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Konsèy Nasyonal Finansman Popilè (KNFP)
Program for the Recovery of the Economy in Transition (PRET/DAI)

**Legal Frameworks and
Performance Standards for Microfinance
A Desk Study**

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Submitted to PRET/KNFP

February 2000

Conseil National de Financement Populaire Konsèy Nasyonal Finansman Popilè-KNFP

Founded on March 1st 1998, the KNFP regroups three organizations, the *Bureau de Coordination des Programmes de Développement de l'Eglise Méthodiste d'Haïti* (COD-EMH), the *Groupe d'Appui pour l'Intégration de la Femme du Secteur Informel* (GRAIFSI), and the *Collectif de Financement Populaire* (KOFIP). Collectively all KNFP members provide savings and/or credit services to enhance the welfare of the urban and rural populations in Haiti. In recognition of the large gap between the supply of funds and the demand for financing, the members of the KNFP have come together with the aim of:

- Contributing to the enactment of a microfinance law (*loi sur le financement populaire*) that is indispensable in avoiding undesirable and unscrupulous financial practices and will also help clarify the status of community-based financial groups—thus helping to facilitate their access to sources of refinancing.
- Promoting cooperation to ensure a better coverage of the national territory with appropriate microfinancial services.
- Serving to guarantee the institutional soundness of its members by offering regular and transparent assessment and verification services.
- Helping to channel sources of finance to the productive sector and develop appropriate financial tools and methodologies.

The member organizations of the KNFP express their willingness to be agents for economic change in Haiti and to collaborate with public sector institutions and all other organizations that seek to combat the high cost of living and the shrinking of the productive sector.

Program for the Recovery of the Economy in Transition (PRET/DAI)

PRET is a microfinance technical assistance project financed by the United States Agency for International Development (USAID) and implemented by Development Alternatives, Inc. (DAI). Since its debut in 1995, PRET has been working with diverse non-profit associations, NGOs, banks and private companies with the goal of facilitating access to financial services to segments of the population that are not reached by traditional providers. PRET provides technical assistance to microfinance institutions to help them strengthen their institutional and financial capacities. PRET works with institutions practicing a diversity of methodologies and operating in different market niches. From April 2000 the activities of PRET will be continued under FINNET, a new project financed by USAID. DAI will also implement FINNET.

PREFACE

This study has been commissioned jointly by PRET/DAI and the KNFP in order to present a comparative overview of how various countries are approaching issues related to the legal-regulatory framework for microfinance. Part I of the study presents a general overview of its findings and distills a number of lessons that are of relevance to current issues under discussion in Haiti. Part II presents more detailed case studies for readers wishing to find a greater degree of detail on developments in specific countries. The study's main authors, Robin Young and Lauren Mitten are employees of Development Alternatives Inc. They are responsible for Part I of the Study and the Part II Case Studies on Central America, the Dominican Republic, the Philippines and South Africa. Claude Falgon, of Horus Banque et Finance in Paris, contributed the case studies included in Part II on Cambodia and Senegal. The Cambodia and Senegal case studies are presented in French. The rest of the study is in English.

A separate shorter version of this study presenting only the Part I synthesis in French is available from PRET/FINNET and the KNFP.

TABLE OF CONTENTS

PART 1: OVERVIEW.....	5
RATIONALE.....	5
PRINCIPLES OF EFFECTIVE LEGAL FRAMEWORKS	6
SYNTHESIS OF CASE STUDY MATERIAL	11
<i>How are credit-only MFIs organized, classified, and supervised?</i>	11
<i>How is access to deposits from the public regulated? Is there a need for a new category of microfinance institution that can collect deposits? What models have countries developed?</i>	14
<i>How are cooperative financial institutions (credit unions) integrated into legal and regulatory frameworks?</i>	16
<i>How are standards promoted?</i>	16
LESSONS FROM CASE STUDIES.....	18
PART II: CASE STUDIES.....	21
CENTRAL AMERICA	21
<i>El Salvador</i>	23
<i>Honduras</i>	25
<i>Nicaragua</i>	27
DOMINICAN REPUBLIC	29
<i>Institutional Infrastructure</i>	29
<i>Second Tier</i>	31
THE PHILIPPINES	34
<i>The Institutional Landscape</i>	34
<i>Notable Government Laws, Policies, Programs and Regulations</i>	35
<i>Performance Standards</i>	36
<i>Challenges and Opportunities</i>	39
SOUTH AFRICA	41
<i>Current South African Small Loan Environment</i>	41
<i>Institutional Forms of Microfinance Providers</i>	41
<i>Government Policies and Programs Regarding the Provision of Financial Services</i>	43
<i>Performance Standards</i>	47
CAMBODIA.....	50
<i>Le contexte de la micro-finance au Cambodge</i>	50
<i>Textes légaux et réglementaires</i>	55
<i>Limites des projets de textes de loi</i>	59
SENEGAL.....	62
<i>Le contexte de la banque et de la micro-finance au sénégal</i>	62
<i>Présentation et application des textes légaux et réglementaires</i>	63
<i>Limites et difficultés</i>	67
ANNEXES	71
ANNEX A: GLOBAL PERFORMANCE STANDARDS INITIATIVES	72
ANNEX B: ACCREDITATION CRITERIA FOR MICROFINANCE REGULATORY COUNCIL	76
ANNEX C: THE ALLIANCE OF MICRO ENTERPRISE PRACTITIONERS CODE OF CONDUCT	77
ANNEX D: BIBLIOGRAPHY AND RESOURCE LIST	78

PART 1: OVERVIEW

RATIONALE

The microfinance sector in Haiti is at a critical juncture. Growth in the outreach of microfinance institutions over the past four years has been impressive. In 1995, no commercial banks were providing loans to the informal sector in any systematic way. Only a handful of non-governmental organizations (NGOs) had begun to experiment with village bank methodologies, and few or none had achieved significant levels of outreach. A variety of associations, NGOs and community organizations were providing individual or group credit with donor support – but few of these programs were designed with any concept of sustainability or even basic financial viability. Only the credit union movement, represented by over 300 *caisses populaires* (most of which would be considered financially and institutionally unsound), was even close to providing any sort of significant outreach in terms of clients served.

Today, significant progress has been achieved. Several solid NGOs with village bank programs built along best practice standards reach several thousand clients each. A number of new microfinance institutions using individual credit technologies have joined more established providers to reach the point where they are beginning to compete for clients in the urban areas around Port-au-Prince. Commercial banks are entering the market with their own direct lending programs. A number of credit unions have instituted prudent practices, are on the path to growth and sustainability, and have established an external audit and verification company.

Despite, or perhaps due to, this progress, many believe that Haiti lacks an appropriate legal framework for microfinance. This has caused concern among some donors, practitioners and government supervisors. Some see the need to raise the bar on entry standards, others want to establish a predetermined regulatory path for institutional evolution—including the eventual mobilization of voluntary deposits, and still others want to control what they see as “anarchic” proliferation of unsupervised/unregulated institutions offering credit and savings services. It is clear that the regulatory objectives and methods vary. However, Haiti is not alone; many other countries have or are currently undergoing similar processes. Therefore, the Conseil National de Financement Populaire (KNFP) and PRET/DAI have commissioned a study to learn from the experience of several other countries in the areas of regulation, supervision and performance standards to see what lessons may be applicable to Haiti.

This initiative to review options for non-cooperative microfinance institutions is part of a broader trend in Haiti to review the legal framework for financial services organizations. Recently, policymakers have drafted a new credit establishment law that is under review by the private and public sectors. A commission also has been established under the auspices of the Conseil National des Cooperatives (CNC) to examine the cooperative legal and regulatory framework. Finally, the Ministry of Agriculture and Rural Development (MARNDR) has created a commission to guide reform of the legal framework governing microfinance (*financement décentralisé*). It is hoped that these current initiatives seeking to modify the legal and regulatory framework in Haiti will help to encourage an enabling environment for the prudent growth and expansion of sustainable microfinance. This paper is meant to provide the people working on

these initiatives in Haiti with a short summary of microfinance legal frameworks and reform efforts in a selected group of countries.

It is important to note that the countries selected for presentation in this paper do not necessarily represent “best practice” cases or models for Haiti to follow. They were selected on the basis of information availability, geographic distribution and intrinsic interest. The authors of this report did not travel to any of the countries covered to prepare this paper, so all information has been collected through a review of documents, as well as telephone and e-mail exchanges with microfinance practitioners in-country. Thus, while this study provides information about the formal architecture of microfinance legal frameworks, it does not provide the type of detailed on-the-ground information needed to make judgments about the institutional-level impact of the legal framework reforms.

PRINCIPLES OF EFFECTIVE LEGAL FRAMEWORKS

According to experts who have been studying the topic of regulation and supervision for microfinance, the desire to incorporate non-traditional financial institutions into a more formal financial sector regulatory framework is due to a number of diverse motivations.¹ These include: (1) diminishing international donations for these organizations and hence a desire to mobilize resources from the public; (2) the growing tendency for private and public financial institutions and donors to limit their loans and donations to organizations that are subject to formal regulation and supervision; (3) promotion of the sector and its particular characteristics within the financial services industry; (4) standards to strengthen institutions and integrate microfinance into the financial system; and (5) consumer protection regarding deposit safety, credit pricing and collection practices.

All of the above motivations come into play to some extent in Haiti and are legitimate reasons for the current interest in “regularizing” the microfinance sector. It is important to recognize, however, that legal framework reform is not a miracle cure for addressing problems related to MFI technical capacity and financing. Institutions facing serious financial and technical capacity obstacles will not find that these barriers disappear overnight because of new MFI registration or regulatory guidelines. Most experts in the field of MFI regulation caution against the notion that regulation itself can provide an impetus for raising MFI standards. Rather, they note that the purpose of legal-regulatory reform should be to provide an appropriate legal-institutional framework for the development of the microfinance sector in which the types of financial services that MFIs offer are matched with appropriate safeguards and oversight.

Moreover, it is important to consider the possible unintended consequences of regulation, in terms of increased costs and constraints to experimentation in a new industry. Regulations that are based on the notion that mandatory standards should be imposed to “strengthen” institutions across the board, independently of the real risks that such institutions may pose to the financial

¹ See for example Berenback and Churchhill 1997, Soto Jimenez and Thompson Chacon 1999, Young and Valenzuela forthcoming, among others.

system, carry the danger of introducing barriers to market access and discouraging innovation. Other approaches to improving industry standards, such as introducing rating systems and voluntary standards promoted by MFI associations seem to offer a more effective way of achieving these goals.

When considering legal-regulatory framework reforms it is also critical to recognize the distinction between *financial regulation* and *financial supervision*. Financial regulation may be defined as the body of laws, rules, and compliance procedures that dictate the entry, operations, and exit of actors within the financial system. According to Chaves and Gonzalez-Vega, in “Should Principles of Regulation and Prudential Supervision be Different for Microenterprise Finance Organizations?” regulation serves three main functions—1) maintain the integrity of the payments system and avoid crisis within the banking sector; 2) protect depositors from fraudulent and opportunistic behavior of financial service providers; and 3) encourage financial sector efficiency and competition.² Financial supervision refers to the monitoring and evaluation of institutions expected to comply with financial regulation. It is critical to note that the design of systems for financial regulation cannot be independent of the capacity of regulatory authorities to exercise effective supervision. At best, microfinance regulations that are not applied because of lack of effective supervisory capacity serve no purpose and, at worse, may undermine the image and authority of the supervisory authorities in other domains.

Overall, most experts agree that, to be effective, legal and regulatory frameworks for microfinance must possess the following characteristics.

First, in order for the framework to be effective, it *must be implementable*. As mentioned above, supervisory bodies should have both the authority and the capacity to enact regulations and monitor compliance.

Secondly, the legal and regulatory framework *should facilitate the healthy development of all types of institutions serving the microfinance market*, meaning that it should not contain legal barriers to upscaling of NGOs who wish to evolve into regulated financial institutions or downscaling of commercial banks who wish to reach microentrepreneurs.

Thirdly, the framework *should be sufficiently dynamic to evolve with the changes that may occur in the financial services market*. Specifically, Chaves and Gonzalez-Vega state: “it must recognize that, inevitably, there will be innovations adopted to avoid the original regulation. The regulatory environment should evolve accordingly...” . Comprehensive regulation, or regulation of every type of institution or activity, is not necessary for a legal and regulatory framework to be effective. Some institutions, such as non-profit NGOs, engaged only in microcredit activities may be recognized within the framework as microfinance institutions but should not be subject to external regulation. Other institutions, such as rotating credit schemes and village banks, may not appear within the framework.

² Chaves, Rodrigo and Claudio Gonzalez Vega, “Should Principles of Regulation and Prudential Supervision be Different for Microenterprise Finance Organizations?” Pp. 2-3 GEMINI Working Paper No. 38, Washington, DC, April 1993.

Finally, the legal and regulatory *framework should be flexible enough to deal with different institutions differently*. One way to ensure this flexibility is to incorporate a process of tiered regulation and supervision, within which the type and degree of supervision and regulation should depend upon the degree of risk associated with the institution's activities. The seminal regulatory framework model proposed by the World Bank in van Greuning, et al. outlines the "*thresholds of financial intermediation activities which would trigger a requirement to satisfy external or mandatory regulatory guidelines.*"³ This framework is reproduced in Table One, below.

³ van Greuning, Hennie, Joselito Gallardo, Bikki Randhawa. "A Framework for the Regulation of Microfinance Institutions." Pp. 9 and 11 The World Bank, Financial Sector Development Department: May 1998.

TABLE ONE
REGULATORY THRESHOLDS OF ACTIVITIES
BY TYPE OF MICROFINANCE INSTITUTION

MFI Type	Activity that Determines Regulatory Status	Proposed Form of External Regulation, If Required	Regulatory Agency
CATEGORY A MFIs	MFIs that use other people's money (donors, banks, investors)		
Type 1 Basic Nonprofit NGO	Making microfinance loans in excess of grants and donated/concessional funds.	None- voluntary registration with Self-regulatory Organization	None, or Self-Regulatory Organization
Type 2 Nonprofit NGO with limited deposit-taking	Taking minor deposits, e.g. forced savings or mandatory deposit schemes from microfinance clients in community.	None- Exemption or exclusion provision of banking law; compulsory registration with Self-Regulatory Organization	Self-Regulatory Organization
Type 3 NGO transformed into incorporated MFI	Issuing instruments to generate funds through wholesale deposit substitutes (commercial paper, large-value certificates of deposit, investment placement notes)	Registration as a corporate entity; authorization from securities & exchange agency, with limitations on size, term and tradability of commercial paper instruments.	Companies' registry agency; Securities & Exchange agency.
CATEGORY B MFIs	MFIs that use their members' money		
Type 4 Credit union, Savings and Credit Cooperative Society	Operating as closed-or open common bond credit union or savings & credit cooperative society; deposit-taking from member-clients in the community, workplace or trade.	Notification to and registration with Cooperatives Authority or Bank Supervisory Authority; or certification and rating by a private independent credit rating agency.	Cooperatives Authority, or Bank Supervisory Authority, or Credit Rating Entity.
CATEGORY C MFIs	MFIs that use the public's money		
Type 5 Specialized Bank, Deposit-taking Institution, or Finance Company	Taking limited deposits (e.g. savings & fixed deposits) from general public beyond minor deposits exemption in banking law. Microfinance activities more extensive than NGOs but operations not on scale of licensed banks.	Registration and licensing by Bank supervisory Authority, with a limitation provision (e.g. savings & fixed deposits, smaller deposits/capital multiple, higher liquidity reserves, limits on asset activities and uses).	Bank Supervisory Authority.
Type 6 Licensed Mutual-Ownership Bank Type 7 Licensed Equity Bank	Non-restricted deposit-taking activities, including generating funds through commercial paper and large-value deposit-substitutes, from the general public, investors and other banks.	Registration and full licensing by Bank Supervisory Authority as a mutual ownership or equity bank; compliance with capitalization/ capital adequacy requirements, loan loss provisioning and full prudential regulations.	Bank Supervisory Authority.

Source: van Greuning, Gallardo and Randhawa, 1999

Categories of MFIs. As the table indicates, there are three categories of semi-formal and formal microfinance institutions, with the defining characteristic being how an institution receives its primary source of funding: Category A institutions use *other peoples' money*, Category B institutions use *members' money*, and Category C institutions use *the general public's money*.

Each Category, except for B, consists of a variety of institutional types that are engaged in distinctly different activities. For example, Category A contains three types of NGOs.

- Type 1 is a basic nonprofit NGO solely involved in providing microcredit.
- Type 2 is a nonprofit NGO that makes microcredit loans and accepts minor deposits from microfinance clients in the community through forced savings or mandatory deposit schemes.
- Type 3, unlike the previous two types, is an NGO that has transformed into an incorporated MFI and, subsequently, mobilizes wholesale funds through the issuance of commercial paper and/or captures wholesale deposits.

Regulation and Regulatory Agency. It is the activities, and the risks associated with these activities, that determine the regulatory status of an institution. Type 1, Type 2, and informal sector MFIs, including rotating savings and credit associations and village banks, should not be subject to any external regulation. One should expect the funders of these institutions to make sensible decisions regarding whether or not to provide financial support to these types of institutions—a form of regulation through market selection.

Because Type 3 MFIs mobilize wholesale funds through the issuance of commercial paper, they should receive authorization from the securities and exchange agency, meet certain minimum requirements, and face certain limitations concerning the size, term, and tradability of commercial paper instruments.

Type 4 MFIs—credit unions and savings and credit cooperative societies—may operate as open-common bond societies or as closed-common bond societies. Even though open-common bond cooperatives tend to be larger in scope of operations and deposit volume, making them deposit-taking activities riskier than those of closed-common bond cooperatives, both kinds should face external regulation because they both are permitted to capture deposits. These institutions should be required to either register with a Cooperatives Authority or Bank Supervisory Authority, or become certified and rated by a private independent rating agency.

MFIs that mobilize savings from the general public, such as those of Types 5, 6, and 7, should be registered and licensed by the Bank Supervisory Authority. They should meet the capital adequacy and liquidity reserve requirements for their particular type of institution set forth by the regulatory agency. Since Type 5 MFIs engage in less risky activities than Types 6 and 7 do, the magnitude of the requirements imposed on them may be less.

In sum, it is the degree of risk associated with the way in which a particular type of institution obtains its sources of funds that determines the degree and type of regulation to which the institution is subject. Those institutions that capture savings from the general public carry the highest level of risk (both to themselves and to the overall financial system) and, hence, are subject to the greatest amount of regulation and supervision by bank supervisory authorities.

SYNTHESIS OF CASE STUDY MATERIAL

The purpose of this paper is to provide actors in the legal and regulatory reform process in Haiti with a summary of microfinance legal frameworks and reform efforts in select countries—The Philippines, South Africa, Senegal, Cambodia, Dominican Republic, and the Central American countries of El Salvador, Honduras, and Nicaragua. The synthesis of the case study material is presented below and is organized around four key questions of relevance to Haiti:

- How are credit-only MFIs recognized and supervised
- How is access to public deposits controlled?
- How are cooperative financial institutions integrated into the legal and regulatory framework? and
- How is the issue of performance standards for non-regulated institutions addressed?

Not every country is discussed for each of these questions, since the authors were not able to obtain a complete inventory of the current situation for each case. Illustrations given are based on the major salient points drawn from available materials. The details of the country studies are given in Part II.

Question one: how are credit-only MFIs organized, classified, and supervised?

Microfinance institutions can be categorized into two groups—those that provide clients with a multitude of services, such as savings and credit and those that provide clients with credit only. This sections deals exclusively with credit-only MFIs, since this is the category that has received the least attention in the existing literature. Two broad approaches to credit-only MFIs can be distinguished here—one that essentially adopts a total laissez-faire attitude and one that seeks to create a formal institutional category for credit-only MFIs with some sort of registration or oversight procedures.

Model 1: No special microfinance licensing or registration process.

Credit-only MFIs, which may adopt any institutional form, are not required to register as microfinance institutions. No laws regulate and no body supervises the credit activities of these institutions. Although they are not required to register as microcredit providers, they are registered with the governmental body that has legal authority to recognize their particular institutional form and are subject to all the rules and regulations governing this form. For example, a non-profit organization that offers microloans is registered as a non-profit organization and is subject to the rules and regulations governing all non-profit organizations. Other habitual types of credit only MFIs include private limited companies and foundations. Occasionally, MFIs may also be organized as religious institutions or churches recognized as such by public authorities. In general, the specific credit operations of such institutions are not subject to any special oversight or control.

In El Salvador, Dominican Republic, and the Philippines, credit-only MFIs are not subject to any special licensing or registration process. NGO microcredit institutions in the Dominican Republic, for instance, are organized as non-profit foundations or associations. All non-profits, regardless of their mission and activities fall under Law 520, the general framework that governs the requirements for the constitution of these types of institutions. This legal framework does not contain any prudential regulations, registration or specific financial reporting requirements for microfinance NGOs—except that they are prohibited from mobilizing savings.

In El Salvador, no law regulates the credit activities of non-bank institutions. NGOs and private companies are allowed to offer microcredit services, again with the caveat that they do not mobilize public savings. In an effort to receive permission to mobilize savings, NGOs in El Salvador are currently lobbying to be included in a proposed law for non-bank financial intermediaries, whose major purpose is to bring cooperative financial institutions under the prudential authority of the banking superintendency. However, the inclusion of NGOs in this law as mobilizers of deposits, with the same range of allowed activities as cooperative credit unions, is highly unlikely due to opposition from the superintendency.

