24 September 2011, organizing the associations,

Having regard to the deliberations of the council of ministers,

Enacts the following decree-law:

CHAPTER 1

General provisions

First Article - Is considered micro finance institution, any legal entity exercising, by way of usual profession, the operations authorized within the frame work of the decree-law herein.

Art. 2 - The micro finance institutions are established in the form of limited companies with a minimum capital fixed at three million dinars (3.000.000 dinars) or associations submitted to the provisions of decree-law n° 2011-88 dated 24 September 2011 organizing the associations with minimal associative endowment fixed at two hundred thousand dinars (200.000 dinars).

Art. 3 - The micro finance institutions are not submitted to the provisions of law n° 2001-65 dated 10 July 2001 relating to the credit institutions referred to above. They may not receive deposits from the public, nor issue or manage means of payment as defined by article 2 of the law referred to above.

Art. 4 - The micro finance institutions are submitted to the provisions of law n° 91-64 dated 29 July 1991 relating to the competition and prices and law n° 2003-75 dated 10 December 2003 relating to the support of the international efforts of fight against terrorism and the repression of money bleaching and the texts taken for their applications.

Art. 5 - The provisions of the commercial companies code apply to the micro finance institutions made up in the form of limited companies and the provisions of the decree-law n° 2011-88 dated 24 September 2011 organizing the associations apply to the micro finance institutions made up in associative form as long as it is not derogated by the decree-law herein.

CHAPTER 2

Conditions of exercise of the microfinance activity

Title 1

Authorized operations

Art. 6 - The micro finance institutions grant the microcredits in accordance with the conditions fixed by the decree - law herein and by the texts taken for its application. They carry out, within the framework of the activity of granting of the microcredits, all the operations dependent on the framing of the initiatives of the customer, his training and his accompaniment.

Art. 7 - Is considered microcredit any credit aiming at the assistance to economic and social integration. The microcredits are granted to finance an income generating and employment creation activity.

These credits may be also granted to finance needs aiming at the improvement of living conditions. The maximum amount of the microcredit and the conditions of its granting are fixed by order of the Minister of Finance.

Art. 8 - Are eligible for the microcredits the natural persons:

- Who belong to the needy families and the vulnerable categories and having the capacity to exercise an economic activity,

- Or who have a qualification to exercise a profession, a trade or an income generating activity.

Art. 9 - Are repealed the provisions of the first paragraph of article 70, article 76 and first paragraph of article 78 of the insurance code, and replaced by the following provisions:

Article 70 (first new paragraph): With the exclusion of the banking establishments, the micro finance institutions and the national post office, the persons referred to in article 69 of this code, shall justify the possession of a professional card and their inscription on a register held for this purpose by the services of the general committee of insurances and this, in order to be able to present insurance operations.

Article 76 (new): With the exclusion of the banking establishments, the micro finance institutions and the national post office, the exercise of the intermediary activity in insurance is incompatible with any other activity of commercial nature.

Article 78 (first new paragraph):

I- The property portfolio of insurance contracts subscribed within the framework of the mandate granted to the insurance agent or the bank or the micro finance institution or the national post office returns to the mandante insurance company.

Art. 10 - Are added a paragraph 6) to article 69 of the insurance code and a paragraph V in article 78 of the same code made out as follows:

Article 69 (paragraph 6):

6) The micro finance institutions charged, under the terms of a convention, of concluding insurance contracts on the name and for the account of one or several companies of insurances, whatever its form and notwithstanding all contrary provisions, and this, for the branches of insurances whose list is fixed by an order of the Minister of Finance.

Article 78 (paragraph V):

V- The relations between the insurance companies and the micro finance institutions are submitted to the provisions of a framework agreement established by the professional association of insurance companies and the professional association of the micro finance institutions and submitted to the prior approval of the Minister of Finance.

Title 2

The Approval

Art. 11 - The micro finance institutions exercise their activities on the basis of approval granted by the Minister of Finance on a report from the micro finance supervisory authority provided for by article 43 of the decree-law herein and this in accordance with the provisions of the decree-law herein and the texts taken for its application.

