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Benin

BANKING & FINANCE

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This country-specific Q&A provides an overview of banking & finance laws and regulations applicable in Benin.

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BENIN BANKING & FINANCE



1. What are the national authorities for banking regulation, supervision and resolution in your jurisdiction?

Benin banking system is under the authority of the following regional and national bodies:

- the Conference of Heads of State of the Union which defines the strategic orientations of the Union's institutions;
- the Council of Ministers of the West African Economic and Monetary Union which sets the legal and regulatory framework applicable to credit activity. It is currently chaired by the Minister of Economy and Finance of Benin;
- the WAMU Banking Commission, responsible of banks and financial institutions control. The Banking Commission has two decision-making bodies:
 - a) Supervisory Board;
 - b) Resolution Board.
- the Central Bank of West African States (BCEAO), the issuing institute common to the eight countries Member of the West African Monetary Union (WAMU) in charge of centralising the Union's foreign exchange reserves, managing the monetary policy of the Member of the Union, keeping the accounts of the Treasuries of the countries of the Union, and defining the banking law applicable to banks and financial institutions;
- The Ministry of Economy and Finance
- The courts
- CENTIF : National Financial Information Processing Unit (Cellule Nationale de Traitement des Informations Financières)
- the Personal Data Protection Authority (APDP)

2. Which type of activities trigger the requirement of a banking licence?

In accordance with Article 2 of the framework law on

banking regulation in the WAMU area, the following are considered as credit institutions:

- legal entities which carry out, as a regular profession, banking operations such as: receiving funds from the public, credit operations, as well as providing customers with access to and managing means of payment, currency buying and selling transactions, transfers within and outside the union.

For this purpose, credit institutions are licensed as banks or financial institutions of a banking nature.

3. Does your regulatory regime know different licenses for different banking services?

Our regulatory regime first requires the bank to obtain a banking license at the time of its establishment.

This license allows banks to provide banking services.

4. Does a banking license automatically permit certain other activities, e.g., broker dealer activities, payment services, issuance of e-money?

Banking license permit payment services.

- Article 9 of banking law states: subject, where applicable, to compliance with authorisations and other legislative provisions and specific regulations, relating to the exercise of certain activities or professions, credit institutions are also entitled to carry out the following operations, considered as related to their activities :

1. gold and precious metal transactions;
2. manual or cashless foreign exchange transactions ;

3. investment transactions, i.e. the acquisition of holdings in undertakings existing or in formation and all acquisitions of securities issued by public or private persons ;
 4. advice and assistance operations in the field of financial management, management of assets, management and placement of securities and financial products, financial engineering operations and, in general, all operations designed to facilitate the creation and development of businesses, including the search for funding and partners;
 5. operating leases of movable or immovable property by the establishments; 6. leasing of movable or immovable property by the establishments financial institutions of a banking nature, authorised to carry out transactions leasing ;
 6. intermediation operations as commission agents, brokers or otherwise in all or part of the banking operations and transactions referred to in this article.
- Electronic money activities are governed by Instruction n°008-05-2015 of May 21, 2015, governing the conditions and modalities for the exercise of electronic money issuers' activities in WAMU Member States.
 - Banks and payment financial institutions may issue electronic money, provided they inform the Central Bank at least two (2) months before launching their activities. Concerning other structures or institutions (non-bank actors or decentralised financial systems), the exercise of electronic money activity is subject to obtaining an authorisation or license issued by the BCEAO. The authorisation or license is issued on the basis of the examination of the file submitted by the applicant, in accordance with the provisions of Article 8 of the above-mentioned Instruction n°008-05-2015.

5. Is there a “sandbox” or “license light” for specific activities?

Not yet.

6. Are there specific restrictions with respect to the issuance or custody of crypto currencies, such as a regulatory or voluntary moratorium?

Crypto currencies are not yet regulated in our economic zone.

