

LAW 67-51 OF DECEMBER 7, 1967

REGULATING THE BANKING PROFESSION

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CHAPTER I

General Provisions Concerning Banking and Related Activities

ARTICLE 1. Enterprises to which the designation “bank” applies and which do business in the Tunisian Republic shall be subject to the provisions of this law.

Said provisions shall not, however, apply to the Postal Checking Administration, to the National Savings Bank, or to such agencies as may be established in Tunisia by international financial institutions pursuant to agreements with the Tunisian government.

ARTICLE 2. All enterprises that routinely engage in the following operations are considered to be "banks" and are therefore subject to licensing under this law:

- receiving deposits from the public in any form and for any term whatever;
- granting credit of all kinds;
- carrying out securities exchange or foreign exchange operations as intermediaries;
- paying or collecting checks, bills, coupons, or any other payment instrument or debt security on behalf of their depositors.

The exercise of any of these functions, even if not such as to warrant the designation of “bank,” shall confer the status of financial institution and shall be subject to the authorizations required by law. Financial institutions may be subject to regulations by decree. (1)

Banks may also carry out operations related to their business, such as providing advice and assistance in assets management, financial management, financial engineering, and generally all services designed to facilitate the creation, development, and restructuring of enterprises. (2)

ARTICLE 3. Article 2 of this law notwithstanding, the following categories of funds shall not be considered deposits received by an enterprise from the public:

- funds received to constitute or increase the capital of said enterprise;

- funds left by any person participating in the management of the enterprise as a manager or a member of the board of directors or, more generally, by any partner or group of partners exercising real control over said enterprise;
- funds derived from discounting, repurchase arrangements, or advances of any other type granted by enterprises engaged in banking;
- funds derived from bond issues;
- funds left by personnel of the enterprise, to the extent that they do not exceed 10 percent of the capital of said enterprise.

Credit granted by commercial firms to their customers for the provision of supplies or services, as well as loans by parent companies to their subsidiaries, shall be excluded from the scope of Article 2.

ARTICLE 4 (new). Institutions engaging in banking shall be required to indicate, when applying for a license, whether they belong to the category of deposit banks, investment banks, or merchant banks [*banques d'affaires*]. (3)

ARTICLE 5. Deposit banks shall engage in all the operations described in Article 2 of this law. They shall receive deposits without restrictions as regards their maturities but shall re-use them principally in short-term lending.

They shall also be authorized to grant medium- and long-term credit out of said deposits, subject to the conditions laid down for this purpose by the Central Bank of Tunisia. (4)

ARTICLE 6 (new). Investment banks are enterprises whose principal business consists of equity investment in enterprises and the granting of medium- and long-term credit.

Medium- and long-term credit shall be granted by these banks either against their capital equity or from the resources generated by medium- and long-term borrowing.

Investment banks may receive deposits only for terms exceeding one year. They may allocate said deposits to the financing of medium- and long-term credit only under the terms set by the Central Bank of Tunisia within the framework of the pertinent decisions of the National Credit Council.

In addition, investment banks may, under the terms set by the Central Bank of Tunisia, grant short-term credit to enterprises in which they have majority ownership and to enterprises to which they have extended project financing.

They may receive demand deposits from their own personnel and from enterprises in which they have majority ownership. (5)

ARTICLE 6 bis. Merchant banks are banks licensed to engage primarily in the banking-related operations mentioned in the third paragraph of Article 2 of this law.

In addition, merchant banks may, under the terms set by the Central Bank of Tunisia, provide other banking services to the beneficiaries of their interventions, in accordance with the third paragraph of Article 2 of this law. (6)

ARTICLE 7. The licensing applications mentioned in Article 2 of this law shall be submitted to the Central Bank of Tunisia, which shall consider them and may require any information, documents, or evidence that it deems necessary for this purpose.

To determine whether the operations of an enterprise are subject to authorization as described in Article 2 above, the Central Bank of Tunisia shall have the right to request any information from the enterprise and conduct on-site investigations, asking to see the books, correspondence, contracts, and, more generally, any documents it deems necessary for the proper fulfillment of its task. (7)

Any refusal to hand over any of the above documents shall be the subject of a report drawn up by a duly authorized agent and punishable by a fine of up to D 50 per day of delay in complying, starting from the date of signature of said report. The final amount of the fine in question shall be set by the Central Bank of Tunisia, after consultation with the Minister of Finance, and paid to the Treasury. (8)

ARTICLE 8. The authorization required to exercise the banking profession or any of the activities described in Article 2 of this law shall be issued by the Minister of Finance, after consultation with the National Credit Council, based on the report of the Central Bank of Tunisia, which shall then inform the party concerned of the decision taken regarding its application. (9)

