REPUBLIC OF BURUNDI

OFFICE OF THE PRESIDENT

LAW N°1/02 OF 04th FEBRUARY 2008 ON THE FIGHT AGAINST MONEY LAUNDERING AND TERRORISM FINANCING

THE PRESIDENT OF THE REPUBLIC:

In view of the Constitution of the Republic of Burundi;

In view of Law N° 1/015 of 20 July 1999 reforming the Code of Criminal Procedure;

In view of Law N° 1/017 of 23 October 2003 on the regulation of banks and financial institutions;

In view of Decree N° 100/203 of July 22, 2006 on the regulation of microfinance activities in Burundi;

The Council of Ministers having deliberated;

The National Assembly and the Senate having adopted;

PROMULGATES:

CHAPTER I: GENERAL PROVISIONS

Article 1: The objective of this law is to fight against money laundering and terrorism financing.
It contributes to supporting the international effort to combat all forms of terrorism, to deal with related sources of financing and money laundering within the framework of the international conventions ratified by Burundi.

Section: Definitions

Article 2: For the purposes of this Act, the following definitions apply:

1° **Money laundering**: the act of concealing by any means the proceeds of drug trafficking, activities of mafia-type organizations, terrorism, smuggling, corruption, infringement of the administration of financial order, financial fraud and similar offences, as well as the acceptance of any profit that has as its source or character money laundering activity.

2° Terrorism financing: the provision, collection, gathering or management by any means whatsoever, directly or indirectly, of funds, securities or property with the intention that they be used, or in the knowledge that they will be used in whole or in part, to commit an act of terrorism, irrespective of the occurrence of such an act.

3° Terrorism: acts related to individual or collective acts aimed at seriously disturbing public order through intimidation or terror, namely:

- The voluntary attacks on the life or physical integrity of the person, kidnapping and sequestration of the person as well as hijacking of aircraft, ships or any other means of transport;
- Theft, extortion, destruction, degradation and deterioration;
- The manufacture, possession, storage and transfer of machines, lethal devices, explosives or other biological, toxic or war weapons;
- Any other act of the same nature and purpose consisting of the introduction into the atmosphere, the soil, the subsoil or the waters of the Republic, of a substance of such a nature as to endanger human or animal health or the natural environment.

4° Criminal activity: any act of criminal participation in an offence that is likely to generate substantial proceeds, whether the offence is provided for in this law, in the Penal Code or in other special texts relating to certain offences, or whether the offence stems from an international convention ratified by Burundi.

5° "Competent authority" means any administrative or criminal prosecution authority responsible for combating money laundering and terrorism financing, including the financial intelligence unit and the supervisory authorities.

6° Supervisory authority means an authority vested by law with the mission of ensuring the effective implementation of anti-money laundering and combating the terrorism financing measures and of sanctioning breaches of the said law.

7° Property means any kind of asset, whether tangible or intangible, movable or immovable, tangible or intangible, as well as legal documents or instruments attesting to the ownership of such assets or rights thereto.

8° Manual exchange, the exchange of banknotes or money denominated in different currencies and the delivery of cash against settlement by another means of payment denominated in a different currency.

9° Microfinance institution means any establishment that carries out credit and/or savings collection operations and offers specific financial services to populations that are essentially outside the traditional banking circuit.

10° Financial institution means any natural or legal person engaged in one or more of the following activities or transactions on a commercial basis in the name of or on behalf of a customer:

- Accepting deposits from the public or other repayable funds;
- Lending;
- Leasing;
- Foreign exchange transactions;
- Formal and informal money or value transfer operations;
- Issuance and management of means of payment;
- Trading in money market instruments, foreign exchange, securities;
- Custody and administration of securities, in cash or liquid, for the account of others;
- Granting of guarantees and underwriting of commitments.

11° "Subject person" means any natural person or legal entity mentioned in Article 3 of this law.

