A Critical Appraisal of the legal framework governing the Approval in Microfinance Establishments within CEMAC

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ABSTRACT

During the mid 80’s and the early 90’s the Banking sector of the CEMAC sub-region experienced crisis, this could be seen from the numerous liquidation of Banks within the sub-region during this period. Microfinance establishments found a place as an alternative financial institution involved in the provision of savings and loans to the masses.

But the exercise of microfinance activities requires an application for an approval given by the Monetary Authority on confirmation of the Banking Commission. However, before this approval is granted, they must furnish certain documents and information. Microfinance establishments are equally obliged to furnish certain documents and information when wishing to create a branch in any member state of CEMAC.

After this approval has been granted they have certain administrative and professional obligations to fulfill. This consists of registration with the National Credit Council, registration in the Trade and Personal Property Credit Register, adherence to a Professional Association, but they have the choice of joining a Network or carry their activities independently.

The Monetary Authority can unilaterally withdraw the approval decision for one reason or the other. However, this withdrawal decision is subject to appeal before the Board of Directors of BEAC. The Banking Commission has provided for set of sanctions to ensure that any defaulting establishment or person be call to order.

RESUMÉ

Durant les années 80 et au début des années 90 le secteur Bancaire de la sous-région CEMAC on vécue une crise, ceci pouvait ce voir par de nombreuse liquidation des Banques
au sein de la sous-région pendant cette période. Les Etablissement de Micro finance ont trouve une place comme une institution financière alternative s’impliquant dans la fourniture de l’épargne et des prêts pour la masses.

Mais l’exercice de l’activité de microfinance exige une demande d’agrément remise par l’autorité monétaire après confirmation de la commission bancaire. Mais avant que cet agrément soit remis, ils doivent fournir certain documents et informations. Les microfinances sont également oblige de fournir certaines documents et informations s’il veut offrir un agence dans un du état membre de la CEMAC.

Quand cette agrément est remise il sont les obligations administrative et professionnelle a remplir. Ceci consiste de s’inscrire auprès du Conseil National du Crédit et le Registre du Commerce et du Crédit Mobilier, adhérer a une Association Professionnelle, mais ils sont le choix adhérer à un réseau ou de poursuivre les activités indépendamment.

L’autorité monétaire peut unilatéralement retrait la décision d’agrément pour un raison ou l'autre. Cependant, la décision de retrait de l’agrément est assujettir à un appel devant le conseil d'administration de la BEAC. La commission bancaire a prévu un ensemble de sanctions pour s’assurer que une personne ou établissement en défaut soit appelle en ordre.

INTRODUCTION

A cross section of the economy of Member States of the Economic and Monetary Union of Central Africa (CEMAC1) is financed to a great extend by microfinance establishments. The first experimentation of Microfinance in Africa first saw the light of day in the beginning of the 60’s on the initiative of the Protestant Missionaries who wanted to facilitate access to credit to the indigenous who were sidelined by the colonial Banks2. But Microfinance Establishment (MFE) started at the international level as Credit Cooperative3 and it modern version as an instrument of the fight against poverty really took off in Asia in the 70’s under the leadership of D’yunis Muhamad, who initiated with success the “Gramen Bank” in response to the distress of the Bangladesh poor deprived of access to the services of the traditional Banks because they were poor4.

In Cameroon, the first Microfinance Establishments were opened between 1964-1968 by the Catholic Missionaries under the need to secure the savings of the local population and to facilitate their access to Credit in the absence of Commercial Banks. This led to the first

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1 The Treaty instituting CEMAC was signed in 1994 in N’djamen during a Head of States Summit and members are: the Republic of Cameroon, the Republic of Central Africa, the Republic of Gabon, the Republic of Equatorial Guinea, the Republic of Chad, and the Republic of Congo. This treaty was however revised in Libreville on the 30th of April 2009.
3 The first Credit Cooperative was started by Hermann Schulze-Delitzsch and Friederich Raiffeisen (both of German origin) and eventually Luigi Luzzatti (an Italian) as well as other household name like Alphonse Desjardins who was inspired by their example and was the first to take the idea of credit unionisms from Germany to North America where he created the people’s Bank of Levis, near Quebec City in 1901 and eventually proceeded to the American mainland where he establishment the St Mary’s Cooperative Credit Associations. See, ABONO (H.M), Reaching the Poor with Micro-Credit: The missing link, Dschang University Press, 2006, p.2.
revolution of Microfinance, which remained for a long time under the monopoly of the Anglophone regions of Cameroon before taking a national dimension.

However, the development of Microfinance in Member States of the Economic and Monetary Community of Central Africa remained in an embryonic phase until in 1990\(^5\). Meanwhile at the international scale, this activity witnessed a flourishing growth. In fact, despite certain experiences noted for a certain numbers of years in Cameroon, Congo, Chad, Gabon, and in the Central Africa Republic, the sector of Microfinance did not have a significant impact on the populations of the sub region. From the years 1990, three principal factors have favored the birth and rapid expansion of this sector.

In the first place, the serious crisis of the 80s which severely affected the economy of the sub-region and in particular the financial system caused a profound restructurisation to be carried by states in all the sectors of the economy. In the domain of Banking, numerous bankruptcies were experienced within the CEMAC sub-region\(^6\) and this adversely affected many people, especially those of weak revenue. Moreover, most of these Banks did not offer credit to the poor, whereas access to credit is one of the most useful financial tools available to the poor. In this state of situation, a cross section of the population of these countries turned to other alternative sources such as tontines\(^7\) and Microfinance Establishments, which to an author\(^8\) are fast becoming the locomotives of the economy. These bankruptcies had equally provoked a massive dismissal of managers of Banks who, due to lack of means to subsist, embarked on the creation of Microfinance entities. Moreover, following the putting into place of the restructurisation plan (because the period between 1989- 1993 witnessed many Banks failure within the BEAC\(^9\) zone\(^10\)), classic Banks had hardened their access conditions to their services. These evolutions had as consequence a marginalization of the greater part of the population as concerns access to Banking services and a worsening of Banking in the sub region, mostly the rural zones.

At the end of the restructurisation, a number of Banks retreated in the big towns notably in Yaoundé and Douala, where they benefited from a good infrastructure and thus the

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5 Source: http://www.beac.int/cobac/Microfipre.htm.


7 The word “Tontine” used in French draws it origin from the name of a Neapolitan Banker, Lorenzo Tontine. An advantage of Tontine is that we meet friends who can assist us in case of misfortune. Money in Tontines are readily available than that in Banks and you always have Credit without compiling documents and without harassment. See ALAIN(H), TCHENTE (G.H) et al, Tontines et Banques au Cameroun, Editions KARTHALA, Paris, 1991, pp.8-16.


9 Banque des Etats de l’Afrique Central (Bank of Centrall African States) which is one of the organs of the Monetary Union of Central Africa. According to Article 9 of the Convention creating the Monetary Union of Central Africa this is the Central Bank of six countries, Cameroon, Gabon, Central Africa Republic, Chad, Congo, and Equatorial Guinea.

rural zones and towns of less importance or of a difficult access facility where absolutely deserted. As such, Microfinance structures revealed to be more and more attractive due to their involvement with the poor, who to an author are more potential clients due to their majority. Access to Credit was more flexible in the microfinance structures than in Banks, this worked to the disadvantage of Banks and only encouraged a rapid emergence of microfinance structures in Cameroon in particular and the sub-region in general.