Model 2: Special microfinance registration processes for credit-only MFIs

Some countries, like Honduras, South Africa and Cambodia, have proposed or enacted laws regarding microfinance registration that specifically includes credit-only MFIs. Registration and licensing processes can be divided into two distinct types, depending upon whether microfinance is defined as an institutional form or as an activity.

Registration based on legal institutional-type. In this type of system, a new *institutional form based* MFI category is created that is limited to particular credit-only MFIs having a specific legal institutional form—most often requiring that such institutions be non-profit associations or NGOs. In Honduras, a draft law has been established creating a registration process that will result in credit-only NGO MFIs being listed with the banking superintendency as Non-Supervised Private Development Organizations, or OPDs in Spanish. The authors of the draft law believe that this type of registration will help credit-only MFIs attract additional sources of funding—primarily from commercial banking sources. Under the law, credit-only MFIs must register, present a feasibility plan, maintain the required minimum capital of about \$14,000, and be subject to auditing requirements and a directive concerning organizational governance. The law does carry provisions for the establishment of special risk parameters and classification schemes to be determined subsequently by a special commission, although these would presumably only be non-binding guidelines for Non Supervised OPDs. Non-Supervised OPDs are required to maintain internal reserves against loan losses and keep institutional reserves equal to 10 percent of assets with the Central Bank. It should be noted that, as Honduras has not yet passed this law, it is still essentially a Model 1 laissez-faire country.

Nicaragua has also passed a similar law that recognizes only non-profit NGOs as MFIs and (going even farther than Honduras) makes them subject to direct prudential supervision by the superintendency of banks in return for granting them the right to mobilize savings deposits. However, although passed in 1997, this law has not been implemented because of opposition on the part of the superintendency.

An extreme example of an MFI registration plan based on a specific legal institutional type is provided by Senegal—where in a recent law enacted at the regional level within states belonging to the Banque Centrale des Etats de l’Afrique Occidentale (BCEAO), a mandatory registration procedure for MFIs was established that did not even recognize the presence of credit-only MFIs. Under the law, MFIs were defined exclusively as cooperative enterprises that both accept savings from members and make loans—essentially defining all MFIs as credit unions. As the procedures specified in the law for supervising and controlling credit unions could not effectively be applied to credit-only MFIs, authorities in Senegal and other countries were forced to develop procedures for issuing renewable exemptions to the law on a case-by-case basis, or otherwise be faced with the rapid disappearance of the entire credit-only NGO segment of the microfinance market. To apply for the exemption, institutions must state their objectives, describe their client base, and explain the ways in which they mobilize savings, grant credit, and recover loans. As exempt institutions, they must undergo an external audit each year and provide annual reports to the Ministry of Finance. They are also subject to prudential requirements.

Registration based types of activities. In those countries following the activity-based registration system, any institution engaged in microcredit—whether it is a bank, private non-banking company, cooperative, or non-profit NGO--must register as a microfinance provider. Both South African and Cambodia have adopted such an approach. Here it is not the legal form of the institution that determines registration, but the nature of the activity that the institution engages in.

In South Africa, the registration process was developed as a means for microfinance institutions to become exempt from the usury act, which prohibits all lenders from providing credit at interest rates greater than the maximum rate determined by the registrar of banks. Microfinance institutions wishing to receive exemption from the usury act are required to register with the microfinance regulatory council (MFRC), a joint regulation organization comprised of governmental institutions, consumer interest groups, and members of the finance and banking industry. As a registered microfinance institution, MFIs are required to display their registration certificate at each location of business, submit annual financial statements that have been certified by an auditor, and quarterly returns outlining key performance and risk indicators. They are also subject to on-site inspections. Although registration is not legally mandatory, in practice it is unavoidable since it is virtually impossible for MFIs to offer microloans at rates under the usury act’s current limit of 32 percent per year. In Cambodia a draft law has been prepared that will require all credit-only MFI (cooperatives, private companies, NGOs) to register with the central bank. The registration set up for credit-only MFIs is automatic

and does not entail any sort review of institutional soundness or subject the MFI to any supervision. Its major purpose is to ensure public disclosure of basic financial data and ownership.

Question 2: how is access to deposits from the public regulated?

Government authorities usually only regulate and supervise institutions that capture important quantities of voluntary deposits from the public. These deposit-taking institutions are licensed, demonstrate capital adequacy, are subject to strict prudential oversight, and are able (at least in theory) to raise fresh capital from members or owners. The types and requirements of deposit-taking institutions vary. While some governments permit only commercial banks to capture savings, other countries have created new categories of microfinance institutions allowed to collect deposits. Three general types of models can be discerned here:

Model 1: Deposit collection limited strictly to commercial banks, cooperative banks and/or credit unions.

Under this model, only commercial banks and cooperatives are permitted to collect deposits. For a non-profit NGO MFI to mobilize deposits, it must first “transform” and establish a subsidiary registered as a commercial bank or it must form a cooperative. Currently in El Salvador, under the new banking law of 1999, only commercial banks may collect deposits. This law raised the minimum capital requirements for commercial banks and eliminated the deposit-mobilizing finance company institutional category, which under the previous banking law, had been allowed to mobilize public deposits. A draft law placing cooperatives under the authority of the superintendency and consequently legalizing their deposit mobilizing activities has been developed. Senegal also follows this model: commercial banks and cooperatives may collect savings, while finance companies may not.

Model 2: Savings mobilization extended to private company non-bank financial intermediaries.

In some countries, non-bank financial intermediaries may mobilize public deposits. These institutions, which are regulated by the banking authority of the particular country, possess a more limited range of allowed activities compared to that of a commercial bank, but they may mobilize at least time deposits from the public (it is more rare for them to be allowed to offer checking accounts). Like a commercial bank, these institutions are subject to prudential requirements. Although the prudential requirements for these non-bank institutions (principally required loan provisioning and capital adequacy) are often more stringent than those of commercial banks, the minimum capital requirements are generally below limits required of commercial banks. Examples of these non-bank financial institutions allowed to engage in banking activities, like capturing savings, can be found in Bolivia, Dominican Republic, The Philippines, and South Africa.

Private Financial Funds, (or FFP in Spanish) organized as corporations, are Bolivian institutions established to finance the activities of micro and small businesses as well as to make loans to individuals for durable goods purchases. These institutions, which must maintain a minimum of US \$1 million in operating capital, are permitted to provide financial services such as making drafts and payment orders, buying and selling foreign currencies, and receiving savings and time deposits. It is important to note that the Bolivian FFP was designed to cover both institutions that have a specific microfinance orientation and institutions that act as a more general finance company. Thus they have a somewhat larger “menu” of allowed operations (primarily foreign exchange trading and trade finance) than similar institutions that are more narrowly targeted on the microfinance sector.

In the Philippines, institutions known as rural banks, thrift banks may offer passbook savings, checking accounts, and time deposits. Capital requirements for rural banks range from US \$76,000 to 760,000 and from US \$1.5 million to \$9.5 million for thrift banks. A similar category of institutions, called Development Banks, has been created in the Dominican Republic, although they are not permitted to offer checking accounts. Dominican Development Banks are subject to a minimum capital requirement of \$1.0 million.

In order to encourage non-traditional financial institutions to become banks, the South African government passed the Mutual Banks Act of 1994. Although the Act calls for the same risk management requirements and principles of accountability as those outlined in the Banks Act for commercial banks, the Mutual Banks Act allows for lower capital requirements.

Model 3: Access to savings extended to NGOs and non-profit associations.

Although many governments recognize the need for non-bank institutions capable of offering savings services, they have tended to require that such institutions be either private share holding based companies or cooperatives. Banking authorities, in general, appear apprehensive about allowing non-profit organizations to become non-bank institutions with access to savings facilities. However, in at least three countries, legislation has been passed or exists in draft form that would enable MFIs with the legal status of NGOs to capture savings without “transforming” into private or cooperative entities. This is the case in Nicaragua, where Law 244 enables microcredit NGOs to remain as non-profit institutions and to capture passbook savings. To date, however, this has not been implemented. Peru has actually passed a similar law, although it does not carry the automatic access to savings that is present in the Nicaraguan law. In Honduras, the draft OPD legislation that would create a category of Supervised OPDs coming under direct prudential supervision by the banking superintendency also remains under consideration. Overall, there seems to be very little experience with this model on a practical level. In the two countries that have passed laws creating a category of regulated NGOs with access to savings (Nicaragua and Peru), as of present, none have actually been licensed.

Question four: how are credit unions integrated into financial sector legal and regulatory frameworks?

Model 1: Regulated by an authority separate from the banking authority.

Many governments allow cooperative financial institutions to be regulated by an authority other than the central bank or bank superintendency. For example, in the Central American countries, cooperatives have traditionally fallen outside the financial sector's regulatory framework. Therefore, none of the norms issued by the financial sector's supervisory authorities apply to them. Instead, cooperatives are subject to authorization and control by a public institute, ministry, or cooperative agency. Although these regulatory agencies frequently require information and registration, they do not, in general, conduct any effective financial supervision.

In South Africa, Credit unions and *stokvels*—rotating credit associations consisting of about twelve members—do not have to comply with the prudential and reporting requirements of the country's banking regulations. Instead, these organizations are required to join a representative body, such as the National Association of Stokvels in South Africa or the Savings and Credit League of South Africa. The government does restrict the amount of deposits these organizations may accept from their members. Any cooperative organization that exceeds this limit must register as a mutual bank, in which case it does come under prudential supervision from the central bank.

Model 2: Regulated by the Central Bank/Superintendency.

In some cases, cooperative financial institutions are regulated by the Central Bank or banking superintendency. The Intendency of Non-Banking Entities, one of three departments of the Bolivian Superintendency of Banks and Financial Entities, supervises the activities of savings and loan cooperatives, the private financial funds, and other non-banking institutions. Of the 207 savings and loan cooperatives in the country, 17 report to this department of the Superintendency and another 60 have applied for licensing.

In other countries, there appears to be a movement to bring credit unions under closer supervision of the Banking authorities. A law incorporating cooperative financial institutions under the purview of the banking superintendency has been proposed in El Salvador. The new law in Cambodia would categorize cooperatives and deposit taking non-cooperative MFIs under the same regulatory heading, requiring them to respect similar prudential regulations. It is important to note, however, that the Central Bank would be free to establish different guidelines for cooperatives and deposit-taking non-cooperative MFIs through the publication of its circulars.

Question five: How are MFI standards promoted?

Standards can be promoted by a variety of institutions in a variety of ways. For regulated institutions, the authority responsible for prudential regulation enforces standards. For non-regulated institutions, standards are most often promoted indirectly by funders or directly by

voluntary industry associations. This section focuses solely on national initiatives of standards promotion for non-regulated institutions. Global or regional efforts such as those conducted by the Private Sector Initiatives Corporation (PSIC) in Latin America, the global MicroBanking Bulletin, now published by Calmeadow, ACCION International's CAMEL assessments of its affiliates, and the World Council of Credit Unions' (WOCCU) PEARLS assessment tool for savings and credit cooperatives are discussed briefly in Annex A.

Standards promoted by funders. This method, also known as investment monitoring, principally involves due diligence review of funding decisions on the part of donor, lender, wholesaler, or other investors. Second tier financial institutions, commercial banks, and donors providing grants or investments to microfinance organizations may enforce strict selection criteria and condition funding on institutional development and performance. To protect their investments and decide on how to disburse limited funds, these institutions develop performance criteria and evaluate microfinance institutions wanting or receiving funding based upon these criteria. Some funders develop criteria based upon what they feel is important, while others follow international standards. Microfinance institutions wishing to receive funding at concessional rates from these second tier financial institutions, commercial banks, and donors are constrained to abide by their funders' performance standards.

Second tier financial institutions in South Africa and the Dominican Republic have developed standardized systems for evaluating institutional performance and for promoting standards. Khula Enterprise Finance Limited, a wholesale provider of credit to the microenterprise industry in South Africa, provides select microfinance institutions with various loan products at concessional rates. But because their capital is limited, Khula cannot support all MFIs. Khula uses a set of criteria to select and evaluate those institutions applying for and receiving financial assistance from Khula. During the evaluation of an institution, Khula looks at the number of actual and projected clients, operational cost ratios, gender distribution of clients, repayment rates, and portfolio at risk. Box Six in the South Africa case study and Annex C outline the criteria used by Khula. If Khula doubts the applicant's financial stability and its commitment to assisting the microenterprise sector, then Khula will not provide the institution with the desired support.

Like Khula, Fondo Micro, an apex institution founded by Dominican business people and established in 1991 with USAID capital, promotes industry performance standards. Fondo Micro assesses the institutions wishing to access its loan window in terms of the following criteria: a ratio of assets to capital of no more than five to one; portfolio at risk (over one day) of no more than 10 percent, with late payments of no more than three to five percent of the outstanding portfolio; productive assets of 80 percent (in portfolio and short term investments); return on assets of seven to eight percent; and return on capital of 14 percent. Fondo Micro requires that its client institutions submit monthly reports and periodically conducts on-site inspections of these institutions. If a client institution does not meet Fondo Micro's performance standards, it is expected to return the loan funds to Fondo Micro. Fondo Micro will not reissue the loan until the institution complies with the standards.

Standards promoted by voluntary industry associations. Industry associations may develop performance standards, assess institutions on the basis of these standards, and disclose the information to inform the public, depositors, borrowers, members, and lenders of the soundness of particular institutions. National initiatives, championed by microfinance industry associations, to develop and promote performance standards are underway in the Philippines and South Africa.

The Microfinance Standards Coalition in the Philippines formulated its standards, using the SEEP Network and CGAP financial ratios and the ACCION CAMEL as reference materials, to evaluate and categorize microcredit NGOs. The standards developed by this Coalition are of two types: minimum standards, which are standards an NGO must meet in order for it to be considered to be a serious professionally managed microfinance institution, and performance standards, which are the standards the coalition uses to make comparative ratings of the performance of all microfinance NGOs meeting the basic minimum standards. Tables Four and Five in the Philippines case study describe the indicators for these two levels of standards.

The Alliance of Micro-Enterprise Development Practitioners, a membership association of South African institutions and individuals active in the microenterprise development field, has created and disseminated a Code of Conduct to its members to encourage best practices. As members of the Alliance, organizations are expected to adhere to principles outlined in the Code of Conduct. However, unlike the Coalition, the Alliance does evaluate and categorize the performance of its member organizations. Annex C contains the Alliance of Micro-Enterprise Development Practitioners Code of Conduct.

LESSONS FROM CASE STUDIES

From the above discussion of the case studies, the following conclusions concerning a framework for microfinance regulation and supervision can be drawn.

Few countries have sought to create a special category or registration system for credit only institutions. In general, little need for such a system exists since many institutional forms (NGOs, associations and foundations, and private limited companies) allow the flexibility required to make micro-loans. Exceptions arise when the legal framework presents a major obstacle to the sustainable provision of microcredit and the political environment is such that an exception or exemption is more feasible than overall regulatory reform. Such is the case of the registration system for exemption to the Usury Act in South Africa. Another motivating factor may be to qualify institutions for access to government rediscount lines that require institutions to be regulated by the government in order to be eligible, as with the EDPYMES in Peru and the proposed registration system for NGO MFIs in Nicaragua. The Cambodian example shown in Part II, provides one of the few examples of a country that is considering a mandatory MFI registry that is open to all microcredit providers, regardless of their particular institutional legal form.

It is important to maintain a level playing field between different types of credit-only institutions. The legal framework should allow for bank and non-bank, private, cooperative and non-profit credit providers. In order to generate the innovations necessary to expand outreach and efficiency, while managing risk, microcredit requires flexibility and experimentation with various institutional options. The creation of specific licensing schemes for credit-only MFIs that are limited to a specific type of institutional type—usually NGOs—creates a risk of either excluding other types of providers or of introducing differences in regulatory treatment, access to preferential funding or legal protection that can bias the development of the market. Because credit-only MFIs pose little risk to the financial system as a whole, there is little reason in the first place to introduce any sort of licensing system. This does not preclude a simple microfinance “registration” system (similar to what has been proposed in Cambodia), whose main purpose would be to ensure the disclosure of information on credit-only MFI activities.

Disclosure and transparency of institutional data improves the efficient and appropriate allocation of funding. A concerted effort on the part of institutions to promote disclosure and set standards could improve industry performance and image. Microcredit organizations can encourage funders to focus on good institutions by developing and enforcing performance standards. Performance standards should focus on objective performance indicators, particularly financial ratios, rather than proscriptive operational policies. Such systems may be implemented by a second tier institution (supply side) or by an industry association (demand side) but will only be effective if linked with effective incentives and penalties.

The trigger for government regulation and supervision is the mobilization of savings, which is generally limited to private companies or cooperative institutions. Non-profit associations and NGOs are generally excluded from savings mobilization. Some of the reasons for this exclusion are: nonprofit organizations are often subject to less stringent reporting requirements which makes it difficult to ascertain their true financial status; nonprofit organizations do not possess clear owners, which means that no one has a clear personal or institutional stake in their financial health; and nonprofit organizations tend to be less able to respond to capital calls from regulatory authorities. Countries whose legal framework includes financial institutions with lower minimum capital requirements that can mobilize savings most often have restricted these to institutions that are private share-capital institutions (although the owners may include NGOs). Examples include the Development Banks in Dominican Republic, Rural Banks in Philippines or Finance Companies throughout Latin America. Exceptions to this rule have been proposed in Central America, but the outcome is not clear, and in general these proposals are not favored by the regulatory agencies.

High barriers to entry, particularly in terms of minimum capital requirements, might create the need for a new financial intermediary institutional category. Non-bank financial institutions, subject to lower minimum capital requirements than commercial banks, could provide a useful option for credit-only MFI institutional evolution and help mobilize uncaptured savings among the poor. The utility of such a category depends largely on how banking regulations are set. If a country’s banking regulations specify high minimum capital requirements, sectoral loan limits and inflexible reporting and loan documentation requirements, then such a category becomes more useful to MFIs seeking to transform into regulated institution

since there is little hope that they could fit in under the same rules governing banks. However, if there is flexibility in adapting prudential standards and reporting requirements in the banking sector to the particularities of MFIs, then the need for such institutional categories is diminished.

When developing a legal and regulatory framework, it is important to consider the capacity of the regulatory body. Banking authorities, already responsible for the regulation and supervision of formal financial institutions, might not have the resources to expend on regulating a plethora of microfinance institutions. Perhaps one of the reasons why the banking authority in Nicaragua has not yet implemented the law that requires all microcredit NGOs in the country to receive operating licenses from the Superintendency of Banks, is the banking authority does not have the capacity to conduct prudential analyses of all such institutions.

PART II: CASE STUDIES

Following are six short case studies on Central America, The Dominican Republic, The Philippines, South Africa, Cambodia, and Senegal. The case studies were selected because they represent culturally, economically and geographically diverse environments as well as varied experiences with microfinance legal and regulatory frameworks and reform as well as industry development. The research method utilized consisted of a desk review of available literature and select interviews conducted via telephone and email.

For each case study, the authors examined issues of industry development and structure; registration, regulation and supervision relevant for microfinance within the financial sector, commercial sector and non-government sectors; and performance standards and apex institutions for microfinance. The relevance and amount of information on each set of issues varied from country to country. Hence, the focus of each study is based on the most salient points and lessons from that particular country's experience with microfinance. Each study does not cover all the issues in the same depth. This paper is intended to provide a brief overview of a number of complex issues; therefore the coverage is not exhaustive. A list of resource materials and people consulted for this study is provided in Annex D for those that wish to follow-up for more details.

CENTRAL AMERICA

To provide some background on the microfinance sector in Central America, it is estimated that more than 400 cooperatives with average assets of \$300,000 and 600 financial NGOs (associations and foundations) with average assets of \$120,000 operate in the region. In addition, several of the more than 100 banks in Central America have entered this segment as have a few regulated financial institutions that specialize in micro and small enterprise finance. Traditionally, the finance companies (*financieras*), or non-bank financial intermediaries, have serviced the consumer credit markets in these countries, and some have moved into microenterprise finance as well.⁴ FOLADE (The Latin American Development Fund), a microfinance network and research organization based in Costa Rica, estimates the portfolios of the cooperative and NGO institutions represent approximately 8 – 10% of credit and up to 40%

⁴ Finance companies or *financieras* are a type of non-bank financial intermediaries that exist in many countries throughout Latin America. In many countries in the region, they have minimum capital requirements lower than commercial banks, are allowed to mobilize passbook savings and time deposits, and are regulated by the Superintendency of Banks. Additionally, in many countries in the region, private lenders operate as pawn shops or general money lenders. These firms are not regulated by the banking authorities, are not legally permitted to mobilize deposits (in some countries they can mobilize a type of time deposit) and fall under the commercial code.

of borrowers of the financial system in the region.⁵ The Central American countries range in size from 2.8 million in Panama to 10.8 million in Guatemala, for a total regional population of almost 30 million people with GDP per capita ranging from about \$500 to \$2,800.

