

LAW L/94/018/CTRN OF JUNE 1, 1994 ON THE CHARTER OF THE CENTRAL BANK OF THE REPUBLIC OF GUINEA

[Translation from French]

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Having regard to the Basic Law and Articles 93 and 94 thereof, in particular;

The Transitional Council for National Recovery,

Having deliberated, adopts;

The President of the Republic promulgates the law set forth below:

Article 1.

This law shall establish the legal status of the Central Bank of the Republic of Guinea (BCRG), hereinafter ~~A~~the Central Bank, \cong determine the scope of its operations, and establish the manner of its administration and supervision.

Chapter 1. General Provisions

Article 2.

Placed under the supreme authority of the President of the Republic, the Central Bank shall be a legal entity with financial and administrative autonomy. It shall receive from the State the general mandate of attending to the creation, circulation, and defense of the value of the national currency.

Article 3.

Unless otherwise provided in this law, the Central Bank shall be governed by the Code of Economic Activities in its relations with other parties.

The staff of the Central Bank shall be governed by the provisions of the Labor Code, supplemented as necessary by a corporate agreement establishing the by-laws governing such employees.

Government accounting standards shall not apply to it. Unless otherwise provided for in this law, its accounts and balance sheet shall be kept and prepared in accordance with commercial laws and customs and with the accounting standards appropriate for banks of issue.

The Central Bank shall not be subject to profits tax. Services provided by the Central Bank shall not be subject to turnover tax.

Article 4.

The Central Bank shall be authorized to use the seal of the Republic incorporating its title.

Article 5.

The principal office of the Central Bank shall be in Conakry. For reasons of public interest, this office may be moved to any other place in the Republic. The Central Bank may open branches and agencies anywhere in the Republic and have correspondents in any foreign country in which it deems this necessary.

Article 6.

The capital of the Central Bank shall be five billion Guinean francs.

It shall be fully subscribed by the State. By decision of the Board of Directors of the Central Bank, this capital may be increased by transfers from reserves or by other means.

Article 7.

The net profit of the Central Bank shall be distributed as follows:

Legal reserve fund Twenty percent
Special reserve fund Fifteen percent
Optional reserve fund Fifteen percent
State budget Fifty percent

Any deficit for the fiscal year shall be covered by drawing from the optional reserve fund and, should this prove insufficient, by drawing from the special reserve fund and, if necessary, the legal reserve fund. If the legal reserve fund proves insufficient, the State shall make a capital contribution in the form of Treasury or any other instruments, in an amount equivalent to the shortfall, within sixty days from the publication of the accounts of the Central Bank.

In exceptional circumstances, the Board of Directors may decide by a two-thirds majority to distribute the net profits of the Central Bank differently, on condition that it restore the situation by appropriate drawings on net profits in future financial years.

Chapter 2. Purpose and Functions

Article 8.

The mandate of the Central Bank, as established in Article 2 above, shall include:

- the sole right to issue currency and all means of manipulating the counterparts of the money supply, especially foreign exchange reserves and the exchange market; the distribution of credit to the economy, and the constitution of advances to the State.
- the conduct of these various activities in accordance with the State's economic and financial policy, while maintaining price stability.
- the floating of bond loans or of any other kind of negotiable instrument.

Article 9.

The Central Bank shall hold and manage official foreign exchange reserves on behalf of the State. In this capacity, it shall prepare estimates and reports on national foreign exchange revenue and expenditure as well as on the balance of payments.

It shall organize the operations of the exchange market and regularize relationships between the national currency and foreign currencies by all appropriate means. It shall be consulted in advance regarding any change in the exchange regime. It shall be responsible for the enforcement of the regime in force by appropriate supervision of the approved intermediaries

It shall participate in the drafting and signing of international monetary agreements.

Article 10.

The Central Bank may avail itself of all means of intervening indirectly to adjust bank liquidity, in particular, by establishing the terms for the refinancing of credit institutions, by imposing reserve requirements, by the open market mechanism and, where appropriate, by issuing its own instruments. It may, to the extent necessary, intervene directly to influence the volume and/or cost of bank credit for a given period of time.

