



2018

Improving credit reporting in Madagascar: Request for Proposal



BANKY FOIBEN'I MADAGASIKARA

**For a technical and equity
partnership in establishing
a Private Credit Bureau in
Madagascar**

2018/3/12

REQUEST FOR PROPOSAL:

**FOR A TECHNICAL AND STRATEGIC PARTNERSHIP
TO ESTABLISH A PRIVATE CREDIT BUREAU IN MADAGASCAR**

Issued by:

BANKY FOIBEN'I MADAGASIKARA

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This document serves the purpose of communicating to all interested parties the terms, the conditions and procedures that are applicable for the evaluation of proposals and awarding of the project

LIST OF ABBREVIATIONS

ABBREVIATION	Meaning
BFM	Banky Foiben'i Madagasikara
H&S	Hub and Spokes
H2H	Host-to-Host
IPSec	Internet Protocol Security
JV	Joint-Venture
MFI	Institutions Microfinance
MSME	Micro and Small Medium Enterprises
NIF	Numéro d'Immatriculation Fiscale (Personal Identity Number)
PCB	Private Credit Bureau
PCR	Public Credit Registry
PDF	Portable Document Format
RFP	Request for Proposal
SME	Small Medium Enterprises
SSL	Secure Sockets Layer
VPN	Virtual Private Network

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1.0 INTRODUCTION

1.1. SUMMARY OVERVIEW

BANKY FOIBEN'I MADAGASIKARA (hereinafter "BFM"), invites proposals from leading international credit reporting information providers (hereinafter "**Partner**") for the investment, development, operations and management of a **Private Credit Bureau** system (hereinafter "**PCB**") to service the lending industry and service providers of Madagascar.

The PCB system should be able to provide exhaustive, assorted, and sophisticated credit risk information services to support all lending sectors, financial and non-financial institutions, regulated and non-regulated entities, services providers like mobile telecom providers, public utilities, etc. in their underwriting and related activities across Madagascar.

The selected Partner will be expected to subscribe a minimum of 51% (but up to 100% if necessary) of the equity shareholding participation in the legal entity that the Partner must create under Madagascar laws, with the objective of establishing, owning, operating, expanding the PCB.

The balance of the shares may be held by local shareholders, including all active players of the Madagascar financial and service industries, potential future users of the PCB, within the limits established by the existing Law project (**until 5% individually and 49% collectively**).

The Partner must be able to demonstrate: i) proven proprietary skills and solid experience in credit reporting development and services supplying, ii) a proven track record in similar emerging markets, iii) financial solidity, iv) existing credit information sharing operations currently serving other markets and countries, v) capability to deliver.

The proposed PCB must fully comply with world recognized stringent security requirements, as well as with any consumer protection, credit reporting, data privacy, banking, and other relevant legislation enacted in Madagascar as well as with best international practices.

The system envisaged must be capable of processing **positive and negative data sourced from both financial** (banks, MFIs, financial entities, specialized financial institution), consumer credit companies, credit cards **and non-financial entities** (e.g. telecommunication companies, retailers, utilities, etc.), which will be members (data suppliers/users) of the PCB, as well other information from third party sources (e.g. public data, derogatory information, etc.).

The BFM will select and license the Partner in accordance with the selection method and Guidelines detailed in this document and recapped in the annexed **Datasheet** (Annex 7).

- 1.1.1** The bidders are invited to submit, separately, i) a **Technical Proposal** and ii) a **Financial Proposal**, for the provision of the services concerning the assignment specified in the Datasheet and throughout this RFP. The proposals will be the basis for contractual negotiations and for applying for the license, necessary to operate the PCB in Madagascar, which will be granted by the BFM.
- 1.1.2** BFM reserves the rights to grant a license to more than one provider.
- 1.1.3** The assignment includes different phases and shall be implemented in accordance with the phasing indicated in this RFP. The performance of the bidder under each phase must be up to the BFM satisfaction before work begins on the next phase.
- 1.1.4** Bidders must familiarize themselves with local market conditions and practices, taking them into account in preparing their proposals.
- 1.1.5** BFM will provide the inputs specified in the Datasheet, and grant the license/s and permit/s needed to register the company/s and carry out the activity.
- 1.1.6** Please note that: (i) the costs of preparing the proposal, negotiating the contract, and obtaining the license are not reimbursable; and (ii) BFM is not bound to accept, and can reject at any moment without any specific reason ,any of the proposals submitted or applications for licensing.
- 1.1.7** Procurement policy requires that all bidders provide professional, objective, and impartial advice, always hold paramount the interests of BFM’s without any consideration for future work, and strictly avoid conflicts with other assignments or their own corporate interests. Bidders shall not be approved for any assignment that would conflict with any of their prior/current obligations or that may place them in a position of not being able to carry out the assignment in the best interest of BFM and Madagascar.
- 1.1.8** It is BFM’s policy to require that bidders hired under BFM contracts, observe the highest standard of ethics during the selection and execution of such contracts. In pursuance of this policy, BFM:
- 1.1.8.1** defines, for the purposes of this provision, the terms set forth below as follows:
- (i) **“corrupt practice”** means the offering, giving, receiving, or soliciting of anything of value to influence the action of any official in the

selection process or in contract execution; and

- (ii) **“fraudulent practice”** means a misrepresentation of facts in order to influence a selection process or the execution of a contract to the detriment of BFM, and includes collusive practices among bidders (prior to or after submission of proposals) designed to establish prices at artificial, noncompetitive levels and to deprive BFM of the benefits of free and open competition.

1.1.8.2 will reject any proposal presented for award if it determines that the firm requesting/recommended for award has engaged in corrupt or fraudulent activities while competing for the contract in question;

1.1.8.3 will reject applications for licensing if at any time determines that corrupt or fraudulent practices were engaged in by representatives of the bidder or of a beneficiary of the contract during the selection process or the execution of that contract, without the supplier having taken timely and appropriate action, satisfactory to BFM, to remedy the situation;

1.1.8.4 will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded any BFM’s contract if at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, BFM’s contract;

1.1.8.5 will have the right to require that, in bids or contracts involving BFM (in case BFM will be engaged with such contracts), a provision be included requiring bidders to permit BFM to inspect their accounts and records relating to the performance of the contract and to have them audited by auditors appointed by BFM.