In the second place, at the international level, the movement of microfinance intensified because it was henceforth considered as one of the essential tools for the fight against poverty. Moreover, international donor institutions recognized that a significant part of the crucial needs of the marginalized population could be satisfied by Micro-Credit.

Finally, the activity of microfinance within the CEMAC States was performed in a “zig-zag” legal framework, for example in Cameroon the Law No. 92/006 of 14 August 1992 relating to Cooperatives and Common Interest Groups modified by Decree No. 98/300/P.M of 9th September 1998 fixing the modalities for the exercise of Saving and Credit Cooperative activities (known by its French acronym as COOPEC) previewed only articles applicable to Saving and Credit Cooperatives, leaving aside the numerous structures who opted for a different legal form. Elsewhere, for Cooperatives exercising the operation of collecting savings and the distribution of credits, the competent authority was the Minister of Agriculture whereas it would have been the Minister in charge of Money and Credit (know as the Minister of Finance) and in addition no control authority was previewed.

In the domain of banking regulation, the Convention of 1992, governing the activities of Banks and Financial Establishment, revealed to be inapplicable to this new form of financial activity. Conscious of the necessity to remedy these situations, the Conference of Head of States of CEMAC asked the Governor of the Bank of Central Africa known by its French acronym as BEAC, to submit to her a project of sub-regional texts regulating the activity of microfinance. Within the same period the, the Stabilization Programs of the Economic and Finances concluded between the States and the Britton Wood Institutions emphasized particularly on the necessity to conceive a legal framework appropriate to the development of the sector.

It is within this context that in his quality as the President of the Banking Commission of Central Africa, the Governor of BEAC instructed the General Secretariat of COBAC to

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12 The poor have been defined as those who cannot afford the minimum 2400 caloric intake per day. Others measure poverty in terms of shelter, nutrition, and health. We are, however, in a money context and should be referring to the poor in terms of income level which is defined as “the lack of minimally adequate income”, the measure of which is the World Bank $ per day standard adopted in 1985. Planet Finance, an International NGO of French origin that supports and funds MFIs affirms, "Extreme poverty has become one of the greatest challenges of this century. In 2000, close to half of the world population, that is, 2.8 billion were living on less than $2 per day. A quarter of the inhabitants of our planet live in the most extreme poverty conditions (less than $1 per day). If this trend continues for the next 30 years, these figures will simply double”. See, ABONO (H.M.), Op.cit, pp.1-2.


14 The proclamation in 2005 by the United Nations as the International day of Micro-Credit goes to show the importance accorded to this institution by the international organs as an agent in the fight against poverty.

15 MEDAMKAM TOCHE (T.S.J), La Sécurité du Déposant dans le Système Bancaire de le CEMAC, Université de Dschang, Mémorie de DEA, 2005-2006, p.5
elaborate a draft text of rules to regulate this sector. The proposed text was adopted by the Conference of Head of States of CEMAC as Regulation No. 01/02/CEMAC/UMAC/COBAC relating to the conditions for exercising and controlling microfinance activity within the Economic and Monetary Community of Central Africa and on the other hand COBAC Regulation 2002/01-21 relating to Prudential Norms applicable to Microfinance Establishments. Thus, all Microfinance Establishments exercising their activities within any Member States of CEMAC are governed by these regulations.¹⁶ In addition to these regulations they are equally regulated by the various Uniform Act, especially the Uniform Act relating to General Commercial Law, that relating to Commercial Companies and Economic-Interest Groups, that on Securities, that relating to Simplified Recovery Procedure and the Uniform Act relating to Cooperative Societies.⁰ These CEMAC regulations on MFEs according to the then Governor of BEAC, Philibert Andzembe, involves the publication of the list of authorized Microfinance Establishments in each Central African country in order to get rid of some of the Microfinance Establishments giving the rest a bad name and cleanse the sector. Philibert Andzembe had reportedly added that in addition to the adopted legal framework, COBAC will now go into a more repressive phase to ensure that the established rules are respected.⁰⁸

As to the denomination Microfinance Establishments (MFEs), these are entities which exercise microfinance activity in CEMAC. As to what is a Micro-finance, it is an activity carried out by registered entities which do not have the status of a Bank or Financial Establishment and carry out on habitual basis loans operations and/or savings collection and offer special financial services to populations who mainly operate outside the traditional Banking channel. In short, a Microfinance Institution according to ABONO (H.M) is an entity that provides savings and lending facilities to the poor and thereby combat poverty.

The above texts enacted to regulate the Microfinance activity within the CEMAC zone and the creation by BEAC in 2003 of a Specialized Department of Microfinance charge with the follow up of this sector, has helped to provoke a proliferation of Microfinance Establishments within the sub-region in general and Cameroon in particular. However given the fact that Microfinance Establishments which are all considered as financial intermediaries deal with the savings of depositors, it is normal that there should be control as to those who can exercise the activity of Microfinance. This is the reasons why no one can exercise the activity of Microfinance nor manage or audit such an institution if he or she has not been approved or better still if he/she has not applied and receive a license to perform this activity.

So, we shall evaluate the various elements surrounding the approval in Microfinance Establishments in order to appreciate whether they facilitate the installation and exercise of Microfinance Establishments within the sub-region. To this effect it is imperative to examine

¹⁶ Article 4 of Regulation No. 01/020CEMAC/UMAC/COBAC.

¹⁷ Article 2 of the Uniform Act relating to Cooperative Societies is to the effect that “Despite the provision of the present Uniform Act, Cooperatives who exercise Banking or financial activities must be subject to internal or communal laws relating to the exercise of this activity.

¹⁸ Lori Curtis, MICROCAPITAL STORY: Cameroon’s Microfinance Industry in Need of Regulation if it is to Meet Poverty Eradication Expectations, 2008, http://www.microcapital.org/microuniverse/

¹⁹ Ibid, Article 2 of Regulation No. 01/020CEMAC/UMAC/COBAC.

²⁰ Ibid , Article 1.

the prior conditions to fulfilled by Microfinance Establishments, their managers and auditors in an application for approval.

1.0. Conditions to be fulfilled by Microfinance Establishments, Managers and Auditors

Be it a Microfinance Establishment, their managers or auditors they must all obtain an authorization to exercise their activity in any Member State of the Economic and Monetary Community of Central Africa and this is only through an approval. Approval is the condition to have access to a Microfinance activity, without this, it is not possible to convince people about the legal existence of a Microfinance Establishment. A unique approval is instituted for all Microfinance Establishments to be created within the Economic and Monetary Community of Central Africa. This approval enables MFEs who have obtained it to exercise their activity in any Member States of the Community (CEMAC), and gives it the right, if it wished to open up branches all over the respective national territories of Member States of CEMAC.

1.1. Administrative conditions to be fulfilled prior to Approval

Microfinance establishment, their would be manager/s and auditor/s are obliged to furnish cerftain informations to the Monetary Authority (which in Cameroon is the Ministry of Finance) when depositing their application for an approval from the above authority. These informations guide the judgement of the Monetary Authority when granting an approval to Microfinance establishments, their would be manager/s and auditor/s.

1.1.1. Administrative requirements to be fulfilled by microfinance establishments

1.1.1 (a) Documents to be supplied

Microfinance establishments are bound to furnish, a stamped application specifying the requested category, a registration certificate, the minutes of the general meeting for the creation of the establishment, the Articles of Association of the Establishment, the list of founding members, the members of the Board of Directors or of the organ considered as such, where necessary, documents testifying that payments have been made in connection with the subscribed shares, supported by Bank statements or any other documents serving as such, the three years forecast of the activity, expansion and organization of the establishment, the detail of technical and financial means to be used as well as any element likely to enlighten the competent authorities.