Art. 12 - The granting of approval to the micro finance institution is subordinated to the satisfaction of the following conditions:

- Its statutes shall provide that its sole purpose is the granting of microcredits and the exercise of the other activities provided for by the decree-law herein,

- Its human, technical and financial means are sufficient for the realization of its object,

- Its work program shall include the zones of its interventions, the resources, the activity of granting of the credits and other operations related to the granting of credit,

- Its work program over five years, shall be compatible with the state of saturation of the market and with the national, regional and local programs in the economic and social field. The said work program shall give a report on the financial sustainability of the micro finance institution,

- The release of the minimum capital or the payment of the minimal associative equipment referred to in article 2 of the decree-law herein before its entry into activity.

The Approval is also granted to the micro finance institution taking into account the quality of the contributors of capital and if necessary their guarantors, as well as the reputation and competence of its leaders.

The micro finance institutions shall notify, without delay, to the micro finance supervisory authority any change occurred in the composition of their board of directors or management committee as well as all new appointment of the leaders,

The micro finance supervisory authority acts in concert with the Ministry of Finance about the changes and the new appointments. The silence of the micro finance supervisory authority during one month as from the date of notification is worth acceptance.

The procedures of granting of approval are fixed by order of the Minister of Finance.

Art. 13 - The approval application is addressed to the micro finance supervisory authority, which proceeds to its examination. To this end, it may request all the information and the documents which it considers necessary. The approval decision is made within a deadline of four months as from the date of communication of all the required informations. The micro finance supervisory authority has the responsibility to notify to the interested in writing the decision of the Minister of Finance concerning the approval application.

Art. 14 - Is submitted to the approval provided for in article 11 of the decree-law herein:

- Any operation of fusion between institutions of micro finance or subsidiaries within the meaning of articles 25 and 26 of the decree-law herein,

- Any acquisition, direct or indirect, by one or more persons, of shares of the capital of a micro finance institution likely to involve the control of this one and in all the cases any operation of which it results the acquisition of the tenth, the fifth, the third or the half or the two thirds of the voting rights,

- Any reduction of the capital or the associative equipment,

- Any operation of which it may result a transfer of a significant part of the assets of a micro finance institution, which may cause a change in the financial structure or the orientation of its activity. The maximum deadline provided for in article 13 of the decree-law herein is reduced to one month for the above mentioned cases.

Art. 15 - The opening of any branch or agency by an approved micro finance institution is submitted to the authorization of the Minister of Finance on justified opinion of the micro finance supervisory authority.

Art. 16 - The micro finance institution shall, at all time, respect the condition relating to the minimum capital or the minimal associative endowment.

Art. 17 - The withdrawal of approval may take place on request of the micro finance institution addressed to the micro finance supervisory authority.

The withdrawal of approval may also take place on initiative of the Minister of Finance on the basis of report drawn up by the micro finance supervisory authority after hearing the legal representative of the concerned institution and on opinion of the professional association provided for by article 54 of the decree-law herein, and this, in the following cases:

- It was not made use of the approval within a deadline of one year as from its granting,

- The micro finance institution no longer operates from six consecutive months,

- The micro finance institution does not meet any more the conditions on the basis of which the approval was granted,

- It was proven that the micro finance institution obtained approval by means of misrepresentations or by any other irregular means,

- The micro finance institution does not justify any more that its assets exceed the liability of which it is held towards the thirds of an amount equal to the minimum capital or the minimal associative endowment. If the micro finance institution object of the withdrawal is made up in associative form, the decision of withdrawal and its reasons are notified to the general secretariat of the Government.

Art. 18 - The micro finance institution whose approval was withdrawn shall cease its financial activity immediately and limit its operations to those necessary to the liquidation of the activity of microcredit and, if necessary, to the other authorized activities and this for a period not exceeding a year which may be extended by authorization of the micro finance supervisory authority.

Art. 19 - The micro finance supervisory authority, indicates, when the withdrawal of approval takes place following its request, a liquidator of the activity or institution.