Licenses shall be granted on the basis of the business plan of the applying institution, the technical and financial resources it intends to use, the caliber of the contributors to its capital and, where applicable, of their financiers, as well as the integrity and appropriate qualification of its managers. (10)

For the granting of licenses, account shall also be taken of the aptitude of the applying institution to achieve its development objectives in circumstances compatible with the proper functioning of the banking system and to provide its customers with adequate security. (11)

Licenses shall specify the amount of initial capital required based on the business plan proposed by the applying institution. However, said amount shall not be less than the minimum capital established in Article 13 below. (12)

ARTICLE 9 (new). No enterprise that has not been licensed in accordance with Article 2 of this law may engage in the business defined in said article, or use the words “bank,” “banker,” “credit institution,” or “financial institution” in its title or company name, or in its publicity, or in any way in its business. (13)

An enterprise whose license has been withdrawn must cease engaging in business and restrict its operations to those necessary for its liquidation. A liquidation report shall be drawn up by

an accountant registered with the Professional Association of Accountants of Tunisia and submitted for consideration by the Central Bank of Tunisia. Said report shall indicate in particular whether the entity in question has met its commitments and arranged for any of its own resources remaining to be used to settle its debts fully. During the liquidation process the enterprise shall remain subject to supervision by the Central Bank of Tunisia. (14)

Any violation of these provisions shall be punishable by imprisonment for one month to two years and a fine of D 100 to D 10,000, or by either one of these sanctions alone. (15)

ARTICLE 10 (new). Notwithstanding the provisions of Article 27 below, the license withdrawal mentioned in Article 2 of this law shall be pronounced by the Minister of Finance after consultation with the National Credit Council:

1. Either at the Minister's own initiative on the basis of a report from the Central Bank of Tunisia, following consultations with the Professional Association of Banks and after a hearing of the banking institution concerned;
2. Or at the request of the Central Bank of Tunisia and following consultations with the Professional Association of Banks of Tunisia and a hearing of the banking institution concerned, in cases where the Central Bank of Tunisia deems that the institution in question no longer meets the conditions on which the granting of the license was based;
3. Or at the request of the interested party, submitted by the Central Bank of Tunisia after consultation with the Professional Association of Banks of Tunisia.

In serious cases, the Minister of Finance may, after consultation with the Central Bank of Tunisia, immediately appoint a liquidator for the bank whose license was withdrawn, and establish the liquidation procedures and time limits applicable. The liquidator shall keep the Central Bank of Tunisia informed of the liquidation proceedings. (16)

ARTICLE 11. (17)

ARTICLE 12. Banks and legal entities incorporated and established in Tunisia and whose business is subject to the licensing described in Article 2 of this law may be established only in the form of business corporations or in a manner prescribed by a special legal statute.

Foreign banks operating in Tunisia through branches or agencies must be established in the form of business corporations unless some other legal status has been considered and agreed when the license was issued. Their status must in any case be in conformity with the legislation applicable in their country of origin.

CHAPTER II

Provisions Specifically Governing Banking

ARTICLE 13 (new). At the time of its creation, each bank must prove that it possesses capital of at least:

- D 10,000,000 in the case of deposit and investment banks, to be paid up in accordance with the provisions of the Commercial Code;
- D 3,000,000 in the case of merchant banks, to be paid up when the corporation is established.

Any branch or agency of a foreign bank authorized to conduct business in Tunisia must be able to prove, when setting up its offices in Tunisia, that it has a minimum endowment of the same amount that can be paid up in like manner.

In addition, any bank and any branch or agency of a foreign bank must be able to prove at any time that its assets actually exceed its liabilities to third parties by an amount at least equal to the minimum capital or the minimum endowment required. (18)

ARTICLE 14. (19)

ARTICLE 15. The following shall be subject to the authorization mentioned in Article 2 above:

- any merger of banks;
- any acquisition of a portion of the capital of a bank and likely to lead to majority ownership therein; and
- any act that may result in the sale of a major portion of the assets of a bank and likely to lead to a change in its financial structure or business orientation. (20)

Evaluations made by the banks concerned to determine the size of a merged institution's capital shall be subject to the agreement of the Central Bank of Tunisia, in pursuance of the provisions of Article 13 of this law.

Any capital decrease shall be subject to authorization, in accordance with the procedure described in Articles 7 and 8 of this law.

No branch or agency may be opened or closed in Tunisia or abroad without the prior joint authorization of the Ministry of Finance and the Central Bank of Tunisia. (21)

The authorization of the Central Bank alone shall be required for the periodic opening and closing of offices.