But umbrella organs of microfinance establishments are equally called upon to furnish some documents to the Monetary Authority, which according to Article 27 paragraph 4 of Regulation No. 01/02/CEMAC/UMAC/COBAC relating to the conditions for the exercise and controlling Microfinance activity within the Economic and Monetary Community of Central Africa must be comprise of: a stamped application, the registration certification, the list and registration certificates of affiliated establishments, the list of founding establishments, the

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22 However, in most cases only microfinance establishments of the second category do open up branches in Member State of CEMAC. For example, Express Union (S.A) has branches in all the CEMAC Member States.

23 Article 23, Paragraph 3 of Regulation No 01/02/CEMAC/UMAC/COBAC relating to the conditions for the exercise and control of Microfinance activity within the Economic and Monetary Community for Central Africa.
minutes of the general meeting of each establishment authorizing its adherence to the
network, the Articles of Association and internal rules and regulations of the umbrella organ,
the files of managers and main responsible persons, information on the control facilities of the
affiliated organs, the detailed human resources as well as technical and financial means
needed to carry out the prerogatives assigned to the umbrella organ, documents testifying
payments for share subscription purposes and related Bank statements or any other documents
saving as such, membership contracts duly signed by the parties concerned and defining the
reciprocal rights and obligations, certified accounting documents for the past three financial
years of founding establishments and forecast accounts for a period of three years of the
umbrella organ.

1.1.1 (b) The use of names and legal status

The requirement as to the use of names and legal status are aimed at informing and
protecting the public.

1- The use of names

In order to prevent them from duping the public, microfinance establishments are
prohibited from using misleading names. The prohibition as to the use of the name “Banks”
by microfinance establishments is the worry of Banks who wanted to prevent a situation
where their profession will be polluted by the bad practices and reputation that surrounds the
microfinance sector, as well as to enable the public to make a different between her (Bank)
and the fragile microfinance sector24. This prohibition has been enforced by Article 6 of
Regulation No. 01/02/CEMAC/COBAC, which equally obliges registered microfinance
establishments to have their denominations followed by the mention “microfinance
establishment”, the references of the text governing them and that of their licenses, those of
the category under which there are registered and those of their registration. However, we
must know here that microfinance establishments have the rights to change their category, but
on condition that such change of category shall be subject to prior approval of the Banking
Commission25.

2- The legal status of Microfinance Establishments

The legal status of microfinance establishments depends on which category a
microfinance establishment finds herself. For microfinance establishments of the first
category, who are involved in the collection of their member’s savings which they use for loan
granting transactions exclusively for the benefit of their members shall take the legal status of
Associative, Cooperative26 or Mutualist27. While category two microfinance establishments
who are involved in the collection of savings and loan granting to third parties, are
exclusively constituted under the legal status of a public limited company28. Though
microfinance establishments of the second category are constituted in the legal status of a


25 Article 38 paragraph 4 of Regulation No. 01/02/CEMAC/UMAC/COBAC.

26 According to Article 4 of the Uniform Act on Cooperatives Societies “A Cooperative is an autonomous group
of persons who voluntarily decide to come together in order to satisfy their aspirations and economic, social and
communal needs within the umbrella of an enterprise whose ownership are collective and where power is
democratically exercised according to cooperative principles”.

27 Article 3, paragraph 1 of regulation No. 2002/21 relating to the legal status of each category of MFE.

28 Ibid, Article 3, paragraph 2.
public limited company, the legislator did not go as far as it did for credit establishments to impose a mode of administration to them. Category three microfinance establishments, who are involved in loan granting transactions to third parties without carrying out savings collection activity, are known as Micro-credit establishments, projects, and enterprises likely to grant sector loans, as well as mutual security enterprises.²⁹

The above notwithstanding, microfinance establishments³⁰ wishing to change their legal status must obtain a prior authorization from the Banking Commission before doing so. The microfinance establishment decision taken with regards to the modification of their legal status shall be declared to the Banking Commission within a maximum period of two months.³¹

1.1.1 (c) The categories and registered capital of Microfinance Establishments

1- The categories of Microfinance establishments

Microfinance establishments are classified into three categories. The first category of microfinance establishments are those who collect savings from members and in turn use the savings to grant loans exclusively to their members,³² while category two microfinance establishments collect savings from the public and grant loans to third parties,³³ and category three microfinance establishments grant loans to third parties without carrying out savings collection activities.³⁴ Microfinance Establishment wishing to change their type and category respectively, must equally follow the same procedure for the change of their legal status seen above.

2- The registered capital of Microfinance establishments

Microfinance seeking for approval must equally show prove of a registered capital. Capital provides a cushion against a financial institution’s potential losses and it comprises

²⁹ Ibid, Article 3, paragraph 3.

³⁰ Article 1 and 2 of COBAC Regulation No. 2002/17 relating to the Modifications of the legal status and conditions for shares taking in MFEs.

³¹ Ibid, Article 3 subsections 2.

³² Article 5 paragraph 1 of Regulation No 01/02/CEMAC/UMAC/COBAC Relating to the conditions for the exercise and controlling Microfinance activity within the Economic and Monetary Community for Central Africa

³³ Ibid, Article 5, paragraph 2.

³⁴ Ibid, Article 5, paragraph 3.

³⁵ Most microfinance establishments wish to transform from a microfinance institution of the first category to that of a second category or a Bank, this transformation will facilitate the mobilization of savings, expand their funding base, increase the number of their customers, diversify their ownership and governance structures, increase the professionalism of their staff, improve overall internal control. Nevertheless, due to the financial constraints associated to this transformation, most Microfinance Establishments prefer to remain in their respective category.

that part of microfinance establishment liabilities which are not claimed by outsiders and is what the microfinance establishment owes itself and its members. However, the minimum capital of microfinance establishments depends on the category the microfinance establishment was registered. For microfinance establishments of the first category no minimum capital is fixed but the constituted capital must be represented\(^37\). Though this is to encourage microfinance establishments of this category, it at the same time limits the efforts and increases the risks of financial instability\(^38\), reasons why we proposed that a minimum capital should be fixed to this category of microfinance establishment. For microfinance establishments of the second category the minimum capital is fixed at 50 millions FCFA\(^39\), while that of microfinance establishments of the third category is fixed at 25 millions FCFA\(^40\). That of Umbrella Organs shall not be less than 20% of the constituted capital of its affiliates\(^41\). Category two and three Microfinance Establishment’s decision to change the amount of their capital shall be subject to the prior authorization of the Banking Commission, following the same procedure for the change of their legal status.

### 1.1.2. The Eligibility of managers and Auditors of Microfinance Establishments

The success of a Microfinance Establishment depends on how they are managed and on the quality of the audit reports that are done by the auditors. Before an individual who wish to manage a Bank or a Microfinance Establishment apply for an approval, he/she must have the legal capacity and the required academic qualification, be resident in the country in which he is applying for his approval, as well as furnish certain documents to the Monetary Authority.

#### 1.1.2 (a) Legal capacity and academic qualification

**1- Legal Capacity**

Giving the fact that a manager under a management lease\(^42\) has the status of a trader, he is subject to all obligations relating to his status. Managers of all the category of microfinance establishments must conform to the capacity to trade listed in Article 6 to 12 of the new Uniform Act on General Commercial Law.

