

Konsej Nasyonal de Finansment Popilè (KNFP)
Program for the Recovery of the Economy in Transition (PRET/DAI/USAID)

**LEGAL-REGULATORY FTAMEWORK FOR NON-COOPERATIVE
MICROFINANCE INSTITUTIONS**

SUMMARY OF RECOMMENDATIONS IN ENGLISH

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Recommendations

A. Improvements in Haitian Common Law

- Pass an “Associations Law” to create legally recognized associations that are moral persons (*personnalité civile*). Associations do not now have a practical way of becoming legally recognized entities whose assets and liabilities are separable from those of their founders. This is a serious problem for many small and a few large MFIs. A draft law modeled on the French associations law already exists that would represent a significant step forward. Its passage through parliament should be supported.
- Pass an “NGO Law” to clarify the legal status of non-governmental organizations. Such a law would clarify the ambiguity that currently exists surrounding the issue of whether NGOs are moral persons by virtue of their registration with the MPCE or through their incorporation as some other type of legal entity enjoying such a status. A draft law exists which makes it clear that NGOs are a type of association that merits special tax advantages for reasons of national development and is subject to special reporting requirements imposed by the MPCE. This draft law forms a useful package with its companion association law; it should also be supported.
- Generalize the tax exemptions available to NGOs and cooperatives to all microfinance institutions, irrespective of their legal form. This would *not* apply to taxes on profits for commercial firms, but would cover real estate taxes, *patente*, turnover taxes and customs and excise duties. A clear definition of “microfinance” would need to be adopted to limit the application of these advantages.

B. Changes in the Framework for Financial Sector Regulation

Two broad types of options for MFI legal framework reform are possible, depending on whether or not Haitian authorities (principally the BRH) follow-through on present initiatives to adopt a new banking law (*projet de loi sur les établissements de crédit*). From the standpoint of non-cooperative MFIs, it is clearly preferable that an effort to address certain critical issues such as registering credit-only microfinance institutions and widening access to savings deposits be incorporated in an integrated approach to financial sector regulation that could only come about through a new umbrella banking law. Thus the first set of options presented below for promoting reforms within the framework of the existing banking law is clearly a second-best solution.

Option 1: Desirable reforms should the present banking law be left untouched

- The BRH could issue special regulatory decisions that would make it more feasible to operate an MFI from a commercial bank platform. This would necessarily include a reworking of control procedures to account for a loan portfolio consisting entirely of microloans. It could also include a

strengthening of loan provisioning requirements for microloans and clarifications on procedures for registering commercial banks under legal forms besides the *Société Anonyme* (such as an association).

- An amendment to the current banking law could be issued to explicitly liberalize the practice of collecting mandatory deposits linked to loans. This would give official recognition to the current policy of unofficial tolerance. It would also, by corollary, actually strengthen the existing law's prohibitions on the collection of voluntary deposits by MFIs other than commercial banks and cooperatives.

Option 2: Desirable reforms within the framework of a new banking law (*projet de loi sur les établissements de crédit*).

The BRH has developed a reformulated banking law, which exists in draft form, and has been the subject of official consultations with the banking sector, but not with the microfinance sector. This draft law provides a flexible umbrella that could provide a framework for integrating the microfinance sector, in all its diversity, into a coherent system of financial sector regulation and supervision under the authority of the BRH.

The draft law is structured to define: (1) a list of financial activities whose exercise is covered by the law and (2) a classification of financial institutions according to the specific types of activities they are permitted to engage in and their reporting and supervisory requirements. This type of flexible framework could be adapted to recognize appropriate microfinance activities, institution types and regulatory requirements.

