

# decrees and ministerial orders

## MINISTRY OF FINANCE

**Decree n° 2012-2128 dated 28 September 2012, fixing the functioning methods of the micro finance control authority.**

The Head of Government,

On a proposal from the Minister of Finance,

Having regard to the constituent law n° 2011-6 dated 16 December 2011, on the provisional organization of the public authorities,

Having regard to law n° 85-78 dated 5 August 1985 relating to the general status of offices agents and the public industrial and commercial enterprises which capital belongs, directly and totally to the state or to the public local collectivities, as amended and completed by the subsequent texts,

Having regard to law n° 96-112 dated 30 December 1996, relating to the enterprises accounting system,

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

Having regard to decree law n° 2011-117 dated 5 November 2011 relating to the organization of the activity of the micro finance institutions and notably its article 51,

Having regard to the opinion of the administrative tribunal,

Having regard to the deliberations of the council of Ministers,

The President of the Republic, being informed,

Decreets the following :

First title

### **Organization and functioning of the micro finance control authority**

Article one - The micro finance control authority is composed of a board of directors and a Directorate general

Chapter one

#### **The functions of the board of directors**

Art. 2 - Within the scope of its functions, the board of director of the micro finance control authority is in charge notably of:

- Studying the approval files of the micro finance institutions and their unions and issue its opinion.

- Proposing the withdrawal of the micro finance institutions and their unions.
- Approving the estimated budget, the financial statements and the annual report of the activity of the micro finance control authority draft by the directorate general.
- Drawing up, upon a proposition from the director general, the status of the agents of the micro finance control authority, its organization chart as well as the procedures of contracting public procurements according to the legislation in force.
- Studying the investigations reports and deciding in accordance with them.
- Issuing its opinion on the legislation relating to micro finance.
- Approving the appointment of a temporary administrator in an institution of micro finance.

Art. 3 - The board of director of the micro finance control authority meets on convocation of its president or at the request of the half of its members if necessary once each three month at least according to the agenda notified to the members of the board of directors 15 days at least before the meeting.

Art. 4 - The board of directors may deliberate in presence of the majority of its members. In case of impediment of the president, the representative of the Ministry of Finance shall preside the meeting.

The board of directors makes its decisions with the majority of votes, in case of tied vote; the president has the casting vote.

If a member misses the meeting for three times without reason, the president of the board of directors may request its replacement. The new member finish the remaining duration of the completion according to the provisions of article 45 of the decree law n° 2011-117 dated 5 November 2011.

Art. 5 - The president of the board of directors may call for any person having skills in the field of micro finance and which presence is deemed useful. This person may take place in the deliberations of the board but they are not invested with the voting right.

The deliberations of the board of directors are secret.

The president of the board of directors appoints, upon a proposal from the director general a reporter among the executives of the micro finance control authority who is in charge of recording the deliberations of the board of directors and its decisions in a minute signed by the reporter, the president of the board of directors and the present members after reading them. Theses minutes shall be communicated to the members of the board of directors.

Art. 6 - A member of the board of directors of the micro finance control authority shall not practise directly or indirectly functions placing him in a position of conflict of interest with reference to the general interest of the micro

finance control authority and notably the following functions:

- A member of an organ of control or management of a micro finance institution or its union.
- An auditor of a micro finance institution.
- A provider of services with a micro finance institution, whatever he is remunerated or not.
- An employee of a micro finance institution.
- A first degree relative of a person practicing the above mentioned functions.
- A shareholder of a micro finance institution having the form of a corporation.
- A member of a micro finance institution having the form of an association.

Any member of the board of directors in a position of conflict of interest and did not signal it is liable to put in end its functions.

The members of the board of directors may not practice remunerated services, whatever the form they take, on behalf of the micro finance control authority.

## Chapter two

### On the Directorate General

Art. 7 - The directorate general of the micro finance control authority is composed of a director general and administrative and technical structures provided by the organization chart mentioned in article 2 of the decree herein.

Art. 8 - The director general of the micro finance control authority must be Tunisian. He shall have the required skills in the financial field and shall be invested with his civil and political rights. He may, upon a delegation from the board of directors, practice the following functions:

- To undertake the investigations, qualify the investigators and submit the pursuit decisions.
- To inform the public prosecutor if there are acts liable to criminal sanctions.
- To cooperate with his homologue or with the authority practicing analogous functions according to the legislation and regulation in force. For the purpose he may conclude agreements of cooperation stipulating notably on the information and experience exchange and the organization of the training programs.
- To issue the order to pay of the revenues and the expenses of the micro finance control authority.
- To recruit, appoint and promote all the employees of the micro finance control authority and put an end to their functions according to the status of the employees of the micro finance control authority according to the legislation in force and the approval of the board of directors.

- To conclude public procurements with respect to the procedures fixed by the board of directors and according to article 2 of the decree herein, after the approval of the board of directors.

- To Fix the salaries, allowances and bonus granted to the employee of the micro finance control authority within the scope of their status and fix the salaries, allowances and bonus granted to the external collaborators with respect to the procedures and after the approval of the board of directors.

- To achieve the purchase, exchange and all real estate transaction falling within the scope of the activities of the micro finance control authority with respect to the procedures of procurements approved by the board of directors.

