

REPUBLIC OF BURUNDI



OFFICE OF THE PRESIDENT

DECREE NO 100/044 OF 16 MARCH 2020, PERTAINING TO CREATION, MISSIONS, ORGANIZATION AND OPERATION OF THE NATIONAL FINANCIAL INTELLIGENCE UNIT IN BURUNDI "C.N.R.F" IN ACRONYM

THE PRESIDENT OF THE REPUBLIC,

Given the Constitution of the Republic of Burundi;

Considering Law No. 1/12 of April 18, 2006 on the prevention and repression of corruption and related offenses;

Given Law No. 1/02 of February 4, 2008, on the fighting against money laundering and the financing of terrorism;

Considering Law No. 1/22 of July 25, 2014 regulating the recourse and direct action of the State and the municipalities against their agents and their attendants;

Given Law No. 1/17 of August 22, 2017 governing banking activities;

Given Law No. 1/27 of December 29, 2017 revising the Burundi Criminal Code;

Given Law No. 1/07 of May 11, 2018 on the national payment system;

Considering Law No. 1/09 of May 11, 2018 modifying the code of criminal procedure;

Given Law No. 1/05 of February 27, 2019 governing the Burundi capital market;

Considering the decree-law no 1/024 of July 13, 1989 on organic framework of personalized state administrations;

Considering Decree No. 100/181 of August 11, 2014 bearing missions, reorganization and operation of the insurance regulatory and control agency;

Considering Decree No. 100/196 of September 15, 2016 providing additional governance of public establishments with an administrative nature, personalized state administrations and public participation companies;

Considering Decree No. 100/037 of April 19, 2018 revising Decree No. 100/29 of September 18, 2015 relating to structure, functioning and missions of the Government of the Republic of Burundi;

Given Decree No. 100/081 of July 20, 2018 bearing missions, organization and operation of the Ministry of Finance, Budget and Cooperation for Economic Development;

On the proposal of the Minister of Finance, Budget and Economic Development Cooperation;

DECREES :

CHAPTER I: GENERAL PROVISIONS

Article 1: The purpose of this decree is the creation of a national financial intelligence unit, "CNRF" in acronym, below called the cell.

Article 2: The unit is a public service with a legal personality and an autonomy of administrative and financial management.

It is placed under the supervision of the ministry in charge of finance.

Article 3: The cell's Head Office is in Bujumbura. It can be transferred to any other place within the national territory on the proposal of the board of directors and after approval of the supervisory authority. Cell agencies can be established throughout the national territory.

Article 4: The cell is created for an indefinite period.

CHAPTER II: OBJECTIVES AND MISSIONS OF THE CELL

Section 1: Cell objectives

Article 5: The cell has the objectives of:

- Promote financial transparency;
- Fight against financial crime;

- Fight against the financing of terrorism.

Section 2: Missions of the cell

Article 6: The overall mission of the cell is to collect and process financial information on capital laundering and terrorism financing circuits.

To this end, it has a specific missions of:

- Receiving declarations of suspicion of money laundering and financing of terrorism;
- Processing declarations of suspicion and to transmit, to the public prosecutor, the report which follows as well as other information concerning acts likely to constitute money laundering or financing of terrorism;
- constituting one or more databases containing all the useful information concerning the declarations of suspicion, the operations carried out as well as the persons having carried out the operation directly or by person interposed;
- -keeping, for ten (10) years, from the date of closing of a case from which it is seized, all information or documents relating to it;
- Providing and receiving or exchanging, spontaneously or on request, information with national financial intelligence cells of other countries and its foreign counterparts with similar functions, about the declaration of suspicious operations, provided that there was reciprocity and that the counterparts concerned are bound by the same obligations of professional secrecy;
- undertaking the inspection and supervision of declaring institutions to ensure compliance with declaration obligations in the fight against money laundering and the financing of terrorism (LBC/FT) provided for by law;
- Developing LBC/FT training programs for clearing agents and public institutions;
- following up on requests for intelligence which it is seized by a foreign counterpart service dealing with a declaration of suspicion;
- Communicating, on the part of the taxable persons or the police services, all additional information that it deems useful for the accomplishment of its mission, within the deadlines it determines, without professional secrecy being opposed to it .

The unit has independence to fulfill its mission to collect statements of suspicious operations as well as additional information relating to it by subject persons, to analyze it and to communicate the information resulting from the public prosecutor, everything having to report on his results to the Minister in charge of finance.