Article 11.

The Central Bank shall provide protection for depositors and of savings in general. In this capacity:

- it shall exercise surveillance over credit institutions, insurance companies, and financial markets; and
- it shall be responsible for promoting the proper functioning of money market and financial market operations.

Article 12.

The Central Bank shall be empowered:

- to have credit institutions and insurance companies provide it with any documents or information necessary for the exercise of its functions; and
- to deal directly with enterprises and professional groupings.

If false information is given or the regulations infringed, it may impose such penalties as are provided by law on the establishments and institutions concerned.

Article 13.

The Central Bank shall be the agency of the Treasury for its banking and credit operations, both in the Republic of Guinea and abroad.

To that end, the Central Bank shall be responsible for the floating, conversion, and repayment of loans floated or guaranteed by the State. It shall assist the Minister of Finance in negotiating foreign loans and borrowing arranged either for the State or with its guarantee. Lastly, it may grant advances to the State under the terms of Article 28 below.

Article 14.

The Central Bank shall assist the Government in its relations with international monetary and financial institutions. For such purposes, the Government may, to the extent deemed necessary, have itself represented by the Governor of the Central Bank.

Article 15.

The Central Bank shall be the Government's financial advisor. It shall be consulted on all questions that might affect the exercise of its prerogatives and functions as defined in this law. For its part, the Central Bank may submit to the Government any opinions or recommendations it considers advisable in the monetary and financial areas.

Chapter 3. Central Bank Operations

Section 1. Issue, circulation, and withdrawal of banknotes and coin

Article 16.

Banknotes and coins issued by the Central Bank shall be the sole legal currency and sole legal tender throughout the territory of the Republic.

Article 17.

Banknotes issued by the Central Bank shall be legal tender for all payments.

Coins issued by the Central Bank shall be legal tender to the extent established by decree. They shall, however, be accepted without limitation by the Central Bank, commercial banks, and Treasury bookkeepers.

Article 18.

No stop-payment order may be lodged with or accepted by the Central Bank in connection with the loss, theft, or destruction of banknotes and coin issued by it. A mutilated or worn banknote shall be replaced if all of the distinguishing marks and features are intact. In other cases, full or partial payment shall be made at the discretion of the Central Bank.

If one or more categories of banknotes or coin are withdrawn from circulation, banknotes and coins that have not been presented at the Central Bank by the established deadlines shall cease to be legal tender.

Article 19.

The Central Bank shall select

- a. The characteristics of banknotes, including their denominations, formats, illustrations, colors, and all other ;
- b. All characteristics of coins, including their denominations, types, nature, weights, dimensions, and tolerances;
- c. The placement in circulation of any new type of banknote or coin;
- d. The withdrawal by means of exchange of a circulating type of banknote or coin, as well as the deadline and modalities for its exchange. The printing of banknotes and striking of coins shall be done at the behest of the Central Bank.

*Section 2. Operations offsetting currency issues***Article 20.**

The currency issuing operations of the Central Bank shall include:

- a. Gold and foreign currency transactions;
- b. Credit transactions;
- c. Financial assistance to the State

Paragraph 1. Precious metal and foreign exchange transactions**Article 21.**

The Central Bank may perform all precious metal transactions, including purchases, sales, and swaps, on both its own and third parties= behalf.

Article 22.

The Central Bank may also perform any foreign exchange transactions:

- a. Negotiation of foreign banknotes and, in general, of any payment instrument denominated in a foreign currency and used in international transfers;
- b. Foreign-currency lending or borrowing, demand and time deposits, and deposits requiring notice of any transaction concerning them;
- c. Negotiation of commercial paper or securities denominated in foreign currencies.

Article 23.

Any gains or losses on foreign exchange holdings and instruments, resulting from international exchange rate fluctuations, shall be recorded in a special revaluation account.