1.1.9 Bidders shall not be under a declaration of ineligibility for corrupt and fraudulent practices issued by BFM in accordance with the above sub para. 1.1.8.4.

1.1.10 from bidding all those entities and organizing which, directly or indirectly (subcontractors):

- a) are bankrupt or being wound up, are having their affairs administered by the courts, have entered an arrangement with creditors, have suspended business activities or are in any analogous situation arising out of

- proceedings of a similar nature;
- b) have been convicted by a judgment of a competent authority for any offense concerning the ethics of their professional conduct;
 - c) have been guilty of grave professional misconduct proven by any means which BFM can justify, including by a decision of an international organization;
 - d) have not fulfilled their obligations relating to the payment of social security contributions or their obligation to pay their taxes in accordance with the legal provisions of the country in which they are established;
 - e) have been the subject of a judgment which has the force of res judicata for fraud, corruption, participation in a criminal organization, money laundering or any other illegal activity;
 - f) following the award of another contract, have been declared to be in serious breach of contract for failure to comply with their contractual obligations.

Means of proof is:

The tenderer must certify that he is not in one of the situations referred to in the preceding paragraphs.

1.2. BANKY FOIBEN'I MADAGASIKARA (BFM) AND THE PROJECT OBJECTIVES

BFM is the Central Bank and banking regulator of Madagascar. BFM's mission includes, among other major responsibilities, the oversight of the credit industry and the control of the systemic credit risk in the country. The new Credit Information Law (N°2017-045 of 15 February 2018), recently promulgated empowers BFM to grant licenses before any Private Credit Bureau is established and can operate in Madagascar. The law project also appoints BFM as the Supervisor of all the licensed Private Credit Bureaus in Madagascar.

BFM is now willing to start the process of establishing the first Private Credit Bureau in the country by selecting and licensing a renowned and financially solid international credit bureau provider to operate in Madagascar. The new PCB will have to offer advanced credit information and credit risk management services to all users/members (regulated and non-regulated entities) in compliance with the Credit Information Law (N°2017-045 of 15 February 2018) and the other Madagascar jurisprudence.

For this reason, BFM is seeking a **technology and strategic (equity) international credit bureau investor** with proven know-how, experience, capability, and financial strength willing to establish, operate, and manage a state-of-the-art, scalable and modular credit reporting system with the potential to be equipped, in a staggered and modular manner, with more sophisticated features,

according to international best practice and to Madagascar gradually growing financial market's needs.

The future PCB shall aim at electronically supplying data-based credit information services (including but not limited to credit related decision support services, credit histories/reports, scoring models, collections, outsourced automated application processing systems, risk management training, and other information and credit risk management services) allowed under the legislation of Madagascar, and based on the most advanced technology and know-how existing in the credit reporting industry. Local potential shareholders may be part in the new venture, users of the PCB included, if the international investor wishes to undertake this shareholding avenue.

Users, however, may participate within the shareholding limits imposed by the Law¹, while the capital shares majority (at least 51% but up to 100%), as well as the control of the future PCB, shall remain with the international provider/investor.

NOTE: the BFM will review the operational objectives of the Public Credit Registry after the PCB will be operational, and operate the former mainly for institutional, internal purposes (e.g. banking supervision) or to supply complementary services to the supervised entities.

1.3. PURPOSE OF THIS REQUEST FOR PROPOSAL

This Request for Proposal (RFP) is aimed at soliciting responses from organizations specialized in providing technological expertise for consumer and commercial credit reporting services.

The result of this exercise will be the selection of the right Partner that will work with BFM, its advisors, the lending industry and other relevant stakeholders to establish, own, manage, and operate a PCB, serving the credit and service sectors in Madagascar, through a commercial strategy gradually tailored to the capacity and readiness of the data providers/users, the market conditions, and its growth conditions.

The information contained in this RFP will assist interested potential bidders in the preparation of a proposal addressing the requirements for the licensing and establishment of the PCB. The technology and equity Partner not only must prove adequate experience and possess proprietary skills in the international credit bureau services arena, but must also prove sound financial stability, credibility, and standing, as well as capabilities to deliver the vital mix of international know-how and local market support and knowledge.

BFM is envisaging a solution which, based on economies of scale, harnessing the power of technology/telecommunications and without jeopardizing the quality of the final PCB system, data security and integrity, and the quality of the services supplied to the final users, will allow a

¹The Credit Information Law of Madagascar does not allow users, either individually or in group, to own more than 49% of the PCB or the shareholding majority of the PCB.

substantial reduction of the costs of development, operations, management, technological maintenance and upgrades.

The required system must process data in the **French language**, with the reports, tabs, etc., displayed in French. The system must be capable of processing positive and negative data sourced from a range of regulated and non-regulated PCB members such as banks, microfinance institutions, leasing companies, mobile telecoms, utilities etc. (not an exhaustive list) as well as from other public and/or private sources. Providers are encouraged to propose high-quality / cost-effective solutions, possibly based on successful similar previous experiences.

NOTE: Solutions based on the **Hub and Spoke** model, with system / database / platform allocated abroad, which can **offer relevant economies of scale** in development and operational costs, as well as a higher security level are acceptable to BFM (cross-border data-flows are allowed by the legislation under the condition that the hosting country grants the same security level of Madagascar).

BFM encourages the potential Partners to propose, prove and quantify the financial benefits of such model in their proposal, and quantify what will be the financial benefit for the users, if such H&S solution is adopted rather than a resident credit bureau system.

The system must respond to the following key operating principles:

- i) **Open database and horizontal participation** -the database will have no vertical separations or data-silos based on type of credit, loan, borrower or lender type, and it will be fed with all the loans / data supplied by all the users/data providers, from all lending and services sectors (supervised and non-supervised entities, financial and non-financial entities) though it is foreseen that at the outset only the supervised sector will start sharing data.
- ii) **Inquiries**- inquiries will be allowed to any subscriber having signed a Service Agreement and Code of Conduct with the PCB, and providing the totality of their loans/portfolio data to the PCB (based on the “**reciprocity**” principle included in the Law project).
- iii) **Exhaustiveness of information provided to the PCB and services** – Data supplied by members/data providers, will be exhaustive and complete and will include all loans, from all clients on all lines of credit/services (e.g. banks and telecom providers)
- iv) **Exhaustiveness of the services provided** - On the other hand, credit reports offered by the PCB shall include the whole credit history of the subject of information concerning the completeness of his/her lines of credit and financial engagements with the whole credit system of Madagascar, for the duration allowed by the legislation.