Non-conventional financial intermediation is the term FOLADE uses for microfinance. Commercial banks as well as other traditional financial intermediaries, private commercial companies, cooperatives and non-profit or non-governmental organizations (usually associations or foundations) provide microfinance. In Central America, the NGOs were founded mostly in the 1980s to attend to marginalized sectors of society with funds donated by foreign or international organizations. They were usually set up as associations or foundations, institutional forms that were not designed for financial intermediation. Many argue that since these forms are not intended to accumulate capital or intermediate funds as related to deposit mobilization, and since they have weak ownership and governance structures, in the long term they are not appropriate legal or organizational forms for microfinance.

In only two cases have these non-traditional financial institutions been incorporated into the Central American bank regulatory and supervisory frameworks. The first case is that of credit unions in Costa Rica. A proposal to do the same seems likely to become law in El Salvador as well. The second case is the 1997 law that created Non-Profit Financial Entities in Nicaragua, however this law was never implemented due to opposition on the part of some regulators. New proposed laws for non-profit institutions regulated by the banking authorities are under review in Nicaragua and Honduras. Both cases are discussed below.

In all other Central American countries, the non-formal financial institutions – cooperatives, NGOs, associations and foundations – are outside the financial sector's regulatory framework and hence none of the norms issued by the financial sector's supervisory authorities apply to them. In these cases, cooperatives, associations and foundations are subject to authorization and control by a public institute, ministry or agency. However, while these regulatory regimes require up front information and registration, no ongoing financial supervision is conducted. Moreover, they are not designed especially for microfinance or financial intermediation in general.

As a point of reference, it is worth noting the minimum capital requirements for banks and finance companies in these countries (actual values may vary based on current exchange rates):

⁵ Much of the information in this section comes from a paper prepared by Max Alberto Soto Jimenez and Alan Thompson Chacon on the Project for a Regulatory Framework for Non-Conventional Financial Intermediation in Central America, organized by FOLADE, Development international Desjardins and Banco Centro Americano de Integración Económica (BCIE).

TABLE TWO
MINIMUM CAPITAL REQUIREMENTS
FOR FINANCIAL INTERMEDIARIES IN CENTRAL AMERICA

Country	Banks	Finance Company
Costa Rica	\$4 million	\$820,000
El Salvador	\$12 million (as of July 1999)	not allowed (as of July 1999)
Guatemala	\$3.3 million	\$1.8 million
Honduras	\$3.45 million	\$869,000
Nicaragua	\$2 million	\$2 million
Panama	\$1 million	Finance companies exist legally as non-deposit taking entities, most are bank subsidiaries

In summary, the Central American countries do not present a consistent tendency regarding incorporation of NGOs, cooperatives or other non-conventional financial institutions into the regulatory structure. El Salvador is making entry barriers more strict for licensed financial intermediaries and creating a new regulatory window for cooperative institutions. Nicaragua is reversing recent regulation that incorporated NGOs into the regulatory framework and offering another new non-bank financial intermediary option. It is also strengthening regulation of microcredit NGOs. Honduras is considering the introduction of new legislation for non-conventional financial intermediaries, whereas Costa Rica and Panama are focusing on strengthening the regulatory and supervisory framework for their formal financial systems.

Following is a bit more information on recent events in El Salvador, Honduras and Nicaragua. It is important to note that each country presently is revising its legal and regulatory framework and hence the examples presented below are all in the proposal stage. These new types of institutions have not yet been approved and the outcome is not yet known.

El Salvador

In El Salvador, presently the regulated, supervised financial system is comprised primarily of 15 commercial banks, which must be corporations of fixed capital, divided in nominal shares, with no less than ten (10) shareholders. The finance company category was eliminated with the 1999 banking law, and policymakers still are weighing alternatives for the regulation and supervision of other entities, particularly cooperatives.

Since mid-1999, minimum capital for a bank has been 100 million colones, or about \$12 million (more than twice its previous level and more than 10 times the minimum capital previously allowed for finance companies). New institutions must maintain 14.5 percent capital adequacy

for the first three years; it can then be maintained at 12 percent (capital to weighted average of risk adjusted assets). They must invest at least 10 percent of their annual income in the required reserve. This is the same law that eliminates the finance company figure that previously existed in El Salvador.

There is a proposed law for non-bank financial intermediaries which appears to include only cooperatives. This law will incorporate cooperative financial institutions under the purview of the superintendency of the financial system. NGOs are lobbying to be included in this law as well, so that they can mobilize deposits and transform into some other kind of institution. However, it appears that only the cooperative associations and societies will be covered by this law that requires cooperative governance and ownership structures.

A few of the commercial banks currently are considering developing microfinance operations and one or two already have begun to make micro-loans. Financiera Calpia, established from a microcredit NGO and small business association, is the only remaining finance company and it specializes in micro and small enterprise finance. All other finance companies have closed or merged with banks, and Calpia is required and plans to raise the capital and convert into a bank over the next few years. In addition to a rather active and well-organized cooperative movement, dozens of NGOs operate in the country registered as associations or foundations. Only about five or six of these NGOs have significant operations, that is they are nearing sustainability and have more than a thousand clients. Only one has more than 5,000 clients, using the village banking model. In addition to their small size, these organizations are not exceptionally strong in terms of capitalization, portfolio quality and sustainability. While several have accessed international donor funding, they are not allowed to access domestic lines of credit such as those offered by the second tier Banco Multisectorial de Inversiones (BMI), which does have microcredit refinancing available to regulated institutions—i.e. banks. BMI, a government owned institution, is the only second tier financial institution in the country.

The new banking law, with increased capital requirements and elimination of the finance company category was driven, in part, by recent events that resulted in the loss of deposits and some loss of confidence in the financial system. Given the relative importance of the cooperative movement in El Salvador, as well as its organization, it seems to have been successful at lobbying for inclusion under the government's financial sector supervision. Given the recent fraud on the part of a finance company (that was allowed to mobilize deposits), it is unlikely that any type of NGO or private company, other than banks and financial cooperatives, will be allowed to mobilize deposits. However, it is unlikely these regulatory changes will affect the ability of private companies or NGOs to continue credit operations as long as they are not mobilizing public deposits. Presently, no law regulates the credit activities of non-bank institutions.

No special microfinance or lenders' license exists and no official microfinance performance standards are in place. However, donor supported projects do have selection and performance requirements for financing. The eligibility requirements for the current USAID financed and DAI managed FOMIR project are presented in Box One. These criteria are based, in part, on a number of donor applications for grant funding and performance criteria including: the Donor's

Working Group on Financial Sector Development and the Committee of Donor Agencies for Small Enterprise Development Guiding Principles for Selecting and Supporting Intermediaries; USAID Microenterprise Development Office; and Consultative Group to Assist the Poorest (CGAP). Ongoing performance monitoring consists of monthly reports on a variety of operational and financial indicators such as portfolio quality, financial sustainability, client and portfolio growth, as well as site visits.

Recently a microfinance association, ASOMI, comprised of three leading microcredit NGOs, was established to advocate for changes in the proposed non-bank financial institutions law. In particular, ASOMI is lobbying for an institutional category of non-profit, deposit taking MFIs with the ability to scale-up.⁶ The association is also interested in institutional strengthening and is coordinating technical assistance and training for its members under FOMIR.

**BOX ONE
ELIGIBILITY CRITERIA FOR FINANCING
FOMIR/EL SALVADOR**

- ⇒ Demonstrated commitment and capacity of organization and directors to outreach and sustainability
- ⇒ At least two years offering financial services
- ⇒ At least 750 active clients
- ⇒ Cost-recovery interest rates, resulting in at least 70% operationally self-sufficient with plans to reach full financial self-sufficiency within three years
- ⇒ Portfolio at risk (over 30 days) of no more than 20% with strategy to reduce delinquency
- ⇒ Legally registered Salvadoran institution, with audited financial statements

Honduras

Honduras, a country of over 6 million people had 20 banks in 1996 as well as finance companies, credit and savings associations, credit unions and housing banks. At least three commercial banks and two finance companies (one formerly an NGO and one purely commercial) offer loans to microenterprises. The banks and finance companies fall under the Superintendency of Banks; the credit unions do not. In addition, it is reported that some 3,500 non-bank registered lenders offer credit with mortgage and collateral guarantees. These entities are registered with the Superintendency but are not authorized to mobilize deposits. Some 20 NGOs are engaged in microcredit. In the last few years, as a result of interest among NGOs and donors to enable NGOs to access Central Bank resources and public deposits, a lengthy process began to develop a special microfinance law for non-governmental organizations wishing to be regulated. This law has not been approved, and the outcome is not clear. However, since it is the only country under review with such a proposed law under serious consideration, it seems worthwhile to present some key elements of this proposal within the context of this paper.

⁶ As a general principle, the authors do not agree that a non-profit deposit taking institutional model is appropriate or desirable. However, since the Central American laws presented here are all in the proposal stage and as such subject to significant revision, and since the authors were not able to conduct field research to understand all the intricacies of the legal and regulatory frameworks for each institutional model, the authors do not have sufficient information to evaluate the models under review in this paper.

The proposed law is to regulate the financial activity of private development organizations (Organizaciones Privadas de Desarrollo OPD). Its stated purpose is to regulate the activities of these NGOs to ensure the transparency of their operations, maintain the confidence of the public and to strengthen their permanence and sustainability while giving them the right to access new sources of capital. The law would allow for the creation of licenses for non-profit, private, development finance organizations to intermediate resources in support of low-income micro and small entrepreneurs.

Two varieties of OPDs are proposed: non-supervised and supervised. The non-supervised OPDs must register as such and have a feasibility plan, duly constituted organization with a board and statutes, and a minimum capital of Lps. 200,000 (about US\$14,000). The Supervised OPDs have additional requirements: minimum capital of Lps. 10,000,000 (about US\$690,000) in cash or the equivalent in net worth, of which 80% must be liquid, and have an established capacity to implement financial technologies suitable for micro and small entrepreneurs.⁷ In addition, they must maintain a standard chart of accounts, have audited financial statements, and cover 100 percent of their operational and financial costs, essentially meaning they would not be in compliance with the law if they operate at a loss. Minimum capital requirements can be met with donations and other sources.

Non-Supervised OPDs would be allowed to make loans with any kind of collateral (including solidarity groups) and would be eligible to receive loans from public and private financial entities. The Supervised OPDs, in addition to these activities, would be allowed to offer passbook savings and time deposits in local currency; provide domestic payment and transfer services, as well as leasing, and other similar services.

If this law were passed, a special commission would establish risk parameters and classification criteria for OPDs. The prudential regulations would establish a maximum on dividends to be paid;⁸ require building up institutional reserves (minimum of 10% of assets) held in specified instruments at the Central Bank as well as internal loan-loss reserves. Institutional reserves must be maintained in specified instruments at the Central Bank. Changes in board members and the executive director would have to be communicated to the Central Bank. Procedures for mergers and liquidations are also detailed.

The proposed law dictates a common governance structure for these OPDs, that is similar to that of NGOs: A general assembly (which must meet once a year), board of directors and senior management. In addition they must have an internal auditor. The Board has five members,

⁷ The authors have tried to present all figures in dollars for comparative purposes. When available, they have also included values in local currency. Since the data presented in this paper comes from diverse sources published on diverse dates, it is likely that different exchange rates were used to convert foreign currency to US dollars. Hence all figures are not directly comparable since they may have been converted at different rates, such as the minimum capital requirements for finance companies and the new OPDs in Honduras.

⁸ Interestingly, this new type of proposed non-profit organization would be allowed to issue dividends, for amounts no greater than 3 percent above the official consumer price inflation, as well as accept donations.

elected by the assembly and each founder has one vote. Board representatives must be adults and have sufficient background to manage a financial business. Founders can be local or international, persons or institutions, and must contribute capital to the OPD, based on their by-laws. Owners are responsible only for the amount of capital they have already invested and cannot be required to provide additional capital.

Nicaragua

Nicaragua, a country of 4.8 million people, is one of the poorest countries in Central America. The country has benefited from extensive donor support to the microcredit sector, and an estimated 90 NGOs offer microcredit in the country. However, it is reported that the majority of institutions demonstrate relatively low levels of outreach, capitalization, sustainability and efficiency. Additionally, commercial banks and finance companies have begun to service the microenterprise sector, and a new microfinance entity is being established by a local finance company and an NGO with international technical assistance and financing.

The Nicaraguan case is also interesting since in 1997, many Nicaraguan NGOs gathered to develop a law that would provide them the opportunity to be regulated within the financial sector and to mobilize deposits. However, as mentioned above, this law encountered strong opposition, has been regarded as inadequate by financial sector authorities and has not been implemented. Hence no NGOs have been authorized to mobilize deposits or access government rediscount lines. Nicaragua has recently named a new Superintendent of Banks and is in the process of redefining the legal, regulatory and supervisory framework for the financial sector in general and the microfinance sector in particular. It is reported that a new proposed law under review would increase minimum capital requirements for commercial banks (up from the present figure of \$2 million) and have a lower capital, privately owned and incorporated, non-bank financial intermediary, similar to the current finance company or Bolivian FFP model. The new legal framework also would include registration and operating requirements for NGOs, requiring external audits and minimum performance standards for NGOs before they are allowed to access any kind of bank financing.

Law 244, passed in 1997—but never implemented, is described here merely to illustrate one kind of law that is being proposed. It is important to note the opposition such proposals may incur. For example, the EDPYME law was passed in Peru in 1994. As with the Nicaraguan Law 244, Peruvian NGOs can be licensed by the Superintendency, given access to government rediscount lines, and eventually were suppose to be licensed to mobilize deposits. While several EDPYMEs have been formed from NGO microcredit programs and access the government rediscount lines, to date no EDPYME has been granted a license to mobilize deposits. In the case of Law 244, NGOs would have remained as non-profits and been permitted to capture passbook savings.

Under Law 244, all micro-credit NGOs are to receive an operating license from the Superintendency of Banks. The application includes a feasibility plan, and other registration documents. These organizations are to be overseen by a Board of Directors, chosen by the General Membership, composed of a minimum of three members and two alternates. These

entities are supervised by the Superintendency of Banks, and must conform to the norms associated with the General Law of Banks and Other Institutions. The Superintendency is charged with establishing minimum capital requirements for these institutions. Capital contributions to these entities would be non-refundable, and those who contributed would not be able to claim ownership over the contributions. As non-profit institutions, net profits from operations are not distributed and would go into the organization's equity or loan fund. These organizations are permitted to provide credit to small and medium enterprises, with limits and loan amounts established in subsequent directives; capture deposits from the public in passbook savings; be recipients of loans from national and international entities; make financial investments; and perform other activities that the Superintendency approves. In return, financial reports must be submitted to the Superintendency.

DOMINICAN REPUBLIC

The Dominican Republic has about 8.2 million people, of which approximately 1 million work in the country's approximately 353,000 small and microenterprises, according to FondoMicro's 1998–1999 survey of the sector.⁹ FondoMicro's annual survey also indicates only 17 percent of micro and small enterprises utilized credit (not including supplier credit) during 1998, with 4.2 percent receiving loans from banks and finance companies and 4.7 percent receiving loans from NGOs. Over 35 percent of those receiving credit paid annual effective interest rates of over 100 percent.

Institutional Infrastructure

Institutional microfinance began in the Dominican Republic in the early 1980s. A variety of institutions and organizations offer financial services to small and microenterprises with national coverage. These include banks, commercial finance companies, non-government organizations (NGOs) and savings and credit cooperatives. In recent years, the government has begun to provide subsidized credit directly to entrepreneurs, although the recent FondoMicro survey indicates that it reached only 0.5 percent of the micro and small enterprise sector.

Presently, more than 20 microcredit NGOs operate in the country, the five most important institutions are and some of their key indicators are presented in Table Two:

TABLE THREE
LEADING MICROFINANCE NGOS IN THE DOMINICAN REPUBLIC

Microfinance NGOs ¹⁰	Loan Portfolio (US\$) ¹¹	Portfolio at Risk	Number of Clients	% Rural Clients	% Women
ADOPEM	6,033,374	5.1%	16,542	11%	100%
FONDESA	3,182,570	9.0%	1,957	18%	32%
ADEPE	2,200,520	28.7%	1,548	100%	22%
FDD	3,306,188	23.3%	2,200	21%	26%
MUDE	1,279,046	10.4%	3,402	90%	100%
CDD	243,340	1.6%	359	25%	70%
Total	16,245,038		26,008		

Source: FondoMicro, October 1999.

⁹ Preliminary results of the latest annual small and microenterprise nationwide survey for March 1999.

¹⁰ Asociación dominicana para el desarrollo de la mujer (ADOPEM); Fondo para el desarrollo de Santiago (FONDESA); Asociación para el desarrollo de la provincia Espaillat (ADEPE); Fundación dominicana de desarrollo (FDD); Centro dominicano de desarrollo (CDD); Mujeres en desarrollo dominicana (MUDE).

¹¹ The exchange rate used for the conversion is RD\$16 to US\$1.

NGO microcredit institutions are organized as non-profit foundations or associations. Law 520 is a general framework that governs the requirements for the constitution of these types of institutions, and all non-profits fall under this same law, regardless of their mission and activities. Since non-profit institutions originally were not conceived to carry out financial intermediation, this legal framework does not contain any prudential regulations or any specific reporting requirements for the microfinance institutions. No other law or regulation exists that would back up any regulatory or supervisory function.

The president of the country has to approve the incorporation of these institutions. No government body supervises the NGOs; the government's oversight essentially ends once these institutions are legally incorporated. Presently, NGOs are not able to capture deposits but are lobbying the policymakers to include them in the new banking law that is under review in congress. Those that do require savings as part of their lending methodology deposit the funds in a banking institution. While various microfinance associations exist in the country, none has any systematic analysis of the NGOs nor have they established particular standards.

One NGO, ADEMI, recently has set-up a development bank to take over its microfinance program. The non-profit foundation remains a partial owner of the new bank. As an NGO, ADEMI was successful at fundraising, expanding outreach, achieving sustainability and profitability. It also formed an alliance with a commercial bank to assist with loan disbursements and payments and to offer its qualified microenterprise clients a credit card. Since 1992, as an NGO, ADEMI mobilized resources from its clients, essentially deposits accounted for as loans. By 1997, these funds represented 25 percent of ADEMI's portfolio. By then, its equity base had grown to US\$17 million and its assets were over US\$40 million. At this time, several factors led ADEMI to pursue establishment of a new formal sector bank. The factors are reported to include some tax law changes affecting the attractiveness of non-profit status, recognition of the institution's large equity base, and an unfavorable view on the part of some policymakers of the NGO's unsupervised deposit mobilization.¹²

ADEMI and another new bank established at the same time – Banco de la Pequeña Empresa that also focuses on the small and microenterprise sector – both were set-up as Development Banks. In both cases, the banks have multiple shareholders comprised of private sector, multi-lateral and non-profit institutions. Apart from these two institutions, 14 other development banks operate in the Dominican Republic. Aside from Banco de la Pequeña Empresa and Banco ADEMI, most of these institutions do not have a well defined market niche, and the tendency is for these development banks to convert to multipurpose commercial banking institutions as the competitive pressure from the commercial banking sector increases.

These entities are regulated by the Superintendency of Banks, and must conform to general banking law, monetary law, the law that creates the development banks, and other regulatory norms of the monetary board. The minimum capital requirements are \$1 million for development

¹² Campion and White, p. 118. As an NGO, ADEMI was not subject to the prudential norms, supervision and reporting requirements of the banking superintendency, although the institution in effect was mobilizing the public's deposits.

banks and they are permitted to offer time deposits, savings accounts and promissory notes as well as lending operations. The original idea behind the development bank was to create institutions to channel central bank funding to long term projects. Once the subsidized funding from the Central Bank disappeared, the development banks had to search out commercial markets, though with legal restrictions that do not allow them to effectively compete with the commercial banks.

In essence, the development bank structure operates under a special law. The idea of the new monetary code, currently under review in Congress, is to eliminate the special laws and place all types of financial intermediaries under one legal framework, leveling the playing field. If the new monetary code is passed, the development bank as such will disappear and the institutions remaining in this category will need to change their legal status. One attractive alternative to the development bank would be a savings and loan bank. The operations both entities can conduct essentially are the same.

As of December 1998, one hundred finance companies (known as *financieras*) operated in the country. Down from 149 the year before, these non-bank financial intermediaries rapidly are disappearing from the market. These institutions operate under the commercial code, and as such they are not allowed to offer checking accounts or passbook savings accounts. Since their inception, they have captured deposits from the public, mainly through large time deposits known as public investment certificates. The *financieras* serve the consumer, small and microenterprise market segments with credit. However, they are not allowed to offer credit cards, which represents an important obstacle in penetrating this market in the Dominican Republic.

In addition, a number of the 15 commercial banks have started to explore the microenterprise finance market. The remainder of the financial sector is comprised of three mortgage banks, 19 housing savings and credit associations, 42 small loan houses and 5 public banks.

Second Tier

One apex institution exists in the country to provide financing for microfinance organizations. This is FondoMicro that was founded by Dominican business people and set up in 1991 with capital provided by USAID. This organization is registered as a non-profit institution under law 520. In addition to conducting research, including the annual microenterprise sector survey, the organization provides technical assistance and monitoring as well as financing to microfinance organizations. In addition to its own capital, FondoMicro has recently begun raising capital on the Dominican stock exchange through the issuance of commercial paper backed by its loan portfolio. The Stock Exchanges has authorized an initial placement of US\$1,875,000 of which the institution has placed US\$562,500.