7. What is the general application process for bank licenses and what is the average timing?

- In accordance with the provisions of articles 13 to 16 of the framework law on banking regulation, the general application process is summarized as follows
1. Letter of request for approval accompanied by the required documents, addressed to the Minister in charge of Finance and filed with the National Directorate of BCEAO ;
 2. Examination of the file by the National Directorate of BCEAO and Notification to the promoters of any comments,
 3. Transmission of the file to the BCEAO headquarters;
 4. Examination of the file and possible comments from the BCEAO Headquarters;
 5. Transmission of the file by the BCEAO, with a reasoned opinion, to the Banking Commission;
 6. Examination of the file and possible comments of the Banking Commission;
 7. Transmission by the Banking Commission of the request for approval with its assent to the Minister of Economy and Finance;
 8. Decision of the Minister of Economy and Finance by a decree granting approval, notified to the applicant, the Banking Commission of WAMU and the National Directorate of BCEAO;
 9. The National Directorate informs the BCEAO Headquarters;
 10. Registration on the list of Banks or Financial Institutions by the Banking Commission;
- For this application process, the average timing is 6 months.

8. Is mere cross-border activity permissible? If yes, what are the requirements?

Cross-border activities such as transfers, letters of credit, documentary credits are allowed.

There are procedural requirements for each of these activities to prevent money laundering and currency leakage.

For instance, any money transfer operation outside WAMU involving an amount exceeding 500,000 F CFA requires the prior authorization of the Ministry of Finance.

9. What legal entities can operate as banks? What legal forms are generally used to operate as banks?

The banks in our jurisdiction are constituted as Joint Stock Companies.

10. What are the organizational requirements for banks, including with respect to corporate governance?

There are no special rules on the internal organization of banks.

Indeed, each particular case corresponds to a mode of organization, linked in particular to size, to the number of employees, the geographical location and the activities of the establishment.

However, it is good practice for the organization of services to be based on at least a clear organization chart, a high-performance information system and appropriate accounting.

In accordance with Circulars No 01-02-03-04-05-2017/CB/C relating to the governance of credit institutions and financial companies in WAMU, the governance framework must:

- take into account the security of information systems, the coverage of all risks incurred by the institution and possible conflicts of interest;
- define the roles and obligations of stakeholders;
- meet the needs of the institution as a whole and of each of its organisational and operational units;
- incorporate mechanisms to maintain and/or restore its operations in the event of discontinuity; and
- reflect, over time, the changes resulting from the characteristics of the institution and its external environment.

11. Do any restrictions on remuneration policies apply?

Each bank bases its remuneration policy on the collective agreement which set the minimum amount to be paid as salary and different types of bonus.

In general, banks employees are paid according to classification, based on coefficients. These coefficients are expressed in points. The value of the point is set by a

joint committee of representatives of the employers who are members of the Professional Association of Banks and Financial Institutions (APBEF-BENIN) and the representatives of the employees' unions who are signatories to this agreement.

12. Has your jurisdiction implemented the Basel III framework with respect to regulatory capital? Are there any major deviations, e.g., with respect to certain categories of banks?

Basel II and III rules new rules came into force on 1 January 2018 in Benin and all WAMU member countries with transitional provisions up to o 2023 due to COVID-19.

The new prudential framework obliges banks to set aside sufficient capital to cover unexpected losses and remain solvent in the event of a crisis. The basic principle is that the amount of capital required depends on the risk associated with each bank's assets.

The regulatory capital requirements consist of:

- minimum capital requirements;
- the conservation buffer;
- the countercyclical buffer; and
- the systemic buffer.

13. Are there any requirements with respect to the leverage ratio?

Yes. the leverage ratio is intended to control the growth of an institution's balance sheet in relation to its equity capital and to limit the accumulation of leverage in the banking sector. It is measured by T1 core capital in relation to total exposure (balance sheet and off-balance sheet) with a minimum standard set at 3%.

14. What liquidity requirements apply? Has your jurisdiction implemented the Basel III liquidity requirements, including regarding LCR and NSFR?

Financial institutions must hold sufficient liquid assets to cover net cash outflows over a period of 30 days in a crisis situation.

The institution must meet the requirements of both liquidity standards:

- the Short-Term Liquidity Ratio ((RLCT)); and
- the Structural Long-Term Liquidity Ratio

(RLLT).

15. Do banks have to publish their financial statements? Is there interim reporting and, if so, in which intervals?

Banks are required to publish financial statements in the Official Gazette every six months. These publications must be made on 30 June and 31 December of each year. To this end, banks close their accounts twice a year. In practice, the BCEAO decided to proceed on behalf of banks since the year 2020. Of course, the cost of the publication is paid by the banks.