A report of liquidation of the activity or institution shall be established by a chartered accountant registered at the order of chartered accountants of Tunisia and shall be presented to the micro finance supervisory authority.

The micro finance institution remains, for the period of liquidation, submitted to the control of the micro finance supervisory authority.

Art. 20 - The dissolution or the proposal for dissolution of a micro finance institution may take place only after the withdrawal of the approval.

In the event of liquidation of a micro finance institution made up in associative form giving place to a profit of liquidation, its general meeting shall elect its management body for the assignment of the profit of liquidation to the benefit of associations having a similar object which may be indicated in the statutes of the institution.

Title 3

Prohibitions

Art. 21 – No one may direct, administrate or engage a micro finance institution:

- If he was the subject of a final judgment for forgery in the acts, theft, breach of trust, swindle, infringements attacking the moralities and the honor, for an offence punished by the laws on the swindle, for extortion of money of others or their values, for diversion made by an authorized depository, for issuance of bad check, for concealment of things obtained following these infringements or for infringements with the exchange control,

- If he was the subject of a final judgment of bankruptcy,

- If he was an administrator or manager of companies declared in bankruptcy or has been convicted under articles 288 and 289 of the penal code relating to bankruptcy,

Art. 22 – Any leader of a micro finance institution may not exercise at the same time another administrative duty in another microfinance institution.

Art. 23 - It is prohibited to any person not approved in the quality as micro finance institution to devote himself on a purely usual basis, to operations of micro finance.

It is, also, prohibited to any person not approved in the quality as micro finance institution to make appear the expressions " micro finance institution " or " micro credit association " or " credit company " in its trade name or its corporate name or in its advertising campaigns or to use them in any manner whatsoever in its activity, it is also prohibited to use any other denomination which implies that the institution is a micro finance institution.

Art. 24 - It is prohibited to the members of the board of directors or the members of management committee or the members of the directory of a micro finance institution, to its leaders, agents, controllers and to its personnel, to reveal the secrets communicated by the customers of the institution or of which they took note because of their profession, except in the cases authorized by the law, failing they are liable to the sanctions provided for by article 254 of the penal code.

CHAPTER 3

Institutional evolution and unions

Title 1

Fusion

Art. 25 - Two or several micro finance institutions may amalgamate and form a new micro finance institution submitted to the approval of the Minister of Finance after opinion of the micro finance supervisory authority and this, in accordance with the conditions provided for by the legislation in force.

The fusion methods of the micro finance institutions established in associative form are fixed by order of the Minister of Finance.

Title 2

Subsidiary

Art. 26 - Any micro finance institution established in associative form may transfer to subsidiary its activity of micro finance by the participation of a micro finance institution created in the form of a limited company or an association. Approval for the exercise of the activity is granted to these subsidiaries in accordance with the procedures provided for by the decree-law herein and the texts taken for its application.

It is prohibited to any micro finance institution having transferred to subsidiary its activity to directly exercise the micro finance activity.

Art. 27 - Is described as development association and remains submitted to the control of the micro finance supervisory authority any micro finance institution established in associative form which transferred to subsidiary its activity related to the micro finance in accordance with article 26 of the decree-law herein.

The standards of governance, financial transparency and the declarations to which these associations are submitted are set by order of the Minister of Finance.

Title 3

Unions

Art. 28 - Two or several micro finance institutions established in associative form may create or adhere to a union. In this case, the minimal associative endowment provided for by article 2 of the decree-law herein is given in a consolidated way.

The union is established in the form of association or economic grouping of interest, and this, subject to the legislation in force on the matter.

A micro finance institution established in associative form may not be member of more than one union having the same missions. The members of the unions are made up of micro finance institutions made up in associative form.

Any person may take part in the union by his experience or his funds with an aim of contributing to the achievement of the objectives of the union without profiting from its services. These persons may not hold more than 35% of voting rights in the general meeting of the union made up in the form of economic grouping of interest.

The conditions and methods of adhesion and withdrawal from the unions are fixed by order of the Minister of Finance.

