Proclamation No. 626/2009

MICRO FINANCING BUSINESS PROCLAMATION

WHEREAS, micro-financing institutions play an important role in providing access to financial services to rural farmers and people engaged in other similar activities as well as micro and small-scale rural and urban entrepreneurs;

WHEREAS, it is necessary to have an appropriate legal framework that further enhances the development and soundness of the micro-financing business;

NOW, THEREFORE, in accordance with Article 55(1) of the Constitution of the Federal Democratic Republic of Ethiopia, it is hereby proclaimed as follows:

PART ONE
GENERAL

1. Short Title

This Proclamation may be cited as the “Micro-Financing Business Proclamation No. 626/2009”

2. Definitions

In this Proclamation, unless the context requires otherwise:
1/ “authorized institution” mean any financial institution licensed by National Bank to carry on micro-financing business;

2/ “chief executive officer” mean a person, by whatever title that person may be referred to, who is primarily responsible for the day-to-day management of the affairs of micro-financing institution;

3/ “company” mean a share company as defined under the Commercial Code of Ethiopia in which the capital is wholly owned by Ethiopian nationals or organizations wholly owned by Ethiopian nationals, and registered under the laws of, and having its head office in Ethiopia;

4/ “compulsory savings” mean mandatory deposits made for the purpose of enabling the individuals or groups making the savings to qualify to receive loans from an authorized institution and to serve as collateral against the loans so obtained;

5/ “director” mean any member of the board of directors of a micro-financing institution, by whatever title he may be referred to;

6/ “financial institution” mean insurance company, bank, micro-financing institution, postal savings, money transfer institution or such other similar institution as determined by the National Bank;

7/ “financial lease” mean a type of leasing by which a lessor provides a lessee against payment of mutually agreed installments over a specified period with the use of specified capital goods which is:

a) either already acquired by the lessor; or

b) purchased by the lessor from a third party, known as the supplier, chosen and specified by the lessee;

and under which the lessor shall retain full ownership right on the capital goods during the period of the lease agreement, and subject to agreement between the two parties, the lessee may have an option to purchase the capital good outright after the termination of the lease period at an agreed price;
8/ “financial year” mean the financial year of a micro-financing institution running from July 1st to June 30th of the following year;

9/ “group guarantee” mean a guarantee mechanism whereby a group of borrowers undertake to be liable jointly and severally for the repayment of a loan taken from an authorized institution in the event of default by any one of them;

10/ “micro-financing business” mean the provision of financial services as specified under Article 3(2) of this Proclamation by authorized institution;

11/ “micro-financing institution” mean a company licensed under this Proclamation to engage in micro-financing business in rural and urban areas and other activities specified under Article 3(2) of this Proclamation;

12/ “National Bank” mean the National Bank of Ethiopia;

13/ “person” mean any natural or juridical person;

14/ “qualification of competency” mean required education, experience, fitness and propriety as prescribed by directives to be issued by the National Bank;

15/ “receiver” mean the National Bank or a person appointed by the National Bank to take control of a problem micro-financing institution for the purpose of restructuring its operations in order to make it sound or to terminate the existence of such institution;

16/ “voluntary savings” mean any deposit made with an authorized institution, which may be withdrawn partially or totally at any time by the account holder;

17/ “senior officer” mean any officer of a micro-finance institution who is deputy to the chief executive officer or is directly reporting to the board of directors.

18/ any expression in the masculine gender includes the feminine.
3. Purpose and Activity of Micro-Financing Institutions

1/ The main purpose of a micro-financing institution shall be to collect deposits and extend credit to rural and urban farmers and people engaged in other similar activities as well as micro and small scale rural and urban entrepreneurs, the maximum amount of which may be determined by the National Bank.

2/ Subject to conditions set under this Proclamation, a micro-financing institution may engage in some or all of the following:

a) accepting both voluntary and compulsory savings as well as demand and time deposits;

b) extending credit to rural and urban farmers and people engaged in other similar activities as well as micro and small-scale rural and urban entrepreneurs;

c) drawing and accepting drafts payable within Ethiopia;

d) micro-insurance business as prescribed by directive to be issued by the National Bank;

e) purchasing income-generating financial instruments such as treasury bills and other short-term instruments as the National Bank may determine as appropriate;

f) acquiring, maintaining and transferring any movable and immovable property including premises for carrying out its business;

g) supporting income generating projects of urban and rural micro and small scale operators;

h) rendering managerial, marketing, technical and administrative advice to customers and assisting them to obtain services in those fields;

i) managing funds for micro and small scale businesses;

j) providing local money transfer services;
k) providing financial leasing services to peasant farmers, micro and small-scale urban and rural entrepreneurs in accordance with the Capital Goods Leasing Business Proclamation No. 103/1998; and

1) engaging in other activities as specified by directives of the National Bank from time to time.