FondoMicro is the only private microfinance wholesale lending institution in the country. It has established performance standards for institutions that want access to its loan window and as part of its due diligence gathers detailed information about its institutional borrowers. FondoMicro does not collect or analyze performance information for non-borrowing institutions.

Presently, FondoMicro serves six organizations classified as cooperatives and NGOs. FondoMicro uses the following eligibility criteria in deciding which organizations to finance.

- ⇒ Leverage: Ratio of assets to capital of no more than five to one;
- ⇒ Portfolio: Portfolio at risk (over one day) of no more than ten percent, with late payments of no more than three to five percent of the outstanding portfolio
- ⇒ Asset structure: productive assets of 80 percent (in portfolio and short term investments)
- ⇒ Profitability: return on assets of seven to eight percent, return on capital of 14 percent

These indicators have been modified over time based on institutional performance. FondoMicro also requires monthly reporting of key operational, financial and portfolio data, and conducts periodic on-site reviews of its client institutions. If borrowing institutions do not meet these performance standards, their loan funds are called and are not reissued until the institution comes back into compliance. Early on, FondoMicro provided extensive training and technical assistance to these organizations and is promoting these services again.

When FondoMicro depended exclusively on its own capital and retained earnings, it set its interest rate each month using the average prime lending rate in the Dominican banking system. However, now that it raises capital in the Stock Exchange, its cost of funds has become more variable. FondoMicro now bases its lending rate on the higher of either its marginal cost of funds in the stock exchange plus 2.5% or the prime rate of the commercial banking system.

FondoMicro's management has also begun to revise its portfolio classification policy to more accurately measure the risk of each institution's portfolio. It recently developed a risk classification system based on the CAMEL. Based on this information, it has begun to differentiate its interest rates, which previously had been uniform for all borrowing institutions. Institutions now are classified into three categories: A, B, C. Those classified as B can borrow at FondoMicro's prime rate, while the A's can borrow at .25% below prime and the C's at .50% over prime.

Loan terms for institutions borrowing from FondoMicro are for periods of up to one year and are subject to renewal. The interest rate is fixed at time of the loan contract. Each contract is backed by 10 – 15 IOU notes (known in Spanish as *pagares*) of different size and maturity. If the performance of the NGO is good when the IOU comes due, it can be renewed. At that time the interest rate is revised if FondoMicro's interest rate has changed.

BOX TWO MICROFINANCE IN BOLIVIA

Although Bolivia is not one of the country case studies included in this paper, it is worth mentioning a few important aspects related to the development of its microfinance sector, as well as the Private Financing Fund or FFP law. The first microfinance organizations in Bolivia were incorporated as NGOs in the 1980s and early 1990s. There have been some strong credit unions in the country serving the microenterprise sector as well. One of the strongest microcredit organizations in the early 1990s was Prodem, which formed BancoSol, a commercial bank established under the existing banking laws. Prodem continued to operate a microcredit program transferring part of its portfolio to capitalize BancoSol and receiving share capital in return. Prodem continues to operate as a separate NGO. Although some of the laws and norms were not appropriate for BancoSol's unsecured lending operations, the institution was able to work with the Superintendency of Banks to demonstrate its risk management and financial management expertise and together over the years they worked to modify the regulations that were inappropriate. Subsequently, Bolivia introduced the Private Financing Fund figure or FFP as it is known by its Spanish acronym. Presently this figure has a minimum capital requirement of almost US\$1 million, although Bolivian authorities have stated they plan to increase this figure by the end of the year. Commercial banks presently have a minimum capital requirement of over US\$7 million. Reserve and capital adequacy requirements are the same for banks and FFPs (12% and 10% respectively). The FFP entity is a for-profit, limited liability company, although its owners may be non-profit organizations, that is allowed to perform most banking functions except offer demand deposits or checking accounts, credit cards, trusts, or foreign trade operations. Two of the existing FFPs grew out of successful NGO microcredit programs (Caja los Andes and FIE); one was formed by the fusion of several NGO microcredit programs to meet the minimum capital requirements, take advantage of economies of scale and geographic coverage (Ecofuturo); and two were formed by purely for profit investors (FA\$SIL and Acceso) and offer both consumer and microenterprise credit. In addition to the FFPs operating in Bolivia, it is expected that two or three more will be incorporated in the near future based on the microcredit operations of Bolivian NGOs. A number of NGOs continue to operate microcredit programs with significant outreach in Bolivia.

Apart from these regulatory aspects of microfinance in Bolivia, it is interesting to note that previously the government closed all public banks in the 1980s, while it also was working to improve the macroeconomic and policy environment. Apart from its important efforts to stabilize and strengthen the macroeconomic and policy environment, during the past decade of microfinance development in Bolivia, the government had a very limited role in development of this emerging industry.

The operations of three second-tier financial institutions also are noteworthy. FUNDA-PRO is a FondoMicro type second tier institution capitalized initially by USAID to lend to NGO microcredit programs. NAFIBO is a corporation with mixed public private ownership, including the multi-lateral Corporación Andino de Fomento (CAF) and the Bolivian government among its shareholders. Along with FONDESIF, which was set up in 1995 to lend to banks with financial problems, these are the second tier institutions that are designed to lend to microfinance organizations. In 1998, the regulations for second tier financial institutions were issued, and the decree establishing the norms for their operations was issued earlier in 1999. However, it is not clear if NAFIBO and FONDESIF have begun second financing operations for microfinance.

Diverse donor agencies have supported microenterprise and microfinance programs throughout the country over the past decade and various institutions have benefited from expert technical assistance and training from a variety of international universities, NGOs and consulting firms. Finally, in more recent years, the industry has witnessed an increased rotation in personnel which facilitates information and technology transfer among institutions, while it also causes some instability at the institution losing the staff. The Bolivian financial sector has been affected by the entrance of domestic and international commercial financial institutions that has increased competition and client indebtedness.

THE PHILIPPINES¹³

The Institutional Landscape

The Philippines has a population of approximately 75 million people, of which it is estimated that about 5 million households or 28 million people live below the poverty line. The banking system is relatively developed with 54 commercial banks, a proliferation of thrift banks, development banks, savings and loan associations, 820 rural banks and 54 cooperative rural banks. The rural banks and cooperative rural banks operate under the supervision of the central bank and at the end of 1998 had a combined loan portfolio of approximately \$1.2 billion, while the commercial banking system had a total loan portfolio of \$33 billion. Rural banks are generally local and family owned corporations and cooperative rural banks are owned by cooperatives. Both types of institutions are reported to suffer from low capitalization, while cooperative rural banks also suffer from poor management. These institutions are supervised and regulated by the Central Bank of the Philippines. Commercial banks operate with a national network of branches with the top ten banks having between 250 and 500 branches each.

Of the more than 20,000 registered cooperatives, it is estimated that less than 5,000 operate currently. Experts estimate few, perhaps only about 100 of the 2,000 credit unions function properly. The credit unions are registered under a government agency called the Cooperative Development Authority (CDA) but this agency does not actively regulate or supervise credit unions.

Credit unions and rural banks have existed in the Philippines since the 1950s, and have traditionally served poor entrepreneurs and families along with other members of their communities. NGOs generally have entered the microfinance sector much more recently than credit unions and rural banks. The NGOs have an average period of operations of about seven years, although some stretch back into the early 1980s. NGOs in the Philippines are registered with the Securities and Exchange Commission as non-stock, not for profit corporations. Currently, these NGOs are not regulated by any government agency. NGOs do not report having a problem with their legal identity, apart from being inhibited from mobilizing deposits.

The Coalition for Microfinance Standards estimates about 200 NGOs are engaged in providing credit, and has found that most have low outreach and have not achieved financial sustainability. A survey based on 1996 data showed relatively small and weak institutions. Respondents reported an average of 500 clients and assets of P. 8.4 million per institution (US\$325,000, with the median at P. 3.4 million or US\$138,210). More than half reported their equity base was less than P. 3 million (US\$121,950). Most of these NGOs are multi-purpose institutions, with credit offered as part of a larger development program. The Coalition has identified twenty-five credit

¹³ This section on the Philippines is based primarily on materials provided by the Microfinance Coalition for Standards and the documented Case Study on the Philippines by Eduardo C. Luang and Malena Vasquez in "Regulation and Supervision of Microfinance Institutions Case Studies," The MicroFinance Network, Occasional Paper No. 2, 1997.

only NGOs that operate with a combined outreach of about 125,000 clients, as of June 1999, with the largest institution in this group reaching 28,000 clients.¹⁴

Remittances, estimated at US\$4 billion in 1995 and growing dramatically, money lenders, lending investors and pawn shops also are important sources of finance for poor families.

TABLE FOUR
FINANCIAL INSTITUTIONS IN THE PHILIPPINES

Type	Purpose	Minimum Capital (\$US)¹⁵	Deposit Taking
Commercial banks and specialized government banks	Service financial requirements of commerce and industry	76 – 171 million	Passbooks Checking Accounts Time Deposits Inter-bank Loans
Thrift banks	Mobilize small savings and provide long and medium term financing	1.5 – 9.5 million	Passbooks Checking Accounts Time Deposits Inter-bank Loans
Rural banks	Provide credit needs in the rural areas for purposes of country-side development	76,000 – 760,000	Passbooks Checking Accounts Time Deposits Inter-bank Loans
Wholesale/retail finance companies	Financing for industrial, commercial and consumer accounts	3.8 million	Inter-bank loans
Pawnshops	Retail lending	3,800	None
Lending investors	Retail lending	3,800	None

Source: Case Study on the Philippines by Eduardo C. Luang and Malena Vasquez in “Regulation and Supervision of Microfinance Institutions Case Studies,” The MicroFinance Network, Occasional Paper No. 2, 1997.

Notable Government Laws, Policies, Programs and Regulations

The early 1990s saw a number of new government laws and policies related to the financial system in general and the small and microenterprise sectors in particular. In 1991, the government approved the Magna Carta for Small Enterprise that mandates all lending institutions

¹⁴ USAID has supported rural banks strengthening project and a cooperative credit union strengthening project in Mindinao, as well as the Microfinance Coalition Standards project. Many other donor projects are also active in the Philippines.

¹⁵ The actual amount of minimum capital required for commercial banks, thrift banks and rural banks depends on where the bank operates. These figures were reported in a 1997 paper. The actual figures may have changes due to exchange rate fluctuations or other factors.

to set aside five to ten percent of total loan portfolio for small enterprise credit or purchasing small enterprise promissory notes from lending institutions or NGOs. In 1992, the government passed the New Rural Bank Act that governs the establishment and operation of rural banks and provides a five-year tax holiday for these local banks. The new Central Bank act of 1993 established the Bangko Sentral ng Pilipinas as an independent central monetary authority as well as bank supervisor. This Act paved the way for restructuring the country's financial system, liberalizing the establishment of local banks and deregulating the foreign exchange system. The Foreign Bank Act approved in 1994 liberalized entry and scope of operations of foreign banks, significantly increasing competition. The following year, the Thrift Bank Act was passed, providing for the regulation and operation of thrift banks including savings and mortgage banks, private development banks, stock savings and loan associations. This Act also provided for a partial tax holiday and unrestricted branching rights. In 1996, the Government established the People's Credit and Finance Corporation (PCFC) as a second tier financial institution. The PCFC's capital came from the Land Bank of the Philippines, the Asian Development Bank and the International Fund for Agriculture.

The National Credit Council (NCC) chaired by the Secretary of Finance was created following the 1993 Social Pact on Credit to improve access to credit for the basic sectors and rationalize various government credit programs. In 1997, it found that 44 government agencies implemented 111 special or directed credit programs for specific sectors with total resources of over \$1 billion. The NCC has recently issued a National Strategy for Microfinance that states:

The government will pursue market-oriented financial and credit policies that create incentives for greater private sector participation in the financial markets. It will avoid costly, unsustainable and distorting credit subsidies that in the past failed to reach their intended beneficiaries, led to the weakening of the rural banking system, and saddled the government with a huge fiscal burden. A distinction is made between credit and welfare policy. In the past, there has been confusion between the need for welfare assistance by really poor households and legitimate credit demand by poor households/microenterprises. Those needing welfare will be provided assistance through the appropriate government departments. Welfare will never be provided through concessional credit, loan quotas and other financially repressive measures and never through government or private financial institutions. On the other hand, the credit demanded by poor households/microenterprises will be met through a variety of innovative financial products provided by the private microfinancial market. The government will be ready to provide assistance to build the institutional capacity of microfinance institutions and the appropriate supervisory and regulatory framework to make markets more efficient and institutions, more viable.

Performance Standards

During the past two years, a group of industry experts has joined together to form the Coalition for Microfinance Standards. The formation of the Coalition was part of an overall strategy formulated under the Developing Standards for Microfinance Project funded by USAID. The

original two-year project has been extended for a third year and is scheduled to end in December 1999. While the initial project has been housed in the Filipino microfinance institution TSPI, recently a corporate entity, the Microfinance Council of the Philippines Inc., has been registered to carry on the work started by the Coalition.

Following a series of meetings in early 1997, a core group of practitioners from two local networks formed the coalition and invited other key stakeholders to join. Today, the Coalition is comprised of sixty-nine members: 48 NGOs; five government agencies; four network organizations; four donor institutions; three government and donor supported special projects; two academic and support institutions; and three banks. While only about 25 percent of all Filipino NGOs involved in microfinance are members of the Coalition, those NGOs that do participate are reported to represent 80 percent of the outreach and total loan portfolio of the Filipino microfinance NGO sector.

The Coalition reports that the idea of performance standards for NGO microfinance institutions was initiated by a few leading NGOs to address two problems faced by credit granting NGOs in the Philippines: low outreach and lack of financial sustainability. NGO leaders felt the presence of performance standards would push NGO players in microfinance toward greater outreach and sustainability. According to the Coalition Secretariat, their sentiment was “we better shape up and have performance standards now before the Central Bank formulates a regulatory mechanism for NGO MFIs; it is better to be prepared than sorry.” However, with just US\$25 million in combined loan portfolio for NGO MFIs in 1998, the people in charge of regulation at the Central Bank did not want to bother with regulating these NGOs. Nonetheless, the NGO MFI leadership in the Coalition deemed it prudent to engage the participation of the director of the Supervision and Examination office of the Central Bank in the process of formulating the Microfinance Performance Standards.

At the start of the project, the Coalition agreed to formulate the performance standards through a consensus building process. The Coalition conducted a survey of institutions engaged in microfinance and referred to the survey findings to formulate the Standards. The Technical Committee on Standards used the SEEP Network and CGAP financial ratios and the ACCION CAMEL as reference materials to draft the standards. The Coalition also held national conferences to learn from local and international experts and practitioners, conducted several exchange visits, and organized a technical committee on standards that sought and gained the contributions of five technical advisors. Also during this time, the coalition conducted a series of training sessions to enhance the awareness and skills of NGO practitioners. Following regional consultations with Coalition members, the Standards were presented in a national conference in August 1998 and approved by a majority of the 250 conference participants. It was agreed the standards would be dynamic with periodic review to check the continuing relevance in light of ongoing industry changes.

The Performance Standards are designed at two levels: minimum standards and performance indicators. The minimum standards are grouped into six categories and the performance indicators grouped into five categories with eight specific indicators. Each indicator is given a weight and a range of scores to arrive at a composite score or rating for the institution ranging

from one to seven.¹⁶ Table Four provides a summary of the minimum standards the Coalition states an NGO has to meet in order that it be considered serious about microfinance.

TABLE FIVE
MINIMUM STANDARDS

Track Record <ul style="list-style-type: none"> • Minimum three (3) consecutive years experience managing and implementing microfinance program • Minimum 500 clients • No adverse borrowing record for past three years based on creditor's rating
Outreach <ul style="list-style-type: none"> • Clear expression in vision and mission statements of a commitment to reach low-income clients; • At least seventy five percent (75%) of number of active clients have loans of less than P.25,000 (US\$1,016, although this level is to be reviewed periodically)
Internal Control <ul style="list-style-type: none"> • Written internal control and/or audit manual • Annual conduct of an external audit that reveals enforced internal control policy, systems and procedures, and absence of fraud from management and/or board for the last three years • Regular conduct of an internal audit
Manual of Operations <ul style="list-style-type: none"> • Written operations manual that shall include administrative and credit program systems and procedures; manual should clearly define levels of authority and accountability, job descriptions, and microfinance program's systems and procedures
Management Information Systems MIS should include regular and timely reports on the following: <ul style="list-style-type: none"> • Loan portfolio including repayment, loans outstanding and aging of loans; • CBU report which includes number of accounts, amount outstanding, withdrawals; • Income statement, balance sheet, cash flow statement; • Outreach report which shall include the number of active clients; • At least one-year operating plan and budget for microfinance program(s).
Write-offs and Loan Losses <ul style="list-style-type: none"> • Existing and enforced policy on write-offs and loan loss provision

Source: "The NGO Microfinance Standards Toward Outreach and Sustainability," The Microfinance Standards Coalition, Manila, Philippines, August, 1998.

¹⁶ Coalition for Microfinance Standards, "The NGO Microfinance Standards: Toward Outreach and Sustainability," Manila, Philippines, August 1998. This document includes a full presentation of the performance indicators, standards and rating system, as well as description of the basic source of documents, means of verification and other information on the Coalition and Standards.

The Performance Standards are designed so microfinance NGOs can be categorized according to their overall level of performance based on the following individual and composite indicators and weights. Each indicator has a score of 1 – 7 points and a weight of 10 – 30 percent.

TABLE SIX
PERFORMANCE INDICATORS AND RATING SYSTEM

Indicator	Definition	Weight
Outreach		
• Number of Active Clients	An active client is one who has an existing loan or CBU (or its equivalent) account	30
Collection Efficiency and Portfolio Quality		
• Repayment	$\frac{\text{Total Collections During Period}}{\text{Amount Due During Period Plus Amount Past Due}}$	10
• Portfolio at Risk	$\frac{\text{Balances of Loans Past Due}}{\text{Value of Loans Outstanding}}$	10
Sustainability		
• Operating Cost Ratio	$\frac{\text{Operating Expenses}}{\text{Average Loans Outstanding}}$	10
• Operational Self-Sufficiency	$\frac{\text{Operating Income}}{\text{Total Operating Expense}}$	10
• Financial Self-Sufficiency	$\frac{\text{Operating Income}}{\text{Adjusted Total Operating Expenses}}$	10
Capital Adequacy/Leverage		
• Equity to Assets Ratio	$\frac{\text{Total Equity}}{\text{Total Assets}}$	10
Liquidity		
• Current Ratio	$\frac{\text{Current Assets}}{\text{Current Liabilities}}$	10

Source: "The NGO Microfinance Standards Toward Outreach and Sustainability," The Microfinance Standards Coalition, Manila, Philippines, August 1998.

Challenges and Opportunities

Managers of the institutions have reached a consensus on the need for the Standards to improve overall performance of the sector. However, use of the Standards for regularly assessing

performance is not widespread, not even among members of the Coalition. The Coalition Secretariat claims that installing the performance standards in the MIS of the microfinance institutions and gaining the understanding and appreciation of the standards for self-assessment and self-regulation on the part of NGO board members are continuing challenges. The limited use is due in part to the lack of direct incentives or penalties for using the Standards. The Coalition Secretariat does not have a mandate to enforce use of the Standards by the NGO MFI members. The People's Credit and Finance Corporation (PCFC), a wholesale lending institution for microfinance owned by the government, is reported to use the Standards to assess NGO MFI-borrowers. While PCFC account officers underwent training on the Standards, these indicators do not form the sole screening tool for evaluating a credit application from NGO MFIs. The Coalition hopes that as donors begin to appreciate the use of the Standards and microfinance becomes commercialized and integrated into the formal financial system, the use of the Standards as a tool for assessing institutional performance will become more widespread. Additionally, the Coalition membership will determine if the newly formed Microfinance Council of the Philippines Inc. could become a self-regulating organization with the standards as the principal tool for monitoring performance.

A number of groups have expressed interest in learning from the experience of the Coalition for Microfinance Standards. In the Philippines, the cooperative sector and the Cooperative Development Authority are initiating moves to formulate Performance Standards for the credit union sector. The Coalition reports that NGOs based in Bangladesh, India and Zimbabwe have communicated with the Coalition to inquire about the processes involved in the formulation of the Performance Standards. The Coalition also reports that the Asian Development Bank (ADB) based in Manila and represented in the Coalition, incorporated the need for having Performance Standards in formulating its Microfinance Strategy for member-countries in Asia.

SOUTH AFRICA

South Africa is a middle-income, developing country with an estimated population of 43.5 million. Over the past twenty years, despite its abundance of natural resources, sophisticated financial systems, well-established legal, communication, infrastructure and business sectors, the country has struggled to attain satisfactory levels of real economic growth. In 1998, the real growth rate of GDP was less than one percent, and inflation was around eight percent.¹⁷

Unemployment, poverty and lack of economic empowerment, problems often associated with the policies of *apartheid*, continue to plague many South Africans.

Current South African Small Loan Environment

Recognizing the important role that small, medium, and microenterprise development can play in the rejuvenation of the South African economy and realizing the critical role that microcredit plays in the lives of the self-employed and low-income salaried workers, the government, donors, and non-governmental organizations have established programs, policies, and institutions to facilitate low-income borrowers' access to credit. Private entrepreneurs have started "cash loan" businesses as a way to serve this sector and make a profit. The microfinance industry is estimated to generate R10bn-R13bn/year (US\$1.67bn-US\$2.17bn/year) and has grown by 280 percent over the past few years.¹⁸ Today, the industry includes over 3,500 formal lending agencies and more than 27,000 informal lenders providing small or microloans to self-employed and wage-earning low-income borrowers.