The allocation of the balance of this special revaluation account at the end of the fiscal year shall be done as follows:

- if the balance is negative, it shall be offset by the issuance of government securities on terms to be decided jointly by the Central Bank and the Minister of Finance;
- if the balance is positive, the surplus shall, in the first place, be used to buy back government securities transferred to the Central Bank on the terms referred to in the preceding paragraph. Any sum left over, up to the equivalent of five (5) percent of currency in circulation, shall be kept in the special revaluation account;
- any surplus greater than this amount shall revert to the Treasury.

Paragraph 2. Credit transactions.

Article 24.

The Central Bank may discount, buy, agree to repurchase or reverse repurchase, or pledge as collateral any of the following:

- a. Claims on the Government, enterprises, or individuals, on such terms as it deems necessary to achieve monetary policy objectives;
- b. Government or government-backed securities;
- c. Foreign currency or foreign currency claims;
- d. Gold;
- e. Any other acceptable real asset.

Article 25.

The Treasury may not present its own instruments to the Central Bank for discounting. Similarly, government units may not transfer their debt instruments to the Central Bank.

Article 26.

Pursuant to the provisions of Article 10 above, and subject to the provisions of Article 28 below regarding financial assistance granted to the State, the Central Bank may undertake

credit operations on behalf of credit institutions only, to the exclusion of all other third parties.

Article 27.

The Central Bank shall issue regulations establishing the following:

- The terms and conditions that must be met by commercial paper and loans and advances;
- Securities that may be accepted as collateral.

Paragraph 3. Financial assistance to the State

Article 28.

The Central Bank may grant advances on assistance of all kinds to the State for up to twenty (20) percent of budgetary receipts for the preceding fiscal year.

The terms and modalities on which the State may obtain the assistance of the Central Bank described in the preceding paragraph shall be established by agreements between the Minister of Finance and the Governor of the Central Bank, who must be specifically authorized in each instance by the Board of Directors.

Section 3. Other Central Bank operations

Paragraph 1. Banking operations

Article 29.

Accounts may be held at the Central Bank by the following bodies: the Treasury, territorial governments, credit institutions, financial institutions and other approved intermediaries, foreign banks and central banks, international financial institutions, and international organizations, and, on conditions set by the Board of Directors, the members of the government, and other senior government officials, the agents of the Central Bank, and any other person in possession of a customer account at the time of promulgation of this Law.

Article 30.

The Central Bank shall take any necessary action to ensure that the payments system operates correctly. It shall create clearinghouses wherever it deems one necessary. It shall oversee their operations.

Paragraph 2. Operations on behalf of the Treasury

Article 31.

The Central Bank shall keep the current accounts of the Treasury on its books free of charge. The nature and modalities of the operations recorded in these accounts shall be defined by agreements between the Minister of Finance and the Governor of the Central Bank.

The Central Bank shall participate in the issuing of certain Treasury securities, as well as in the payment of any related interest due.

Article 32.

Under conditions defined by agreement between the Minister of Finance and the Governor of the Central Bank, the Central Bank may manage and redeem notes signed to the order of government accountants by taxpayers owing taxes, fees, and duties.

Article 33.

The Central Bank shall open special accounts in the name of the Treasury for the deposit of all national currency funds offsetting foreign currency loans or grants in connection with the importation of goods or services.

Article 34.

Through accounts on its books, the Central Bank shall provide for payments and fund transfers among credit institutions and between credit institutions and the Treasury.

Paragraph 3. Central Bank investments

Article 35.

The Central Bank may acquire such real property as is necessary for its operations and staff. It may sell and exchange the said property according to the requirements of its departments. It may also accept real or other property as collateral, in mortgage, or as dation in payment for the purpose of covering bad or delinquent debts. It may, for the same purpose, acquire real property or any other property awarded to it by foreclosure. Without prejudice to the provisions of the first paragraph of this article, real or other property thus acquired must be sold within a period of two years, unless the Board of Directors decides otherwise.

Article 36.

By decision of the Board of Directors, the Central Bank may subscribe to the capital of financial institutions of a regional or international character, with head offices located abroad. On the same conditions, it may subscribe to loans floated by these institutions.

Chapter 4. Administration - Management - Surveillance

Article 37.

The bodies responsible for management, administration, and surveillance of the Central Bank shall be:

- The Board of Directors (the Boar-
- The Governor
- The Vice-Governor
- The Board of Auditors.