In this context, professional secrecy is not enforceable against the members of the cell who enjoy legal protection, in accordance with article 27 of Law No. 1/02 of 04/04/2008 aforementioned.

CHAPTER III: ORGANIZATION AND FUNCTIONING OF THE CELL

Article 7: The cell is made up of the following organs:

- The Board of Directors of the Cell;
- The Executive Secretariat of the Cell;
- The accounting commission.

Section 1: The Board of Directors of the Cell

Article 8: The Board of Directors of the Cell is a bipartite body made up of 11 members representing the public sector and the private sector as follows:

1. A representative of the ministry in charge of finance: President;
2. A representative of the Court of Auditors: Vice-President;
3. The executive secretary of the National Financial Intelligence Unit: Secretary;
4. A representative of the ministry in charge of justice: Member;
5. A representative of the ministry in charge of trade and industry: Member;
6. A representative of the ministry in charge of public security: Member;
7. A representative of the Bank of the Republic of Burundi: Member;
8. A representative of the National Intelligence Service: Member;
9. A representative of the anti-corruption brigade: Member;
10. A representative of the Federal Chamber of Commerce and Industry: Member;
11. A representative of the Burundian Revenue Authority: Member.

Article 9: The Board of Directors of Cell has the most extensive powers to take acts of provision, administration and control, in particular:

- Define the general orientations to be followed by the cell in the achievement of its missions;

- Examine and approve each year the program of activity of the unit proposed by the Executive Secretariat;
- Receive from the executive secretariat, detailed reports, annual and all other reports for evaluation;
- Periodically assess the monitoring of orientations and the level of the achievements of the cell objectives;
- Adopt the budget, permanently decide on the annual accounts and financial statements as well as activity reports;
- Adopt the internal regulations of the cell, the organization chart, the manuals of internal, administrative, financial, accounting and recruitment and human resources management, the administrative and pecuniary status of the staff of the Executive Secretariat and the techniques departments ;

Article 10: The members of the Board of Directors are appointed by decree on the proposal of the minister in charge of finance for a four -year term renewable only once.

Article 11: The mandate of the members of the board of directors ends, either by the normal expiration of its term, either by absence, by resignation, or by death or even by the loss of quality which had motivated the appointment. It also ends by revocation by the appointment authority.

In the event of death during mandate or in all cases where a member is no longer able to exercise his mandate, he is provided for his replacement under the same conditions which presided over his appointment for the period remaining to run .

Article 12: The members of the Board of Directors fulfill their missions with impartiality and independence, and are held to the secrecy of deliberation and decision.

Subject to the relevant provisions of the penal code, the members of the Board cannot be sought, arrested, prosecuted or judged for accomplished acts, measures taken, opinions or votes issued in the exercise of their functions.

Article 13: Excluding the case where they are called to court and that or the law obliges to make known its secrets, the members of the board of directors of regulation are bound by professional secrecy for the information, facts, acts and information which they have knowledge in the exercise of their functions.

They are also held from their entry into office and at the end of it to make on honor a written declaration addressed to the president of the Court of Auditors of their assets.

Section 2: The Executive Secretariat

Article 14: The daily management of the Executive Secretariat is provided by an executive secretary appointed by decree on a proposal from the ministry in charge of finance for a 4 - year term renewable only once.

Paragraph 1: Missions of the Executive Secretariat

Article 15: The secretary ensures the execution of the decisions of the Board of Directors and ensures the current management of the cell.

To this end, it has the missions of:

1. Daily management of business, operations and cell funds;
2. The implementation of the decisions of the Board of Directors;
3. Staff management in accordance with cell policies;
4. The recruitment of staff according to the budget and in accordance with the guidelines of the board of directors;
5. Preparation of the annual budget in accordance with activities planned by the cell;
6. The preparation of an annual report of the cell activities;
7. The development of policies, strategic and operational plans to present to the board of directors for approval;
8. The development of the specifications of each member of the executive secretariat body and the rest of the staff and the procedure manual to be presented to the board of directors for approval;
9. Advise the supervisory minister on all questions relating to money.

Article 16: The functions of the executive secretary cease when he is found guilty of serious breach of the legislation and the regulations in force in Burundi or if he has been definitively condemned for an offense likely to undermine his honorability.

The executive secretary can also be removed from his functions for:

- 1 ° Incompetence;

2 ° Inability resulting from a physical or mental illness which makes him incapable or unfit to exercise his functions.