12° Any person who holds or has held an important public office in Burundi or in a foreign country: Head of State or Government, Member of the Government, high-ranking politician, holding or having held responsibilities at the national level and/or at the level of a political formation or an international organization, civil servant with a rank higher than or equal to that of department director, director of a public enterprise, magistrate and senior officer of the army and the police.

Section 2: Scope of application of this law

Article 3: The provisions of this law are applicable to the following natural and legal persons:

1° Financial institutions authorized under Article 19 of Act N°1/017 of 23 October 2003
on the regulation of banks and financial institutions;

2° Bureaux de change;

3° Insurance companies carrying out life insurance activities

4° Brokerage companies;

5° Casinos and gambling establishments;

6° Dealers in high-value goods;

7° Auditors, lawyers, notaries and other independent legal and accounting professions, when they prepare or carry out transactions for their clients in the following activities:

- Purchases and sales of real estate;
- Management of client's money, securities or other assets;
- Management of bank, savings or securities accounts;
- Organization of contributions for the creation, operation or management of companies;
- Creation, operation or management of legal entities or legal construction and purchase and sale of business entities.

8° Microfinance institutions approved in accordance with article of decree n°100/203 of July 22, 2006 on the regulation of microfinance activities in Burundi;

9° The post office;

10° Real estate agencies;

11° Any other person carrying out in a professional capacity one of the activities covered by the definition of financial institution.

CHAPTER II: PREVENTION OF MONEY LAUNDERING AND TERRORISM FINANCING

Section 1: Identification of clients and internal organization of the institutions and persons referred to in Article 3

Article 4: All establishments referred to in Article 2 of this Act must identify their clients by means of a document that provides proof and verify their identity:

a. When they enter into a business relationship;
b. During any occasional transaction whose amount reaches or exceeds the sum of twenty million Burundi francs, whether the operation is carried out in one go or in several operations between which there is a link.
c. This obligation also applies to any client who applies to open an account;
d. When they carry out occasional transactions in the form of electronic transfers;
e. When there is a suspicion of money laundering or terrorism financing;
f. When there is a doubt as to the veracity or relevance of the client's identification data;
g. When an operation of an unusual nature has no apparent economic or lawful purpose.

Article 5: In the case of relationships with politically exposed persons, financial institutions

must, in addition to the normal due diligence measures:

a. Have adequate risk management systems in place to determine whether the customer is a politically exposed person;
b. Obtain senior management approval before entering into a business relationship with such customers;
c. Take all reasonable steps to identify the source of assets and funds;
d. Provide enhanced monitoring and continue a business relationship.

Article 6: In a situation of a cross-border correspondent banking relationship or similar relationships, financial institutions shall, in order to reinforce normal due diligence measures:

a. Gather sufficient information from a client institution to fully understand the nature of its business and to assess, on the basis of publicly available information, the institution's reputation and supervisory standing, including whether the institution concerned has been subject to investigation or intervention by the supervisory authority relating to money laundering or terrorism financing;
b. Evaluate the anti-money laundering and anti-terrorism financing controls implemented by the client institution;
c. Obtain senior management approval before entering into new correspondent banking relationships;
d. Clarify in writing the respective responsibilities of each institution;
e. Ensure, with respect to "pass-through" accounts, that the client bank has verified the identity of and implemented ongoing due diligence on customers with direct access to the correspondent bank's accounts, and that it is able to provide relevant identifying information on its customers upon request by the correspondent bank.

Article 7: In the case of dealers in high-value goods, they are bound by identification obligations only when the amount of the transaction exceeds twenty million Burundi francs.

Section 2 : Conservation of documents

Article 8: The establishments and persons referred to in Article 3 above are required to keep in their archives, for a period of at least ten years, after terminating relations with their clients, a copy of the document that served as proof of identification or the references of the latter. They are also required to keep for a period of at least ten years, from the execution of the operations, the supporting documents, copies of the records and other documents relating to the operations carried out, so as to be able to reconstitute them precisely.

Article 9: Casinos and gaming establishments, as well as those providing manual exchange, must keep a register marked and initialed by the competent administrative authority, in which are recorded, in chronological order, all operations, their nature and amount, with an indication of the client's name and surname as well as the number of the document presented. The said register must be kept for at least ten years after the last recorded transaction.