Institutional Forms of Microfinance Providers

Because "money-lending" is defined as a transaction and not as an institution, no special legal category exists for microfinance institutions. Institutions issuing microloans to the self-employed or wage-earners may take on a variety of legal institutional forms: some micro-lenders are banks, private companies, community-based organizations, credit unions, cooperatives, or associations-not-for-gain.

Because "money-lending" is defined as a transaction and not as an institution, no special legal category exists for microfinance institutions.
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Banks. The formal banking sector is well-developed, offering a variety of sophisticated products and services. Because some banks perceive low-income borrowers to be riskier clients and believe the transaction costs associated with providing micro loans to be high, they are generally unwilling to extend microloans. Although a few large banks do offer small and microloans and a small number of niche banks that provide microloans to small and microentrepreneurs have been

¹⁷ G.H.G. Lucas, *South Africa: Economic and Sociopolitical Expectations for 1998*, Research Report No. 247 (Pretoria, South Africa: Bureau of Market Research, University of South Africa, 1998), 4, 14.

¹⁸ Heather Formby, "Still More Beggars for Borrowers," *Financial Mail* (March 5, 1999), www.fm.co.za; current exchange rate is approximately US\$1 to R6.

established, it is estimated that up to 80 percent of adult South Africans are unable to receive credit through mainstream financial institutions.¹⁹

Regulation and supervision of the South African banking system are functions of the South African Reserve Bank, the central bank of South Africa. The office of the Registrar of Banks, part of the Reserve Bank, is responsible for registering all domestic banks and mutual banks and for enforcing the Banks Act, Mutual Banks Act, and the Deposit Taking Institutions Act. The Department of Trade and Industry is the responsible government entity for oversight of and administration of the Usury Act, described in detail below.

Mutualist organizations. Many mutualist organizations, like *stokvels*, credit unions, and cooperatives, serve the credit and savings needs of low-income South Africans. Stokvels are rotating credit associations consisting of about twelve members. Through membership in a stokvel, individuals can raise money without interest or a rigid repayment schedule. It is estimated that over 24,000 stokvels exist in urban areas and that turnover for these institutions is R84 million per month (US \$14 million per month).²⁰

According to an amendment to the Banks Act, stokvels, credit unions, and employee saving schemes do not engage in the business of banking and therefore, they do not have to comply with the prudential and reporting requirements of the country's banking regulations. These organizations that are excluded from banking regulation are required to join a representative body: for stokvels, this body is the National Association of Stokvels of South Africa (formed in 1988) and for credit unions, the Savings and Credit League of South Africa. Furthermore, the government restricts the amount of "deposits" these organizations may accept from their members. In 1996, this limit was R9.9 million, or US\$2.3 million.²¹ Any organization that exceeds this limit must register as a mutual bank and act in accordance with the Mutual Banks Act.

Development financial institutions. Several government-supported development financial institutions exist in South Africa. The National Housing Finance Corporation (NHFC) and Khula Enterprise Finance Limited are two fairly new national wholesale credit providers. Khula provides retail financial intermediaries that serve small and microentrepreneurs with loans, guarantees, and grants, while NHFC offers those same products to retail institutions that provide low-income South Africans with housing finance.

For-Profit Companies. The low-income lending market is dominated by "corner money stores," many of which are registered as close (privately owned) corporations. (Some are informal

¹⁹ Professor PG Du Plessis of Stellenbosch University, *The Micro Lending Industry in South Africa*, July 1998, cited in the Business Plan for the Micro Finance Regulatory Council in Support of the Council's Application for Approval as the Regulatory Institution in Respect of the Usury Act Exemption Notice, May 1999, 4. (Excerpts from the Business Plan used on permission from the Micro Finance Regulatory Council.)

²⁰ www.southafrica.net/economy/finance/otherinstso5.html

²¹ Currency conversion based on the average exchange rate for 1996, R4.3 to US\$1; "Sun Multiserve: Adapt or Die," *Financial Mail*, January 26, 1996, www.fm.co.za.

unregistered operators). These money lenders, which include individuals, furniture stores, pawn brokers and butcher shops, extend consumer loans to wage earners at very high interest rates and at short repayment periods. It is not uncommon for these rates to be 30 to 50 percent per month—well over 2000 percent per annum compounded.²² Since January 1999, five companies that extend microloans to low-income borrowers have been listed on the Johannesburg Stock Exchange and consequently are publicly traded companies. Registered as close corporations or publicly traded companies, these lenders are expected to follow South Africa's commercial laws.

Section 21 Companies. Almost all microlending institutions that provide loans to self-employed borrowers in South Africa are registered as Associations-Not-For-Gain under Section 21 of the Companies Act. About 50 such organizations exist, frequently charging effective interest rates between 45 and 70 percent per year.²³ The law does not prohibit this type of organization from making profit; instead it prohibits the organization from distributing those profits. Any profit generated must be reinvested in the organization. This legal form is not specific to the industry, meaning that an organization does not have to be engaged in microlending activities in order to register as a Section 21 company and other types of associations not-for-gain exist with the same legal requirements. To establish a Section 21 company, one must register the company with the Registrar of Companies. All companies, regardless of whether or not they are associations-not-for-gain, must abide by the country's commercial law.²⁴

Government Policies and Programs Regarding the Provision of Financial Services

In deciding its role in supervision and regulation, the government considered the importance of improving low-income persons' access to credit, meeting the general public's demand for financial services, protecting financial service recipients from unfair and unsound lending/saving practices, and using limited government resources effectively. Not surprisingly, these considerations have shaped the laws, regulations, and practices adopted by the government.

BOX THREE REGULATORY CONDITIONS OUTLINED IN THE BANKS ACT OF 1990

- An institution cannot accept deposits from the public, unless it is registered as a bank.
- A retail lender cannot accept capital from investors; however, a retail lender can accept loans from equity banks.
- A bank is required to maintain total-share capital and reserve funds of no less than US\$ 11.1 million or at least eight percent of its risk exposure, whichever is greater.
- A bank is required to maintain liquid assets at an amount of no less than five percent of the bank's short-term liabilities.
- A bank must maintain a reserve balance with the Reserve Bank between one and two percent of its liabilities.

*Regulatory conditions listed above are from a source printed in 1997. Some of the monetary amounts may have changed. The Reserve Bank sets the monetary amounts in rands. These amounts were converted by the authors Wilhemse and Goldblatt from rands to dollars at an exchange rate of US\$1 to R4.50.
Source: Rudolph Wilhemse and Steven Goldblatt*

²² Adrienne Roberts, "Microlending: Sharks or saviours?" *Financial Mail*, 28 March 1997.

²³ Roland Pearson, email correspondence, August 9, 1999.

²⁴ Roland Pearson, email correspondence, October 13, 1999.

In 1965, the *Banks Act* was created to regulate all deposit-taking institutions.²⁵ This Act was rewritten in 1990 so that all deposit-taking institutions, such as banks and building societies, became subject to the same regulatory conditions. Even though many claim that regulating all deposit taking institutions in the same way makes the industry easier to monitor and creates a more level “playing field,” others argue that the conditions of this Act prevent financial services providers from registering as banks and consequently allow a few banking groups to dominate the industry.

In order to encourage non-traditional financial institutions to become banks and to fill the gap between the small and large financial sectors, the *Mutual Banks Act of 1994* was created. Although the Act calls for the same risk management requirements and principles of accountability as those outlined in the Banks Act, the Mutual Banks Act allows for lower capital requirements.

This Act has not had the desired impact: the majority of non-traditional financial institutions did not convert to mutual banks. According to Rudolph Wilhemse and Steven Goldblatt, authors of a case study on regulation

and supervision in South Africa, these institutions have not converted because they believe: 1) registering as a bank will cause the institution to jeopardize its independence; 2) registering as a bank will cause the institution to lose its low-income clientele, because this clientele is skeptical of formal banking institutions; 3) registering and acting as a bank warrants an increase in staffing and reporting, which will be too costly; 4) the capital requirement is too high; and 5) the staff of the non-traditional institutions, who possess a development mentality, will be uncomfortable in the formal banking environment. The primary incentive for non-traditional financial institutions

BOX FOUR REQUIREMENTS FOR A MUTUAL BANK

- Meet capital adequacy requirements by maintaining unimpaired reserve funds in the amount of at least US\$2.2 million or at least eight percent of its risk exposures;
- Maintain a minimum reserve balance with the reserve bank equal to five percent of its short-term liabilities;
- Avoid portfolio concentrations in excess of a certain percentage without making a specific report to the Registrar; and
- Provide detailed monthly and quarterly returns, showing its various risk exposures and the manner in which it complies with capital adequacy and liquidity requirements.

Regulatory conditions listed above are from a source printed in 1997. Some of the monetary amounts may have changed. The Reserve Bank sets the monetary amounts in rands. The authors, Wilhemse and Goldblatt, converted these amounts from rands to dollars at an exchange rate of US\$1 to R4.50.

Source: Rudolph Wilhemse and Steven Goldblatt

²⁵ *Stokvels*, credit unions, and cooperatives are exceptions to the Bank Act. Cooperatives are exempt from the provisions of the Bank Act, because the money made available to the cooperative by its members is considered as a loan to the cooperative rather than as a deposit. Certain provisions, such as the amount must be less than US\$222, and repayment period is greater than twelve months, guide this transaction. Rudolph Wilhemse and Steven Goldblatt, “South Africa,” Regulation and Supervision Case Studies, Microfinance Network, 1997.

to convert to mutual banks is the ability to accept deposits from the general public. These deposits can then be lent out. However, since non-bank institutions can receive loan capital from apex institutions, like Khula Enterprise Finance Limited and National Housing Finance Corporation, at concessional rates, little reason exists for these institutions to convert.

The *Usury Act of 1968* guides lending practices in South Africa. Under this Act, all credit providers, whether they are commercial banks, local money lenders, or microfinance institutions, are prohibited from providing credit at interest rates greater than the maximum rate determined by the Registrar of Banks. In July 1999, this rate was 32 percent.²⁶ Because of the transaction costs associated with providing small or microloans and the inability to recover some of these costs through high interest rates, institutions were generally unwilling to provide microloans to low-income borrowers.

In 1992, the South African Government, wanting to facilitate lending to low-income clients, issued an *exemption to the Usury Act*. This exemption allowed lenders to provide loans at interest rates higher than that determined by the Registrar. In order to qualify for this exemption, lenders were subject to the following terms and conditions:

- a single loan is less than R6,000 (US\$1000)
- the borrower must repay the loan amount and the associated finance charges within three years;
- the lender only advances the loan after a three day “cooling-off” period, during which time the borrower may decide not to accept the loan;
- the lender is required to provide the borrower with written documentation including the amount of the loan, finance charges, and other miscellaneous costs associated with the loan.

As a result of the Usury Act Exemption Notice, the number of microlenders, specifically those lenders that provide short-term loans to the formally employed at high interest rates, grew dramatically.

In 1994, two years after the issuance of the exemption notice, the Government of South Africa, claiming that the exemption allowed lenders to exploit low-income consumers by charging high interest rates (sometimes in excess of 2,000%), stated its intention to abolish this exemption. Concerned about how the removal of this exemption would affect their cost recovery, microfinance institutions, such as members of the Micro Lenders Association, protested the removal and suggested self-regulation.

All money lenders – pawn brokers, butcher shops, banks, section 21 companies, or any other institutional form – are subject to either the Usury Act or the Act’s exemption. It is not the type of institution that is supervised but rather the type of transaction. Hence, the exemption to the Usury Act extends to any type of financial institution providing microloans at rates greater than the government determined maximum rate.

²⁶ Adrienne Roberts, “Natural Selection for Moneylenders,” *Financial Mail*, July 30, 1999, www.fm.co.za/99/0730/trends/aview.htm.

Although the issue of removing the exemption notice and instituting self-regulation was debated for several years, the government did not make any legal reforms until June 1999. On June 1, 1999, the Registrar of Banks revised the Usury Act Exemption Notice. All money lenders, whether they are pawn brokers, butcher shops, banks, or section 21 companies, or some other institutional form, are subject to either the Usury Act or the Act's exemption. It is not the type of organization that is supervised but rather the type of transaction; hence that the exemption to the Usury Act may extend to any type of financial institution providing microloans, including commercial banks and finance companies. Under this revised notice, a money lender can lend at interest rates greater than the government determined maximum rate²⁷ provided:

- a single loan is less than R10,000 (US\$1,667);
- the interest rate is less than ten times prime;²⁸
- the loan term is less than 36 months;
- the cooling off period is three days, that the loan amount, finance charges, and miscellaneous costs associated with the loan are disclosed to the borrower;
- the lender not use unfair collection methods, such as confiscating Automated Teller Machine cards from the borrower or using physical force; and
- the lender registers with the regulatory entity enforcing the exemption.

At the same time that the Exemption was revised, The *Micro Finance Regulatory Council* (MFRC), a joint-regulation organization, was formed to supervise the adherence of microfinance institutions to the Usury Act Exemption Notice. This joint-regulation organization is comprised of governmental institutions, consumer interest groups, and members of the finance and banking industry. Some of the board members include the Alliance of Micro Enterprise Development Practitioners, the Banking Council, Department of Trade and Industry, Khula Enterprise Finance Limited, Micro Lenders Association, National Housing Finance Corporation, the South African Reserve Bank, Legal Resources Council, and the Housing Consumer Protection Trust.

The establishment of the MFRC, an association incorporated under Section 21 of the Companies Act, was approved by the Minister of Trade and Industry in June of 1999. The Minister, if unsatisfied with the MFRC's performance, may retract the MFRC's status as a regulatory institution.

As an association acting independently from the government, the MFRC does not receive direct or indirect subsidies from the government. Contributions from accredited institutions,

²⁷ The maximum interest rate was between 33 and 36 percent in 1998 and was 32 percent in July of 1999. Adrienne Roberts, "Natural Selection for Moneylenders," *Financial Mail*, July 30, 1999, www.fm.co.za; Leigh Roberts, "Usury rate hike sets scene for higher card charges," *Business Times*, August 23, 1998, www.btimes.co.za.

²⁸ In June of 1999, the prime rate was 19 percent, considerably lower than the 25.5 percent rate of the previous October. Thabo Kobokoane, "Pressure on banks to cut interest rates," *Business Times*, June 13, 1999, www.btimes.co.za. Since the exemption permits an institution to charge an annual interest rate of up to ten times prime, MFIs in June of this year were able to issue loans at an annual interest rate of 190 percent.

accreditation fees, certification fees, and financial support from local and international donor agencies cover operational costs.

As previously mentioned, in order for any money lender (whether it is a bank, microfinance NGO, corner money shop, etc.) to be exempt from the Usury Act, the institution or individual is required to register with the MFRC. As part of this registration process, the lender must complete an application form, provide necessary documentation (see Annex A), and pay a R5000 (US\$833.33) annual fee, a R3000 (US\$500) application fee, and a R700 (US\$166.67) certificate fee for each location where money lending takes place.²⁹ These certificates must be prominently displayed at each location. Existing lenders were expected to complete this application process by September 15, 1999. Those lenders who do not register will be visited by the National Inspectorate of the Department of Trade and Industry and will be subject to the penalties of non-compliance with the Usury Act – imprisonment and fines.

To ensure that all accredited organizations comply with the exemption to the Usury Act, the MFRC requires these organizations to submit annual financial statements that have been certified by an auditor and quarterly returns outlining key performance and risk indicators. Furthermore, the MFRC eventually will conduct on-site inspections of accredited organization, regardless of whether a complaint has been brought against them.

In addition to accrediting lending institutions and monitoring these institutions to ensure they comply with the MFRC's regulations and the Usury Act Exemption Notice, the MFRC hears consumer complaints concerning the behavior of lending institutions and educates consumers about fair lending practices and their rights as borrowers. Specifically, the MFRC advises consumers to borrow money from only those lenders who display their registration certificates.

Performance Standards

In South Africa, no one group is responsible for setting and disseminating industry performance standards. The two most active groups in this arena are Khula Enterprise Finance Limited (Khula) and the Alliance of Micro Enterprise Development Practitioners (Alliance).

²⁹ Some smaller 'developmental' lenders might qualify for reduced fees upon presentation of credible evidence that they cannot reasonably afford the established charges.

Khula Enterprise Finance Limited. In 1996, as a result of a Department of Trade and Industry initiative, Khula was founded as a wholesale provider of credit to the microenterprise industry. Khula is a registered public company with the Government of South Africa as the sole shareholder and has received assistance from various donors—the Norwegian Government, the European Community, Danida, the Ford Foundation, UNDP, and the International Development Research Centre of Canada.

Khula works through intermediary institutions, called Retail Financial Intermediaries (RFI). It provides these intermediaries – that can be banks, non-governmental organizations, and provincial development corporations – with business loans (loans specifically for on-lending to small, medium and microenterprises (SMMEs)), seed loans (loans to be used to

build loan portfolio and to cover initial operational costs for start-up RFIs), equity funds, credit guarantees, and capacity building. Although Khula currently provides these products at concessional rates and fees, the organization plans on becoming a fully commercial wholesale institution, lending at competitive rates and charging competitive fees.

Because capital is limited, Khula cannot support all microfinance providers. Instead, Khula uses a set of criteria to select and evaluate the RFIs, those organizations applying to and receiving financial assistance from Khula. By using these standards to evaluate prospective RFIs and to monitor their performance, Khula acts as a type of standards setting and performance monitoring agency. If Khula doubts an applicant's financial stability and its commitment to assisting the SMME sector, then the applicant will not receive the desired financial support from Khula.

The Alliance of Micro-Enterprise Development Practitioners. The Alliance, a membership association of South African institutions and individuals active in the microenterprise development field, formed as a response to developments in the SME finance and development

BOX FIVE **KHULA RETAIL FINANCIAL INSTITUTION** **ASSESSMENT CRITERIA**

Level One

The preliminary evaluation looks at the applicant's future plans or existing performance and will normally include the following:

- actual and projected active clients
- operational cost ratios
- gender distribution of clients
- repayment rates
- portfolio at risk

Level Two

This is a score-based evaluation in which the applicant's record of development and operational activities are assessed.

Level Three

Once the applicant has qualified for a detailed appraisal, the following framework is used:

- the organization's governance (e.g. board of directors and management);
- management routines, procedures, and processes;
- the financial performance of the organization (five year trading results and forecasts, cash management, profitability, etc.);
- its human resources policies and records.

Source: Khula website www.khula.org.za

industry. In September 1992, South African organizations and individuals working in the field of microenterprise development started meeting informally, and in April 1994, the Alliance became a formally constituted organization. In 1998, the Alliance reported having 46 member organizations which were comprised of 240 branches.

The Alliance offers services in five main areas—advocacy, capacity building, networking, information and publications, and building standards. Through the Alliance, member organizations can receive training for their loan officers, guidelines on designing loan products, information on laws and policy affecting microenterprise development, information on industry standards and best practices, opportunities to network and exchange ideas with other members, and can form the critical mass necessary to effectively lobby government for policy change in the area of microenterprise development. In order to encourage best practices within the industry, the Alliance developed a Code of Conduct—a statement on fair industry practice—and disseminated it among its member organizations. Annex C contains the Code of Conduct. As members of the Alliance, organizations are expected to abide by the Code of Conduct. However, the Alliance has no tool to assess whether the member organizations are adhering to the Code.

CAMBODGE

1. Le contexte de la micro-finance au Cambodge

1.1. Le secteur de la microfinance

(1) Le secteur de la microfinance au Cambodge a connu une croissance remarquable depuis le début des années 1990. Il existe un grand nombre d'ONG ou projets distribuant des microcrédits, dont une dizaine ont vocation à se transformer en IMF.

Les services de microfinance sont apparus au Cambodge en 1992-93, à l'initiative d'ONG étrangères, dont le GRET qui a joué un rôle de précurseur par la mise au point d'une approche de banques villageoises autogérées en milieu rural dans les provinces du Sud. Cette expérience a servi initialement de modèle à plusieurs ONG et projets qui ont repris la même méthodologie.

Grâce à l'expérience diversifiée de nombreuses ONG et bailleurs de fonds, de nombreuses approches ont fait l'objet d'expérimentation. D'une manière générale, l'approche dite mutualiste, où les bénéficiaires sont "propriétaires" de leur institution de microfinance (statut coopératif ou associatif) a cédé la place à une approche "entrepreneuriale", voire commerciale, où l'objectif est avant tout de servir une demande pour des services financiers d'une population-cible en offrant des services et produits adaptés. La relation avec les bénéficiaires du système de crédit est alors essentiellement celle d'un prestataire de services à un client, dans le cadre d'un contrat commercial.

(2) Le secteur de la microfinance est actuellement essentiellement orienté vers le crédit. La collecte de l'épargne monétaire est très limitée et liée directement à l'obtention de crédit. La croissance du secteur dépendra de sa capacité à mobiliser des ressources financières extérieures.

Même si les IMF se fixent toujours comme objectifs de distribuer des crédits et de collecter de l'épargne, dans les faits, la collecte de dépôts n'occupe qu'une place marginale. Les IMF qui collectent des dépôts le font généralement sous forme d'épargne obligatoire préalable au crédit ou sous forme d'épargne associée au remboursement du crédit. La collecte des dépôts, lorsqu'elle est pratiquée, est surtout utilisée comme un moyen de sélection et de sensibilisation des emprunteurs et comme un moyen de sécuriser les crédits. Les ressources collectées par les IMF sont ainsi relativement faibles.