Section 1. The Board of Directors

Article 38.

The Board of Directors of the Central Bank shall be chaired by the Governor. It shall consist of the following members:

- The Governor
- The Vice-Governor
- Eight (8) directors chosen from qualified persons in the economic, financial, monetary, or banking fields, or with considerable experience in the world of commerce, as follows:
 - *Two (- members appointed by the President of the Republic;
 - *Two (- members appointed by the Chairman of the National Assembly;
 - *Two (- members appointed by the Chairman of the Economic and Social Council; and
- Two (- members appointed by the Minister of Finance.

The Directors shall be appointed by decree on the recommendation of the appointing authority for a period of six years, subject to the provisions of this paragraph. They shall be renewed in rotation every three years. At the first meeting of the Board of Directors, lots shall be drawn to decide the length of the term of office of each Director. For this purpose, a ballot paper will be prepared in the name of each of the above-mentioned directors. A drawing of lots will take place for each category of director according to the authority making the appointment. The first four directors whose names are drawn will have a term of office of six years. The drawing will be recorded and the report will be signed by all members of the Board of Directors. After the drawing, the lengths of terms of office of all members of the Board of Directors concerned will be published in the Official Journal of the Republic of Guinea.

Arrangements shall be made to replace directors at least one week before the end of their terms of office. The term of office of a director shall be renewable.

If a director is unable to complete his term of office, he shall be immediately replaced. In such a case, the director appointed shall remain in office only for the unexpired portion of his predecessor's term of office.

Article 39.

Directors must be Guinean citizens, enjoy all of their civil and political rights, and not have been found guilty of a criminal offense or have lost their civil rights.

Directors' fees, the annual amount of which shall be set by the Board of Directors, may be paid to the Directors for attendance. Their allocation shall be decided by the Board.

Article 40.

The Board of Directors shall be chaired by the Governor or, in his absence, by the Vice-Governor. It shall be convened by the Governor or, in his absence, by the Vice-Governor in ordinary session once a month. Special meetings shall be convened by the Governor or at the request of at least two of the members.

Article 41.

The Board shall not meet unless the Governor is present or the Vice-Governor, in his stead, and the Directors have been properly summoned to attend.

A majority of the members must be present for the Board to be able to meet in session.

No absent member may be represented by another.

Decisions shall be adopted by majority of members present. In the event of a tie, the Chairman shall have the casting vote. Decisions shall be final.

Article 42.

The Board shall have the broadest powers: it shall, in particular:

- determine the Bank's general policy;
 - propose the appointment by decree of a Second Vice-Governor, should the need arise;
 - authorize the investment program;
 - approve the operating and investment budgets of the Bank and any changes during the fiscal year;
 - decide each year on the setting aside of a provision for the replenishment of bank notes and coins;
 - approve the Bank's balance sheet and the Governor's annual report on Bank operations;
 - decide on the incorporation of reserves into the capital of the Bank;
 - rule on the acquisition, sale, or exchange of real property;
 - rule on subscriptions to the capital of financial institutions in Article 36 above; consider the general framework of the Bank's staff management policy.
 - determine the characteristics of banknotes and coin and decide on their production, pursuant to the provisions of Article 19 above;
 - decide on the opening or closing of the Bank's branches and agencies.
- 1) be kept informed regularly about credit and foreign exchange operations carried out by the Bank.
- establish, pursuant to Article 28 above, the terms on which the State may obtain from the Bank advances and loans decided by agreements between the Minister of Finance and the Governor of the Bank.
 - consider all treaties and agreements concluded by the Bank with domestic or foreign partners of the Bank, as well as all questions of general Bank policy;
 - rule on the report and observations of the Board of Auditors.

Article 43.

The Board may delegate a portion of the powers granted by this law either to the Governor or to specialized committees formed by its members for the purpose of accomplishing specific tasks.

Article 44.

The Board of Directors shall draw up its own rules of procedure. Board meetings shall be recorded in minutes to be signed by the members of the Board and placed in the archives.