Section 3: The internal program to combat money laundering and terrorism financing of the institutions and persons concerned

Article 10: The institutions and persons referred to in Article 3 must designate one or more persons responsible for the application of this Act within the enterprise.
These persons are mainly responsible for internal control procedures, centralization and communication of information to the competent authorities in order to prevent, detect and prevent the carrying out of money laundering and/or terrorism financing operations.

Article 11: The same companies mentioned in Article 3, which carry out their activities under the supervision of a control authority, must incorporate the regulatory measures issued by this authority with a view to strengthening the provisions for combating money laundering, in application of this Act.
They are also required to establish programs for the ongoing training of employees in the fight against money laundering and terrorism financing.

CHAPTER III. DETECTION OF MONEY LAUNDERING AND TERRORISM FINANCING

Section 1: The national financial intelligence unit.

Article 12: A specialized unit responsible for combating money laundering and terrorism financing, hereinafter referred to as the "Unit", is hereby established within the Ministry of Finance, an administrative service with legal personality responsible for receiving and processing suspicious transaction reports and transmitting the resulting report and other information concerning acts that may constitute money laundering and terrorism financing to the Public Prosecutor's Office, in accordance with Article 19 below.

An implementing text specifies its organization, composition, powers, conditions to ensure or reinforce its independence, as well as the content and methods of transmission of the reports sent to it.

Article 13: The Unit shall set up one or more databases containing all relevant information concerning the reporting of suspicions provided for by this Act, the operations carried out and the persons who carried out the operations, directly or through intermediaries.

This information shall be updated and organized in such a way as to optimize research to substantiate or remove suspicions.

Article 14: The Unit must keep all information or documents relating to a case referred to it for a period of ten years from the date of its closure.

Article 15: The Unit is authorized, spontaneously or upon request, to provide, receive or exchange information with the financial intelligence units of another country and its foreign counterparties with similar functions, regarding suspicious transaction reports, provided that there is reciprocity and that the counterparties concerned are bound by the same obligations of professional secrecy.

When it receives a request for information or transmission from a counterpart foreign service dealing with a suspicious transaction report, it shall act on it within the framework of the powers conferred on it by this Act to deal with such reports.

Section 2: Reports of suspicion

Article 16: The persons referred to in Article 3 who suspect or have sufficient reason to suspect that funds constitute the proceeds of an offence or are related to the terrorism financing or who have knowledge of a fact that could be an indication of money laundering or terrorism financing shall be required to file a report with the unit without delay, in accordance with the format established by the latter. Their attention must be drawn in particular to any transaction of an amount greater than twenty million Burundi francs that is unusually complex or unjustified or that appears to have no economic justification or legitimate cause. The entity, required to report the matter without delay to the unit, shall also be required to obtain information on the origin and destination of the money, the purpose of the operation and the identity of the parties involved.

Article 17: Suspicious transaction reports submitted to the cell must contain at least:

a. The identity and other identifying details of the reporting entity, including the name and contact information of the reporting officer;
b. The identity and other identifying details of the client and, if applicable, the beneficiary of the transaction;
c. The nature of the transaction or activity reported as suspicious and its details - amount, currency, date and party involved - including the account number and details of the account holder;
d. A brief description of the reasons and particulars that give rise to the suspicion.

The obligation to report also applies to attempted transactions.
Professional secrecy may not be invoked against them.

However, notaries and lawyers are not obliged to make a report if the information they hold has been received in the course of assessing their client's legal situation or in the course of fulfilling their duty to represent such clients in judicial, administrative, arbitration or mediation proceedings, including advice on how to initiate or avoid such proceedings.

Article 18: The report concerns operations that have not yet been carried out, except if it has been impossible to postpone their execution or if it has become apparent after the operation has been carried out that the sums in question could come from criminal activities or be intended for the terrorism financing.