L'approche "caisse d'épargne et de crédit" de type mutualiste, qui privilégie la collecte de l'épargne des sociétaires comme moyen de sécuriser globalement le système de crédit, est absente du paysage de la microfinance cambodgien. Ceci constitue une différence majeure avec la microfinance en Afrique francophone où une telle approche est très présente voire dominante.

Le secteur de la microfinance au Cambodge est structurellement déficitaire en ressources financières. Sa croissance est ainsi freinée, à court et moyen terme, par les possibilités de mobilisation de ressources extérieures. A moyen-long terme, le développement du secteur de la microfinance dépendra de la capacité des IMF à accroître de manière très significative la collecte de l'épargne. Cette collecte doit cependant être en cohérence avec la capacité de gestion de chaque IMF et résulter d'une stratégie d'entreprise. Elle ne doit pas être le résultat d'une contrainte extérieure de type réglementaire (obligation de collecter de l'épargne). Le dirigisme

constitue une approche particulièrement inappropriée en matière de régulation du secteur financier.

(3) Le secteur de la microfinance au Cambodge est constitué d'environ 60 ONG ou associations. Ces organisations présentent une grande diversité d'approches, de stratégie et de taille.

Le Bureau de Supervision des IMF (BSI) de la BNC, appuyé par l'AFD depuis 1997, recense les associations et ONG impliquées dans la microfinance et collecte régulièrement des informations sur les principales d'entre elles. Ces IMF peuvent être classées en quatre catégories selon la taille de leur activité de microcrédit :

- Les IMF de “ grande taille ” (encours de crédit supérieur à 1 million \$). Il s'agit de trois organisations aux caractéristiques très différentes :
 - ACLEDA, une association en cours de transformation en une Banque Spécialisée ;
 - EMT, qui n'est encore qu'un projet géré par l'ONG française GRET ; cette activité devrait être transférée très prochainement à une société de droit cambodgien qui demandera immédiatement son agrément ;
 - PRASAC, un projet financé par l'Union Européenne, dont le maître d'ouvrage est le Ministère du Développement Rural ; la deuxième phase du projet, qui doit débiter en janvier 2000, pourrait voir une réorientation majeure de la stratégie passée. L'objectif serait alors d'autonomiser le volet crédit de ce projet et de le transformer en IMF avant la fin du projet (2005).
- Les IMF de “ taille moyenne ” (entre 100 000 \$ et 1 million \$). Au nombre de 8, ces organisations, pour la plupart, ont des approches inspirées ou fondées sur les “ bonnes pratiques ”. La majorité d'entre elles peuvent aspirer à se transformer en IMF agréées.
- Les IMF de “ faible taille ” (entre 50 000 et 100 000 \$), au nombre de 6.
- Les micro-IMF (moins de 50 000\$), dont la zone d'activité est très localisée.

La BNC dispose de statistiques pour 34 IMF, dont les plus importantes. Les caractéristiques quantifiables du secteur de la microfinance sont (cf. tableau ci-après) :

- Un encours total d'environ 20 millions de dollars, dont presque 80% pour les trois principales IMF et 67% pour la seule ACLEDA. ACLEDA constitue d'ailleurs un cas à part ; à partir de sa transformation en banque spécialisée, elle ne devrait plus être considérée comme faisant partie du secteur de la microfinance mais du secteur bancaire.
- Des fonds de crédits reçus par les IMF de l'ordre de 25 millions \$, estimation cependant sujette à caution en raison de la mauvaise comptabilisation de cette information. Le secteur

aurait par conséquent “ consommé ” une partie des fonds de crédit reçus en aide ; la situation est cependant très contrastée selon les IMF ;

- Un encours de dépôts très faible (671 000 \$), soit un peu plus de 3% de l'encours de crédit. Le secteur est par conséquent structurellement très déficitaire en ressources. Une analyse plus détaillée montre cependant que ce sont les grandes IMF qui sont le plus déficitaires en ressources et ce sont elles, bien sûr, qui ont reçu le plus d'aide des bailleurs de fonds sous forme de fonds de crédit, mais aussi de subventions diverses. Les petites et les micro organisations collectent systématiquement de l'épargne mais les montants concernés sont très faibles.
- Environ 300 000 personnes ont accès aux services financiers via les IMF, les trois grandes ne représentant qu'environ la moitié de la clientèle. La classe des IMF moyennes apparaît ainsi essentielle pour pouvoir servir la population dans son ensemble.
- Enfin, le nombre de “ points de ventes village ”, c'est à dire de villages dans lesquels une IMF est active (avec possibilité de double compte) est supérieur à 7 000. Bien qu'un grand nombre de villages ne soient pas encore desservis, la couverture du territoire par les IMF est maintenant significative.

(4) Les IMF du Cambodge disposent depuis juin 1998 d'une banque de refinancement publique, la BDR. La BDR devrait devenir l'institution d'intermédiation entre les bailleurs de fonds et les IMF et éventuellement entre les banques excédentaires en ressources et les IMF.

La BDR a été créée en janvier 1998 par décret du Gouvernement et a obtenu un agrément de banque en Juin 1998. Sa mission est de promouvoir le développement des activités économiques en milieu rural. Le capital initial de la BDR est de 10 milliards de Riels (2,5 millions US dollars), actuellement entièrement détenu par l'état quoique l'ouverture au secteur privé soit envisagée. Les statuts de la BDR définissent sa mission en des termes très extensifs :

- créer un réseau d'institutions de microfinancement ;
- négocier avec les bailleurs les ressources nécessaires au refinancement des IMF ;
- financer ou refinancer les IMF ;
- apporter un appui technique aux IMF ;
- servir d'agence de supervision par délégation de la BNC ;
- organiser des cours et séances de formation pour le personnel des IMF ;
- gérer un réseau d'agences régionales et collecter des dépôts du public ;
- effectuer toute opération de banque.

Dans le cadre du réexamen de la politique en matière de microfinance, le rôle de la BDR a été recentré sur le refinancement des IMF :

- La BDR a abandonné le développement d'une activité de banque de détail. Elle n'offrira pas directement de services financiers au public mais seulement par l'intermédiaire d'autres institutions financières ayant une activité grand public (banque de détail). Une exception a

été acceptée concernant la possibilité de faire des prêts à moyen-long terme lorsqu'aucune institution financière n'est en position de servir ces besoins. Elle devra pour cela mobiliser des ressources adaptées auprès de bailleurs de fonds, comme elle le fait actuellement auprès de l'AFD pour le financement du développement de l'hévéaculture paysannale.

- ❑ La supervision des IMF sera mise en œuvre par la BNC directement et non déléguée à la BDR.
- ❑ La formation du personnel et l'appui technique aux IMF ne sont plus considérés comme étant une priorité voire faisant partie de la mission de la BDR.
- ❑ La gouvernance de la BDR (l'organisation des pouvoirs et des instances de décisions) est en cours de réexamen : le conseil d'administration pourrait être réduit de 7 (actuellement) à 5 :
 - deux représentants seulement du Gouvernement (Conseil du Gouvernement et Ministère des Finances) ; la possibilité d'une représentation du MDR est cependant en discussion ;
 - deux représentants du secteur financier privé, désignés par le Ministère des Finances sur proposition de la BDR, un représentant des banques commerciales, 1 représentant des IMF ;
 - le Directeur Général.

Les statuts de la BDR sont en cours de modification pour intégrer ces changements.

Le développement de la microfinance au Cambodge sera fonction de sa capacité à mobiliser des ressources extérieures sur une base commerciale ou quasi-commerciale. Les financements des bailleurs de fonds, sur dons généralement, ne pourront pas accompagner la très forte croissance actuelle et prévisionnelle du secteur, dans son ensemble, mais aussi des principales ONG ou projets qui ont vocation à se transformer en IMF agréées.

Le Gouvernement a décidé de confier à la BDR la mission d'assurer le refinancement des IMF agréées, et de ces seuls IMF. Une ligne de crédit de 19 millions de dollars va être mise en place par la BASD puis rétrocédée à la BDR, sous réserve d'un certain nombre de conditionnalités sur la gestion et la politique de crédit de la BDR. Le FIDA doit également confier à la BDR une ligne de crédit pour le refinancement d'IMF. D'autres bailleurs de fonds vont probablement suivre cette voie.

1.2. le contexte juridique

(1) Le Cambodge est caractérisé par l'importance des domaines de vide juridique. Un grand nombre de projets de loi ont été préparés ; ils pourraient être présentés, amendés et adoptés au cours de la prochaine législature.

Compte tenu de l'histoire mouvementée du pays au vingtième siècle, le " corpus juridique " du Cambodge est complexe, comprenant des textes d'époques et d'inspirations différentes, souvent abrogés globalement par les régimes successifs. D'importants domaines sont en conséquence caractérisés par un vide juridique partiel ou complet.

Depuis la période transitoire sous le contrôle des Nations Unies, le Cambodge est dans une phase d'intense reconstruction de son droit. La phase technique de cette reconstruction se fait en grande partie avec la participation d'experts juristes des différents pays donateurs. La diversité des travaux et des influences en matière de droit est à la fois une chance pour le Cambodge, qui peut ainsi comparer les différentes voies possibles selon les pays ayant inspiré les projets, mais aussi un handicap, en raison de la multiplicité des projets, souvent incohérents, et des querelles d'écoles que cela peut engendrer ; ce contexte de multiplicité des doctrines et inspirations du droit réduit encore la visibilité sur l'évolution future du cadre juridique.

En matière de **droit des institutions**, la situation peut être résumée comme suit :

- *Le droit des citoyens à s'associer est explicitement garanti par la Constitution* ; aucune loi, décret ou sous-décret ne vient compléter et préciser ce droit fondamental ;
- *Un projet de loi sur les associations existe mais, n'ayant pas été validé au niveau politique, n'est pas disponible*; selon des sources officielles on s'oriente vers un texte très inspiré de la loi française de 1901. Aucune disposition concernant l'exonération fiscale des associations n'y figurerait. La seule obligation de déclaration (qui constitue l'élément le plus libéral de la loi de 1901) ne serait cependant pas suffisante et un droit de refus par le Ministère de l'Intérieur serait prévu.
- *Le droit des sociétés est plus développé, quoique encore succinct, et comprend :*
 - une loi générale (" Commercial Registration Law " du 3 mai 1995) ;
 - une *Circulaire sur l'inscription auprès du Ministère du Commerce* (Sarachor du 3 décembre 1997). Cette circulaire présente les principales formes que peuvent prendre les entreprises commerciales, le contenu des statuts et le détail des formalités d'enregistrement et de publicité lors de la création de sociétés commerciales. Il s'agit d'une ébauche de la loi sur les sociétés commerciales qui est en cours de préparation.

Un *projet de loi sur les sociétés commerciales* est en cours de rédaction.

En matière de **droit commercial, fiscal et du travail** :

- *Le droit des obligations et contrats* consiste essentiellement en le décret loi de 1988, qui traite spécifiquement de certains contrats pouvant concerner les IMF : le prêt avec intérêt, le gage, le contrat de dépôt, le cautionnement. Il est toutefois muet sur de nombreux sujets concernant les contrats.
- *La loi sur les investissements* (Kram du 6 août 1999) prévoit certains avantages et garanties aux investisseurs (exonération partielle ou totale de l'impôt sur les bénéfices notamment dans le cas des investissements contribuant au développement rural, exonération de la taxe sur les dividendes distribués).
- *Une loi fiscale a été promulguée en février 1997*. Elle couvre l'impôt sur les bénéfices, la taxe sur les salaires, la taxe sur la valeur ajoutée (TVA), la taxe sur le chiffre d'affaires, et les règles et procédures fiscales.

La loi fiscale est neutre par rapport au statut juridique des institutions, à l'exception des ONG nationales et internationales exonérées d'impôts sur les bénéfices. Aucune disposition d'exonération prévue ne peut être interprétée comme s'appliquant aux IMF. Les implications du droit fiscal pour le processus d'institutionnalisation des IMF sont limitées.

- *Le Code du Travail*, promulgué en 1977 avant l'instauration de la démocratie, constitue l'ensemble du droit du travail. Sa portée est très générale. Aucun accord ou convention collective par secteur n'existe.

2. Textes légaux et réglementaires

(1) Le cadre juridique et réglementaire du secteur financier est encore très incomplet mais devrait se préciser très prochainement par l'adoption de la loi sur les institutions financières.

La situation actuelle concernant le secteur financier est la suivante :

- *La " Loi sur l'organisation et le fonctionnement de la Banque Nationale du Cambodge "* (Kram du 26 janvier 1996) confère à la BNC la tutelle du secteur financier. Celle-ci dispose pour cela d'un pouvoir réglementaire. Elle a ainsi édicté au cours des dernières années une réglementation sur les conditions d'agrément des banques, les ratios prudentiels à respecter et les modalités de supervision.
- *Un projet de " Loi sur les institutions financières " a été préparé par le Gouvernement et transmis à l'Assemblée*, qui a commencé son examen le 4 octobre 1999. L'article 74 de ce projet de loi prévoit que les " entités pratiquant des opérations de banque en vue notamment de promouvoir l'intermédiation bancaire dans les secteurs de l'agriculture, de l'artisanat, du petit commerce et des services aux particuliers " seront couvertes par une réglementation spécifique édictée par la BNC.
- *Les institutions de microfinancement ne sont couvertes par aucune réglementation spécifique.* Dans la mesure où la BNC exerce la tutelle du secteur financier, les IMF entrent dans son champ de responsabilité. La réglementation spécifique prévue dans le projet de loi sur les institutions financières a été préparée par la BNC. Si l'ordre normal est respecté, la réglementation sur les IMF ne devrait cependant être promulguée qu'après la loi sur les institutions financières, qui introduit justement cette réglementation dans son dernier article.

(2) La " Loi sur l'organisation et le fonctionnement de la Banque Nationale du Cambodge " de janvier 1996 assigne à la BNC la responsabilité de la politique monétaire et la tutelle du secteur privé.

Les principales dispositions de la loi concernant l'organisation et la surveillance du secteur financier sont les suivantes :

- En tant que responsable de la tutelle du secteur financier, la BNC :

- prononce et retire l'agrément, réglemente et contrôle les banques et institutions financières ;
 - participe à la création et la surveillance des marchés monétaires et financiers ;
 - a autorité pour déterminer (ou fixer) les taux d'intérêt ;
 - prononce et retire l'agrément de tous les établissements intervenant sur les marchés monétaires et financiers ;
- Dans le cadre de son rôle de surveillance des institutions financières, la BNC doit ou peut :
 - édicter une réglementation prudentielle ;
 - enquêter et contrôler les institutions financières supervisées ;
 - décider d'actions de redressement ou sanctionner toute institution supervisée qui ne respecterait par le droit et la réglementation ;
 - définir les informations que les institutions financières doivent lui communiquer régulièrement ; le principe de l'équité des obligations est spécifié ;
 - Les banques sont libres, depuis une directive publiée par la BNC en mars 1995, de fixer leurs taux d'intérêts créditeurs et débiteurs mais elles doivent déclarer leur niveau et les modalités de calcul à la BNC.

(3) Le projet de loi bancaire a franchi tous les stades de l'exécutif et a été transmis à l'Assemblée Nationale. Il est d'inspiration libérale et en ligne avec l'approche adoptée ces dernières années dans la grande majorité des pays occidentaux ou en développement.

Le projet de loi est, pour l'essentiel, figé depuis plus d'un an. La loi est d'inspiration " moderne " et cohérente avec les réformes de la réglementation bancaire mises en œuvre en Europe et dans d'autres pays depuis les années 1980. En l'absence de loi sur les institutions financières, la réglementation bancaire est fixée par des arrêtés et circulaires de la BNC.

Les principales dispositions de cette loi sont les suivantes :

- Les opérations bancaires sont :
 - l'octroi de crédits *à titre onéreux au profit du public*,
 - la réception de dépôts *non affectés en provenance du public*,
 - la mise à disposition de la clientèle et le traitement de *moyens de paiement*.

Toute entité pratiquant l'une quelconque de ces opérations exerce, de fait, la profession bancaire et relève de cette loi. Il est interdit à toute personne autre qu'un établissement assujéti à la loi bancaire (banque ou société financière) d'effectuer à titre de profession habituelle des opérations de banque.

En conséquence, les IMF entrent dans le champ du projet de loi bancaire.

- Les " banques " peuvent exercer également les opérations suivantes : change ; intermédiation sur le marché monétaire et opérations sur des titres de créance négociables sur ce marché ; opérations sur produits financiers dérivés ; négoce de métaux précieux et

produits ; autres opérations de service liées à l'activité principale ; opérations sur titres. Les banques ne sont pas autorisées à offrir des services d'assurance.

- Les établissements assujettis peuvent adopter une forme juridique de société commerciale ou de société mutuelle ou coopérative, relevant d'un statut légal spécial. *Le projet de loi est par conséquent souple et n'impose pas un statut juridique unique aux banques. L'absence actuelle de cadre juridique spécifique aux mutuelles et aux coopératives limite cependant dans les faits les options statutaires.*
- La BNC exerce la tutelle du système bancaire ainsi que de ses activités annexes telles que le marché monétaire, le système de règlement interbancaire et l'intermédiation financière. A ce titre elle dispose d'un pouvoir réglementaire et définit notamment :
 - le capital social minimal ;
 - divers ratios prudentiels concernant notamment la liquidité, la solvabilité, la division des risques et l'exposition aux risques de change et de marché ;
 - les méthodes d'évaluation des soldes comptables ;
 - les règles de provisionnement des créances douteuses ;
 - le plan comptable bancaire et les normes comptables.
- Les actionnaires influents (" de référence ") sont tenus d'apporter les capitaux propres nécessaires au respect du ratio de solvabilité minimal, sur demande de la BNC.
- L'ouverture d'une succursale bancaire (agence) sur le territoire national doit faire l'objet d'une autorisation préalable par la BNC.
- Les établissements bancaires sont tenus, outre les obligations comptables et juridiques relevant de leur statut de société commerciale, de :
 - se doter d'un système de contrôle interne ;
 - présenter périodiquement des situations comptables ;
 - faire intervenir un commissaire aux comptes agréé par la BNC.
- Une organisation professionnelle unique est prévue.
- La BNC est chargée de définir un corpus de règles de bonne conduite visant à obtenir la protection de la clientèle en matière de transparence des prix et de niveau du coût des opérations de banque, de mise en place et rupture des ouvertures de crédit, et de renégociation des prêts.

La dernière version du texte du projet de loi, présentée à l'Assemblée Nationale, n'est pas disponible. Certaines dispositions actuelles de la réglementation bancaire pourraient être modifiées par la loi ou par les arrêtés et circulaires qui suivront :

- le capital minimal des banques est, depuis décembre 1997, de 50 milliards Riels (13 millions \$), ce qui est très élevé pour un pays comme le Cambodge. Un grand nombre de banques

créées avant cet arrêté ne sont pas en conformité. La BDR a bénéficié d'une dérogation de la BNC puisqu'elle a été créée avec un capital de 10 milliards de Riels. Il est probable que la loi ne fixera pas la valeur du capital minimal mais renverra à un arrêté de la BNC. La dernière version du projet de loi citait cependant un niveau de 10 milliards de Riels, ce qui laisse planer un doute sur le montant qui sera retenu.

- le ratio de solvabilité des banques doit actuellement être supérieur à 5% ; cette réglementation n'est pas conforme aux normes internationales pour deux raisons :
 - la formule de calcul du ratio de solvabilité n'est pas conforme aux accords du Comité de Bâle ;
 - la norme internationale est de 8% ;
- division des risques : le total des engagements d'une banque sur un seul client doit être inférieur à 20% de ses fonds propres. La BDR a bénéficié également d'une dérogation pour lui permettre d'ouvrir une ligne de crédit à ACLEDA de 1 million de \$.

(4) Le projet de réglementation des IMF consacre le rôle de la BNC comme instance de réglementation et contrôle du secteur de la microfinance. Il institue l'obligation pour toute IMF réalisant des opérations de crédit de s'enregistrer auprès de la BNC et pour toute IMF collectant des dépôts d'adopter un statut de société anonyme ou de coopérative et d'obtenir un agrément.

Le projet final de réglementation (Projet de Prakas) pour les IMF s'articule autour des points suivants :

❑ **Existence de deux catégories d'IMF :**

- *les IMF agréées (" licensed ")* qui seraient autorisées à conduire les principales opérations bancaires (crédit, collecte des dépôts), à l'exclusion de la gestion des moyens de paiement et du leasing, des opérations sur produits financiers dérivés, du négoce de métaux précieux et de matières premières, spot ou à terme, et des opérations en devises. Ces IMF agréées devront satisfaire un certain nombre de critères (cf. ci-dessous) et feront l'objet d'une supervision par la BNC. L'agrément serait valable 3 ans et renouvelable. Les organisations effectuant des opérations de microcrédit et ne pouvant satisfaire les conditions d'agrément devraient s'enregistrer auprès de la BNC (cf. ci-après) ;
- *les IMF enregistrées* qui ne feraient pas l'objet d'une supervision par la BNC ; le texte du projet de " prakas " leur interdit implicitement de collecter des dépôts du public.