However, beside the capacity to trade, Article 43 of Regulation No. 01/02/CEMAC/UMAC/COBAC provides that,

\(^37\) Article 7 Paragraph 1 of Regulation No. 01/020CEMAC/UMAC/COBAC. relating to the conditions for the exercise and controlling microfinance activity within the Economic and Monetary Community of Central Africa.


\(^39\) Article 7, Paragraph 2 of Regulation No. 01/020CEMAC/UMAC/COBAC.

\(^40\) Ibid, Paragraph 3.

\(^41\) Ibid, Paragraph 4.

\(^42\) Management lease is an agreement by which a natural person or legal person who is the owner of a business transfers it, on contract, to a corporate body or a natural person who is a manager and who runs the business at his own risk
“Nobody shall be a member of an establishment Board of Directors or any other organ serving as such, neither directly nor through a third party, or be a director or a manager of an establishment or have the power to sign on his or her own behalf:

- If he/she has been condemned for crime, violation of state security or integrity, attempt or complicity of these offenses,
- If he/she has been condemned for theft, breach of trust, breach of social property or swindles,
- If he/she has been declared bankrupt, except where there has been rehabilitation in his/her favor,
- If he/she has been condemned in his capacity as manager of an enterprise by virtue of the law on bankruptcy, except where there has been rehabilitation in his favor,
- If he/she has been destitute or fired from the functions of Ministerial Officer or justice auxiliary,
- If the Banking and financial system of Member States of the Economic and Monetary Community of Central Africa shoulders doubtful debts as defined by the regulation of the Banking Commission resulting from his signature or, after appraisal by the Banking Commission, resulting from the signature of enterprises placed under his control or his management”.

2- The academic qualification of managers and auditors

This element has to do with the academic standards and the level of experience of the manager of a microfinance establishment. The requirement as regard the qualification of managers of microfinance establishment depends on whether the microfinance establishment concerned is independent or is an affiliated establishment, an umbrella organ and equally on the total balance sheet of the establishment.

For independent microfinance establishments whose total balance sheet is not above 250 millions FCFA they shall be managed by a single manager43, here the academic standards and level of experience is not stated for the manager44. However, an establishment with a total balance sheet above 250 millions and up to 500 millions FCFA shall be managed by two managers at least one of whom shall have a diploma at least equal to the Advanced Level Certificate45 and have a professional experience of at least five (5) years in Banking, Associations or cooperatives activities46. For establishment with a total balance sheet of above 500 millions FCFA, they shall be managed by two (2) managers who must be holders of a Bachelor Degree in Economic Sciences, Banking, Finance, Law, management, or any other equivalent diploma and a professional experience of at least five (5) years in a higher level

43 Article 30, Paragraph 1 of Regulation No. 01/020CEMAC/UMAC/COBAC.

44 Though the texts does not provide any academic standards and level of experience for managers of microfinance establishments whose balance sheet is not above 250 million, these microfinance establishment are managed by a single person who must at least be a holder of an advance level certificate or an equivalent certificate and a professional experience of at least five years in the field of Microfinance.

45 An equivalent diploma to the Advance Level Certificate is the Capacité diploma

46 Article 30, Paragraph 2 of Regulation No. 01/020CEMAC/UMAC/COBAC.
manager position\textsuperscript{47}, or in the absence of a higher education diploma a professional experience of at least ten (10) years in a higher level management position will suffice\textsuperscript{48}. For affiliated Establishments whose total balance sheet is 500 millions FCFA they shall be managed by a single manager\textsuperscript{49}, here equally the academic standards and level of experience required of the manager is not mentioned. Establishment with a total balance sheet of 500 millions FCFA and up to a billion FCFA are managed by two managers at least one of whom is a holder of the Advanced Level Certificate or any other equivalent document and has a professional experience of at least two (2) years in Banking, Associations or Cooperatives activities\textsuperscript{50}. For Establishment with a total balance sheet of above a billion FCFA, they shall be managed by two managers at least one of whom shall have a professional experience of at least ten (10) years in a high level management position\textsuperscript{51}. For Umbrella Organs, they shall be managed by at least two (2) managers\textsuperscript{52}, who must be a holder of at least a Bachelor Degree in Economic Sciences, Banking, Finance, Law, Management, or any other equivalent diploma or give evidence of a professional experience of at least five (5) years in a high level management position in Banking, Association or Cooperative activities\textsuperscript{53}. In the absence of higher education diploma, a professional experience of ten (10) years in a high level management positions will suffice\textsuperscript{54}. However, the Banking Commission for Central Africa shall review the conditions for manager’s diplomas in case of non compliance with the above seen conditions\textsuperscript{55}.

As far as the academic qualification of auditors is concerned, from the readings of Article 33\textsuperscript{56} and 34\textsuperscript{57} of Regulation No. 01/02/CEMAC/UMAC/COBAC dealing with specific conditions applying to auditors, the academic standards and the level of experience required

\textsuperscript{47} Ibid, Article 30, Paragraph 3.

\textsuperscript{48} Ibid, Paragraph 4.

\textsuperscript{49} Ibid, Article 31 Paragraph 1.

\textsuperscript{50} Ibid, Paragraph 1.

\textsuperscript{51} Ibid, Paragraph 4.

\textsuperscript{52} Ibid, Article 32, Paragraph 1.

\textsuperscript{53} Ibid, Paragraph 2.

\textsuperscript{54} Ibid, Paragraph 3.

\textsuperscript{55} Ibid, Paragraph 4.

\textsuperscript{56} For Category one Microfinance Establishments whose total balance sheet is less than or equal to 50 millions FCFA, the conditions for accounts certification and the diligence of those in charge of this task shall be defined by a regulation from the Banking Commission of Central Africa. For category one Microfinance Establishments whose total balance sheet is between 50 and 500 millions FCFA, the conditions for accounts certification shall be the same as those applying to category Two and category Three MFE whose total balance sheet is less than or equal to 500 millions FCFA. The auditor shall be at least a CEMAC registered accountant. Above the lowest level, the establishment shall be controlled by an auditor who shall be a CEMAC registered chartered accountant.

\textsuperscript{57} The operation of a network with up to a balance sheet of one billion FCFA, here the certification of the network accounts shall be done by at least a CEMAC registered accountant. Above the mentioned limits, the certification of accounts shall be done by at least a CEMAC registered chartered accountant. The documents to be forwarded to the Monetary Authority in view of the registration shall be those mentioned in Article 29 of this regulation.
of microfinance establishments auditors is not mentioned and that microfinance establishments needless of their total balance sheet shall be control by an auditor, be him a CEMAC registered accountant or a CEMAC chartered accountant. However, practice demonstrates that as far as the audit mission in microfinance establishments are concerned, auditors must be holders of a Bachelor Degree in Accounting.

1.1.2 (b) Requirement of Residence

Managers and auditors of Microfinance Establishments must be resident in Cameroon, not withstanding the fact that they are of Cameroonian nationality or foreigners. Managers and auditors of Microfinance Establishments, reading from Article 29 of regulation No.01/02/CEMAC/UMAC/COBAC relating to the conditions for exercising and controlling microfinance establishments within CEMAC are bound to be resident in Cameroon. This is because amongst the documents to be supplied by these managers and auditors, they must furnish a certificate of residence if they are nationals and a residence permit if they are foreigners. Moreover, for these managers and auditors of microfinance establishments to obtain their approval, they have certain documents to furnish to the administration.