Art. 29 - The Minister of Finance grants to the union and all its members a collective approval in accordance with the conditions and procedures fixed for the micro finance institutions. In this case, the specific approval to each micro finance institution being member of a union becomes null and void.

Art. 30 - The unions act in the quality of organizations of follow-up, supervision and representation of their members and ensure the protection, the management of the interests of their members and of the supply of the various services including notably the administrative, professional and financial services in order to contribute to the achievement of their objectives.

The missions of the union are fixed by order of the Minister of Finance.

The union does not have:

- To grant microcredits within the meaning of the decree-law herein,
- To guarantee the microcredits granted by member associations,
- To centralize the liquidity of its members.

Any union is charged to ensure control on parts and on the spot, of the operations of its members.

Any union is held to proceed, at least once a year, to the inspection of its members. The unions which do not respect this obligation, during two successive years, may not be authorized any more to admit the adhesion of new members.

A union may, if necessary:

- Ask the micro finance supervisory authority the setting under provisional administration of one of its members, and ensure this mission if it was indicated for this purpose by the micro finance supervisory authority,

- Manage an operation of fusion between two or several of its members,

- Be designated, by decision of the Minister of Finance, liquidator of its members.

CHAPTER 4

Governance and internal control

Title 1

Governance

Art. 31 - Any micro finance institution is held, within the framework of the exercise of its activity, to set up procedures of governance which allow a clear separation between the functions of the bodies of administration and the authorities in charge of management, and this according to standards set by order of the Minister of Finance.

Title 2

Provisions of internal control

Art. 32 - Each micro finance institution is held to set up a system of suitable internal control which guarantees the permanent evaluation of the internal procedures, the determination, the follow-up and the management of risks related to its activity.

Art. 33 - The micro finance institutions whose total of assessment exceeds an amount fixed by order of the Minister of Finance are held to create a permanent Committee of internal control whose attributions and composition are submitted to the legislation in force.

CHAPTER 5

Protection of customers

Art. 34 - The micro finance institutions are held to inform the public of the conditions relating to the operations of granting of the microcredits, and this, notably by posters in their offices and by precise and complete mentions of these conditions in the credit contracts.

It is prohibited to these institutions the perception, at the recipients, of commissions or the refunding of expenditure related to this activity other than those provided for by the order provided for in article 7 of the decree-law herein and the commissions provided for in the framework agreement provided for by article 78 of the insurance code. The minimal standards of transparency and the contractual conditions applicable to the relations between the micro finance institutions and their customers are fixed by order of the Minister of Finance.

The micro finance institutions are submitted to the organic law n° 2004-63 dated 27 July 2004 relating the personal data protection.

Art. 35 -The micro finance institutions are held:

- To offer to their customers products and services adapted to their refunding capacity,
- To provide complete information on the cost and quality of the products and services suggested to the customers,
- To define standards of ethics to which its personnel shall be held to conform in his relationship with the customers,
- To take sufficient measures to detect and correct any act of corruption or mistreatment of the customers.

The minimal requirements of equitable treatment of customers by the micro finance institutions are fixed by order of the Minister of Finance.

Art. 36 – The micro finance institutions shall install a suitable mechanism for the fast treatment of the complaints and claims of the customers.

Chapter 6

Countable and financial Standards

Article 37 - The resources of the micro finance institutions assigned to the realization of their object are made up of:

- The capital or associative endowment,
- The funds placed at their disposal within the framework of agreements and contract-programs signed with enterprises, administrations, public entities or local authorities,
- The gifts or financial assistances subject to the legislation in force,
- The available resources within the framework of the bilateral or multilateral co-operation,
- The products coming from the micro credit repayments which they grant,
- The loan resources in Tunisian dinars contracted with the financial sector,
- The loans from the shareholders, who hold more than 10% of the capital for the limited companies subject to the provisions of the code of commercial companies,
- The loans by issuing bonds and commercial paper, for limited companies,

- The products of participations and their transfers,
- The incomes from the placements of their funds.