16. Does consolidated supervision of a bank exist in your jurisdiction? If so, what are the consequences?

Article 3 of Decision n°014/24/06/2016/CM/UMOA relating to the supervision on a consolidated basis of parent company credit institutions and financial companies in WAMU.

The following entities are subject to supervision on a consolidated basis:

- credit institutions (banks) parent companies owning at least one subsidiary which is another credit institution within WAMU;
- financial holding companies and intermediary financial holding companies located in WAMU;
- another intermediary entity of a Group, in particular when circumstances or changes in the structure of the Group justify it,

Article 4 specifies that the scope of prudential consolidation is composed of all financial undertakings over which the parent company directly or indirectly exercises exclusive, joint or significant influence, in particular regardless of their legal form or the country in which they are established or in which their activities are carried out.

The parent must therefore file consolidated financial statements as well as the various reports, in particular the report on internal control, report on the risks of non-compliance...etc.

17. What reporting and/or approval requirements apply to the acquisition of shareholdings in, or control of, banks?

Are subject to the MEF authorization, any acquisition or transfer of shareholding which would have the effect of increasing the shareholding of the same person, directly or through an intermediary, or of the same group of persons acting in concert, first beyond the blocking minority, then beyond the majority of voting rights in the credit institution, or to lower this shareholding below these thresholds. The blocking minority is defined as the number of votes that may prevent an amendment to the articles of association of the bank.

18. Does your regulatory regime impose conditions for eligible owners of banks (e.g., with respect to major participations)?

Yes. Article 40 of the banking law in force states that any transfer by a bank or credit institution of more than twenty percent (20%) of its assets corresponding to its operations in the Republic of Benin, is subject to the prior authorization of the Minister of Finance.

19. Are there specific restrictions on foreign shareholdings in banks?

Yes. In order to ensure sound and solid financial intermediation, the authorities attach great importance to the quality of the shareholding of banks and financial institutions.

Already, during the examination of the authorization files of credit institutions, particular attention is paid to the quality and reputation of the promoters and, where applicable, the reference shareholder.

During the life of the institution, transactions having a significant impact on the configuration of the shareholding structure are subject to the prior authorization of the Minister of Finance, after approval by the Banking Commission;

-Banks and financial institutions having their registered office abroad are required to inform the Banking Commission of any operation referred to in the previous point and concerning them;

The application file for authorization to acquire or sell shares must be examined by the Minister of Finance, after receiving the approval of the Banking Commission.

20. Is there a special regime for domestic and/or globally systemically important banks?

Yes. article 4 of Circular N°01-2017/CB/C relating to the

governance of credit establishments in the WAMU provides that a banking institution of systemic regional or national importance must have a governance framework appropriate to its size and the consequences of its possible failure on the stability of the financial system of WAMU or the state in which it is located.

21. What are the sanctions the regulator(s) can order in the case of a violation of banking regulations?

Sanctions the regulators can order are: disciplinary sanctions such as withdrawal of license; lawsuit and pecuniary sanctions pronounced by the banking commission.

In accordance with Instruction n°006-05-2018 of May 16, 2018 setting the terms and conditions for the application of financial penalties imposed by the WAMU Banking Commission on WAMU credit institutions, the classification of violations of banking regulations and Credit Information Bureaus depends, in particular, on their nature and degree of seriousness. These violations are gathered into three categories according to the scale of the underlying risks. The amount of the pecuniary penalties referred to in article 1 above is, at most, equal to :

- three hundred million FCFA for banks ;
- ninety million FCFA for financial institutions of a banking nature. The sums corresponding to pecuniary sanctions shall be recovered by BCEAO.

At the expiry of the two-month period of appeal granted to the credit institution, the Bank.

The Central debits the credit institution's account in its books, subject to sufficient funds being set aside.

22. What is the resolution regime for banks?

Decision No 010 of 29/09/2017/CM/UMOA and the statutes of the WAMU Deposit and Resolution Guarantee Fund, set the rules governing arrangements for the prevention and management of banking crises. Systemically important banks in WAMU are subject to the resolution regime.