1.1.2 (c) Documents to be furnished

The documents that shall be deposited in two copies by would be managers of microfinance establishments to the monetary authority, according to Article 29 subsection (a) of Regulation No 01/02/CEMAC/UMAC/COBAC shall comprise of the following:

- A copy of birth certificate;
- Two passport size photographs;
- A certificate of non-conviction dating not less than three months;
- A curriculum vitae;
- Copies of acquire certificate;
- A copy of the decision of the Board of Directors appointing the individual as a manager;
- A certificate of domicile;
- A residence permits pending validations in the case of strangers.

As regards auditors of microfinance establishments, beside the list of documents listed in Article 29 subsection (a) seen above of Regulation No 01/02/CEMAC/UMAC/COBAC relating to the conditions for exercising and controlling microfinance establishments within CEMAC, they are bound to supply a copy of the CEMAC certificate of registration as accountant or chartered accountants, a copy of the registration in the National Board of duly registered accountants or chartered accountants or any other documents serving as such. The

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58 Article 29 subsection (a) of Regulation No. 01/02/CEMAC/UMAC/COBAC
prescription that the applicant should deposit two application files all to the Monetary Authority is considered as a fault given the fact that the Monetary Authority may for no concrete reasons refuse to transmit one of the files to COBAC. A solution is that, in addition to these two copies, a third copy should be forwarded directly to COBAC.

1.2. The procedure for Approval and Withdrawal of Approval

The Monetary Authority and the Banking Commission are actively involved in the procedure for approval and withdrawal of approval of a microfinance establishment, as well as their managers and auditors. However, if the decision of the Monetary Authority with regard to an approval is subject to an opinion of the Banking Commission, when it has to do with a withdrawal of license, the decision of the Monetary Authority is not subject to an opinion of the Banking Commission.

1.2.1. The procedure for approval

1.2.1 (a) The Procedure for the approval of Microfinance Establishments

At first this process was regulated by a Prime Ministerial Decree No. 98/300/PM of 9 September 1998 fixing the modalities for exercising the activities of Saving and Credit Cooperatives, modified and completed by Decree No 2001/023/PM of 29 January 2001 on the approval procedure of Saving and Credit Cooperatives and since 13 April 2002 by Regulation No 01/020CEMAC/UMAC/OBAC relating to the exercise of microfinance activity, which entered into force the 15 of April 2005. From the reading of Article 22 of Regulation No 01/020CEMAC/UMAC/COBAC, the exercise of microfinance activity is subject to an approval granted by the Monetary Authority after the opinion of the Banking Commission. According to Article 23 paragraph 4 of the above law, the application for registration of the microfinance establishment shall be sent to the Monetary Authority who shall forward the file to the Banking Commission for approval. The later shall be authorized to gather all information deemed necessary and shall decide, within a maximum period of three (3) months with effect from the date the application was received. Failing to decide within the said period shall mean acceptance. Paragraph 6 of the above article goes further to say that, the decision granting license to a microfinance establishment shall be published in the Official Gazette, in a legal announcement newspapers or in the Banking Commission Magazine. It shall specify the category under which the microfinance establishment is registered and define, where necessary, the authorized transactions.

The approval of branches of first and third category structures (microfinance establishments) is subject only to a simple declaration of the Monetary Authority, the Banking Commission and the National Credit Council (Article 42 of Regulation No 01/02/CEMAC/UMAC/COBAC), while that of structures of the second category will probably be that preview for Credit Establishment in Article 5 Paragraph 2 of Regulation No


60 But Microfinance Establishments who anticipate on this agreement of the Administration are not free from a closure for this motive (reason) in the future. This has been the case of a number of Microfinance Establishments who in this same situation where been asked to close down without any measures but in place to safeguard the savings that were collected by these Establishments. See, Mbouombouo (NJ), Op.cit, p.90.
01/00/CEMAC/UMAC/COBAC relating to the institution of a unique approval for Credit Establishments within the Economic and Monetary Community of Central Africa, which is accorded by a prior authorization of COBAC.

The exercise equally of the functions of the Umbrella Organ shall be subject to a license obtained from the Monetary Authority, after the approval of the Banking Commission and the Umbrella Organ is required to give evidence that two at least of the affiliated establishment have been exercising the activity for a minimum period of two (2) months, but a derogation may be granted by the Banking Commission especially for a Network set up with the support of an experienced institution⁶¹.

Before potential managers as well as auditors of microfinance establishments take up their functions, they must equally apply for an approval.

1.2.1 (b) The Procedure for the approval of managers and auditors of Microfinance Establishments

As far as the procedure for the approval of microfinance establishment managers, reading from Article 23 of Regulation No. 01/02/CEMAC/UMAC/COBAC, whenever a microfinance establishment is depositing her application for approval the file must be supported by that of their managers, so that when their license is given to them this will equally apply to their managers as well. This therefore implies that COBAC has a maximum period of three (3) months from the date of receipt of the documents of managers to give its opinion.

Concerning their auditors, whenever a microfinance establishment is depositing her application for approval the file must be equally be supported by that of their would be auditors, so that when their license is given to them this will equally apply to their auditors as well.

However, whenever microfinance establishments, as well as their managers and auditors no longer fulfill the conditions under which the approval was granted, they can see their approval withdrawn from them.

1.2.2. The procedure for the withdrawal of Approval

Given the fact that withdrawal of approval is a decision taken unilaterally by the Monetary Authority, measures have been put in place to ensure that the Monetary Authority does not abuse this power. To understand these measures, we are going to examine the procedure for the withdrawal of approval of microfinance establishments and that for the withdrawal of approval of their managers and auditors.

1.2.2 (a) The procedure for the withdrawal of approval of Microfinance Establishment

Reading from Article 24 of Regulation No. 01/02/CEMAC/UMAC/COBAC, the Monetary Authority can withdraw the approval of a microfinance establishment either at the request of the microfinance establishment itself or the Umbrella Organ, or when the said microfinance establishment no longer complies with the conditions under which the license was granted, where the microfinance establishment has not made use of its license within a

⁶¹ Article 27 of Regulation No. 01/02/CEMAC/UMAC/COBAC.
maximum period of twelve (12) months or where it has no longer been carrying out its activities for a period of six (6) months. All withdrawal approval decisions must be motivated and notified to those concerned by the Monetary Authority\(^{62}\) and the decision must be published in the Official Gazette and in at least one of the principal National Press. According to Article 28 of Regulation No. 01/02/CEMAC/UMAC/COBAC, the decision withdrawing the approval of the umbrella organ must precise the faith reserved to the affiliated microfinance establishments.

1.2.2 (b) The procedure for the withdrawal of approval of managers and auditors of Microfinance Establishments

Reading from Article 35 of Regulation No. 01/02/CEMAC/UMAC/COBAC the withdrawal of approval of managers or auditors shall be decided by the Monetary Authority either at the request of the microfinance establishments or of the person concerned, or when the person concerned no longer comply with the conditions for their approval. The withdrawal decision for the managers and auditors of microfinance establishment\(^{63}\) can be pronounced by the Banking Commission as a disciplinary sanction. The license withdrawal decision for managers of microfinance establishments\(^{64}\) shall be motivated and notified to those concerned and published in the Official Gazette and at least in a Principal National Press.

The withdrawal decisions delivered by the Monetary Authority with regard to the approval of a Microfinance Establishment, their managers and auditors are subject to appeals. In case where they decide to function without an approval they will be imposed sanctions. However any microfinance establishment who complies with all the norms governing approval will have to equally fulfill certain conditions after her approval decision has been granted.