- v) **Value Added Services**—advanced sophisticated services will have to be developed, promoted, and commercialized by the PCB as soon as the quality and quantity of data collected allows the development.
- vi) **Security** - The licensed PCB shall comply with the most advanced and modern procedures, in the respect of the most stringent security principles required by local legislation and prescribed by best international practice.
- vii) **Consumers' access and rights** – Existing legislation establishes full rights for the consumers over the privacy of their information, therefore provision must also be made by the PCB for the public at large (consumers, borrowers, subjects of information) to gain access to their own credit records/report, dispute and correct them if wrong, based on the provision of the existing legislation and/or the instructions issued by BFM.
- viii) **Mandatory sharing and inquiry** -the financial entities supervised by BFM will be mandated to periodically share all the loan data portfolio to the licensed PCB/s, as well as to inquire at least one PCB before granting any new loan, renewing existing credit lines, or for any other ancillary loan transactions (e.g. refinancing, renewal, collections). Non-supervised entities may participate as members on a reciprocity basis principle.

In a nutshell, the system will be based on one, single, open database transparent to all users and borrowers. BFM intends to favor larger credit access as well as increase the opportunities for financial inclusion and access to credit in Madagascar, especially for individuals and MSME.

NOTE: The current legislation has enforced all the provisions that are necessary to implement the above credit reporting and information sharing model.

1.4. MADAGASCAR CREDIT MARKET AND CREDIT INFORMATION SHARING OVERVIEW

Currently, the only source of loans information for lenders in Madagascar is represented by the Public Credit Registry (PCR) of the BFM, periodically fed by the banking sector and MFIs. The BFM's PCR disseminates information, on an aggregated format, and is precluded to the participation of all non-banking entities. Though the PCR has been recently revamped it is not in the condition to offer advanced credit reporting services to the lending industry.

There is therefore a strong business imperative for a modern and reliable Private Credit Bureau to improve the quality of credit decision making, improve financial inclusion by expanding the base of borrowing customers, improve exposure performance and reduce loan losses.

In 2016 the lending sector composed by banks and MFI lenders sector disbursed, n. **1,044,341 loans** (all lines of credit included).

As of June 2017, **the number of total loans** records held by BFM in its Public Credit Registry was 4,020,971; **the number of open/active loans is 3,970,246**; **the total number of borrowers 901,557** of which **883,055** individuals and **18,502** business firms.

Below is a recap of the main statistics and principal features of BFM's Public Credit Registry system:

- The PCR contains positive and negative information on both business firms and consumers.
- Data is supplied by the **eleven (11)** banking institutions operating in Madagascar and **twenty-three (23) microfinance** institutions, and **three (3)** financial institutions.
- Data is provided monthly on all loans via the Internet.
- Data is then returned by the BFM to the banks via credit reports obtained via the Web interface.
- Lenders can only see the exposure of their own clients only and aggregated data from other unidentified financial institutions.
- In general, the data is at least thirty (30) days old.
- Data is aggregated by borrower's exposure (total engagements towards the credit industry divided into: i) cash credit lines and ii) guarantees.
- Negative and NPLs data is provided.
- NPL ratio as of November 2017, was 8,6% for the banks and 4,1% for the MFI sector.

As for the contribution of other lending sectors (potential data providers and users of the PCB) the following estimates can be made:

- **Mobile Telephone Operators**- official data extracts from the web site (www.omert.mg) of the Telecommunications Regulatory Commission as of December 2016: **9, 426,996 contracts**
- **Fixed Telephone Lines exist 173,708** contracts
- **Utilities** - data provided by from the web site of the Electricity Regulation Office (www.ore.mg) as of December 2016 : **N. 498,475 contracts** and from the web site of the **Jirama**, the energy company of Madagascar (<http://www.jirama.mg/>) as of December 2014: **N. 167 867 contracts**.
- No other lending / service sectors are yet **active (e.g. retailers)**.

On the legislative front, as mentioned above, on 15 February 2018, Madagascar's legislator have adopted a very advanced law (**Credit Bureaus Law**) based on international legal best practice, which should enable a flexible and modern environment for the establishment of private credit reporting, by creating solid pre-conditions for a healthy business development. A Data Privacy Law (Law 2014-038) tailored on the EU directive is in force since 2014.

Among the most important provisions, Madagascar Credit Information Law project, establishes:

- i. License to operate as a credit bureau is mandatory and granted by BFM
- ii. BFM is the Supervisor of Private Credit Bureaus
- iii. All non-regulated and non-financial entities (e.g. utilities, mobile telephone operators, e-wallets and payment companies, on-line lenders, etc.) can participate as users and data providers to any PCB;
- iv. Full reciprocity principle will be applied;
- v. Regulated entities (mainly banks and regulated MFIs), are:
 - mandated to **share** all their credit portfolio data with the PCB/s
 - mandated to **inquire** at least one PCB before any lending transaction is approved;
- vi. PCB shareholding pattern and ownership: the international provider will be reserved a share of at least 51% of the capital, so to maintain control of the business and company, allowing long term investments and plans;
- vii. Borrowers' consent is always requested before sharing/inquiring;
- viii. Borrowers' rights to see own credit report and dispute/correct data are granted;
- ix. Scoring and any other Value Added Services are allowed;
- x. BFM is the only Supervising authorities for Credit Bureaus in Madagascar;
- xi. Data off-shoring / export of data out of Madagascar is allowed;
- xii. Obligation of supervised data providers to report their credit data to the BIC.

A copy of the Credit Information Law is attached to this RFP (Annexure 9). Due to the recent approval of the law, its publication on the Official Journal of the Republic of Madagascar may or may not have yet taken place.