The major elements of such a legal framework are shown in the attached chart on the following page. The principal characteristics of the major institutional categories are as follows:

- Commercial Banks would exist essentially as proposed in the draft law. They would be allowed to exercise the whole range of financial activities and be subject to direct supervision by the BRH. Their judicial form would be restricted to private and cooperative companies.
- Finance Companies would be permitted to engage in a more limited range of activities than commercial banks. Most importantly they would either be prohibited from collecting deposits altogether or at least would not have access to demand deposits or time deposits of short duration. They would be able to offer a wide variety of credit instruments, engage in foreign exchange and trade operations, and issue bonds and commercial paper instruments. They would be limited to private and cooperative companies and be subject to direct supervision by the BRH. This category does not now exist.

Draft Law on "les Etablissements de Crédit"

Definition of proposed institutional categories within the "Etablissement de Crédit" law

Banque	Direct Supervision by BRH Mandatory Prof. Association	SA, Coopérative High minimum capital
Société Financière	Direct supervision by BRH Mandatory Prof. Association	SA, Coopérative Minimum capital lower than bank
[Dashed Box]	Other possible categories (foreign exchange house, money transfer, credit card companies, mutual funds managers, investment companies...)	
Micro-banque	Direct or delegated supervision Mandatory Prof Association	SA, Coopérative Low minimum capital requirement
Institution de microcrédit	No prudential supervision Registration with BRH Voluntary Prof. Associations	Complete freedom of legal form No minimum capital requirement

- Micro-banks. A new category of institution called micro-banks could be created that would be authorized to mobilize time and passbook savings deposits (but not demand deposits), make loans (subject to size restrictions) but would not engage in foreign exchange transactions or issue financial instruments. Micro-banks would be required to incorporate either as a private or cooperative company with a minimum capital requirement well below that of finance companies and commercial banks. They would be subject to prudential supervision (capital adequacy, liquidity, loan provisioning, and individual loan limits) adapted to particularities of MFIs either directly by the BRH or by an institution it would delegate. Micro-banks would be required to form a professional association to represent them with the BRH.
- Microcredit institutions. A final category of microfinance institutions would be created to recognize the many types of credit-only organizations now operating without any specific registration as financial institutions. Such institutions would be authorized to make micro loans and accept mandatory savings deposits linked to a loan (but not true voluntary savings). They would be free to adopt any sort of legal form recognized in Haitian law, but would be required to register with the BRH. They would not be subject to any regulation or prudential supervision but would be required to send an annual report with unaudited financial statements to the BRH. Microcredit institutions would be enjoined, but not required, to form associations to promulgate voluntary professional standards and codes of good conduct according to their particular methodologies.

This particular institutional formulation, within the framework of the new banking, law would offer the following improvements from the point of view of the microfinance sector:

It would liberalize access to deposit mobilization and remove distortions in the current environment resulting from differential regulatory treatment according to MFI institutional form. In the current environment, only cooperative MFIs (*caisses populaires*) can legally mobilize voluntary deposits. They are able to do this free of any effective prudential supervision. The only way in which non-cooperative MFIs, who do not wish to adopt a cooperative form of governance, can mobilize savings would be to “transform” and create a private company registered as a commercial bank. This is a difficult due to BRH regulations making it difficult to operate as a commercial bank with a portfolio consisting entirely of microloans. As a result, there are strong incentives for MFIs wanting to mobilize deposits to choose a cooperative form of governance, whether this is their true preference or not. By creating the micro-bank category, open to both cooperatives and private companies who would be subject to similar prudential regulations set by the BRH, this distortion can be eliminated. Furthermore, this proposal would achieve the twin goals of both widening the scope for microfinance deposit mobilization and improving the overall framework

for financial supervision by enforcing prudential standards in the cooperative sector.

It would create a coherent institutional framework and registry for credit-only MFIs. Currently credit-only MFIs exist in at least five different legal forms (associations, NGOs, foundations, religious institutions and private companies). Although many of these institutions perform similar activities, they are subject to widely different registration requirements and levels of oversight. While there is no need for prudential supervision of such credit-only MFIs, there is a need to identify them and to have some sort of disclosure of their activities to the public authorities responsible for financial sector oversight (the BRH). This goal is achieved with the creation of the microcredit institutional category.