2.0. Appeals against decisions pronounced by the Monetary Authority

The fact that the Monetary Authority has been given a unilateral power to pronounce decisions of withdrawal of approval, there is always suspicion with regard to the exercise of this power. This explains the reason why microfinance establishments, as well as their managers and auditors have always appealed withdrawal decisions pronounced by the Monetary Authority.

2.1. Appeals for withdrawal decisions

Appeals for withdrawal decisions which are carried out by microfinance establishments, as well as by their managers and auditors are addressed to the President of the Banking Commission and tabled in front of the Board of Directors of BEAC, which is considered as the body of last resort.

2.1.1. Appeals carried out by Microfinance Establishments

\(^{62}\)Article 23, Paragraph 5 of Regulation No. 01/02/CEMAC/UMAC/COBAC

\(^{63}\)Article 36 of Regulation No. 01/02/CEMAC/UMAC/COBAC

\(^{64}\)Article 37 of Regulation No. 01/02/CEMAC/UMAC/COBAC.
When microfinance establishments have been refused approval, they have the right to appeal before the Board of Directors of BEAC, which is the body of last resort. An appeal is addressed to the President of the Banking Commission within two (2) months following the notification of refusal and the appeal does not suspend the decision of the Monetary Authority except in cases where the Board of Directors of BEAC has been seized following the withdrawal of an approval.

This implies that appeal before the Board of Directors of BEAC with regard to the sanction of withdrawal of approval has the effect of suspending the decision of the Monetary Authority that pronounced the withdrawal decision. It is therefore possible for a microfinance establishment to continue carrying out its activities after its approval has been withdrawn during the period pending the verdict of the Board of Directors of BEAC. Given that no time limit has been provided for the pronouncement of a verdict by the Board of Director of BEAC when seized, the period of waiting may end up being too long. The question here is to know how the microfinance establishments will be managed during this time, given that the manager has not been unequivocally withdrawn from their functions neither by COBAC nor by the shareholders. Moreover, COBAC cannot nominate a Liquidator for its decision has not yet been final. This flaw can be remedied if the legislator fixes a time limit within which an appeal of this nature should be heard and judgment passed. Managers and auditors of microfinance establishments can equally appeal decisions of withdrawal of approval.

2.1.2. Appeals carried out by managers and auditors of Microfinance Establishments

As far as appeals that can be undertaken by managers and auditors of microfinance establishments with regard to withdrawal decisions delivered by the Monetary Authority are concerned, it is very difficult to foresee a situation where the managers or the auditors of microfinance establishments will individually seize the Board of Directors of BEAC which is the body of last resort. Whenever, the managers or auditors of microfinance establishment’s application for approval are withdrawn, the microfinance establishments are informed of this withdrawal of approval. Therefore, it is but logical that these microfinance establishments will all follow the procedure of appeal mentioned above to protest the decision of withdrawal of approval delivered by the Monetary Authority.

However, whenever these microfinance establishments, managers and auditors wave this right of appeal and proceed to function without an approval, as well as violate certain articulated regulations, sanctions that are well spelt out by COBAC texts will be imposed on them and applied by the Banking commission and the Monetary Authority.

3.0. Sanctions

It is true that cases may arise where some microfinance establishments may either deliberately or by omission violate certain COBAC regulations governing their activities. It is for these that, the Banking Commission has provided for a set of sanctions to ensure that any defaulting Establishment is called to order. For a better appreciation of these sanctions we shall examine Disciplinary sanctions and pecuniary sanctions imposed for not respecting within the prescribed deadlines certain obligations and Criminal Sanctions.

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65 Article 18, Paragraph 1 of the Annex to the 1990 Convention relating to the creation of COBAC.

66 Ibid, Article 18, Paragraph 2.
3.1. Disciplinary and Pecuniary Sanctions

3.1.1. Disciplinary Sanctions

Disciplinary sanctions attack the professional situation of the concerned and are imposed on microfinance establishments as well as their managers and auditors during a disciplinary procedure. According to Article 57 of Regulation No. 01/02/CEMAC/UMAC/COBAC when a microfinance establishment violates a regulation of the Banking Commission the following disciplinary sanctions will be applied on it:

- Warning,
- Blame,
- The prohibition to carry out some transactions or to exercise some activities,
- The suspension, the automatic resignation, or the revocation of the auditor,
- The suspension or the automatic resignation of the board members, the general manager, or the manager,
- The withdrawal of license.

Looking at these sanctions, we discover that, the warning and blame play more of a pedagogic role and that the objective of the Banking Commission was not to systematically sanction Establishments, but to see into it that they function within the normal conditions. Warning and blames exert pressure on them to correct the abnormalities noted during the control process. The other sanctions are coercive measures, which directly affect the activity of the Establishments. In the case of the suspension or removal from office of managers or auditors, the Establishments must take all urgent measures to organize a meeting of the Administrative Council in order to nominate another manager or auditor. Finally, the most grievous sanction is the withdrawal of license that has as effect the liquidation of the microfinance establishment.\textsuperscript{67}

3.1.2. Pecuniary Sanctions

This involves the imposition of fines for not respecting within prescribed deadline certain obligations. Microfinance establishments are imposed certain obligations. This is because, according to Article 65 of the text governing microfinance activities, microfinance establishments are called upon to periodically publish their financial and accounting situation and paste out for the attention of customers and by Article 66 paragraph two (2) of the same text, BEAC shall draw up the list, the content and the deadlines for forwarding of documents and information it needs and according to Paragraph 3 of the same text, the Establishments shall be bound to regularly forward to BEAC their declarations.

With regard to the various fines, per Article 62 of Regulation No 01/02/CEMAC/UMAC/COBAC on Microfinance, the fines per day of delay and per omission are:

- 15 000 francs for the first fifteen (15) days;
- 20 000 francs for the following fifteen (15) days;

\textsuperscript{67} Article 64 of Regulation No. 01/02/CEMAC/UMAC/COBAC
• 30 000 francs beyond that period.

The notification of these fines to defaulting microfinance establishments falls under the respective responsibility of the Banking Commission and the Bank of Central African states and this sum is recovered by the Central Bank and deposited in the account of the Treasury of the State concerned. Upon simple complain tabled before these authorities, the institution keeping the account(s) of the defaulting microfinance establishment shall be obliged to debit the said account and credit the account of the National Loan Council by the amount of the debit entry. Decisions taken by the Banking Commission are likely to appeal to the CEMAC Court of justice within two (2) months following the notification of the decision which, alone, shall act as the court of last resort.

3.2. Criminal Sanctions

Criminal sanctions have to do with the pronouncement of fines and imprisonment terms. We have those impose for non compliance with the rules governing approval and those imposed for obstructing the whole control procedure, providing inadequate information and for not respecting certain provisions of the law.

3.2.1 Non compliance with the rules governing approval

Article 58 of the COBAC text governing microfinance activities stipulates that, without prejudice of the sanctions that the Banking Commission may take under the same initiative, shall be condemned to serve an imprisonment term ranging from three (3) months -- to two (2) years and to pay a fine of from 100 000 to 10 millions francs or one of the punishments, whoever, acting either on his or her own behalf of a legal entity, shall violates the provisions and the implementation texts of this regulation:

• for absence of license for the exercise of the activity of Microfinance Establishment;
• Continuation of the activity of Microfinance Establishment after withdrawal of license;
• Absence of license for the exercise of the functions of managers or Auditors of the Microfinance Establishments
• Illegal exercise of microfinance operations on a regular basis;
• And any other violation of the prohibitions mentioned in the present regulation,
• The court may order that the judgment should either be publish in part or in it entirety in a newspaper designated by her and for the rulings to be published in any place to be determined by her, at the expense of the defaulter’s, provided the said expenses do not exceed the maximum amount of the fine incurred already by the defaulter’s.