ARTICLE 16 (new). A deposit bank must not allocate more than 10 percent of its equity capital to equity investment in any one enterprise; nor may it hold more than 30 percent of the capital of any one enterprise. Said percentages may be changed by decree.

However, by decision of the Central Bank of Tunisia, a deposit bank may be temporarily authorized to hold equity in an enterprise above the limit of 30 percent referred to in the preceding paragraph or, if necessary, to hold majority ownership in said enterprise. Such waivers shall be granted for a duration to be specified for each application. (22)

ARTICLE 17. (23)

ARTICLE 18. Banks shall be prohibited from routinely engaging in commercial and industrial business not related to banking.

ARTICLE 19 (new). The Central Bank of Tunisia shall establish the management rules and prudential standards that the banks are required to observe, and in particular those relating to:

- the use of equity capital;
- ratios between their equity capital and liabilities;
- ratios between their equity capital and credit to individual debtors;
- reserve requirements;
- liquidity ratios; and
- risks in general.

Without prejudice to the penalties described in Article 27 of this law, any violation of the provisions of this article and relating to the payment or collection of interest payable or receivable in excess of the limits set by the Central Bank of Tunisia, as well as any violations relating to the collection of commissions not mentioned in circulars issued by the Central Bank of Tunisia or collected at rates higher than those announced to the Central Bank of Tunisia, shall be sanctioned by a fine of up to five times the amount involved in the violation. Said fine shall be imposed by the Central Bank of Tunisia, after hearing the banking institution concerned, and shall be collected for the Treasury, following the procedure described in Article 27 below. (24)

ARTICLE 20. No person may simultaneously direct, administer, or commit:

- two banks;
- a bank and a financial institution;
- a bank and an insurance company.

A time limit of six months, counting from the publication of this law, shall be granted to interested parties so that they may conform to these provisions.

No person may direct, administer, manage, supervise, or commit a bank or even a bank agency, if he or she has been:

- convicted of forgery, theft, abuse of confidence, fraud, or an offense punishable under the laws on fraud, extortion of funds or valuables, purloining by a public depository, issuing bad checks, receiving objects obtained by means of such offenses, or violating the exchange control regulations;
- declared bankrupt in a final judgment;
- if he/she has been a director or manager of any company declared bankrupt or if he/she has been found guilty under Articles 288 and 289 of the Criminal Code concerning bankruptcy.

Infringements of the provisions of this article shall be punishable with the same penalties as for unauthorized use of the title "bank." (25)

ARTICLE 21. The chief executive officer [*président directeur général*] of a bank legally incorporated in Tunisia and governed by this law must necessarily be of Tunisian nationality.

However, whenever the charter of the bank in question provides for a dissociation of the function of chairman of the board from that of general manager [*directeur général*], one of these functions must necessarily be carried out by a person of Tunisian nationality.

The chairman of the board or the general manager, as applicable, must have the status of resident in Tunisia in the sense of the exchange control regulations.

Directors of offices in Tunisia of foreign banks shall be subject to the same requirement. However, in this specific instance, special waivers may be granted by decision of the Governor of the Central Bank of Tunisia, after consultation with the Secretary of State for Planning and National Economy. (26)

ARTICLE 22. Staff members of a bank may not, whatever their functions in the establishment.

- occupy a paid position outside the bank or engage in any paid activity without prior permission from their employer. However, this provision shall not apply to the production of scientific, literary, or artistic works.
- carry out simultaneously, without the permission of their employer and the approval of the Central Bank of Tunisia, the functions of board member, manager, or director of a commercial or industrial enterprise.

The approval of the bank's board of directors shall also be necessary when the holding of more than one position at a time is requested for the chief executive officer.

In their dealings with their directors, banks shall be governed by the rules of commercial law concerning the relations between board members and the companies they direct.

ARTICLE 23 (new). The Central Bank of Tunisia shall carry out off-site and on-site audits of the banks.

For this purpose, banks incorporated under Tunisian law and the branches and agencies of foreign banks must:

- comply with the accounting standards and principles established by the Central Bank of Tunisia;
- close their financial year on December 31 of each year and within six months draw up a balance sheet, an operating account, and a profit and loss account, which must be submitted to the general meeting of shareholders;
- in the course of the year, prepare accounting statements with a frequency and in a standard form established by the Central Bank of Tunisia and publish their balance sheets and their profit and loss accounts every year in the *Journal Officiel* of the Tunisian Republic in accordance with a standard format established by the Central Bank of Tunisia;
- establish a permanent internal audit office;
- submit to external audits at the request of the Central Bank of Tunisia;
- provide the Central Bank of Tunisia with all documents, information, clarifications, and evidence necessary for reviews of their statements, allowing for verification of their correct implementation of the regulations issued as regards exchange control and the supervision of banks and credit.