Identification of individuals in Madagascar is performed through the National Identity Card while business firms and company are identified with the tax number.

1.5. CONFIDENTIAL USE & DISCLOSURE OF INFORMATION

The information contained in this document is confidential and is the property of BFM. Responses to this RFP must include the receipt of Annexure 4 (**Non-Disclosure Agreement**). Please review, sign and return this agreement with the response and proposal.

BFM assumes that all information supplied by bidders is submitted in good faith, expects the information provided to be accurate and the bidder to deliver the solution and services within the required time frame. BFM reserves the right to use information submitted in response to this document in any manner it deems appropriate. BFM may, at its discretion, honor a bidder's request for confidential treatment of certain data submitted as part of its response.

The issuance of this document and the receipt of data and information in response to this document shall not, in any way, cause BFM to incur any liability, financial or otherwise. BFM will assume no obligation to reimburse or in any way compensate any bidder for losses or expenses incurred in connection with its response to this document.

Any relationship entered, will be subject to the Jurisdiction and Laws of Madagascar.

1.6. SUBMISSION OF PROPOSALS AND CONTACT DETAILS

All questions and communications regarding this RFP shall be directed via e-mail using the coordinates listed below.

Proposals must be dispatched by **express courier service** to the address indicated below (preferably using the services of DHL, FEDEX, UPS, which have their representative offices in MADAGASCAR), followed by an e-mail confirmation, to the e-mail address indicated below, indicating that the parcel has been sent, and in which date).

The **main envelope** must contain **separate envelopes** enclosing:

- A **Technical** proposal,
- A **Financial** proposal
- A **signed Non-Disclosure Agreement** (Annexure 4).

The **technical** proposal envelope must contain **1 hard copy** and **1 electronic copy** (CD-rom /USB) of the proposal. A copy of **only** the **technical** proposal must also be sent by **e-mail**, to the e-mail account indicated below.

The **financial proposal**(1 **hard-copy** and 1 **electronic copy**) must be contained in a **separate sealed envelope** marked “**Financial Proposal -Do Not Open**”. This sealed envelope must also be placed into the main envelope as mentioned.

The proposals should be drafted using **Microsoft Office Word product (on A4 format, and Times New Roman 12 font)**, exhaustively addressing all areas and points mentioned in the following Section 2 of this RFP.

N.B. Please note that proposals to this RFP must not exceed 100 pages including annexes. BFM reserves the right to ignore or disqualify any proposal in excess of 100 pages.

The coordinates for the delivery of the financial and technical proposals

MAILING ADDRESS
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1.7 THE SELECTION PROCESS

1.7.1 RFP timetable

TASKS	DEADLINES
1. Publication Request for Expression of Interest	March 12, 2018
2. Clarification questions	March 27, 2018
3. Answers to clarification questions	April 12, 2018
4. Proposals submitted in response to RFP	May 11, 2018

5. Proposals public opening	May 15, 2018
6. Evaluation of received proposals	June 15, 2018
7. Pre-selection of two (2) short-listed bidders	June 15, 2018
8. On-site visits (at 2 short-listed bidders)	July 2-14, 2018
9. Final choice and confirmation to selected provider	July 30, 2018
10. License application filing	Latest by October 12, 2018
11. License granting	Estimated by 15 December 2018 latest

N.B: If negotiation with local / external partners are necessary, the negotiation of the contract with local partners must be done between bidders and local / external partners prior to License application filing.

Please note that any unsolicited, inappropriate approaches/interaction with members of BFM, or its advisors, may result in a bidder being disqualified from participating in this RFP process.

- i) All bidders' questions, seeking additional information and/or clarification of any matter in relation to this RFP, have to be submitted by the Madagascar close of business day **(4:30 pm on March 27, 2018)**.
- ii) It is the intention to respond to any requests for additional information and/or clarification required by any bidder by the Madagascar close of business day **(04:30 pm)** on April 12, 2018.
- iii) All proposals in relation to this RFP must be submitted latest by the Madagascar close of business day **(04:30 pm) on May 11, 2018**.
- iv) Proposals public opening with the presence of the bidders' representatives that wish to attend will be performed in Antananarivo at the address indicated above, at **10.00 am on May 15, 2018**.

1.7.2 The awarding process

BFM will shortlist two (2) among the bidders (a preferred bidder with a first reserve) by **June 15, 2018**. An invitation might be extended to shortlisted bidders, at BFM discretion, to make a short introductory presentation to the selection committee.

1.7.3 Site Visits

It is anticipated that site visits might be undertaken by the selection committee to the site nominated by each of the two short-listed bidders (one per bidder) during the period, **July 2-14, 2018**. Please refer to Annexure 5 for site-visits Selection Criteria.

Based on these criteria, bidders are requested to nominate in the proposal two (2) options of preferred sites/countries, and confirm that appropriate visits and meetings can be scheduled during the period indicated.

1.7.4 Official Confirmation to Selected Provider

As the final act of the selection process, BFM will officially inform the selected provider, tentatively by **July 30, 2018**.

1.7.5 Contract Negotiations, Shareholders Agreement

All issues pertaining to contractual questions, contract handling, and shareholders' agreement with other partners, if necessary, must be solved and agreements must be finalized prior to and before License application filing.

1.7.6 License Application Filing

All the documentation requested by the BFM for licensing must be provided by **October 12, 2018**. The License processing may take up to **90 days**.

1.7.7. Scorecard and evaluation

The scorecard that will be used by BFM to evaluate the bids, and its details (variables, attributes and points) are provided to enhance the transparency of the selection process, as part of the Datasheet (Annexure 7).

N.B. Though the scorecard will give bidders an indication of the selection process, the scorecard itself and its criteria must be considered **not binding for BFM**, and BFM reserves itself the right to amend it or totally change variables, attributes, points, or even to not utilize the scorecard for the selection process, and take a decision simply based on its own judgment and needs.

2.0 RFP REQUIREMENTS

2.1. BIDDER'S EXPERIENCE / PROFILE AND BASIC REQUIREMENTS

This tender will be carried out through a competitive process as specified further in the document, and is **open to providers that fulfill the minimum following requirements/qualifications**.