Besides these sanctions, we have those impose on Microfinance Establishments for obstructing the whole control procedure, providing inadequate information and for not respecting certain provisions of the law.

3.2.2. Those imposed for obstructing the whole control procedure, providing inadequate information and for not respecting certain provisions of the law

68 Article 68 of Regulation No. 01/02/CEMAC/UMAC/CO.B.A.C.
The control here are internal, external and Banking Commission control. Inadequate information are those related to the documents to be produced by microfinance establishments, their managers and auditors, to the National Credit Council, the Monetary Authority, the Central Bank and the Banking Commission and information to facilitate the control exercise of the Banking Commission. Certain provisions here are those dealing with the participation in the capital of other enterprises, their legal status, their number of managers, the use of names and authorized transactions.

Article 59 of the COBAC text governing microfinance activities provide for an imprisonment term ranging from one (1) month to one (1) year and a fine ranging from 100 000 to 5. 000. 000 million francs or to face only one of the penalties, whoever shall, knowingly:

- Obstruct the controls, by the Banking Commission or by auditors, of a Credit Establishment with a special status,
- Obstruct the exercise of the mission assigned by the Banking Commission, to the Temporal Administrator appointed under the provisions of Article 63,
- Obstruct the exercise of the mission assigned by the Banking Commission to the Liquidator appointed under the provisions of Article 64,
- Give certify or forward wrong information under the provisions and implementation texts of Articles 22, 23, 24, 27, 49, 52 and 54,

In case of inefficiency established in the administration or the management of a microfinance establishment,
the Banking Commission shall be authorised to appoint a Temporal Administrator.

Any microfinance establishment whose license has been withdrawn shall be classified under the structures to be liquidated.

The exercise of Microfinance activity is subject to an approval granted by the Monetary Authority after the opinion of the Banking Commission.

The application for registration of the establishment under one of the categories defined in Article 5 of this regulation shall be sent to the Monetary Authority.

The Monetary Authority can withdraw the approval of a microfinance establishment either at the request of the microfinance establishment itself or the Umbrella Organ, or when the said microfinance establishment no longer complies with the conditions under which the license was granted, where the microfinance establishment has not made use of its license within a maximum period of twelve (12) months or where it has no longer been carrying out its activities for a period of six (6) months.

The exercise of the functions of the Umbrella Organ is subject to a license obtained from the Monetary Authority, after the approval of the Banking Commission and the Umbrella Organ is required to give evidence that two at least of the affiliated establishment have been exercising the activity for a minimum period of two (2) months, but a derogation may be granted by the Banking Commission especially for a Network set up with the support of an experienced institution.

The control of the establishments activity shall be organised according to the following modalities:
- The internal control, carried out within the structure by its own organs,
- The external controls carried out by external accountants or auditors,
- The Banking Commission control.

The control to be made by external auditors shall be carried out once a year and enable the certification of accounts. The basic report shall be forwarded to the Banking Commission and to the Monetary Authority

The Banking Commission shall be authorized to issue a summon to pay or warnings to the establishments concerned as well as to apply against them or against their managers or auditors the disciplinary sanctions
• Violate the provisions and implementation texts of Articles 25\textsuperscript{78}, 26\textsuperscript{79}, 32\textsuperscript{80}, 45\textsuperscript{81}, 62\textsuperscript{82}, 63\textsuperscript{83}, 64\textsuperscript{84}.

4.0. Conditions to be fulfilled after Approval has been granted

Whenever a microfinance establishment has not undertaken any appeal with regard to approval, nor been imposed any of the above sanctions, the Monetary Authority will proceed to issue a license. The issue of a license to a microfinance establishment comes with certain conditions to be fulfilled by these microfinance establishments. These conditions can be divided into Administrative and professional.

4.1. Administrative requirements

These requirements consist of registration with the National Credit Council and registration in the Trade and Personal Property Credit Register.

4.1.1. Registration with the National Credit Council

The National Credit Council\textsuperscript{85} is created in each Member States next to the National Direction of the Bank of Central African States\textsuperscript{86}, and they are National Advisory bodies outlined in Article 57.

\textsuperscript{78} No microfinance establishment shall adhere to a network if the said microfinance establishment has not obtained prior license from the Monetary Authority, after approval by the Banking Commission and the application for registration shall be presented by the Umbrella Organ which shall be made up of the documents mentioned in Article 23 of this regulation.

\textsuperscript{79} Microfinance establishments registered on an individual basis and wishing to join a network shall request the prior authorization of the Banking Commission.

\textsuperscript{80} Umbrella Organs shall be managed by at least two (2) managers, approved by the Monetary Authority upon confirmation by the Banking Commission.

\textsuperscript{81} Establishments shall not be authorised to carry out any foreign transaction as an intermediary. Financial establishments shall be authorised to carry out transactions other than those for which they are authorised according to the category to which they belong or to create confusion in that connection.

\textsuperscript{82} See page 17 above.

\textsuperscript{83} In case of inefficiency established in the administration or the management of an establishment, the Banking Commission is empowered to appoint a Provisional Administrator.

\textsuperscript{84} Any microfinance establishment whose license has been withdrawn go into liquidation.

\textsuperscript{85} The National Credit Council was created by Decree No. 96/09/1996 and it has consultative and regulatory attributions. In it regulatory functions, it fixes the conditions of Banks and ensure the normalization of the statistics that Credit Establishments must periodically elaborate. In it consultative functions, the National Credit Council provides recommendations which are aimed at increasing the volume of deposits in Banks, her opinion is equally required for she is regularly consulted to give her opinion on the general policy of credit. See. KAGHO NANDA (D.F), Contribution de l’Audit Financiere des Enterprises: Cas des Banques Camerounaises, Université Catholique d’Afrique Centrale http://www.memoireonline.com.

\textsuperscript{86} According to Article 47 of the status of the Bank of Central African States.
responsible for making recommendations on the orientation of Monetary and Credit Policy as well as Banking regulation within the conditions prescribed by the Convention, their organization and mode of functioning are fixed by Decree. Microfinance establishments are bound to be registered with the National Credit Council, which in turn establishes a number for them and makes up a list including the registration dates of approved microfinance establishments which is published in the official journal. This measure which is geared at preventing the public from contracting with dubious microfinance establishment is very doubtful if it can really attain this objective given the illiteracy and ignorance of the population of the procedure of verification, reason why we proposes that they should be a periodic reading of the names of the approved microfinance establishments over the radio, in French, pidgin and even the vernacular, this will be of importance to co-operatives who deal with a highly illiterate population. But the question we may be tempted to ask is to know who will bear the expenses of such periodical reading of names of approved microfinance establishments over the radio?

Equally exist, is the obligation of registration in the Trade and Personal Property Credit Register (TPPCR).

4.1.2. Registration in the Trade and Personal Property Credit Register

Application for registration in the Trade and Personal Property Credit Register is obligatory for cooperatives who exercise Banking or financial activities. In the view of Prof Anoukaha these Cooperatives which are engaged in the collection of Savings, Credit operations and the putting at the disposal of their customers means of payments, shows their closeness to Banks who are commercial companies constituted under the legal form of a Public Limited Company. To him, the moments Cooperatives perform commercial acts on regular basis, these Cooperatives are commercial companies and thus must be subject to OHADA legislation. Beside registration in the Trade and Personal Property Credit Register, all Cooperatives must be registered in the Registry of Cooperative Societies instituted in each Member State of OHADA (See Article 74 of the Uniform Act on Cooperative Societies). Moreover, microfinance establishments of the second and third category who are created for profit maximization must apply for registration in the Trade and Personal Property Credit Register.