Paragraph 2: The administrative and financial manager

Article 17: The administrative and financial manager is appointed by decree on the proposal of the minister in charge of finance, for a mandate of four years renewable only once.

Article 18: His missions:

- registration, treatment and transmission of mail relating to finances and which is referred to it by the executive secretariat;
- the management of financial resources and the heritage of the cell;
- the preparation and production of the financial statements;
- Human resources management of the cell;
- the keeping of documents relating to the markets passed by the cell;
- all other tasks entrusted to him by the executive secretary in relation to the missions of the cell;
- the establishment of the provisional public procurement plan.

Paragraph 3: Focal points

Article 19: The cell is supported in the exercise of its functions by focal points from below institutions:

- the ministry having in charge of finance;
- the ministry in charge of justice;
- the ministry in charge of trade and industry;
- the ministry in charge of public security;
- the national intelligence service;
- the anti-corruption brigade;
- The Bank of the Republic of Burundi;

- the Burundian revenue authority;
- The Federal Chamber of Commerce and Industry.

Article 20: The Minister having finance in his attributions provides for the staffing of the staff quoted by regulation. It is aimed at institutions mentioned in article 19 to request the designation of a focal point of the cell.

Section 3: The auditor

Article 21: The statutory auditors are appointed by order of the Minister in charge of finance for a period of two years not renewable.

They send their report directly to the chairman of the board of directors with copying the executive secretary so that it is defended before the administrators before approval.

Article 22: The financial statements certified by the statutory auditors are sent by the latter to the Minister in charge of finance with copy to the Minister in charge of good governance.

CHAPTER IV: THE FINANCIAL ORGANIZATION OF THE CELL

Article 23: The cell budget provides and authorizes revenue and expenses and determines the nature of the needs. It is prepared by the executive secretary who submits it to the board of directors of the cell for examination and approval no later than two months before the end of the current budgetary year.

Article 24: Cell resources come in particular from:

1. State subsidies;
2. Donations and legacies made to the secretariat after approval of the board of directors.

Cell expenditure includes operating expenses and other expenses approved by the Council.

Article 25: The budget exercise of the cell begins on July 1 and ends on June 30 of the following year.

Article 26: Financial and accounting management of the unit obeys the rules of the national accounting plan.

Article 27: The cell must keep registers of all operations according to the methods it has defined. The regulator must keep these registers for a period of at least ten years.

Article 28: The ministry in charge of finance provides the the cell with the means of operating.

The cell identifies its needs which it submits to the Minister in charge of finance for approval.

CHAPTER V.: TRANSMISSION MODALITES AND CONTENT OF DECLARATIONS TO THE CELL

Article 29: The declaration of suspicion is made according to the format established by the national financial intelligence unit.

Article 30: The declaration relates to operations not yet executed, except if it was impossible to suspend their execution or when it appeared, after the execution of the operation, that the sums in question could come from criminal activities or be intended for the financing of terrorism.

The declaration indicates the period within which the operation must be executed or, if it is already executed, the reasons why it is already executed. The declaration is transmitted by e-mail, fax or, failing that, by any other written means.

Article 31: If the analysis of the information collected reports elements that may constitute a criminal offense of money laundering or financing of terrorism, the cell reports on the facts, accompanied by its opinion, to the president of the tribunal de grande instance who judges the continuation to be reserved for the file.

The said report is accompanied by all useful documents, with the exception of the suspicious transaction reports themselves. The identity of the person who made the declaration of suspicion must not appear in the report.

Article 32: The unit refers to the president of the tribunal de grande instance any information later collected highlighting facts under criminal activities or financing of terrorism by specifying if necessary, the investigation or inspection services which have been seized in order to investigate.

CHAPTER VI: TRANSITIONAL AND FINISHING PROVISIONS

Article 33: An internal regulations detailing the organization and the practical operating methods is developed and adopted by the members of the cell and then approved by the Minister in charge of finance.

Article 34: All previous provisions contrary to this decree are repealed.

Article 35: The Minister of Finance, Budget and Economic Development Cooperation is responsible for the execution of this decree which comes into force on the day of its signature.

Done at Bujumbura, 16 March 2020

Pierre NKURUNZIZA.-

BY THE PRESIDENT OF THE REPUBLIC,

THE SECOND VICE-PRESIDENT OF THE REPUBLIC,

Dr. Joseph BUTORE.

**THE MINISTER OF FINANCE,
BUDGET AND COOPERATION
FOR ECONOMIC DEVELOPMENT,**

Dr. Domitien NDIHOKUBWAYO.