2.1.1. Experience and minimum basic requirements

- a) Must have executed with success at least three (3) developments and implementation of credit information sharing systems / projects of similar type (Private Credit Bureau and/or Public Credit Registry) in the past ten (10) years.
- b) The above developments must include the participation, as data providers/users of the system, of **regulated entities** (e.g. banks, MFI, etc.) as well as of **non-regulated entities** (e.g., telecom operators, utilities, retailers, etc.). BFM must be granted permission to verify the level of satisfaction of users.
- c) Must have a demonstrable previous experience of having developed and operated systems based on the **Hub & Spokes model** (1 system hosting data from and supplying information services to one or more countries different from where the system is residentially located).
- d) Must own, or operate and maintain, or manage for third parties, at the date of the proposal submission, at least two (2) sites operating in other countries, with a similar configuration, as the one requested by this RFP.
- e) Must be willing to invest/in the PCB share capital in a proportion of **51%** at least, and up to 100%.
- f) Must prove experience in supplying upgrades and services comparable to the ones requested by this project, as well as additional Value Added Services (e.g. bureau scores, alerts, tracing, collections strategies, etc.).
- g) The appointed Project Leader must have at least (10) ten years of experience in development/ implementation of credit reporting systems in the credit information sharing / financial sectors.
- h) Analysts assigned to the project must have experience of at (5) five years in programming, systems analysis and systems engineering in the credit reporting domain.
- i) Proven capacity of existing help-desk to deliver 24x7 support.
- j) Proven experience in data warehousing and management as well as in credit risk analysis.
- k) Proven knowledge of the legal best practice concerning the privacy and confidentiality of personal information, and ability to deal with the issues deriving from the enforcement of credit reporting regulations or laws, particularly as far as consumer's relations are concerned.
- l) **Key technical staff fluent in French must be available throughout the various phases of the project.**

Providers are required to describe their experience in establishing, and managing the operations of an independent credit bureau organization, and must be **clear and specific** in their representation of previous experience, whether their role was as:

- a) an information provider (Private Credit Bureau) in its own right ; or
- b) only providing software developed and deployed by them (e.g. third parties); or
- c) a member in a consortium, where the provider's software solution was deployed; or
- d) a member of a consortium where a different provider's software solution was deployed;
or
- e) simply providing consultancy services.

NOTE: All claims by bidders as to previous experience will be independently verified and if found to be inaccurate, they may cause the proposal to be disqualified.

Specifically, each bidder must provide a summary of their expertise and ability in providing the following:

2.1.1.1. Setting up Operations, Processes and Organization:

The selected technical and strategic (equity) Partner will work with users, local partners/shareholders, and other stakeholders to set up the company's operating model, processes, and functional organization. Therefore, bidders will need to demonstrate their knowledge and track record of successfully managing the daily activities of a modern credit bureau organization in emerging markets similar to Madagascar.

2.1.1.2. Technical Infrastructure and Company Setup Phase:

Bidders must describe the terms of their involvement in the technical infrastructure setup. Bidders must also clearly define their potential role in setting up the company's operating framework, processes, and management including the involvement of other business Partners, if any.

2.1.1.3. Transferring Management Skills:

The successful bidders must demonstrate their commitment to transferring know-how and management skills to the local company and propose a plan and timeline for achieving this goal.

2.1.1.4. Company Management Phase

Bidders should propose their terms and plans for managing the ongoing operations of the new company, including the duration of their proposed involvement (staff, managers). This arrangement is designed to transfer know-how and technical/management skills from the technical and strategic (equity) Partner to the local management, that will ultimately run the new company. **Refer to Annexure6**

2.1.2. Local support partners

Presumably, to successfully implement the credit bureau project in a timely manner it may be necessary for the technology and strategic (equity) Partner to cooperate with local partners/suppliers/vendors. In this case, please identify any local third party company or other sub-contractors, providing technological and maintenance support, local expertise and presence in the project, if any. **Refer to Annexure2**

2.1.3. Credit Reporting Systems

Bidders must provide a detailed overview of the proposed credit bureau system. BFM is seeking to license a modern, flexible, scalable credit bureau solution that delivers full trade-line history (with positive and negative data) for consumer, SME, micro, and corporate credit, from all sectors (financial and non-financial) of the credit industry and similar services/sectors, through which end-users can assess risk on the following typologies of credit/borrowers, though not limited to:

- Personal Loans
- Consumer Credit
- Credit Cards
- Mortgages
- Leasing
- Utilities
- Commercial Loans
- Term Loans
- MFI loans (group and individual loans)
- Trade credit
- Corporate / SME
- Retail credit
- Mobile telephone contracts,
- Public utilities data
- Post-paid services
- Etc.

The solution must be based on confidentiality, privacy and reciprocity principles, must be scalable and apt to service not only the banking sector, but also non-banking financial institutions, microfinance institutions, leasing companies, insurance companies, telecommunication companies, other utilities, retailers that may be granted membership of the credit bureau in a gradual manner. As the long-term success and efficiency of the credit bureau is also dependent on the operational and organizational rules and principles, then on the actual technological solution only, the bidder/potential Partner would be expected to be able to provide extensive services and know-how in all of the following technical and or business areas:

- credit bureau system development/customization/localization
- ongoing updates and upgrades of the system
- maintenance and operational support
- complete technical infrastructure of the project, including the provision of a warm backup site(service restoration within 24 hours, off-shore hosting can be considered as an option)
- support and advice in data center technical and operational setup
- operation and management of the PCB, support, know-how and documentation transfer in credit bureau operations
- legislation support (personal data protection, consumer protection, etc.)
- training for both bureau staff and end users
- development of additional Value Added Services as Madagascar market matures
- Training and knowledge sharing.
- Data extraction capacity from different financial core systems

Bidders must confirm whether their organization holds all of the abovementioned capabilities.

2.1.4. Implementation Approach

It is acknowledged that credit bureau implementation and ongoing operations is a very demanding and specialized activity, which requires a combination of proprietary skills and experience in the areas of:

- consumer and commercial finance
- credit reporting and financial industry legislation on a local and worldwide basis
- personal data/consumer protection and other legal compliance
- public relations and media coverage crisis management
- data processing and data center management
- operational support of credit bureau (rules, procedures, documentation, training)
- overall corporate managerial capabilities
- I/T project management

- Software development/maintenance and provision of continuous evolution of solutions as technology changes and business needs dictate.

