

DIGITAL CREDIT PROVIDERS MADAGASCAR

1. **Purpose of the note**

The purpose of this note is twofold:

- to try and clarify if being a digital credit provider is a regulated activity in Madagascar; and
- to try and clarify if the activities of digital credit providers are subject to a control in Madagascar.

In this note, digital credit providers (the “**Digital Credit Providers**”) do not include banks nor e-money companies (like MVola). Digital Credit Providers should be understood as entities that are similar to Getcash Capital Limited in Kenya, which website aptly describes its activities as follows, and we quote: “*The lender (i.e., Getcash Capital Limited) is providing loans in a digital way through mobile phones. Money can be transferred through mobile wallets like MPesa and Airtel Money[1].*”

2. **Are the activities of Digital Credit Providers regulated?**

Local banking law

Under the 2020 banking law (the “**Banking Law**”), there are two types of entities that can provide banking services in Madagascar – i.e., credit establishments (“**Credit Establishments**”) and other providers of banking services (“**Other Providers**”).

Credit Establishments and Other Providers all need to hold a proper licence called “*agrément*” to be able to provide banking services.

Credit Establishments include banks, financial establishments (e.g., savings establishments) and microfinance institutions.

Other Providers include (i) e-money companies, (ii) exchange offices, and (iii) any other providers of banking services that carry out (for their own account) banking transactions, including lending activities. For (iii), the Banking Law adds that they need to be licensed (i.e., they need to hold an *agrément*) in accordance with the specific regulations that would be applicable to them. They also need to carry out their activities in accordance with said specific regulations.

[1] <https://www.loans.info.ke/2022/09/get-cash-capital-limited.html>

The Banking Law does not provide any further details regarding (iii) above (e.g., the Banking Law does not expressly specify whether Digital Credit Providers belong to this category (iii)). Additionally, we are not aware of any case-law that could clarify the situation.

With this said, and if we were to construe broadly category (iii) above, Digital Credit Providers may be considered as belonging to said category (iii). We are, however, not aware of any specific regulations on Digital Credit Providers (a) that relate to the *agrément* that they need to hold and (b) that relate to the rules that would be applicable to their activities (as underlined above). We are also not aware of any case law that could clarify the situation.

This means that it would be difficult to properly ascertain (i) if the activities of Digital Credit Providers are subject to an *agrément* and (ii) the rules (if any) applicable to Digital Credit Providers.

We believe that the central bank (the “**Central Bank**”) and/or the *Commission de Supervision Bancaire et Financière* (or “**CSBF**” – i.e., the entity in charge of overseeing the banking/financial sector) can provide more clarity on (i) and (ii) above. Contacting them would be advisable prior to providing any services of Digital Credit Providers in Madagascar.

Local e-money law

Under the 2017 law on electronic money and its 2017 implementing decree (together the “**E-Money Law**”), there are no express references to Digital Credit Providers.

Even if Digital Credit Providers were to be considered as e-money companies, they would not be able to provide any lending services. This is because under the E-Money Law, e-money companies are not allowed to lend money.

3. Are the activities of Digital Credit Providers controlled?

One of the CSBF’s attributions is to oversee the banking/financial sector. This means that it could be possible for the CSBF to control the activities of Digital Credit Providers.

It would, however, be difficult to ascertain the scope of the control that the CSBF could carry out without first obtaining a clarification on (i) whether the activities of Digital Credit Providers are subject to an *agrément* and (ii) the rules (if any) applicable to Digital Credit Providers (as explained in section 2 above). The type of control carried out by the CSBF could vary depending on the clarification obtained with respect to (i) and (ii).

For example, if the CSBF considers that Digital Credit Providers are e-money companies (and thus, are subject to an *agrément* issued by the CSBF), any merger transaction to which these Digital Credit Providers are parties to will be subject to the prior approval of the CSBF.

4. **Other considerations**

Assuming agreements entered into between Digital Credit Providers (based outside of Madagascar) and local customers are governed by a foreign law (i.e., a law other than Madagascar law), then local overriding rules will always apply to said agreements (e.g., local foreign exchange law, local tax law, etc.).

This means that it would be advisable for agreements entered into between Digital Credit Providers (based outside of Madagascar) and local customers to be properly reviewed by local counsel to ensure their compliance with local overriding rules. The application (or not) of overriding local rules will largely depend on the provisions set out in the agreements entered into between Digital Credit Providers (based outside of Madagascar) and local consumers.

5. **Conclusions**

There is no clarity under local law on whether the activities of Digital Credit Providers are regulated. Any entity that wishes to provide the services of Digital Credit Providers should try and obtain clarifications from the Central Bank and/or the CSBF on whether the activities of Digital Credit Providers are regulated, and if so, what would the applicable rules be.

Assuming the above clarifications are obtained, the activities of Digital Credit Providers could probably be subject to the control of the CSBF.

Local overriding rules are applicable to foreign law-governed agreements entered into between Digital Credit Providers (based outside of Madagascar) and local customers. It would be advisable to engage with local counsels to ensure that these agreements are compliant with local overriding rules.



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