Any concealment of information or deliberate submission of inaccurate information shall be punishable by a fine at the rate established in Article 27 below.

Any delay in furnishing the documents, information, clarifications, or evidence referred to in this article shall, once reported by staff of the Central Bank of Tunisia, be punishable by a fine at the rate of D 100 per day of delay, to be collected under the terms established in Article 27 below.

The results of on-site audits shall be forwarded to the chairman of the board of directors of the bank or to the representative in Tunisia of the branch or agency of the foreign bank subject to the audit. The latter shall transmit it without delay to members of the board of directors.

On-site audits may be extended to include the subsidiaries of a bank, legal entities under their direct or indirect control, and subsidiaries of said legal entities. (27)

ARTICLE 23 bis. The annual accounts of banks incorporated under Tunisian law and of the branches or agencies of foreign banks must be certified by an auditor registered with the Association of Accountants of Tunisia.

Notwithstanding their legal obligations, bank auditors shall be required to:

- (1) inform the Central Bank of Tunisia immediately of any fact likely to jeopardize the interests of the bank or its depositors;
- (2) forward to the Central Bank of Tunisia, within six months of the end of each financial year, a report on the audits they have performed. Said report shall be drawn up in circumstances and following procedures established by the Central Bank of Tunisia;
- (3) send the Central Bank of Tunisia a copy of their report prepared for the general meeting and for any organs of the bank that they audit.

Auditors failing to observe the obligations incumbent on them as set forth in paragraphs (1) and (2) above may be prohibited by the Central Bank of Tunisia from exercising their functions at banks, temporarily for up to three years, or permanently.

Decisions involving permanent prohibition may be appealed only before the banking commission mentioned in Article 27 below.

Auditors shall file their appeals before the banking commission within 20 days of the date on which they are notified of a sanction against them. (28)

ARTICLE 24. Bankers shall be prohibited from divulging secrets conveyed to them by their customers or learned in their professional capacity, except in such cases as are permitted by law, and subject to the penalties prescribed in Article 254 of the Criminal Code.

ARTICLE 25. (29)

ARTICLE 26. Banks shall be required to establish a professional association, whose by-laws must be approved in advance by the Secretariat of State for Planning and National Economy and the Central Bank of Tunisia and which shall serve as an intermediary between its members, on the one hand, and the public authorities and the Central Bank of Tunisia, on the other hand, in all matters of concern to the banking profession as a whole.

ARTICLE 26 bis. Whenever the position of a bank so warrants, the Governor of the Central Bank shall call on the stockholders of said bank to provide it with any support necessary.

The Governor of the Central Bank of Tunisia may also organize financing for all the banks with a view to taking measures necessary for the protection of the interests of depositors and third parties, the proper functioning of the banking system, and the preservation of the reputation of the local market. (30)

ARTICLE 26 ter. When a bank has failed to comply with the rules of good professional conduct, the Central Bank of Tunisia may, after allowing members of its board of directors, managers, or trustees to present their explanations, issue a warning to said bank.

When the situation of a bank so warrants, the Central Bank of Tunisia may call upon the members of its board of directors, managers, or trustees to:

- increase the capital;
- not distribute dividends;
- constitute provisions.

The Central Bank of Tunisia may appoint a receiver, to whom shall be transferred the powers necessary for managing a bank and who may declare a suspension of payments.

Such an appointment shall be made either at the request of the managers when they feel that they can no longer properly exercise their functions, or at the initiative of the Central Bank of Tunisia when the bank can no longer be managed regularly or when one of the fines mentioned in the first and second paragraphs of Article 28 bis below has been imposed on the bank in question. (31)

ARTICLE 27 (new). Subject to the provisions of the last paragraph of Article 19, any violations of the banking legislation or regulations shall give rise to legal proceedings at the initiative of the Governor of the Central Bank of Tunisia, and banks found guilty of such violations shall be subject to the following disciplinary measures:

1. a warning;
2. a reprimand;
3. a fine of up to five times the amount of the violation, to be collected for the Treasury by means of a statement of assessment [*état de liquidation*] issued and made enforceable by the Governor of the Central Bank of Tunisia or the Deputy Governor and enforced in accordance with the provisions of Law 73-81 of December 31, 1973 promulgating the Government Accounting Code.
4. suspension of all financing from the Central Bank of Tunisia;
5. prohibition from carrying out certain operations and any other restrictions on the conduct of business;
6. withdrawal of the status of authorized intermediary;
7. withdrawal of the license mentioned in Article 2 of this law.