❑ **Principales obligations s'appliquant aux IMF agréées et leurs actionnaires :**

- être constituées sous forme de société anonyme (" limited liability company ") ou de société coopérative;

- disposer d'un capital social (" registered capital ") minimal de 250 millions Riels, soit 62 000 Euros, 66 000 USD ou 400 000 FF environ ;
- maintenir un ratio de solvabilité supérieur à 20%. Ce ratio est défini comme le rapport des " fonds propres éligibles " sur les " risques pondérés ". Les fonds propres éligibles comprennent les " fonds propres de base " (" tier I capital ") et les " instruments hybrides " tels que " les subventions non remboursables ", " les fonds de garantie publics pour couvrir les risques de crédit à la clientèle " et les " dettes subordonnées perpétuelles " ;
- division des risques : l'engagement total d'une IMF sur un seul client doit être inférieur à 10% de ses fonds propres ; cette disposition est peu contraignante pour les IMF, qui par définition sont censées faire de nombreux " petits " crédit ;
- le ratio de solvabilité devra rester supérieur à 100%, mais les pondérations des différents postes d'actif et passif pris en compte seront fixées ultérieurement dans une circulaire ;
- existence d'une clause de garantie de solvabilité par les actionnaires influents, formulée de manière très souple. Un actionnaire détenant plus de 20% du capital sera considéré comme " influent " (en cohérence avec l'article 27 de la loi sur les institutions financières). Tout actionnaire " influent " pourrait être appelé par la Banque Nationale du Cambodge à reconstituer les fonds propres de l'IMF s'ils sont devenus insuffisants (sous entendu, au cas où le ratio de solvabilité descende en dessous de 20%). Cette obligation de garantie sera caduque dès qu'un système de garantie des dépôts de la place sera créé. Par ailleurs, la BNC pourra accorder une dérogation à une IMF lors de l'obtention de son agrément.
- déposer sur un compte non rémunéré auprès de la BNC des réserves obligatoires :
 - 5% du capital social (10% pour les banques),
 - 5% des dépôts.

Le texte conserve donc, pour leur majorité, les mêmes ratios que pour les banques, en allégeant les contraintes pour les IMF, à l'exception du ratio de solvabilité, renforcé pour tenir compte des risques spécifiques des opérations avec la clientèle visée par la microfinance. Le déploiement est facilité sur le terrain (pas d'autorisation préalable d'ouverture de guichet). Des circulaires d'application préciseront les textes. On peut en attendre des obligations de reporting simplifiées et des obligations d'information du consommateur adaptées.

3. Limites des projets de textes de loi

(1) La collecte d'épargne est l'événement déclencheur de l'obligation d'assujettissement à la réglementation. Le traitement de l'épargne associée au crédit, qui vient en garantie du crédit d'un emprunteur ou de son groupe solidaire, n'est pas clair. Il semblerait logique qu'elle soit

considérée comme une activité annexe au crédit plutôt que comme une activité bancaire par elle-même, qui déclencherait l'obligation d'obtenir un agrément.

Concernant l'épargne, les règles de supervision sont, dans le but de protéger les épargnants, plus contraignantes que pour le crédit.

Selon la loi sur les institutions bancaires, la collecte d'épargne doit, pour avoir la qualité d'activité bancaire, constituer un " dépôt non affecté ". Un dépôt est dit " non affecté " si l'institution financière en porte le risque car elle peut en disposer librement pour un usage qu'elle choisit, avec pour seule obligation de le rembourser au déposant selon des modalités contractuelles. Cette épargne peut alors participer à la création monétaire.

La collecte de dépôts non affectés dans une IMF a deux conséquences :

- elle doit impérativement obtenir un agrément avant toute activité, ce qui lui interdit de passer par la phase préparatoire pendant laquelle un simple enregistrement suffit ; cette obligation s'inscrit dans un objectif de protection de l'épargnant ;
- elle doit déposer à la BNC, en réserve, une fraction des dépôts, ce qui représente un coût en ressources, un manque à gagner mais surtout, compte tenu des relativement faibles montants en jeu, une contrainte de reporting complexe (moyenne des encours quotidiens dans chaque site de tenue des comptes clients, consolidation nationale, déclaration, ajustement de la réserve...). Le principe de cette réserve, actuellement de 5%, mais qui peut être portée par décret jusqu'à 50%, s'inscrit, vis à vis des banques, dans un objectif principal de contrôle de la création monétaire . Concernant la microfinance, cette réserve aurait également un rôle de garantie pour les déposants.

L'épargne associée au crédit qu'exigent de nombreuses IMF est une épargne affectée à la garantie partielle de ce crédit. Le risque n'est pas porté par l'institution. Cette épargne ne participe pas à la création monétaire (elle n'est pas liquide). Les institutions de microfinance qui offrent exclusivement ce type d'épargne nous semblent devoir rester classées dans la catégorie des institutions de crédits, soumises à la seule obligation d'enregistrement auprès de la BNC (selon projet de Prakas de juin 1999).

(2) Une IMF seulement enregistrée peut octroyer autant de crédits qu'elle le souhaite, sans qu'aucune supervision soit prévue. Un seuil de volume d'activité pourrait être défini au-delà duquel une supervision allégée serait mise en place.

Pour les IMF enregistrées, deux niveaux de reporting pourraient être identifiés :

- Un premier niveau, très léger, pour accueillir les petits systèmes déjà existants, et les projets émergents et en phase de recherche/développement,
- Un second niveau, plus complet, dont l'objectif est de préparer l'IMF, si elle a un objectif de pérennité, à l'obtention de l'agrément.

Le passage du “ reporting 1 ” au “ reporting 2 ” serait soit décidé volontairement par l’IMF, soit imposé par la supervision lorsque son niveau d’activité deviendrait suffisamment significatif pour justifier une supervision au titre de l’un des objectifs “ intégrité du système financier ” et/ou “ concurrence loyale ”. Le montant du seuil à partir duquel l’IMF devrait passer au reporting 2, “ X millions de riels ”, serait fixé par la BNC.

SENEGAL

Le Sénégal est un pays de l'Afrique de l'Ouest qui compterait, selon le Rapport sur le Développement de la Banque Mondiale en 1997-1998, près de 9 millions d'habitants. Le PNB par habitant était évalué à 550 USD en 1997, ce qui le classait au 114ème rang mondial (sur 157 pays). Le Produit Intérieur Brut continue d'afficher un taux de croissance positif depuis 1994 ; il était de 5,5% en 1997 et de 6% en 1998. Le taux d'inflation moyen sur la période 1990-1997 se situe à 8,6%.

Depuis 1962, le Sénégal appartient à l'UMOA (Union Monétaire de l'Ouest Africain), qui compte aujourd'hui sept autres pays, le Bénin, le Niger, le Burkina Faso, la Côte d'Ivoire, le Togo, le Mali et la Guinée Bissau. Cette union a été créée dans le but de renforcer la coopération de ces Etats dans le domaine économique et monétaire. La **Banque Centrale des Etats de l'Afrique de l'Ouest** (BCEAO) est l'Institut d'émission commun de l'UMOA, chargé notamment d'assurer la gestion de leur monnaie commune, le Franc CFA, celle de leurs réserves de change et de mettre en œuvre la politique monétaire commune. La **Commission Bancaire** a été mise en place en vue d'assurer une surveillance des banques et des établissements financiers au niveau régional.

La réglementation que le Sénégal a adoptée en matière bancaire et financière et qui sera détaillée dans la partie 2 est identique, sur le fond, à celle des sept autres pays qui composent l'UMOA.

1. Le contexte de la banque et de la micro-finance au Sénégal

Le secteur bancaire

Les banques sénégalaises, dont les agences sont essentiellement présentes dans les grandes villes, ont été confrontées, dans les années 90, à la réforme du marché monétaire et à la baisse des taux d'intérêt et ont ainsi dû recentrer leurs interventions vers une clientèle « haut de gamme ». Cette politique a accentué la difficulté d'accéder à des services bancaires pour les couches moyennes (petits et moyens salariés et fonctionnaires, artisans et petits commerçants), qui se sont alors dirigées vers les principales institutions de micro-finance.

Le secteur de la microfinance

Le secteur de la micro-finance occupe une place encore faible dans le marché financier mais il est en très forte croissance et reste très concentré.

La banque de données du Programme d'Appui aux Structures Mutualistes ou Coopératives d'Epargne et de Crédit (PA/SMEC) de la BCEAO distingue 3 types d'organisations :

- les institutions d'épargne et de crédit (forme mutualiste),
- les organisations ayant comme activité unique ou principale la distribution du crédit (crédit direct),
- les organisations pour lesquelles l'octroi de crédit est une activité accessoire (projet à volet crédit).

La banque de données recensait au 31/12/97 :

- **41 SFD dont 26 institutions d'épargne-crédit, 4 crédit direct et 11 projets à volet crédit,**
- 138 500 membres dont 127 000 pour les institutions d'épargne-crédit (progression globale de 40% par rapport à 1996),
- 15,2 milliards FCFA d'encours de crédit dont 8,2 pour les institutions d'épargne-crédit (progression globale de 50% par rapport à 1996),
- 8,5 milliards FCFA d'encours d'épargne dont 7,7 pour les institutions d'épargne-crédit (progression globale de 60% par rapport à 1996).

Les institutions d'épargne-crédit

Les institutions d'épargne-crédit constituent la part la plus importante des systèmes financiers décentralisés au Sénégal. Trois d'entre eux représentent **70 à 80% du marché total de la micro-finance** que ce soit en nombre de clients ou de crédits. Il s'agit du Crédit Mutuel du Sénégal, soutenu par le Centre International du Crédit Mutuel (CICM), de PAMECAS (Programme d'Appui aux Mutuelles d'Epargne et de Crédit au Sénégal), soutenu par l'opérateur canadien Développement International Desjardins (DID) et de l'ACEP (Alliance de Crédit et d'Epargne pour la Production), cette dernière optant seulement en 1994 pour une organisation sous forme de mutuelle.

Les systèmes non et pré-mutualistes

Des ONG et des projets diffusent, surtout en milieu rural, des crédits sans constitution d'épargne préalable, à des conditions avantageuses pour les usagers (taux d'intérêt inférieurs à ceux du marché, moindre rigueur dans le recouvrement) mais dans des proportions relativement faibles. Certaines expériences font référence, dans leur mode opératoire, au modèle Grameen Bank, d'autres, fortement soutenues par l'aide extérieure, ont pour vocation le financement de la micro-entreprise.

Certaines dont la plus importante d'entre elles en terme d'encours de crédit, COPARE (Conseil et Partenariat Entreprise), connaissent des difficultés. Cette dernière est sinistrée depuis 1996, une grande partie de son encours de crédit étant en recouvrement contentieux.

2. présentation et application des textes légaux et réglementaires

A la suite de la crise des systèmes bancaires africains au début des années 80, la plupart des banques centrales, dont la BCEAO (Banque Centrale des Etats de l'Afrique de l'Ouest), ont cherché à renouveler leur réglementation : elles ont commencé par adopter une nouvelle loi bancaire puis se sont intéressé à la question des systèmes financiers décentralisés (SFD).

La loi portant réglementation bancaire

Une nouvelle loi portant réglementation bancaire a été adoptée par le Parlement du Sénégal en 1989. Elle prévoit l'existence, à côté des **banques, d'établissements financiers** qui ne reçoivent pas de dépôts. Les banques doivent être constituées sous forme de sociétés anonymes à capital

fixe ou sous forme de sociétés coopératives ou mutualistes à capital variable, les établissements financiers sous forme de sociétés anonymes à capital fixe, de sociétés à responsabilité limitée ou de sociétés coopératives ou mutualistes à capital variable (articles 20 et 21). Le capital minimum requis est de 300 millions de FCFA pour les établissements financiers et de 1 milliard pour les banques.

Un **agrément** doit être obligatoirement obtenu pour exercer une activité bancaire ou financière. Il est délivré par le Ministre des Finances après avis de la Banque Centrale. Des règles générales concernant la politique de crédit (constitution de réserves obligatoires auprès de la Banque Centrale,...) ainsi que des normes de gestion (liquidité, solvabilité, division des risques,...) sont indiquées (article 44). Des instructions de la Banque Centrale précisent le mode de calcul de ces normes, le type d'informations à communiquer ainsi que la périodicité.

Les dirigeants et le personnel des banques et établissements financiers sont soumis à des critères de recrutement (casier judiciaire vierge, qualifications professionnelles,...) ; la liste des personnes exerçant des fonctions de direction, d'administration ou de gérance doit être communiquée à la Banque Centrale (articles 14 à 19). De plus la loi exige des banques et des établissements financiers qu'ils fassent partie de l'Association Professionnelle des Banques et des Etablissements Financiers.

Dans un but de standardisation et d'harmonisation, un **plan comptable bancaire** a été rédigé et diffusé à l'intérieur de l'UMOA.

La loi sur les institutions mutualistes

La BCEAO est la première banque centrale à avoir abordé la question des systèmes d'épargne-crédit décentralisés. Celle-ci a mis en place en juin 1992 une cellule, le PARMEC (Projet d'Appui à la Réglementation des Mutuelles d'Epargne-Crédit), qui a conçu un projet de réglementation approuvé par le Conseil des Ministres des Finances de l'UEMOA à la fin de 1993. La **loi sur les institutions mutualistes ou coopératives d'épargne et de crédit** a ainsi été adoptée par le Sénégal le 5 janvier 1995. L'objet de cette loi est de définir le mode d'organisation des institutions mutualistes, afin de protéger les déposants et sécuriser les opérations, ainsi que les caractéristiques de leur contrôle par les autorités monétaires.

Une **institution d'épargne et de crédit**, dite institution de base, est définie comme « un groupement de personnes, doté de la personnalité morale, sans but lucratif et à capital variable, fondé sur les principes d'union, de solidarité et d'entraide mutuelle et ayant principalement pour objet de collecter l'épargne de ses membres et de leur consentir des crédits » (article 2). Elle est tenue de respecter les règles générales d'action mutualistes et coopératives.

Les institutions de base ont la possibilité de se regrouper en réseaux, en formant des unions, des fédérations (regroupement d'unions) et des confédérations pouvant réunir des fédérations de plusieurs pays de l'UEMOA. Tout réseau peut se doter d'un organe financier, doté du statut de banque ou d'établissement financier. Mais la loi sur les institutions mutualistes, contrairement à la loi bancaire, n'exige pas des institutions de s'associer et de définir des normes communes de performance.

Les institutions de base, pour être autorisées à collecter de l'épargne et à accorder des crédits, doivent demander leur **agrément** au Ministère des Finances ou seulement leur **reconnaissance** si elles sont déjà affiliées à un réseau. Leur affiliation à un réseau constitué selon les règles prévues les soumet, d'une façon indirecte, au contrôle des autorités et doit garantir la protection des déposants et la sécurité des opérations. Mais seul l'agrément confère la personnalité morale et donc la capacité d'ester en justice. La décision du Ministre doit intervenir dans un délai de 3 mois et son refus doit être motivé.

Les institutions, qui ont demandé un agrément, sont soumises à un contrôle de leur gestion par les autorités monétaires ainsi qu'au respect d'un certain nombre de règles prudentielles. Celles-ci ont été précisées dans des instructions complémentaires concernant l'application des textes, qui ont été diffusées par la BCEAO aux Ministères des Finances en mars 1998. Ces instructions indiquent notamment :

- les modèles d'états financiers et les règles comptables à respecter,
- les règles de classification des crédits selon leur durée et les règles de déclassement et de provisionnement des crédits en souffrance,
- les règles de détermination des ratios prudentiels.

Ceux-ci sont en partie des ratios de type bancaire qui concernent :

□ la *division des risques* :

- les sommes engagées au titre des opérations autres que les activités d'épargne et de crédit ne doivent pas dépasser 5% de tous les prêts consentis,
- l'encours total des prêts aux dirigeants ne doit pas excéder 20% des dépôts de l'institution,
- une institution ne peut prendre, sur un seul membre, des risques pour un montant excédant 10% de ses dépôts.

□ la *liquidité* :

- l'ensemble des valeurs disponibles, réalisables et mobilisables à court terme d'une institution doit représenter en permanence au moins 80% de l'ensemble de son passif exigible,
- l'institution doit couvrir, à tout moment, ses emplois à moyen et long termes par des ressources stables,

En ce qui concerne la *solvabilité*, les ratios définis par la loi sont adaptés au cas spécifique de ces institutions :

- la réserve générale doit être alimentée par un prélèvement annuel de 15% sur les excédents nets,
- les emplois ne peuvent excéder le double des dépôts.

Les conventions-cadres

Les structures ou organisations non constituées sous forme coopérative ou mutualiste et ayant néanmoins pour objet la collecte de l'épargne et/ou l'octroi de crédit relèvent, lorsqu'elles ne sont pas régies par la loi bancaire, de dispositions particulières convenues avec le Ministère de Finances (article 6).

Pour obtenir sa reconnaissance auprès du Ministère, le groupement d'épargne-crédit doit fournir des indications sur son activité : ses objectifs, sa clientèle ou sa population-cible, les structures d'appui dont il peut bénéficier. Il doit préciser les modalités de mobilisation de l'épargne et/ou de l'octroi de crédit ainsi que celles du recouvrement. Sur cette base-là, une **convention** est conclue, pour une durée maximale de **cinq ans** renouvelables, entre les deux parties. Cette convention détermine leurs conditions d'activité, leur mode de fonctionnement ainsi que les modalités de leur contrôle. Elle peut être dénoncée par l'une des parties avec un préavis d'un mois. Mais la reconnaissance ne confère pas à la structure la personnalité morale.

La signature de la convention entraîne **deux obligations** d'importance :

- La première concerne le **contrôle de sa gestion**. La structure ou le groupement doit fournir au Ministère son rapport d'activité annuel ainsi qu'une situation détaillée de ses opérations d'épargne et de crédit, de ses revenus et ses charges d'exploitation ainsi que de ses perspectives d'évolution. Elle est soumise chaque année à un audit externe et doit se soumettre à toute requête de la part du Ministère. Ce dernier peut dénoncer la convention en cas de manquements graves ou répétés à ces obligations et il peut mettre la structure sous administration provisoire dans les mêmes conditions que les institutions de base agréées (articles 4 à 6).
- La seconde des obligations concerne le **respect des règles prudentielles**. Les unes concernent la **politique de crédit** qui, comme celle pratiquée par les institutions de base agréées, est à la fois indépendante et contrainte : elle est indépendante dans la mesure où « la structure doit être en mesure de disposer d'une politique de crédit susceptible d'assurer le bon dénouement des prêts accordés » (article 7) ; elle est contrainte car « les opérations sont soumises à la loi de l'usure qui plafonne l'intérêt à un taux sensiblement plus bas que celui pratiqué dans le secteur informel » (article 2). Les autres règles concernent la **limitation des risques**. La structure ne peut, comme les institutions de base agréées, octroyer un total de crédits dépassant le double de l'ensemble des dépôts qu'elle a reçus et elle ne peut accorder à un seul client un crédit dépassant 10% de ces dépôts (article 7).

La loi sur l'usure

Dans l'ensemble de la zone UEMOA les prêts sont soumis au respect d'un taux plafond appelé taux de l'usure. Le taux pris en considération pour le calcul du taux de l'usure est le taux effectif global (TEG) qui intègre des frais annexes au prêt. La loi stipule que le taux de l'usure est fixé par le Conseil des Ministres de l'UMOA sur proposition de la BCEAO. Des peines d'emprisonnement et/ou de fortes amendes sont prévues en cas d'infraction.

Le taux de l'usure s'applique à l'ensemble des institutions financières : banques et SFD (institutions mutualistes ou SFD soumis au régime de la Convention-Cadre). Pour tenir compte des différentes conditions d'exploitation des institutions financières le Conseil des Ministres de l'UMOA fixé deux taux qui s'établissent actuellement à :

- 18% l'an pour les banques ,
- 27% l'an pour les « établissements financiers, les institutions mutualistes d'épargne et de crédit, les autres systèmes de financement décentralisés ainsi que pour tous les autres agents économiques ».

Application de la loi sur les institutions mutualistes

On dispose encore de peu de recul par rapport à la mise en œuvre des textes réglementaires, celle-ci ayant été assez tardive. En effet les décrets d'application ne sont entrés en vigueur qu'en décembre 1997 et les instructions complémentaires de la Banque Centrale n'ont été diffusées qu'en mars 1998. Une **cellule d'assistance technique aux caisses populaires d'épargne-crédit (AT/CPEC)**, qui dépend du Ministère des Finances, a été mise en place ; elle a pour mission d'appliquer les textes : délivrance et retrait d'agrément, surveillance et contrôle des institutions. La situation juridique des SFD s'établissait au 31/12/97 comme suit : sur les 41 SFD, 17 n'avaient encore demandé ni agrément, ni convention, 6 étaient en cours d'instruction et 18 (toutes institutions mutualistes) avaient obtenu leur agrément.

Parallèlement à la définition et à la mise en application des textes réglementaires, la BCEAO ainsi que le Ministère des Finances ont essayé de promouvoir un **cadre de concertation inter-SFD**. Il existe une association qui réunit tous les SFD du Sénégal mais elle est peu active en raison de trop grandes disparités (taille, structure,...) et surtout de l'insuffisance des motivations qui les animent. Les institutions mutualistes, de leur côté, ont créé l'APIMEC (Association Professionnelle des Institutions Mutualistes d'Epargne et de Crédit). Mais cette association ne semble pas être parvenue non plus ni à « organiser » la profession ni à définir des normes communes de performance comme dans d'autres pays (Amérique du Sud, Philippines, Afrique du Sud,...).