PART TWO

LICENSING MICRO-FINANCING BUSINESS

4. Requirement of Obtaining License

1/ It is prohibited to engage in micro-financing business without obtaining a license from the National Bank; provided however, that banks licensed under the appropriate law may engage in micro-financing business without a separate micro-financing business license.

2/ Where the National Bank has reason to believe that a person, in contravention of sub-article (1) of this Article, is advertising for or soliciting deposits of money or transacting micro—financing business, it may, in order to ascertain the situation, require that all books, minutes, accounts, cash, securities, records, vouchers and other documents which are in the possession or custody of such person be submitted to it and inspect or cause the inspection of the same.

5. Conditions of Licensing

1/ The following conditions shall be fulfilled to secure a micro-financing business license:

a) a duly completed application in the prescribed format and other accompanying documents as specified by the National Bank shall be submitted;

b) an investment fee, as specified by the National Bank, shall be paid at the time of submitting the application;

c) the institution shall be formed as a company and its memorandum and articles of association shall be approved by the National Bank before registration with the appropriate government organ;
6. Issuance of License

1/ The National Bank shall decide on a micro-financing business license application within 60 days from the last date of receipt of all information to be submitted in accordance with Article 5 of this Proclamation.

2/ The license shall be issued upon payment of the licensing fee prescribed by the National Bank.

3/ A license granted by the National Bank pursuant to this Proclamation shall constitute final authorization to carry on a micro-financing business.

4/ Where the National Bank amends the conditions of licensing in accordance with sub article (2) of Article 5 of this Proclamation, it shall notify the amendments to the concerned micro-financing institutions thirty days before the date on which the amendment becomes effective.

5/ In accordance with the directive to be issued by the National Bank, micro-financing institutions may open branches.

7. Renewal of License

The National Bank may issue directives on conditions of renewal of micro-financing business license.
8. **Revołuțiɔn of License**

1/ The National Bank may revoke the license of a micro-financing institution where:
   a) it is confirmed that the license was issued on the basis of false information; or
   b) the institution has failed to commence operations within 12 months following the grant of the license.

2/ The decision to revoke the license of a micro-financing institution shall be published by the National Bank in a newspaper widely circulating at the place where the head office of the micro-financing institution is situated.

3/ Revocation of license of a micro-financing institution shall become effective on the date of its publication or on any other date as the National Bank may specify.

4/ Any micro-financing institution shall be prohibited from engaging in any micro-financing business starting from the effective date of the revocation of its license.

5/ Any person aggrieved by the decision of the National Bank to revoke the license of a micro-financing institution in accordance with sub-article (1) of this Article may petition to the Federal High Court within 30 days from the effective date of the revocation.

### PART THREE

**OPERATIONAL AND FINANCIAL REQUIREMENTS AND LIMITATIONS**

9. **Commencement of Operation**

A micro-financing institution to which a license is granted shall;

1/ before commencing operation, fulfill requirements prescribed by directives issued by the National Bank, and

2/ commence its operation within 12 months from the date of issuance of the license.
Every micro-financing institution shall maintain a register, in such form as the National Bank may approve, which shall show the list of shareholders with voting rights. Any transfer of shares, which is recorded in the register, shall have legal effect.

The register required to be maintained under sub-article (1) of this Article shall be kept open for inspection by members of the public, without charge, at the micro-financing institution’s principal place of business during the micro-financing institution’s normal working hours.

11. Persons Assuming Management Positions of Micro-financing Institutions

1/ The directors and the chief executive officer of a micro-financing institution shall meet the qualification of competency prescribed by the National Bank and their appointment shall be approved by the National Bank.

2/ The National Bank may determine by directives the maximum number of years a person may serve on the board of a micro-financing institution and the conditions for his re-election.

3/ Without prejudice to the provisions of any other law, any person who is a director, chief executive officer, senior officer or is otherwise directly or indirectly concerned in the management of a micro-financing institution in Ethiopia, shall cease to exercise such function if:

a) declared bankrupt, whether in Ethiopia or elsewhere; or

b) convicted of an offence involving dishonesty or fraud, whether in Ethiopia or elsewhere.
4/ The National Bank may issue directive on duties, responsibilities and good corporate governance of the boards of directors of micro-financing institutions.