The penalties mentioned in paragraphs 1 to 4 shall be imposed by the Governor of the Central Bank of Tunisia after hearing the banking institution concerned.

The penalties mentioned in paragraphs 5 to 7 shall be imposed by a special commission, called the banking commission and consisting of:

- a magistrate carrying out at least the functions of presiding judge of an appeals court chamber: chairman;
- a representative of the Ministry of Finance with the rank of at least director-general: member;
- a representative of the Central Bank of Tunisia with the rank of at least director-general: member
- and the secretary-general of the Professional Association of Banks of Tunisia: member.

The banking commission shall hold its meetings at the head office of the Central Bank of Tunisia, which shall provide it with secretariat services.

Members of the banking commission shall be prohibited from divulging secrets learned in their professional capacity, except in such cases as are permitted by law, and subject to the penalties prescribed in Article 254 of the Criminal Code.

ARTICLE 28 (new). Whenever the banking commission considers it appropriate to impose penalties such as mentioned in Article 27 above, it shall inform the bank concerned, by registered letter with acknowledgment of receipt addressed to the legal representative of the bank, of the facts held against it.

It shall also inform the legal representative of the bank of the accessibility, at the offices of the commission, of documentation providing evidence of the violations reported.

The representative of the bank must send his/her remarks to the chairman of the banking commission within one week [*huit jours*] of receipt of said letter.

The representative of the bank shall be invited, by registered letter with acknowledgment of receipt, to be heard by the banking commission. Said letter must reach the bank's representative at least one week [*huit jours*] prior to the date of the meeting of the commission. The bank's representative may be assisted by an attorney.

The decisions of the banking commission shall be based on findings. They shall be taken by majority vote; in the event of a tie, the chairman shall have the casting vote.

Decisions of the banking commission may be appealed before the Administrative Tribunal. (33)

ARTICLE 28 bis. Any members of the board of directors, managers, or trustees found guilty of violations of the banking legislation or regulations or who have agreed to or participated in such violations shall be subject to the following penalties:

- temporary suspension of any function carried out by the person(s) mentioned above, with or without the appointment of a receiver;

- cessation of the functions of the person(s), with or without the nomination of a receiver;
- a fine of up to five times the amount involved in the violation, collected for the Treasury, in the same circumstances as mentioned in Article 27 above.

Said violations shall be the subject of legal proceedings at the initiative of the Governor of the Central Bank of Tunisia, and the applicable penalties shall be imposed by the banking commission mentioned in Article 27 above, on the same terms and in the same forms as those mentioned in respect of proceedings and the sanctions in respect of violations committed by banks. (34)

ARTICLE 29 (new). Notwithstanding the disciplinary sanctions, fines, or penalties imposed in circumstances as defined in this law, violations against the banking legislation or regulations shall render the guilty parties liable to prosecution pursuant to the laws in force. (35)

This Law shall be published in the Official Gazette of the Republic of Tunisia and enforced as the law of the land.

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| (1) | As amended by Law 75-12 of February 26, 1975 (<i>JORT</i> , 2/28/75) |
| (2) | Added by Law 94-25 of February 7, 1994 (<i>JORT</i> , 2/15/94) |
| (3) and (4) | As amended by Law 94-25 |
| (5) | As amended by Law 94-25 |
| (6) | Added by Law 94-25 |
| (7) | As amended by Law 75-12 |
| (8) and (9) | As amended by Law 75-12 |
| (10) | Added by Law 94-25 |
| (11) and (12) | Added by Law 94-25 |
| (13) and (15) | As amended by Law 75-12 |
| (14) | As amended by Law 94-25 |
| (16) | As amended by Law 94-25 |
| (17) | Repealed by Law 75-12 |
| (18) and (20) | As amended by Law 94-25 |
| (19) | Repealed by Law 94-25 |
| (21) | As amended by Law 75-12 |
| (22) | As amended by Law 94-25 |
| (23) | Repealed by Law 94-25 |
| (24) | As amended by Law 94-25 |
| (25) | As amended by Law 78-59 of 12/28/78 (<i>JORT</i> of 12/29/78) |
| (26) | As amended by Law 85-83 of 8/11/85 (<i>JORT</i> of 8/16-20/85) |
| (27) | As amended by Law 94-25 |
| (28) and (30) | Added by Law 94-25 |
| (29) | Repealed by Law 94-25 |
| (31) | Added by Law 94-25 |
| (32) | As amended by Law 94-25 |

(33) and (35) As amended by Law 94-25
(34) Added by Law 94-25