3. Limites et difficultés

Les limites inhérentes aux textes de loi

3.1.1 Au niveau des statuts juridiques

La loi sur les institutions mutualistes va dans le sens d'une « normalisation » du secteur en privilégiant une forme particulière d'organisation (forme mutualiste). Les structures qui ne sont pas organisées sous forme mutualiste sont pénalisées. La convention qui les lie au Ministère des Finances n'est valable que cinq ans (certes renouvelables) et ne leur accorde pas la personnalité morale. Cette restriction par le statut a deux effets pervers : elle freine le développement de modèles alternatifs adaptés et pousse artificiellement les systèmes non coopératifs vers ce type de statut. Cette loi pose la question plus générale de la confrontation de deux approches : celle de l'autorité de tutelle qui supervise le secteur et donc cherche en quelque sorte à le normaliser et à le simplifier, celle du secteur lui-même qui répond à des situations et à des besoins de microfinancement variés.

Consciente de ces limites, la BCEAO réfléchit à son tour à la mise en place d'un cadre réglementaire pour les institutions de micro-finance. Elle se dirigerait davantage vers une réglementation par l'activité d'intermédiation financière que par le statut (coopérative, ONG, société...). On mettrait l'accent sur des normes relatives aux conditions de l'exercice de l'activité (propriété du capital, exigences sur le rendu d'états financiers, respect des normes prudentielles...) et non plus sur des normes relatives au statut.

3.1.2 Au niveau des ratios prudentiels

La seconde limite concerne les ratios prudentiels que les instructions de la Banque Centrale imposent aux institutions mutualistes. Ceux qui concernent la **solvabilité** des mutuelles paraissent insuffisants sur plusieurs points :

- la réserve générale imposée de 15% du bénéfice est trop faible car elle ne permet pas le renforcement rapide des fonds propres (il est à noter que les institutions les plus performantes mettent en réserve l'intégralité de leurs résultats),
- le taux maximal de réemploi de l'épargne en crédit de 200% peut gêner les mutuelles ainsi que les autres institutions liées à la convention-cadre qui bénéficient de lignes de refinancement extérieures. La loi prévoit la possibilité d'exclure de ce ratio les ressources dites affectées du calcul de ce ratio mais la notion de ressources affectées pose des problèmes d'appréciation aux institutions.

Les institutions ne sont pas assujetties à un véritable ratio de solvabilité, comme le ratio Cooke (fonds propres/encours de crédit $>$ ou $=$ 8%), qui subordonne le crédit à la constitution de fonds propres. Etant donné le risque inhérent à la micro-finance, un ratio plus sévère pourrait être exigé. C'est le cas à Madagascar, où la tutelle réfléchit à un taux qui se situerait autour de 15-20%.

D'autre part ces ratios n'ont de validité que par rapport à une Banque Centrale. La supervision néglige les indicateurs de performance, tels que la qualité du portefeuille, qui constituent une information pertinente pour les bailleurs et les partenaires.

3.1.3. Au niveau du taux de l'usure

L'application du taux de l'usure aux SFD bénéficie d'un taux dérogatoire par rapport à celui appliqué aux banques (27% au lieu de 18%). Cependant les études réalisées sur les taux pratiqués par les SFD montrent qu'une majorité d'entre eux ne sont pas en mesure de respecter ce taux plafond. En effet même si leur taux apparent est parfois inférieur, leur taux effectif global (TEG) qui est le taux de référence pour le calcul du taux de l'usure dépasse souvent le taux plafond autorisé.

Les SFD éprouvent des difficultés à respecter la réglementation pour plusieurs raisons :

- les coûts de mise en œuvre sont élevés, particulièrement pour les SFD « ruraux » (prêts de faibles montants, décentralisation des activités, formation des membres et clients etc.),
- les SFD, qui ont pris conscience que les subventions accordées au départ par leurs bailleurs de fonds ont un caractère provisoire, cherchent à augmenter leur marge bancaire pour parvenir au point d'équilibre de leur exploitation,
- le taux de l'usure réelle pratiquée au sein du milieu d'intervention des SFD est beaucoup plus élevé que le taux d'usure « officiel » (il peut atteindre 2 à 300%). Les SFD ont intégré cette donnée et les taux qu'ils pratiquent, bien qu'élevés en regard de la norme officielle, sont jugés attrayants par leurs membres et clients. Les taux les plus élevés sont souvent pratiqués par des SFD qui responsabilisent leurs membres et les laissent décider librement du taux des opérations
- le coût de la ressource peut être élevé pour certains SFD, notamment en phase de croissance de leurs activités qui nécessite des refinancements bancaires. Pour les mutuelles d'épargne crédit le coût de la collecte de l'épargne est également important.

Les autorités monétaires ont jusqu'à présent adopté une attitude assez tolérante envers les taux pratiqués par les SFD. Mais cette position pourrait évoluer après la délivrance des agréments, reconnaissances et signatures des Conventions-Cadre. L'application stricte de cette réglementation pourrait alors constituer un frein à la création et au développement des SFD. Le maintien d'une certaine souplesse est donc souhaitable, afin qu'avec la croissance de leurs activités et le développement de la concurrence les taux offerts à la clientèle baissent naturellement sans mettre en péril l'activité des SFD qui recherchent leur viabilité financière.

Les difficultés de la mise en œuvre

3.2.1 Au niveau de la cellule d'assistance technique du Ministère des Finances

La cellule manque de moyens financiers (aide prévue non débloquée) et humains (cadres insuffisamment formés et expérimentés) pour remplir sa mission, ce qui entraîne une lente mise en application des textes : ainsi beaucoup de demandes d'agrément de nouvelles caisses n'ont pas reçu d'accord officiel et peu de contrôles ont été effectués jusqu'à maintenant, ceux-ci étant d'autant plus rendus difficiles en raison de la décentralisation des opérations. Ce retard est préoccupant à cause de la croissance du secteur et de la montée correspondante des risques. D'autre part le partage des rôles entre la BCEAO et la cellule de suivi du Ministère se fait difficilement ; cette dernière souhaiterait être impliquée davantage dans la définition des textes réglementaires en vue de les adapter aux réalités locales. Ceci explique le retard pris dans la diffusion des instructions de la BCEAO de mars 1998, jugées par la cellule trop contraignantes et difficilement applicables par certains SFD agréés.

3.2.2 Au niveau des systèmes financiers décentralisés

Ceux-ci, à l'image du Crédit Mutuel du Sénégal qui n'a pas encore organisé de formation interne sur les textes réglementaires à l'intention de son réseau, laissant ce soin à la cellule, sont peu

sensibilisés et peu mobilisés. Ces textes sont donc relativement méconnus au niveau des caisses locales, les réunions d'information organisées par la cellule laissant peu d'impact.

ANNEXES

ANNEX A: GLOBAL PERFORMANCE STANDARDS INITIATIVES

Concerned about performance standards and interested in the industry-wide benefits performance evaluation provides, ACCION International, Private Sector Initiative Corporation (PSIC), the *MicroBanking Bulletin* and the World Council of Credit Unions (WOCCU) have undertaken initiatives to create tools to assess and rate performance, establish standards or benchmarks, and disseminate performance results.

ACCION International. Taking into consideration the unique conditions that characterize the microfinance industry, ACCION International modified CAMEL, a financial assessment tool used by US bank regulators to evaluate the health of US commercial banks, to assess the financial and managerial health of the microfinance institutions within the ACCION network. This assessment is linked to ACCION's investment and guarantee funds as well as to its technical assistance and training services. In other words, a microfinance institution interested in benefiting from these programs and services must participate in the assessment.

In order to complete the assessment, ACCION requires that MFIs within its network submit financial statements, budgets and cash flow projections, portfolio aging schedules, funding sources, information on the board of directors, operations and staffing procedures, and macroeconomic information and open their offices and make staff available for on-site assessment. Data and assessments are kept confidential.

ACCION CAMEL, like the original CAMEL, assesses five areas of a lending institution's financial and managerial performance-- capital adequacy, asset quality, management, earnings, and liquidity management. These five categories are comprised of a total of 21 key indicators that are individually weighted and are combined to come up with the institution's numerical rating, on a scale of zero to five with five being the best rating. In addition, an alphabetical rating corresponds to this numerical rating.

- **Capital adequacy:** To assess an institution's capital adequacy, or financial solvency, ACCION looks at the institution's leverage (the relationship between the institution's risk-weighted assets and equity), its ability to raise equity, and its adequacy of reserves.
- **Asset quality:** The asset quality of an MFI is examined in three areas: 1) portfolio quality, which includes two indicators--portfolio at risk and write-offs/write-off policy; 2) portfolio classification system, which involves analyzing aging schedules and the MFI's policies regarding the evaluation of portfolio risk, and 3) fixed assets, which entails reviewing the institution's policies concerning the investment in fixed assets.
- **Management:** Governance; human resources; processes, controls and audit; information technology system; and strategic planning and budgeting are the five qualitative indicators that comprise this assessment area.
- **Earnings:** Adjusted return on equity, operational efficiency, adjusted return on assets and interest rate policy are the indicators used to measure an institution's profitability.
- **Liquidity management:** To evaluate an institution's liquidity management, the CAMEL team looks at the liability structure, availability of funds to meet credit demands, cash flow projections, and productivity of other current assets.

Private Sector Initiative Corporation. The Private Sector Initiatives Corporation (PSIC), based in Washington, DC, developed a system to evaluate and rate microfinance institutions. This system was created to facilitate investors' access to reliable data on MFIs in the region, thereby promoting sound investment decisions.

With funding from the Inter-American Development and the USAID-sponsored Microfinance Best Practices Project, PSIC developed and tested this system by assessing leading microfinance institutions in the Latin American and Caribbean region. During the first 18 months of this initiative, PSIC evaluated 17 institutions which possess various legal forms, asset sizes and management structures. Participation in this assessment is voluntary.

PSIC uses a standardized methodology incorporating both qualitative and quantitative variables to evaluate the institutions. For each MFI, PSIC prepares a fact sheet describing the institution's performance and comparing this performance to that of other MFIs. (An example of a PSIC fact sheet is attached). These fact sheets are available to the public. Anyone interested in receiving the fact sheet for a particular MFI may contact PSIC.³⁰ Fact sheets will be made available through PSIC's website in early 2000.

In evaluating and rating MFI performance, PSIC examines the institution's:

- Asset structure and quality—principal sources of funds (borrowing, equity, savings, retained earnings), the ratio of loans past due to gross loans, ratio of write-offs to average gross loans, the ratio of loan loss reserve to gross loans, and ratio of provision expense to average gross loans;
- Capital structure and cost-- debt/equity ratio and the ratio of interest expense to average liabilities;
- Profitability--return on assets and equity;
- Productivity and efficiency--number of loans outstanding per credit officer, the ratio of operating expenses to the average value of the gross portfolio, and the ratio of operating expenses to the average number of loans outstanding;
- Loan portfolio--portfolio yield, the percentage of loan balances more than thirty days past due, and the ratio of loan loss reserves to loan balances more than thirty days past due;
- Governance--organizational structure, legal status, ownership policies, board responsibilities, management style, and dispute resolution mechanisms;
- Lending Operations—management of finance and credit administration, range of clients, average loan size, activities, methodology; and
- Organization—responsibilities of management team, location and size of headquarters, number and responsibilities of personnel, profile of loan officers, and client load per officer.

After an MFI has been assessed by PSIC on numerous occasions, PSIC will be able to chart the progress of this MFI's performance. In addition, once a greater number of MFIs undergo the assessment process and their evaluations are entered into the PSIC database, PSIC will begin to provide each participating MFI with a rating.

³⁰ Private Sector Initiatives Corp., 1828 L Street, NW, Suite 1030, Washington, DC, 20036; Phone (202) 785-0758; Fax (202)785-0799; Email damian@microrate.com.

MicroBanking Bulletin. Calmeadow, a microfinance support organization founded in 1983, manages the MicroBanking Standards Project. This MicroBanking Standards Project, which is funded by CGAP, involves gathering financial data of microfinance institutions around the world, adjusting financial data, and assessing the data. The assessment team does not verify the financial data submitted by the participating MFIs, nor does it conduct on-site assessments. Twice a year, Calmeadow publishes the results of the assessment in the *MicroBanking Bulletin*, formerly published by the Economics Institute, Boulder, Colorado. By publishing and disseminating the microfinance industry's financial performance results, the creators of this project hope to improve the financial performance of microfinance institutions.

Microfinance institutions that participate in this project do so voluntarily. In return for their participation, they receive an individual financial performance report which compares their results with those of their peer group. Each MFI's data and performance report are kept confidential. To participate in this project, MFIs give Calmeadow financial and portfolio performance information, other information concerning accounting practices, subsidies, and the structure of liabilities, and audited financial statements, annual reports, and any other documents that explain practices and procedures. Using this information, the authors of the *Bulletin* place the participating MFIs in peer groups based upon their region, scale and target market. By only printing the average scores for the various financial indicators for each peer group in the *Bulletin*, the authors maintain the confidentiality of the individual MFI's financial information.

In the *MicroBanking Bulletin*, the financial performance of each peer group is evaluated in terms of:

- Outreach and institutional indicators, such as total assets, number of branch offices, number of staff, age of institution, number of clients, and percentage of loan clients that are women;
- Macroeconomic indicators, including GNP per capita, GDP growth rate, inflation rate, deposit rate, and financial deepening;
- Profitability indicators, like unadjusted return on assets, adjusted return on assets, adjusted return on equity, operational self-sufficiency, financial self-sufficiency, and profit margin;
- Income and expense indicators, for example asset utilization, operating expense, loan loss provision expense, portfolio yield, salary structure, and total admin. expense;
- Portfolio indicators, such as portfolio at risk > 90 days, total loan portfolio, average loan balance, and average loan balance divided by GNP per capita; and
- Capital and liability structure indicators, like "market" based funding and the capital to assets ratio.

The World Council of Credit Unions, Inc. The World Council of Credit Unions, Inc. (WOCCU) developed the PEARLS system after attempts to tailor the CAMEL ranking system to the credit union context failed. Since 1990, WOCCU has used the PEARLS system to evaluate and monitor the performance of credit unions. Specifically, WOCCU uses this standardized evaluation system to 1) assist credit union managers in identifying problems with their institutions and in developing solutions, 2) compare and rank the performance of credit unions, and 3) facilitate supervisory control (national associations use the information generated by PEARLS to analyze the operations of their members and detect their affiliates' problem areas).

The evaluated institutions use a standardized accounting system, and the PEARLS performance indicators are standardized. Unlike CAMEL, which assigns numerical ratings to subjective indicators, such as management, PEARLS does not include qualitative indicators. By only including quantitative indicators in the ranking, WOCCU believes that the tool objectively assesses different credit unions and allows for comparison from one institution to the next. The components of the system include:

- Protection is calculated by comparing the adequacy of the loan loss provisions against to the amount of delinquent loans. An institution has adequate protection if it possess sufficient provisions to cover all loans over a year past due and 35 percent of all loans one to twelve months past due.
- Effective financial structure is measured in three areas—assets, liabilities, and capital. The targets for assets are 95 percent of productive assets comprised of loans (70 to 80 percent) and liquid investments (10 to 20 percent) and 5 percent of unproductive assets mainly comprise of fixed assets. Liabilities should be composed of 70 to 80 percent of member deposit savings, and capital should include 10 to 20 percent of member share capital and 10 percent institutional capital.
- Assets quality is evaluated in terms of the delinquency ratio, percentage of non-productive assets, and the financing of non-productive assets.
- Rates of return and costs looks at the yield from the loan portfolio (interest income, penalties, and commissions), liquid investments (income from bank savings accounts and liquidity reserves), investments in finance companies, other non-financial investments. In addition, PEARLS examines operational costs, such as financial intermediation costs, administrative costs, and unrecoverable loan costs.
- Liquidity is analyzed in terms of total liquidity reserves and idle liquid funds.
- Signs of growth in a credit union's total assets, loan portfolio, savings deposits, shares, and institutional capital are examined.

For more detail on each of these components, please see attached “Quick Key to the PEARLS” and “The ‘PEARLS’ Monitoring System Manual.”

Sources: Sonia B. Saltzman and Darcy Salinger, “The ACCION CAMEL,” *Microenterprise Best Practices Project Technical Note*, September 1998, www.mip.org/PUBS/MBP/CAMEL.htm; Inter-American Development Bank, “The Microfinance Industry: Does it Measure Up?” *Microenterprise Development Review*, Inter-American Development Bank, August 1999; Private Sector Initiatives Corp., *Rating Agency for Microlenders: MFI Evaluation Manual Draft*, December 29, 1997; Calmeadow, *The MicroBanking Bulletin*, Issue no.3, July 1999, www.calmeadow.com; David C. Richardson, “PEARLS Monitoring System,” World Council of Credit Unions Research Monograph Series Number 4, June 1999, www.woccu.org.

ANNEX B: ACCREDITATION CRITERIA FOR SOUTH AFRICAN MICROFINANCE REGULATORY COUNCIL

- ◆ The lending organization must be a registered, incorporated, legal entity. This minimalist requirement will ensure that all registered lenders are at least registered corporations.
- ◆ Each lender is required to manage its lending business through a bank account or series of related/linked bank accounts that are separate from other businesses or personal finances.
- ◆ The lending organization is required to keep a loan register with a detailed list of all loans disbursed.
- ◆ Copies of all loan agreements have to be filed and fully referenced to the loan register.
- ◆ The institution must be registered with the South African Revenue Service.
- ◆ The institution, its directors and/or members may be subjected to a credit check. The rationale for this requirement is to assess the ability of the lender to take and repay wholesale deposits.
- ◆ Financial statements, prepared by an auditor who is recognized by the Public Accountants Board and a member of the South African Institute of Chartered Accountants, will be reviewed. The rationale for this criteria is to gain some understanding of the size of the industry to monitor the effect of the regulation on the industry and eventually to have a basis for considering the accreditation of lenders for purposes of wholesale deposit taking. A window period will be provided where applicants will be provisionally registered and will be required to submit these statements within four months of their financial year-end.
- ◆ The directors and executive staff may not have criminal records, in respect of theft, fraud, or any offence involving dishonesty or a history of violent crime which indicates an inclination towards unacceptable collection practices. In the latter case the Council will have to exercise a discretion based on the facts related to any such conviction. This is to ensure a credible, moral and clean industry.
- ◆ The directors or executive staff may not hold such positions if they have been declared (either provisionally or finally) insolvent and where they have not been rehabilitated or where the estates are administration.

In terms of the accreditation and monitoring of micro-lending conglomerates, franchises or 'similar' groupings, the following approach will be followed:

- ◆ The group could be accredited and monitored as a single entity, if it exercises some form of monitoring and supervision over the affiliated members. In such a case, the group will be penalized for a digression by any member of the group and the penalty, up to de-registration, will be applied to the group as a whole (and associated members).
- ◆ Therefore, if the implications of such a group accreditation are not acceptable, then each member of such a group will have to be accredited separately.
- ◆ It is unlikely that group registration will be abused as a transgression by any component of the group would put the whole group at risk. Furthermore, the Council will only grant group registration where it is satisfied that the controlling entity is in a position to exercise effective control over the other components of the group. The supporting documents will have to be submitted to prove effective control.

Source. Business Plan for the Micro Finance Regulatory Council in Support of the Council's Application for Approval as the Regulatory Institution in Respect of the Usury Act Exemption Notice, May 1999.

ANNEX C: THE ALLIANCE OF MICRO ENTERPRISE PRACTITIONERS CODE OF CONDUCT

The Alliance of Micro Enterprise Development Practitioners is a membership organization dedicated to the building and maintaining SMME support services of the highest standards and the development of a thriving micro-enterprise sector in the mainstream of the South African economy. The Alliance strives to do this through enhancing the capacity of, and representing, micro enterprise development organizations.

Members of the Alliance strive to empower people through the provision of credit, training and support for microenterprise. Despite the diversity of their activities, the members of Alliance, in dedicating themselves to the achievement of similar goals, have agreed to abide by the following Code of Conduct.

Members commit themselves to:

- Meet the needs of their clients in an efficient and prompt manner
- Serve the long-term interests of their clients, even if this means sacrificing short-term returns for their institution
- Educate the public and their clients to the needs, strengths and responsibilities of the sector
- Operate their businesses with the highest degree of professional conduct, and respect fellow members of the Alliance with professional courtesy
- Conduct themselves in a manner consistent with the good reputation of their fellow members and the Alliance
- Constantly monitor the performance of their businesses and strive for ways of improving efficiency and better delivery of services
- Work actively towards building sustainable institutions
- Serve the ongoing learning needs of management and staff of their institutions in order to improve the sector
- Responsibly manage development funds
- Submit their institution's financial accounts for annual external audit, in the interests of responsibility and transparency
- Abide by the guidelines set down by the Regulatory Council, if these guidelines are appropriate to their organization's activities
- Build public awareness and trust of the sector, by encouraging the sector to meet the highest standards of quality
- Reassess the needs of the sector on a regular basis to ensure that needs are being met in the most efficient and relevant way

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ANNEX D: BIBLIOGRAPHY AND RESOURCE LIST

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