12. Appointment of External Auditors

1/ Every micro-financing institution shall appoint an external auditor satisfactory to the National Bank. Where it is without an external auditor it shall forthwith notify such fact to the National Bank.

2/ If a micro-financing institution fails to appoint an external auditor in accordance with the sub article (1) of this Article, the National Bank may appoint an auditor who shall serve until the next annual general meeting of shareholders of the institution. The remuneration of such auditor shall be paid by the institution.

3/ The National Bank may issue directives, from time to time, on;

a) the minimum qualification required of external auditors appointed to perform audits of micro-financing institutions;

b) the scope and depth of the audit; and

c) tenure of auditors.

4/ Any of the following persons may not be qualified for appointment as an external auditor of a micro-financing institution:

a) a shareholder, director, chief executive officer or employee of the institution;

b) a person who is a spouse or related by consanguinity or affinity to the first degree to a person referred to in paragraph (a) of this sub-article; or

c) a firm of auditors of which any of its partners or employees falls within the categories of persons described under paragraph (a) or (b) of this sub- article.
13. Duties and Reports of External Auditors

1/ The duty of an external auditor of a micro-financing institution shall be to report his audit findings and conclusions, carried out on the basis of accepted auditing standards, to the shareholders of the institution and the National Bank. The external auditor shall also be required to submit the management letter to the National Bank.

2/ The National Bank may, if not satisfied with the audit report, commission a second audit or require the prompt appointment of a new auditor who shall make an independent report and whose remuneration shall be paid by the micro-financing institution.

3/ Where the external auditor of any micro-financing institution, in the course of the performance of his audit duties, finds out that:

a) there has been a serious breach of, or non-compliance with, the provisions of this Proclamation, other relevant laws or regulations or directives issued hereunder;

b) a criminal offence involving fraud or other dishonesty has been committed by the micro-financing institution or any of its directors or employees;

c) losses have been incurred which reduce the total capital of the micro-financing institution by 25% or more;

d) serious irregularities have occurred which may jeopardize the security of its depositors or creditors;

e) it is not possible to confirm that the claims of depositors and creditors of the micro-financing institution are capable of being met out of the assets of the micro-financing institution;

he shall immediately report the matter to the National Bank and other concerned bodies.
14. Financial Requirements

1/ The minimum paid up capital required to be maintained by a micro-financing institution shall be determined by directives to be issued by the National Bank.

2/ The National Bank may issue directives governing:
   a) limits on the maximum credit to be extended by a micro-financing institution to any individual or group and provisioning for problem loans;
   b) capital adequacy and liquidity levels to be maintained by a micro-financing institution in operation;
   c) the maximum number of years after licensing within which a micro-financing institution shall be profitable and related matters;
   d) financial performance standards of a micro-financing institution; and
   e) keeping of books of accounts, management information system, internal control system and periodic reporting of a micro-financing institution.

3/ The National Bank may prescribe a different capital and liquidity requirements to be maintained by different micro-financing institutions depending on their risk profile.

4/ A person appointed as an external auditor of a micro-financing institution shall not operate an account with, or be granted any type of facility from, that institution except in the normal course of business and at an arm’s length basis.

5/ The National Bank shall determine by directives the time limit for issuance of audit reports after the end of a micro-financing institution’s financial year.
15. Financial Records and Disclosure of Information

1/ Any micro-financing institution shall:
   a) prepare its financial statements in accordance with acceptable accounting standards;
   
   b) keep such records as are necessary to exhibit clearly and correctly the state of its affairs and to explain its transactions and financial position and to enable the National Bank to determine whether the micro-financing institution had complied with the provisions of this Proclamation and directives issued by the National Bank; and
   
   c) register and keep documents for each type of transaction in accordance with directives of the National Bank.

2/ Any micro-financing institution shall:
   a) within a time period to be determined by the National Bank, submit to the National Bank duly signed financial statements and other reports as prescribed by it; and
   
   b) exhibit at all branches, in a conspicuous place throughout the year, a copy of the last audited balance sheet and profit and loss statement.

3/ Any micro-financing institution shall, where it appears likely that:
   a) it cannot meet its obligations to its depositors or other creditors;
   or
   
   b) it may have to suspend payments to depositors or other creditors;
   forthwith notify the National Bank of the full facts of the situation and also provide such other information as the National Bank may request.
16. **Extending of Loans**

An authorized institution may extend loans to groups and to individuals. Loans may be made without collateral, secured by collateral or secured by group or individual guarantees as appropriate and at the discretion of the institution.