*Section 2: The Governor***Article 45.**

The Governor shall be appointed by decree of the President of the Republic for a renewable term of five years from among qualified persons in the economic, financial, monetary, or banking fields who are of unimpaired respectability and good moral character.

He shall take oath before the President of the Republic to govern the Central Bank well and faithfully in accordance with the law and this Charter.

He may be relieved of his duties during his term of office for physical incapacity or gross negligence, by decree.

Article 46.

The Governor's base salary shall be at least equal to that of the highest-ranking civil servant at the highest administrative level.

Both this salary and his housing allowance shall be paid from the budget of the Central Bank.

The Governor shall be granted an entertainment allowance by decision of the Board of Directors.

His salary and allowance shall be paid for two year after the Governor leaves office. During this time, he may exercise no professional activity in the industrial, commercial, or services sectors, except for any public office that may be conferred on him.

Article 47.

The Governor shall manage the Central Bank in accordance with the law and this Charter and in the context of the decisions of the Board of Directors. He shall have the following powers, inter alia:

- He shall convene and chair the Board of Directors of the Bank. He shall establish the agenda for the Board meetings;
- He shall see to the implementation of the Board's decisions;
- He shall see to the observance of the provisions of this law and of laws and regulations relating to the banking system, insurance companies, and financial institutions;

- He shall organize the supervision of the institutions referred to in the preceding subparagraph on behalf of the Central Bank;
- He shall represent the Bank before Government bodies, other central banks, and third parties with respect to all legal or commercial acts binding the Bank;
- He may take any legal action, measures of execution, or of conservation that he deems necessary;
- He shall be sole signer, on behalf of the Central Bank, of all treaties and agreements regarding the Bank's assets and liabilities;
- He shall also sign the annual reports on the fiscal year, the Bank's annual report, periodic financial statements, balance sheets, and income statements;
-)He shall organize currency issues;
- He shall recruit for and fill all Bank positions, following guidelines issued by the Board of Directors and in conformity with the staff rules;
- He shall organize the Bank's representation at the boards of other institutions, when such is necessary;
- L) He may delegate all or part of his power;
- At least once a year, he shall submit to the President of the Republic, with copies to the Chairman of the National Assembly, the Chairman of the Economic and Social Council, the President of the Supreme Court, and the Minister of Finance, a report on the Central Bank's activities, monetary policy, and the outlook;
- He shall attend hearings, at their request, by the competent authorities of the National Assembly and the Economic and Social Council, and may request to be heard by these same bodies.

Article 48

During his term of office, the Governor shall neither seek nor accept any participation or interest of any kind in any industrial, commercial, or service enterprise, nor render assistance thereto, with or without payment. He shall be bound by the duty of professional secrecy.

Section 3. The Vice-Governor

Article 49

The Governor shall be assisted by a Vice-Governor, appointed by decree for a renewable period of five years.

The Vice-Governor may be relieved of his duties during his term of office for physical incapacity or gross negligence, by decree.

The salary and entertainment allowance of the Vice-Governor shall be set by the Board of Directors.

If a second Vice-Governor is appointed by decree, he shall be subject to the same conditions as the first Vice-Governor.

Article 50.

The Vice-Governor shall be responsible for the day-to-day management of the Central Bank. He may also perform functions specially delegated to him by the Governor.

Section 4. The Board of Auditors

Article 51.

The Board of Auditors shall consist of two members appointed by the President of the Supreme Court for a renewable term of two (2) years, chosen from the members of the Accounting Division of the Supreme Court.

Article 52.

The Board of Auditors may, at the headquarters, branches, and agencies of the Central Bank, inspect the Bank's books, correspondence, reports, and, in general, all of the Central Bank's records. The Board of Auditors may seek the assistance of magistrates of the Accounting Division, provided the rule of confidentiality is upheld.

It may inspect and audit Central Bank services at least once a year in order to verify enforcement of the Bank's by-laws and regulations, as well as their compliance with accounting standards. It shall prepare its observations and an annual report on the Bank's compliance with accounting standards for submission to the Board of Directors.

Article 53.