All person with the exception of Economic Interest Groups, registered in the Trade and Personal Property Credit Register shall be presumed save proof to the contrary to have the status of a trader within the meaning of the Act and are bound to indicate on their correspondences their numbers and place of registration in the Register. Microfinance Establishments have certain professional requirements to fulfill.

4.2. Professional requirements

Article 30 of the Annex to the 1992 Convention relating to the Harmonization of Banking regulations in Central Africa States.

Article 21 of Regulation No 01/02/CEMAC/UMAC/COBAC relating to the conditions for the exercise and controlling Microfinance activity within the Economic and Monetary Community of Central Africa.

ANOUKAHA (F), La Commercialité Dans le Droit OHADA (Lectures Notes, Masters II), University of Dschang, 2009.

Microfinance establishments are bound to join the professional association of their respective profession, but they have the option of either adhering to a network or not.

4.2.1. Adherence to a Professional Association

Article 20 of Regulation No 01/02/CEMAC/UMAC/OBAC provides that, microfinance establishments are bound to adhere to the Professional Association of Microfinance establishments of their respective countries. This regulation indicates that there shall only be one such Association per State. The purpose of a Professional Association shall be to defend the collective interest of the establishments. Its mission shall be to inform it affiliates and the public. It shall be authorized to carry out any study and to make any recommendation in view to enable the cooperation among members and the organization, as well as the management of services of common interest. It Articles of Association shall be submitted for approval of the Monetary Authority. The Professional Associations of Member States shall be obliged to adhere to the Federation of Professional Associations of Microfinance Establishments of the CEMAC zone. That Federation shall be in charge of achieving the same goals as those of Professional Association with sub-regional characteristics.

The name of the Professional Association of microfinance establishments is known as Association Nationale des Etablissement de Microfinance au Cameroun (The National Association of Microfinance Establishments in Cameroon) abbreviated in French as ANEM-CAM. But microfinance establishments have the option of being a member to a network.

4.2.2. Membership to a Network

Microfinance establishments have the choice of either carrying on their activities independently or to join a network, which regroups registered microfinance establishments who all share the same purpose and have voluntarily decided to group together in order to adopt common organization and functioning rules and the network must provide itself with an Umbrella Organ. No establishment reading from Article 25 of Regulation No. 01/02/CEMAC/UMAC/OBAC shall adhere to a network if the said establishment has not obtained prior license from the Monetary Authority, after approval by the Banking Commission and the application for registration shall be presented by the Umbrella Organ which shall be made up of the documents mentioned in Article 23 of this regulation.

However according to Article 26 of the above regulation, microfinance establishments registered on an individual basis and wishing to join a network shall request the prior authorization of the Banking Commission and such application for authorization which shall be submitted by the Umbrella organ shall include: the reason for the application, the minutes of the general meting of the establishment authorizing its adherence to the network, the minutes of the general meeting of the Umbrella Organ authorizing the adherence, the accounting documents for the past three financial years, the draft membership contract defining the reciprocal rights and obligations.

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91 Article 12 of Regulation No. 01/02/CEMAC/UMAC/OBAC relating to the conditions for the exercise and control of Microfinance activity within the Economic and Monetary Community of Central Africa.

This Umbrella Organ\textsuperscript{93} which is an establishment with an appropriate capital shall represents the network to third parties (namely supervisory and control organs), define conditions for membership, exclusion and withdrawal of affiliates, ensure the respect of prudential norms by affiliated establishments so as to enhance the cohesion and guarantee the financial balance of the network, exercise disciplinary powers, implement restructuring measures and financial sanctions laid down in the internal rules and regulations of the network, the putting in place of an accounting plan of the profession, the requirements of the control and supervisory authorities, elaborate consolidated accounting documents and other statements defined by the regulation of the Banking Commission, organize the management of resource surpluses generated by affiliated establishments, protect network liquidity, organizes financial solidarity among the affiliates in case one or several affiliates becomes bankrupt, creating internal control system of the network and ensuring the respect of prudential norms by affiliated establishments\textsuperscript{94}.

Establishments affiliated to a network shall be bound to subscribe social shares in the Umbrella Organ, pay contributions for running expenses, pay to the Umbrella Organ part of the resources collected, takes part in the reconstitution of the Umbrella Organ’s shares capital and in the covering of the net liability where necessary\textsuperscript{95}. The fact that Article 16 of Regulation No. 01/02 dealing with the conditions for the exercise and control of Microfinance Establishments provides that this Umbrella Organ shall be registered and governed as a Credit Establishment is a bid confusing when we know for example in Cameroon that the Union Bank of Cameroon was created by members of CAMCCUL, so why create a Bank when CAMCCUL is itself registered and governed as a Bank. From our research, the explanation was that CAMCCUL was dealing only with affiliates and not with the general public as is suppose to be the case with all Banks, so CAMCCUL decided together with her affiliates to create a Bank that will not only transact business with her affiliates but equally with the general public.

CONCLUSION

In fact, we have seen that the exercise of the activity of microfinance is surrounded around the approval of these microfinance establishments as well as their managers and auditors. But the fact that the Monetary Authority can issue a license before the exercise of any microfinance activity only after confirmation by COBAC is one of the must important attributions of COBAC because until the1990s it was reserved only to the Monetary Authority. But the fact that the approval of a microfinance establishment and their managers is pronounced by the competent national authority after confirmation by COBAC is a major obstacle, giving the fact that COBAC can give its opinion only after been seized by the national Monetary Authority.

\textsuperscript{93} In Cameroon this umbrella organs which are the main network of Microfinance establishments are the Cameroon Cooperative Credit Union League (CAMCCUL) Ltd, created in June 1986 by 34 Credit Unions, the Association of Mutuelles Communautaire de Croissance (MC\textsuperscript{2}) developed with the technical assistance of Afriland First Bank and the N.G.O. ADAF (Appropriate Development for African Foundation), the Caises Villageoises d’Epargne et de Credit Autogérees (CVECA) backed up by Microfinance and Development (MIFED), BICEC and two French Institutions: Le Centre International pour le Development et la Recherche (CIDR) l’Agence Française de Developpement (AFD). See Anne-Claude (C), Op.cit.

\textsuperscript{94} Article 14 of Regulation No. 01/02/CEMAC/UMAC/COBAC relating to the conditions for the exercise and controlling Microfinance activity within the Economic and Monetary Community for Central Africa.

\textsuperscript{95} Ibid Article 15.
The academic level and years of experience required of managers of microfinance establishments are of great importance. This is because microfinance establishments that have succeeded have managers who carefully think through the long-term objectives they wish to meet and then plan systematically to achieve them. However, a difficulty comes into place with regards to the effective application of the professional experience required of managers of microfinance establishments, giving the fact that from our research most of these managers did not fulfill this professional experience required of them at the time of taking over the post of managers of microfinance establishments. This problem is further aggravated with the fact that, beside the academic and professional experience required of these managers, they are equally required to have a sound knowledge in computing.

We have seen the disciplinary and criminal sanctions imposed on microfinance establishments, meritorious as this provision may seem, it suffers from the difficulty of enforcement. COBAC neither has a judiciary of its own nor any police force to ensure enforcement but relies on those of the contracting States for implementation whenever there is a breach.

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