The report is transmitted by fax or, failing that, by any other written means. Reports made by telephone or electronic means must be confirmed by fax or any other written means as soon as possible. The declaration shall indicate the time limit within which the operation must be carried out or, if it has already been carried out, the reasons why it has already been carried out.

Article 19: As soon as the analysis of the information gathered by the unit reveals evidence of a criminal or terrorism financing offence, the unit will send a report on the facts, together with its opinion, to the Public Prosecutor who will decide what action to take. This report is accompanied by all useful documents, except for the suspicious transaction reports themselves.

The identity of the author of the report must not appear in the report.

Article 20: As soon as the information gathered reveals facts that may be related to criminal activity or the terrorism financing, the unit shall refer the matter to the public prosecutor, indicating, where appropriate, the investigation or inspection services that have been referred to it for investigation.

Article 21: Upon request addressed to the president of the tribunal of the first instance by the said unit, the time limit provided for in article 18 may be extended by a maximum of one month upon the favorable opinion of the public prosecutor.

Article 22: The president of the tribunal of the first instance may, under the same conditions, order the seizure of funds, accounts or securities concerned by the declaration.

Article 23: If no opposition has been lodged or if, at the end of the period opened by opposition, no decision of the President of the Tribunal de Grande Instance has been communicated to the reporting entity that has filed the suspicious transaction report, the reporting entity may carry out the operation.

Article 24: At the request of the public prosecutor, the president of the high court may also order the seizure of property belonging to the natural or legal person suspected of being linked to organizations or activities related to the offences referred to in this Act, on condition that the unit is informed of the seizure at the request of the public prosecutor.

The seizure order is enforceable on the spot.

Article 25: The persons and establishments designated in Article 3 of this law may not under any circumstances inform their clients or third parties that information has been passed on to the financial intelligence unit. Those who violate this prohibition shall be punished by imprisonment of one to two years and a fine of one million to five million Burundi francs.

Section 3: Protection of persons or establishments subject to the law, their managers and agents, the national financial intelligence unit and its agents.

Article 26: For the sums or transactions that have been the subject of the declaration referred to in Articles 16, 18 and 30, no proceedings based on breach of professional secrecy may be instituted, nor may any professional sanction be pronounced against the persons or establishments subject to the law or their managers and agents who have, in good faith, made the said declaration. The same applies to any civil liability action. In the event of damage resulting from such a declaration, the injured party shall be entitled to fair compensation.

The provisions of this article shall apply even if proof of the criminal nature of the facts at the origin of the declaration is not provided or if these facts have been the subject of a decision of non-prosecution, of acquittal or acquittal.

Article 27: No action for criminal liability or civil liability shall be admissible against the National Financial Intelligence Unit or its agents by reason of the performance of the duties assigned to them by this law.

However, if they are personally guilty of abuse or corruption, they are prosecuted on the basis of criminal law, without prejudice to civil action for payment of damages in the event of civil liability.

Section 4: The search for evidence

Article 28: When the unit in charge of financial intelligence receives the information referred to in Articles 17 and 18, it may obtain from the taxable person and from the police services any additional information that it deems useful for the accomplishment of its mission, within the time limit that it determines.

Article 29: Without prejudice to the application of Articles 20 and 28, except in cases where they are called to testify in court, the members of the unit and its staff may not disclose information. Violation of this prohibition is punishable by the penalties provided for in Article 25 of this law.

Section 5: Supervisory or tutelage authorities

Article 30: The supervisory or oversight authorities referred to in Article 3 who observe facts that may constitute an indication of money laundering or terrorism financing are required to inform the national financial intelligence unit.

Article 31: Without prejudice to the measures defined by other laws or regulations, the competent supervisory or regulatory authorities may, in the event of non-compliance with the provisions of Articles 4, 5, 6, 8, 9, 10, 11, 16, 17 and 18 or with the regulatory measures taken for their implementation by the institutions referred to in Article 3 that are subject to them.

- To proceed to the publication, according to the modalities that it determines, the decisions and measures that it takes;
- To impose, after having duly summoned the person in default and heard his or her defense, a pecuniary penalty, the amount of which may not be less than one million Burundi francs and exceed fifty million Burundi francs.