Art. 38 - It is prohibited to the micro finance institutions established in associative form to distribute benefits in any form.

Art. 39 - The micro finance institutions shall hold a regular accountancy in accordance of the accounting standards set by order of the Minister of Finance.

Art. 40 - The micro finance institutions are held to carry out an external audit their accounts according to methods fixed by order of the Minister of Finance.

Art. 41 -The micro finance institutions are held to respect the rules and standards of management which are set by order of the Minister of Finance.

Art. 42 - The micro finance institutions commit to transmit to the supervisory authority of micro finance institutions:

- Their annual financial statements certified by the external auditor,
- All the information requested, and fixed by order of the Minister of Finance.

CHAPTER 7

Control and organization of the micro finance institutions

Title 1

"The micro finance supervisory authority "

Art. 43 - Is created a committee equipped with the legal entity and financial autonomy called " micro finance supervisory authority ", its headquarters is in Tunis. The micro finance supervisory authority is charged of:

- Instructing the approval files of the micro finance institutions and giving an opinion on their subjects,
- Informing the micro finance institutions of the decisions of authorization taken by the Minister of Finance,
- Controlling on parts and on the spot the micro finance institutions, their unions and the associations which proceeded to the transfer to a subsidiary of their activity,
- Appointing a provisional administrator for the micro finance institution according to conditions fixed by order of the Minister of Finance,
- Pronouncing administrative sanctions, except for the withdrawal of approval, in the event of violation of the provisions of the decree-law herein and of its application texts,

- Pronouncing penalties, in the event of non-respect of the provisions of the decree-law herein and its application texts, payable to the benefit of public treasury. Their amounts are fixed by order of the Minister of Finance,

- Proposing, with justification, to the Minister of Finance the withdrawal of the approval of the micro finance institutions and their unions,

- Setting up a system of centralization of risks of the sector and communicating them to the micro finance institutions at their request, it may for this purpose ask the micro finance institutions to provide it with all the statistics and information enabling it to follow the development of their activities. It may also conclude partnership contracts with similar supervisory authorities for the exchange of information,

- Issuing its opinion with the Minister of Finance on the legislation relating to the micro finance.

Art. 44 - The micro finance supervisory authority is independent in the exercise of its functions and benefits from all the prerogatives necessary to carry out the missions which are allotted to it under the terms of laws and regulations in force, as well as of the prerogatives necessary to the administration of the services which it creates for this purpose.

Art. 45 - The micro finance supervisory authority is made up of a board of directors and a general directorate. The chairman and members of the board of directors of the micro finance supervisory authority shall be of Tunisian nationality and have all their civil and political rights. It is prohibited to the chairman and members of the board of directors to exercise directly or indirectly a micro finance activity during the duration of their mandates.

The board of directors is composed of a chairman and seven members appointed hereafter:

- A magistrate of third grade,
- An adviser at the administrative court,
- A representative of the Ministry of Finance,
- A representative of the general insurance committee,
- A representative of the national council of accountancy,
- A representative of the central bank of Tunisia,
- A member chosen for his experience in the micro finance field.

The chairman of the board of directors and his members are appointed, on a proposal from the concerned authorities, by order of the Minister of Finance. The term of the office is fixed at five years, renewable only once. The chairman and the members of the board of directors perceive in return for their functions, allowances fixed by order of the Minister of Finance.

The board of directors of the micro finance supervisory authority, on a proposal from the general director, adopts the principles of organization of services, fixes the rules of deontology applicable to the personnel and the general recruitment framework.

Art. 46 – The micro finance supervisory authority is directed by a general director, appointed by decree on a proposal from the Minister of Finance, ability to represent it in front of the various legal and administrative entities. The general director organizes and directs the services of the micro finance supervisory authority.

Art. 47 - The examination of appeals against the decisions of the micro finance supervisory authority comes under the responsibility of the court of appeal of Tunis in accordance with the deadlines and procedures provided for by the code of the civil and commercial procedures. The recourse does not suspend the implementation.