BFM wishes to adopt a phased approach to meet market demands by delivering a consumer and commercial credit bureau as soon as practical, without compromising good project and program management protocols. However, offering immediately the most advanced risk management tools to the users is a primary objective. Therefore, the following staggered delivery schedule must be adhered to by the bidder:

2.1.4.1. Phase I -analysis (it is part of this current project)

- This is a key phase which includes the development of the required technical infrastructure (data analysis, input file format, database design, software customization, hardware, communications) required to operate the solution.
- Lenders' data bases contain data maintained in **French** language.
- Banks, financial establishment and large (regulated) microfinance institutions will join the PCB since the outset, while mobile telecom users and non-regulated microfinance institutions, utilities companies, etc. will be joining in a future phase, depending on the market's reaction.
- It is expected that some data providers (e.g. MFIs) may require consultancy, support or even a technical solution/ device provided from the bidder to extract and/or to prepare the data input file according to the desired format / layout. The bidder must possess and prove this competence, and offer solutions if requested by the data providers.
- Interfaces with other external databases will have to be created (e.g. public data). While availability and timing of this access are yet to be defined, the bidder must prove its previous experience in doing so in similar projects, and its willingness to include this data in the database, if / when made available.

2.1.4.2. Phase II – development (it is part of this current project)

Activities in the second phase will include the following (but not be limited to):

- System development and implementation.
- Assistance, support and training of data contributors with the cleansing of data.
- Upload of positive and negative consumer/commercial data from all members to populate the database as initial contribution.
- Upload of payment history data from those members which have the infrastructure to deliver history data.
- Interface to other 3rd party databases that have value added data.
- User acceptance test.

- Documentation (end user guide, product guide, consumer access and dispute resolution processes and procedures, back office operation, technical manual, training manuals, etc.)
- Users training and outreach, knowledge transfer
- Generic Bureau Scores development and provision

2.1.4.3 Phase III – expansion (it is not part of the current development)

In the future, and based on the maturity and the needs of the market, the provider must have the capability to develop and offer, in a phased manner, the following Value Added Services (not an exhaustive list):

- Custom Bureau Scores;
- Anti-fraud systems;
- Identity verification;
- Basel II/III Models;
- Historical & Behavior Statistics;
- Application Processing;
- Portfolio monitoring/ analysis;
- Early warning tools;
- Tracing;
- Decision systems to individual lenders
- Application processing services
- Scoring models
- Others.

Bidders are therefore expected to demonstrate an already existing capability and necessary previous experience to develop and offer additional Value Added Services, on a rolling basis, according to the maturity/demand/needs of the market, ensuring continuity, growth, development to the PCB activity.

Though **Phase III is not part of the scope of this RFP and of the current project**, bidders should provide information on the range of products that they are able to develop in-house and deliver, as well as references on those products that are currently used, and where, or should these Added Value Services not be developed in-house / or directly, the bidder should provide detailed information on the bidders' agreements in place to provide the same services, and with whom.

2.1.5. Documentation

Bidders must indicate which supporting documentation will be produced, including technical documentation, operation manuals, training manuals, and user manuals. All users' documentation must be provided in French and in both soft and hard copy. Bidders should outline how documentation will be maintained current and updated.

2.1.6. Project Plan

Bidders should provide a detailed tentative project plan, including time-frame, listing all of the activities required for the completion of the project, including key milestones and secondary activities, assigned resources, tasks planned start/end dates, deadlines, identifying critical points. A detailed test plan and test scripts, to be developed and carried out by the bidder, are also part of the plan and part of the acceptance process.

2.1.7. Project Management

Bidders should identify the key staff that will be allocated to these tasks strengthening the delivery of this project. Comprehensive resumes must be provided in respect of all key project team members, and profiles should fulfill the prerequisites indicated earlier in this RFP.

2.1.8. Training

Bidders should make recommendations and outline a plan detailing the proposed training to be provided as part of the deliverables (including training program, documentation, manuals, timing, etc.) for both:

- staff of the PCB
- end-users / data providers / BFM

The training would include materials covering the bureau's operation (technical as well as sales, help desk user support, consumer support, etc.).

2.2. TECHNICAL PROPOSAL

2.2.1. General Description of the Solution

The PCB must be equipped with a proprietary software solution (implemented through appropriate hardware systems to be identified by the bidder in the proposal) able to perform the tasks of **collecting, checking, processing, validating and disseminating** credit information **contributed and retrieved** by financial entities users/data-providers (private and public sources) operating in Madagascar. To accomplish these purposes, a full Web-Based operational credit reporting system, mirroring the following functional configuration should be provided:

- Strong, flexible and highly expandable systems in response to the needs of users or financial sector members;

- Allowing high-speed processing and dissemination of data, between the PCB and the users, with the goal of processing and re-distributing the information received with a quick turnaround to be indicated in the proposal;
- High security standards for data storage and handling of the information;
- Supported by a back-up system, with sufficient redundancy to guarantee uninterrupted services, even in the event of a disaster, natural or intentionally provoked like DOS attacks (Denial of Service).
- Maximum compatibility with existing web browsers.

The bidder should illustrate in details the essential elements and features of the credit reporting solution that will be delivered in the above-mentioned Phases I and II of the project. The high-level system capabilities, necessary to deliver services to the users/data providers, must include:

- Upload of positive and negative data as submitted by members.
- Application localizations including help text and all documentation in **French**.
- Names and addresses should be in the French language as submitted by the data providers, and match logic should be able to match the same entity from the data in **French** as provided by different data sources.
- The provision of a warm backup site
- Generate billing files to be imported into an accounting software package.
- A sophisticated facility to deal with disputes or enquiries raised by members of the public/subjects of information.
- Sub-5-second system-time response time to all credit inquiry transactions.
- Maximum number of users connected and supported in parallel without any deterioration of the service.
- Monitor alerts notifying members of address changes, new enquiries, defaults, etc.

Please list any 3rd party software that will form part of the solution being proposed.