17. **Prohibitions**

Without the prior written approval of the National Bank, no micro-financing institution shall:

1/ enter into an agreement for the amalgamation or disposal of its business;

2/ transfer or otherwise dispose of the whole or any part of its property other than in the ordinary course of business;

3/ effect reduction of its capital, other than as a result of losses;

4/ amend its memorandum and articles of association or alter the name under which it is licensed;
5/ operate outside the area for which it has been issued with a license.

18. Inspection of Micro-Financing Institution and Corrective Measures

1/ The National Bank may, periodically or at any time, without prior notice, make, or cause to be made, an on-site inspection on any micro-financing institution carrying on micro-finance business in Ethiopia.

2/ Where an application, accompanied with supporting evidence, is made to the National Bank by one-tenth of the total number of depositors or by any number of depositors holding not less than one-sixth of the deposits of a micro-financing institution, the National Bank shall examine, or cause to be examined, under conditions of secrecy, the affairs of the micro-financing institution in order to determine whether it is in a sound condition and the provisions of this Proclamation and regulations and directives issued hereunder have been complied with.

3/ Inspection of micro-financing institutions may be carried out by one or more officers of the National Bank or by trustworthy and qualified persons or firms employed by the National Bank for this purpose.

4/ Persons charged by the National Bank with inspection of a micro-financing institution shall be authorized to request from the personnel of the micro-financing institution such information or explanation of the records or transactions of the micro-financing institution that are necessary for the effective carrying out of the inspection.

5/ The inspection report shall be communicated to the examined micro-financing institution and, before the report is made final, it shall be given an opportunity to express its views on the report.

6/ The content of the inspection report submitted to the National Bank shall be considered as confidential by:
The persons carrying out the inspection, and the directors and employees of the inspected micro-financing institutions; and

b) the National Bank, unless it is for the purpose of fulfilling the requirements of this Proclamation or to the interest of the public;

7) Where an inspection of a micro-financing institution results in a finding that the institution has failed to comply with applicable laws and directives or with the terms and conditions of license or has engaged in practices detrimental to the interests of depositors or has serious weaknesses in its corporate governance, the National Bank may:

a) require the inspected micro-financing institution to call a meeting of its shareholders or board of directors for the purpose of considering any matter arising out of, or relating to, the inspection or require the officers of such micro-financing institution to discuss any such matter with the officers of the National Bank;

b) depute one or more of its officers to watch the proceedings at any meeting of the board of directors of the inspected micro-financing institution or of any committee or of any other body constituted by it and require the inspected micro-financing institution to give an opportunity to the officers so deputed to be heard at such meetings;

c) instruct in writing corrective actions to be taken by the inspected micro-financing institution;

d) impose a fine, as prescribed by its directives, on the inspected micro-financing institution’s one or more directors, the chief executive officer and other senior officers, or order their suspension or dismissal from duty;
The National Bank may appoint a receiver or itself act as a receiver if it determines that one or more of the following circumstances exist in respect of a micro-financing institution:

- prohibit the micro-financing institution from opening new branches;
- restrict, suspend or prohibit payment of dividends;
- direct the inspected micro-financing institution to temporarily suspend any one or all of its micro-financing business; or
- revoke the license of the micro-financing institution and initiate the process of its liquidation.

19. Receivership and Liquidation

1/ The National Bank may appoint a receiver or itself act as a receiver if it determines that one or more of the following circumstances exist in respect of a micro-financing institution:

- the license of the micro-financing institution is revoked as stipulated under sub-article 1(a) of Article 8 of this Proclamation;
- the micro-financing institution’s assets are less than its obligations towards its depositors and creditors;
- substantial dissipation of assets or earnings due to a violation of any statute or directive or unsafe and unsound practice;
- the micro-financing institution is in an unsafe and unsound condition to transact business;
- the micro-financing institution willfully violated any limitations imposed by the National Bank;
- concealment or refusal to submit the micro-financing institution’s books, papers, records or assets for inspection to any inspector or to any lawful agent of the National Bank;
g) there is a strong likelihood that the micro-financing institution may be unable to pay its obligations or meet its depositors’ demands in the normal course of business;

h) the micro-financing institution has incurred, or is likely to incur, losses that will deplete all or substantial part of its capital;

i) the institution has engaged in activities other than micro-financing business;

j) the institution has merged with another micro-financing institution or a bank without the prior written authorization of the National Bank;

k) the micro-financing institution:

(1) is undercapitalized and has no reasonable prospect of becoming adequately capitalized;

(2) fails to become adequately capitalized when required to do so by the National Bank, or fails to submit a capital restoration plan acceptable to the National Bank within the time prescribed by the National Bank; or

(3) materially fails to implement a capital restoration plan submitted and accepted by the National Bank;

l) shareholders of the institution have decided, subject to approval of the National Bank, to dissolve the institution or the institution has ceased to exist as legally or operationally independent entity;

m) the micro-financing institution, by resolution of its shareholders, and subject to approval of the National Bank, has requested to be put under receivership.
2/ The National Bank shall determine the fee to be paid to a receiver appointed pursuant to sub-article (1) of this Article.

3/ The receivership and liquidation of a micro-financing institution shall proceed in accordance with the relevant provisions of the Banking Business Proclamation.

PART FOUR
MISCELLANEOUS PROVISIONS

20. Publication

The National Bank shall, in its annual report, publish the list of licensed micro-financing institutions. It shall also publish in newspapers of wide circulation any additions to or cancellation from the said list.

21. Transformation of a Micro-Financing Institution to a Bank or other Financial Institution

1/ The National Bank may, upon request, re-license a micro-financing institution that meets the criteria set by the National Bank to operate, in accordance with the relevant law, as a bank or another type of financial institution.

2/ Where a micro-financing institution is re-licensed in accordance with sub-article (1) of this Article, the National Bank may require it to continue providing micro-financing services as part of its operations.

22. Assistance

Micro-financing institutions may obtain grant from local or foreign sources for the purpose of on-lending or capitalization.
23. **Exemption from Profit Tax**

Any micro-financing institution that makes profit from its business and:

1/ distributes to shareholders shall pay profit tax as any business entity,

2/ fully ploughs back shall not pay profit tax.

24. **Know-Your-Customer Standards**

The National Bank may issue directive prescribing standards on micro-financing institutions’ due diligence in knowing their customers and reporting of suspicious transactions.

25. **Prohibitions**

Any foreign national or organization fully or partially owned by foreign nationals may not be allowed to establish a micro-financing institution, open branches or subsidiaries of a foreign micro-financing institution in Ethiopia or to acquire the shares of an Ethiopian micro-financing institution.

25. **Penalties**

1/ Any director, officer or employee of a micro-financing institution who:

a) obstructs the proper performance by an auditor of his duties in accordance with the provisions of this Proclamation or inspection of a micro-financing institution by an inspector duly authorized by the National Bank; or

b) with intent to deceive, makes any false or misleading statement or entry, or omits any statement or entry that should be made in any book, account, report or statement of micro-financing institution;

shall be punished with a fine from Birr 500,000 to Birr 100,000 and with rigorous imprisonment from 10 to 15 years.
2/ Without prejudice to sub-article (1) of this Article, any person who contravenes or obstructs the provisions of this Proclamation or regulations or directives issued to implement this Proclamation shall be punished with a fine up to Birr 10,000 and with an imprisonment up to three years.

27. Issuance of Regulations and Directives

1/ The Council of Ministers may issue regulations necessary for the implementation of this Proclamation.

2/ The National Bank may issue directives necessary for the implementation of this Proclamation and the regulations issued in accordance with sub-article (1) of this Article.

28. Applicability of other Laws

1/ Banking business laws shall, mutatis mutandis, be applicable to micro financing business with respect to matters not covered by this Proclamation.

2/ Property Mortgaged or Pledged with Banks Proclamation No. 97/1998 and Business Mortgage Proclamation No. 98/1998 shall, mutatis mutandis, be applicable with respect to property mortgaged or pledged with micro-financing institutions.

29. Repealed and Inapplicable Laws

1/ The Licensing and Supervision of the Business of Micro-financing Institutions Proclamation No. 40/1996 is hereby repealed.

2/ No law, regulations, directives or practice may, in so far as it is inconsistent with the provisions of this Proclamation, be applicable with respect to matters provided for by this Proclamation.
30. Effective Date

This Proclamation shall enter into force up on the date of publication in the Federal Negarit Gazeta.

Done at Addis Ababa, this 12th day of May, 2009

GIRMA WOLDEGIORGIS

PRESIDENT OF THE FEDERAL
DEMOCRATIC REPUBLIC OF ETHIOPIA