However, the president of the court of appeal of Tunis may order the postponement of implementation of the decision object of recourse, if it is likely to involve irreversible consequences.

Art. 48 – The sources of the micro finance supervisory authority come from:

- Budgetary endowments,
- Products of its goods,
- Products of transfer of the assets,
- Products of services which it provides,
- Contribution of the micro finance institutions fixed by decree of the Minister of Finance.

Art. 49 - The micro finance supervisory authority benefits for the recovery of its credits, of the general privilege recognized by the State. Recovery may take place by the means of states of liquidation made executory by the Minister of Finance.

Art. 50 – The micro finance supervisory authority is submitted to the control of the court of auditors.

Art. 51 - The operating methods of the micro finance supervisory authority are fixed by decree.

Art. 52 - It is prohibited to the general director, the employees and the chairman and members of the board of directors of the micro finance supervisory authority to reveal the secrets of which they took note within the framework of their mission, except in the cases authorized by law, failing this they are liable to the sanctions provided for by article 254 of the penal code.

Art. 53 – In the event of non-respect by a micro finance institution of the provisions of the decree-law herein and its application texts, the micro finance supervisory authority may,

- 1- Address a warning to him,
- 2 -Address a blame with an injunction to him to take any corrective measure, within the limited deadlines,
- 3-Impose against it an administrative or pecuniary sanction fixed by order of the Minister of Finance,
- 4-Suspend all or part of its activity for a duration going from one month to 6 months,
- 5-Suspend all or some of its leaders of work,
- 6-Place it under provisional administration for a duration not exceeding six months, may be extended only once,
- 7- Propose the withdrawal of its approval.

The micro finance supervisory authority may not impose these sanctions without the convocation of the legal representative of the micro finance institution by registered letter with acknowledgement of receipt 15 days at least before the date planned for his hearing.

The concerned person may obtain on his request communication of copies of the parts of the infringement file.

Title 2

The Professional association of micro finance institutions

Art. 54 – The micro finance institutions are required to constitute a professional association, whose adhesion is obligatory for all the micro finance institutions, having notably for objective:

- The representation of the common interest of the micro finance institutions near the public authorities,
- The study and issuance of opinion relating to any affair of common interest relating to the profession and the formulation of recommendations for this purpose,
- The development of a code of ethics forcing for all its members and takes care of its good application.

The statutes of the professional association of micro finance institutions are submitted to the prior approval of the Minister of Finance after opinion of the micro finance supervisory authority.

CHAPTER 8

The sanctions

Art. 55 - Is punished with imprisonment from three months to three years and with a fine from 5.000 dinars to 50.000 dinars, or one of these two punishments only, any person contravening the provisions of the first paragraph of article 23 of the decree-law herein. The sanction is doubled in the event of repetition.

Is punished with imprisonment from one month to one year and with a fine from 1.000 dinars to 10.000 dinars, or one of these two punishments only, any person contravening the provisions of article 21 and the second paragraph of article 23 of the decree-law herein. The sanction is doubled in the event of repetition.

The imprisonment penalty provided for by the article herein applies to the leaders and all those whose personal penal responsibility is proven.

Art. 56 - In addition to the application of the sanctions provided for by the decree-law herein, the infringements of the legislation and the regulation governing the activity of micro finance expose their authors to legal proceedings in accordance with the laws in force.

CHAPTER 9

Various provisions

Art. 57 - Are repealed the provisions of the organic law n° 99-67 dated 15 July 1999, relating to the microcredits granted by associations, however, the application texts of the said law remain in force until promulgation of the of application texts of the decree-law herein.

Art. 58 - The associations approved in accordance with the organic law n° 99-67 dated 15 July 1999 relating to the micro credits granted by the associations remain approved as micro finance institutions with the provision of conforming to the provisions of the decree-law herein within a deadline of one year as from the date of its publication in the Official Gazette of the Republic of Tunisia.

Art. 59 - The decree-law herein shall be published in the Official Gazette of the Republic of Tunisia.

Tunis, 5 November 2011.

The President of the Republic by interim

Fouad Mebazâa