2.2.2. Business Architecture

Please outline in detail the core Credit Reporting System including Web Servers, Application Servers, Database Server, and Security Services but specifically the following:

- Customer Web Access:
- Compatible versions of Web browsers limitation
- Batch processing:
- B2B Access

- Datacenter design (design of the development/test and production environments, disaster recovery infrastructure, firewalls etc.)
- Security Architecture (including perimeter security including hardware & software firewalls, DMZ, intrusion detection system etc.)
- Security policy details on data sharing and storage
- Network Architecture (load balancing and performance management capabilities, minimum bandwidth for Internet & Host-to-Host connections etc.)
- Technical Architecture (recommended server configuration, operating system, RDBMS etc.)
- Customer Network Access
- Web Reporting (list of reports available and examples of the same)
- Report generator for the generation of reports
- Billing module
- Data load (methodology, validation and auditing processes, member updates, both regular and emergency)
- Customer Service: bureau back office and help desk processes (including the internal recording of file notes, etc.) when dealing with data quality issues or other disputes raised by the public.
- Administration: bureau and data center interaction with applications to control the configuration and operation of sub-systems.
- On line inquiry tools.

2.2.3. System Features

Please outline in detail the features of the credit reporting system (high-level capabilities of the system)

2.2.4. Credit Inquiry Access Types

Please confirm that members will be enabled to access the PCB database through:

- A secure Internet application;
- Application to application (Host-to-Host) protocols
- Batch processing facilities.

Please note the following:

- Use of formatted input screens
- Use of Standard SSL encryption and IPSec
- Return of PDF and/or Web Credit Reports.

2.2.5. Inquiry Access - Match and Merge Rules

Generally, in Madagascar, the following pieces of Identification are available:

- i. for individuals : National Identity Card, Passport, Driver License
- ii. business entities and companies are instead identified through a tax number called NIF (*Numéro d'Immatriculation Fiscale*)

Based on the challenges relating to the identification and subsequent matching, merging and validation of data in respect of individuals and commercial entities and any interrelationship and links, bidders are required to:

- Outline in specific detail the proposed matching logic and algorithm that the system will use to access credit files on the database (e.g. Personal Identification Number, other ID numbers, combinations of this number/s with Date of Birth, Name, Address, etc.),
- Indicate how related commercial entities will be linked: company / subsidiaries / groups; individuals' histories and related companies/businesses; guarantors and applicants, etc.

NOTE: Sophisticated system merging and matching capabilities are a paramount need, as well the experience in building algorithms for matching and inquiry purposes. **The bidder must prove its previous experience in doing so in other countries / languages / alphabets.**

2.2.6. Inquiry Input Fields

The objective of the users inquires to the PCB will be to identify a unique name/record and to retrieve a single, complete, final credit report, loaded with demographic and positive + negative credit or performance data. The use of a standardized, complete and accurate data format for data collection should allow the PCB to provide extremely reliable credit reports, and disseminate all the information present in the database compacted into one, single, document/file.

The contents expected of a Credit Report, similar to what the PCB will have to supply to its users, are summarized below (not an exhaustive list):

- Biographic/demographic data (name surname, D.O.B, P.O.B, ID number/s, etc.)
- Telephones and addresses (current and previous)
- Credit data at time of application and single account level (trade-lines), positive and negative as well as detailed, historical repayment performance records (5 years of history)
- Floor limits / loan amounts / credit limits
- Outstanding loans balances (current, 30, 60, 90, 120, 150, 180 dd, etc.)
- Maturity / installments
- Bounced / protested checks
- Risk factors associated to a consumer based on repayment record
- Charts related to consumers/firms' payment record, outstanding lines of credit

- All available judicial / derogatory information
- Monthly monitoring of accounts or early warning systems
- Bureau scores, ratings, classification services
- Corporate information
- Indicators created by the system (e.g. previous searches)
- Other

Therefore, bidders should:

- Analyze and identify in detail, as part of the process, the types of consumer and commercial data that will be included in the input file as mandatory data fields and what will be considered as optional to be added to an existing credit report when that data does not exist on the credit report.
- Provide samples of consumer and commercial reports (the system should be able to generate different types of reporting such as: basic, standard, advanced, consumers, MFIs report types, etc.(please also make reference to point 2.2.10 - Database Content).
- Outline in detail, as part of the process, how the system will search for consumer data using localized match rules to (potentially accessing 3rd party databases) deliver the highest possible “**hit-rate**” by combining two or more records into a single Consumer / Business Record (see also point 2.2.5).

2.2.7. Creating New Consumer Records

Should the system not find a consumer record that matches the input or data input please outline the alternative process in detail, and how the database is updated by the creation of a new consumer record.

2.2.8. Name and Address

Name and Address normalization rules are proprietary functions of the credit reporting system. Hence:

- Please detail the processes to edit and normalize names and address information for subsequent database updating, processing and online maintenance and;
- Confirm whether or not it will be possible to validate address information from independent 3rd party databases (e.g. civil register).

2.2.9. Application Security

Please detail the User Validation System which will control all application system security and all application system accesses to the database for bureau members and for bureau

administration purposes for regular as well as ad hoc reporting, maintenance and research purposes.

Please outline in detail the process relating to the assignment of user ID's and passwords. Please confirm if the solution will deliver a security violation report when access to the database is denied to an inquirer.

2.2.10. Database Content

It is envisaged that the database will contain consumer and commercial trade data with payment information on every type of credit accounts/loans. The bidders must confirm that in addition to trade-line data, the system will be able to support the storage and utilization for credit reporting purposes of the following data types:

- Other credit data
- Services data (e.g. mobile and fixed telephone operators, utilities, etc.)
- Various government IDs
- Returned payment instruments (bounced checks/non-sufficient funds items)
- Name, address and phone numbers, and other demographic data
- Employment records
- Spouse details
- Salary details
- Court Judgments
- Guarantor details
- Directors/owners of business firms
- Etc.

Bidders should outline in detail the process used in case two or more borrowers (consumers or business firms) are legally responsible for a line of credit and whether that line of credit will appear on the credit report for every legally responsible owner of information, and if the different responsibility (e.g. main applicant, guarantor) will be identified.