The annual report and any observations of the Board of Auditors shall be submitted to the Governor for comment. The Governor shall have two weeks to inform the Board of Auditors of his opinion. The Board of Auditors shall have two weeks to revise its observations and its annual report in light of the comments received. After revision or confirmation, the observations and the annual report shall be submitted to the Board of Directors, which shall rule thereon, without appeal, in the presence of the Auditors.

Section 5. General administrative arrangements - Signature of documents - Conflict of interest

Article 54.

All documents binding on the Central Bank, except for those concerning day-to-day operations, together with all proxies and powers of attorney, shall be signed by the Governor, except in the case of special delegations of authority granted by the Governor.

Article 55.

Bank documents concerning day-to-day operations shall be signed by one or two persons acting jointly and specifically authorized for such purpose by the Governor.

Article 56.

The Board of Directors, the Governor, and the Vice-Governor shall not incur any personal obligation with respect to the liabilities of the Bank. They shall be responsible solely for the performance of their duties.

Article 57.

The Governor, the Vice-Governor and the directors of the Bank may not serve on the board of directors of any company, nor may they exercise any function in an industrial or commercial enterprise.

They may however serve on the boards of institutions or bodies managed or supervised by the State or in which the State has a financial interest, as well as international institutions.

Article 58.

The duties of Governor are incompatible with the exercise of government functions. However, the Governor, as the Government's financial advisor, may be authorized to attend meetings organized by or on behalf of the Government. Similarly, he may appear before specialized committees of the National Assembly or of the Economic and Social Council, regarding aspects of the policy followed by the Central Bank.

Article 59.

All persons who are involved in any capacity in the management, administration, supervision or operations of the Central Bank shall be bound by professional secrecy, unless they are required to testify in court or to meet obligations imposed by law.

Section 5. Annual reports

Article 60.

All of the Bank's accounts shall be closed on December 31 of each year.

The balance sheet, income statement, inventories of personal and real property, and all claims on the Bank, together with a summary of its outstanding claims shall be prepared and finalized as of that date.

Article 61.

Final approval of the balance sheet and income statement by the Board of Directors shall exonerate the Governor with respect to his management for the fiscal year in question.

Article 62.

After approval by the Board of Directors, the financial statements of the Bank and the Annual Report of the Central Bank shall be submitted to the President of the Republic on or before June 30 of each year, with copies to the Chairman of the National Assembly, the President of the Supreme Court, the Chairman of the Economic and Social Council, and the Minister of Finance.

The financial statements shall be published in the *Journal Officiel* of the Republic of Guinea.

Chapter 5: Miscellaneous Provisions

Article 63.

In any legal proceedings, the Central Bank shall be exempt from the requirement to furnish security and advance payment for costs in all cases in which the parties are required to do so by law.

Article 64.

Without prejudice to any present or future provisions more favorable to secured creditors, the Central Bank shall be authorized to take the following actions to realize the securities guaranteeing its claims:

- 1.If sums owed to it are not paid on time, two weeks after service on the debtor of a notarized demand for payment, and any appeal notwithstanding, the Bank may have the security sold up to full repayment of the amounts due for principal, interest, and charges, without prejudice to any other proceedings that might be brought against the debtor.
- 2.The sale shall be ordered by the President of the Court of First Instance simply at the request of the Bank and without need to make the debtor appear.
- 3.The Bank's claim for principal and incidental costs shall be paid directly, without further formalities, from the proceeds of the sale.

Article 65.

The State shall be responsible for the security and protection of all property and offices of the Central Bank. It shall provide the Bank free of charge with the escorts necessary for the safety of transfers of valuables.

Chapter 6. Final Provisions

Article 66.

The provisions of Ordinance 030/PRG/88 of June 15, 1988 on the basic principles of the organization, creation, and structure of government services shall not apply to the Central Bank.

Article 67.

This law, which shall enter into force on the date of its promulgation, shall abrogate all previous conflicting provisions, including Ordinances 235/PRG/85 and 236/PRG/85 of

September 28, 1985, and shall be recorded, published in the *Journal Officiel* of the Republic of Guinea, and implemented as the law of the land.

Conakry, June 1, 1994