Article 32: The administrative or professional regulations that the controlling or supervisory authority is authorized to issue by virtue of and for the application of this Act shall take account of the particular situation of the establishment.

CHAPTER IV. INTERNATIONAL COOPERATION

Section 1: Mutual legal assistance

Article 33: Mutual assistance may in particular include: taking testimony or statements,

providing assistance in making detained persons or other persons available to the judicial authorities of the requesting State for the purpose of giving testimony or assisting in the conduct of investigations, the delivery of judicial documents, searches and seizures, the examination of objects and places, the provision of information and exhibits, the provision of originals or certified copies of relevant records and documents, including bank statements, accounting records, records showing the operation of an enterprise and its business activities.

Article 34: At the request of a foreign State, requests for mutual assistance relating to the offences referred to in the Criminal Code of Burundi with respect to terrorism, terrorism financing and money laundering shall be executed in accordance with the principles defined in this chapter.

Article 35: A request for mutual assistance may be refused only if:

- It does not emanate from a competent authority under the legislation of the requesting country or if its form and transmission procedure do not comply with the rules established by the Code of Criminal Procedure;
- Its execution is likely to undermine public order, sovereignty, security or the fundamental principles of Burundian law;
- The facts to which it relates are the subject of criminal proceedings or have already been the subject of a final decision on Burundian territory;
- The measures requested may not be pronounced or executed because of the statute of limitations for one of the offences referred to in this law.
- Bank secrecy may not be invoked to refuse to execute the request.

Section 2: Extradition

Article 36: In order to ensure the effectiveness of the prosecution of offences of terrorism, terrorism financing and money laundering, requests for the extradition of persons sought for proceedings in a foreign State shall be promptly executed. The procedures and principles provided for in the extradition treaty in force between Burundi and the requesting State shall be applied.
In the absence of bilateral extradition treaties, the conditions, procedures and effects of extradition are determined by the provisions of the law on extradition.

Article 37: Extradition may be refused if:

- The offence for which extradition is requested is considered by Burundi as an offence of a political nature or if the request is politically motivated;
- There are substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's race, religion, nationality, ethnic origin, political

opinion, sex or status, or that the situation of that person could be prejudiced for any of these reasons;
- A final judgment has been rendered by a Burundian court in respect of the offence for which extradition is requested;
- The individual whose extradition is requested can no longer be prosecuted or punished under the laws of either country, due to the passage of time, an amnesty or any other reason;
- The individual whose extradition is requested has been or would be subjected in the requesting State to torture and other cruel, inhuman or degrading treatment or punishment, or if he has not benefited or will not benefit from the minimum guarantees provided for in criminal proceedings, by Article 25 of the International Covenant on Civil and Political Rights;
- The judgment of the requesting state was rendered in the absence of the person concerned and if he or she did not have the opportunity to arrange for his or her defense, and was not able or will not be able to have the case retried in his or her presence.

CHAPTER V. FINAL PROVISIONS

Article 38: For monitoring purposes and for the application of Articles 31 and 32, the Control

Authority shall be informed of the proceedings instituted against the entities under its supervision.

Article 39: Persons subject to this law who do not yet have a supervisory authority, like that exercised by the Central Bank over financial institutions, are placed under the supervision of the national financial intelligence unit. The latter will be able to issue regulations and sanction breaches of the obligations arising from this law.

Article 40: The amount of twenty million indicated in Articles 4, 7, 16 paragraph 2 may be reviewed by order of the Minister of Economy, Finance and Development Cooperation, because of its importance in value.

Article 41: All previous provisions contrary to this law are repealed.

Article 42: This law shall enter into force on the day of its promulgation.

Done at Bujumbura, on 04 February 2008
For the President of the Republic,
Pierre NKURUNZIZA

Seen and sealed with the seal of the Republic
The Minister of Justice and Keeper of the Seals

Jean-Bosco NDIKUMANA