- Principal Means of Resolving a Failing Bank

Preventive recovery plan

Banks subject to the resolution regime must draw up

their preventive recovery plans and have them validated by the Resolution Board.

- Conditions for entry into resolution and Resolution Measures

At the request of the Supervisory Board, the Resolution Board may decide to dissolve any subject bank deemed to be unviable and with no prospect of a return to viability. The Resolution Board may take all measures necessary for the accomplishment of its mission, in particular:

- require any reporting institution, its managers, corporate officers, statutory auditors or employees to provide all information necessary for the implementation of the resolution procedure;
- appointing a special director responsible for implementing the resolution measures and executing the decisions of the Resolution Authority. Any stipulation providing, within the framework of the contractual relations of the institution, that this appointment is considered as an event of default, is deemed to be unwritten;
- remove or replace any manager whose responsibility for the situation of the institution is established;
- to decide on the automatic transfer of all or part of one or more branches of activity of the establishment;
- to decide on the use of an intermediary institution charged with receiving, on a provisional basis, all or part of the assets, rights and obligations of the institution in resolution, with a view to a transfer under the conditions laid down by the Banking Commission;
- to transfer to an intermediary institution or any other structure, the shares or corporate units issued by the institution;
- involve the Deposit Guarantee and Resolution Fund, in accordance with the provisions in force;
- impose a reduction in capital, the cancellation of equity securities or liabilities or the conversion of liabilities;
- require the institution to issue new shares or corporate units or other equity instruments, including preference shares and conditional convertible securities;
- impose, notwithstanding any provision or stipulation to the contrary, a temporary ban on the payment of all or part of the debts arising prior to the date of entry into the

resolution;

- limit or temporarily prohibit the exercise of certain transactions by the institution;
- limit or prohibit the distribution of dividends to shareholders or remuneration of shares to members of the institution;
- decide on the termination of agreements involving financial obligations for the institution or the offsetting of debts and claims relating to such agreements; and
- suspend the exercise of the right to invoke the forfeiture of the term as well as the rights of termination and set-off, provided for in bullet point 13 above, of all or part of a contract concluded with the institution.

The Chairman of the Banking Commission shall inform the Minister of the Economy and Finance of the implementation of the termination measures.

The contradictory procedure may be conducted, as a regularization, when the said measures are lifted, revised or confirmed.

Recapitalization, provisional administration as well as merger with another bank applied.

In the similar way, the Deposit Guarantee and Resolution Fund intervenes at the request of the Resolution Board to finance resolution actions.

23. How are client's assets and cash deposits protected?

Banks adhere to the deposit guarantee scheme and are bound by an obligation to provide information to customers.

24. Does your jurisdiction know a bail-in tool in bank resolution and which liabilities are covered?

Yes: The Deposit Guarantee and Resolution Fund in WAMU

The Fund's mission is to guarantee the deposits of clients of Credit Institutions (banks) and Decentralized Financial Services approved in WAMU and to participate in the resolution of institutions subject to this regime. In this respect, it is notably in charge of compensating depositors (small savers), in case of unavailability of their assets, within the limit of a ceiling defined by the WAMU Council of Ministers; to finance resolution actions at the request of the resolution college of the Banking Commission.

The annual contribution rate is set at 0.06% of eligible deposits for banks. The compensation ceiling for holders of eligible deposits is CFA1.4 million per holder for all deposits held in the books of a bank.

25. Is there a requirement for banks to hold gone concern capital ("TLAC")?

The minimum share capital applicable to banks of the West African Monetary Union (WAMU) is CFA 10 billion. The terms TLAC is not used.

26. In your view, what are the recent trends in bank regulation in your jurisdiction?

Recent trends in banking regulation relate to the implementation of Basel II and Basel III standards. Several circulars and instructions have been issued by the Central Bank and the Banking Commission in this regard.

27. What do you believe to be the biggest threat to the success of the financial sector in your jurisdiction?

The greatest threat is relative, from my point of view, to the difficulties of debt recovery. These difficulties are reflected in the lack of promptness, the complexity of the procedures and the delaying tactics of unscrupulous debtors when creditors find themselves obliged to take legal action to enforce recovery.

We can also mention the threat relative to GAFAM and BATX.

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