- To issue the liquidation statements as for the debts due for the benefit of the micro finance control authority declared executor by the Minister of finance.

Art.9 - The directorate general may upon a delegation of the board of directors ask a chartered accountant registered on the association of the chartered accountant of Tunisia or ask an expert registered on the table of the judicial experts, to proceed before the micro finance institutions or their unions to all complementary analysis or verification deemed to be useful, the costs and fees are supported by the micro finance institution or its union after the approval of the board of directors.

Art.10 - The micro finance control authority is entitled to receive the petitions and claims which, having regard their subject, fall within the scope of its competence.

Art. 11 - The administrative and technical structures of the micro finance control authority referred to by article 7 of the decree herein ensure the secretariat and the follow up of the affairs of the micro finance control authority. They prepare the files, draft the studies and realize the functions allocated to it by the director general or the board of directors. They are in charge of the conservation of the files, registers and documents of the micro finance control authority and of those legally sent to it.

Art. 12 - The employee of the micro finance control authority are subjected to the provisions of the law n° 85-78 dated on 5 August 1985, on the general status of the agents of the public offices and establishments having industrial and commercial nature and the companies which capital is directly and totally detained by the state or the local collectivities, except for the provisions of the chapter of the mentioned law.

Art. 13 - The investigations of the micro finance control authority are performed by sworn agents who are entitled for the purpose by the micro finance control authority.

The professional secrecy is not opposable in the scope of these investigations.

Art.14 - The investigators are entitled, in order to accomplish their functions to:

- Visit the vocational premises of the micro finance institutions

- Seize the documents suspected of being falsified or not complying with the standards and rules in force even if they are detained by their holders. The seized documents are kept in charge of their holders according to the conditions stipulated by articles 97, 98 and 100 of the criminal procedures code.

- - Make all the necessary observations, produce on a first requisition and without displacement the documents, pieces whatever their medium may be, and the registers necessary to their researches and observations and take a copy.

- Hand over against a receipt the documents or pieces referred to in the previous paragraph and which are necessary to accomplish their functions or to pursuit the investigation.

- Call for and hear all the persons who are likely to provide information relating to their functions.

Art. 15 - In order to pursuit the infringement to the legislation and regulation in force governing the micro finance activity, as well as the ethical rules of the profession, the investigators, may after carrying out the investigations, summon by a registered letter with acknowledgment of receipt and audition the concerned persons or any other person liable to provide information about the business they handle.

The investigations are observed by a minute drafted and signed by two investigators from the micro finance control authority who shall indicate their identity and the pieces proving their entitlement. Each minute shall contain the seal of the department which the investigators come from as well as the declarations or the refusal of the heard person.

The heard person may be assisted by an advisor of his choice at the level of hearing and the level of drafting the minute. The person heard during the draft of a minute shall post his signature. The minute shall indicate if the minute is drafted in the absence of the concerned person or if he refused to sign.

The minute shall contain the date, the place and the natures of the observations or supervisions carried out and indicate that the heard person has been informed about the date and the place of his draft and has been summoned by a registered letter with acknowledgment of receipt, except for the case of flagrante offence.

### Chapter 3

#### On Discipline

Art. 16 - The board of directors, met as a disciplinary council, rules on the cases incurring sanctions according to the provisions of the decree law n° 2011-117 dated 5 November 2011 and notably its article 53.

Its decisions are subjected to the professional secrecy

Art. 17 - The board of directors, met as a disciplinary council, meets as much as necessary on a summon from his president .the rules of summon, quorum and the majority are those provided for the deliberations of the board of directors.

Art. 18 - The procedure before the board of directors, met as a disciplinary council, shall be written.

The examination of the files of sanctions before the board of directors is carried out by the agents of the micro finance control authority under the supervision and liability of the directorate general.

The micro finance institution may be assisted by any defender of his choice.

The deliberations and decisions of the board of directors, met as a disciplinary council, are recorded in a special initialed register kept in the seat of the micro finance control authority, signed by all the present members and its reporter.

Art. 19 - The disciplinary decisions are motivated and enforceable as from their enactment. They are notified to the concerned persons by a registered letter with acknowledgment of receipt within a deadline of seven days as from their enactment day.

#### Title 2:

##### **Miscellaneous**

Art.20 - The micro finance control authority accounts are established according to the rules of the commercial accountancy. The annual financial statements of the micro finance control authority are subjected to an annual audit by an auditor registered on the chartered accountants association of Tunisia appointed by the board of directors for three years renewable only once.

Art. 21 - The extracts of the decisions of the micro finance control authority are published in a bulletin of the micro finance control authority if they affect the third parties.

Art. 22 - The director general of the micro finance control authority submits to the Minister of finance the report of the annual activity of the micro finance control authority.

This report expurgated from the registered parts subjected to the professional secrecy, shall be published on the web site of the micro finance control authority.

Art. 23 - The micro finance control authority shall keep an official list of the micro finance institutions which shall be published on the web site.

Art. 24 - The Minister of Finance shall implement the decree herein which shall be published on the Official Gazette of the Republic of Tunisia.

Tunis, 28 September 2012.

*The head of the Government*

***Hamadi Jebali***