NOTE: A final listing of all supported trade and other data types will have to be specified based upon the data received from the data providers during the data analysis phase of the project.

2.2.11. Data Maintenance Application

Please outline in detail the system capability for bureau in-house administrators to perform online maintenance to a record including adding, deleting or modifying information as requested by the member who reported the information, or as determined by the PCB.

2.2.12. Billing System

The system would provide a daily file of transactions made as an input to a possible PCB internal billing system, or exported to an external billing system.

2.2.13. Standard System Reports and Data Presentation Facilities

Bidders should confirm whether the system will provide the following standard reports/data presentation facilities for use in data analysis by PCB and/or its users. Reports generated for PCB's users will contain only data related to that member; reports generated for the PCB utilization will contain all users' data.

- Statistical Reports of accepted/rejected records loaded by PCB members.
- Merge Audit Report.
- Security Violation Report.
- Statistical reports for balancing and control of the database update process.
- Operations reports.

Bidders are also requested to provide samples and examples of such reports. Also, they must provide the list and copies of other system generated reports which will be made available to PCB users, and regulators.

2.2.14. Networking and Communications Overview

Bidders should provide specific details as to how the proposed solution will deliver industry-standard communication protocols to support internet based communications for the system.

2.2.15. Data Centre/Bureau Security Policies

Bidders shall provide details and define the security protocols relating to;

- Physical Security
- Change Management Security
- Operating System Security related to System Administration
- Events and incidents monitoring.

2.2.16. Data encryption during transfer

Bidders shall specify and define the data encryption protocols relating to data transfer.

2.2.17. After-sales Technical Support and Maintenance

Bidders shall confirm if the following will be provided as part of the services:

- General technical support

- Application maintenance support
- Operational Consultancy

Please outline in detail the level of technical and maintenance support proposed to be provided to the PCB and/or bureau members, including help-desk service hours, emergency line, response time based on severity levels, etc.

2.3. FINANCIAL PROPOSAL

2.3.1. *Proposed Contract Terms*

Bidders should include in the **main envelope, a separate sealed envelope containing** a detailed financial proposal with relevant business terms and conditions for the establishment and implementation of the PCB system and related software, hardware and communications equipment, management services as well as maintenance and support. All prices set forth in the offer are to be quoted in **United States Dollars (USD)** and **conditions are to be valid for 180days** from the date of this response.

Please include and provide all cost details (see attached submission form - Annexure 8) such as:

- Software license fee
- Localization / customization fee
- Maintenance & support fees
- Hardware and materials;
- Any necessary 3rd party software (including its installation process)
- Any other costs to be borne by the licensee.

NOTE: A detailed financial proposal is required only for Phases I and II of the project.

2.3.2. *Equity Participation*

The selected Partner will be expected to either consider:

- FULL OWNERSHIP** - The International Partner can submit proposals to own up to 100% of the PCB, or in alternative
- JOINT VENTURE** - Subscribe at least a minimum of 51% of equity shareholding participation. The 49% (or less) remaining capital balance, can be held by local reputed shareholders (the banking industry, mobile telecom companies, insurance companies, other information providers, local technology companies/providers etc.), which will have

to be contacted by the international Partner directly, and whom the Partner will have to negotiate the JV conditions.

Investments are expected to be made under the form of actual fresh capital investment that the Partner shall bring in for the PCB establishment, and not under the form of Software License Agreement (SLA), or development fees, or service fees or any other related fees, items, assets.

Should option ii) above be selected (Joint Venture), the **shareholding structure** will be adjusted after negotiations with the local Partners are finalized, upon completion of the bidding process, and during shareholding agreement negotiation. The PCB's **Board of Directors** representation will be subject to local legislative requirements, and to the subsequent shareholders' agreement.

It is intended that the structure of the PCB's Board of Directors will be adjusted and finalized after the conclusion of the negotiations concerning the capital shares that will reflect the new composition of the shareholding pattern, reflecting the condition of majority and minority shareholding, in the voting rights.

3.0 EVALUATION CRITERIA

This section describes the main evaluation criteria that will be considered in appraising the responses to this RFP. These include, but are not limited to, the following:

3.1. EMERGING MARKETS STRATEGY AND INTEREST

Preference will be given to bidders that successfully demonstrate a growth strategy as well as an interest and focus on emerging consumer and business credit markets like Madagascar.

3.2. TECHNICAL EXPERTISE

Potential Partners technical competence in setting up and maintaining the necessary technological infrastructure required for a modern consumer and commercial Credit Bureau, for FIs (banks and MFI's) but also other emerging users / sectors (non-bank FIs, leasing companies, utility and telecom companies and retail traders) is an important evaluation criterion.

3.3. DAY-BY-DAY OPERATIONS AND PREVIOUS BUREAU MANAGEMENT EXPERIENCE

Emphasis is placed on the demonstrable running and managing capability of the daily operations of a credit bureau. Potential Partners will be expected to have deep knowledge of the credit bureau management processes and related strategies to both grow the business,

raise awareness of the users, and deal with problems effectively. It is expected that potential Partner is presently operating Private Credit Bureaus internationally. This is considered as a pre-requisite.

3.4. RANGE OF SERVICES FOR CREDIT BUREAUMEMBERS

The range of services provided by a typical consumer and commercial credit bureau, as well as services to assist members to deal with data quality issues and connectivity to the bureau, will be considered. Innovative solutions that provide viable alternatives to small size credit grantors (e.g. MFIs) that may operate sub optimal lending solutions are deemed strategic by BFM.

3.5. WILLINGNESS AND ABILITY TO DEPLOY RESOURCES TO MADAGASCAR

The BFM is extremely interested in fostering a local credit information industry that gives specific growth opportunities to local talented professional. Potential Partners with a strong commitment to the country that will deploy well experienced and skilled resources to the project at the outset, but that will gradually build local capacity, transferring skill, knowledge, and expertise to **local staff** will be preferred. In formulating the responses, bidders should emphasize their commitment to do so, and how they practically intend to adequately staff the company and ensure a turn-over with local staff.

3.6. WORKING ARRANGEMENTS AND CONDITIONS

Potential Partners with simple deal structures and flexible working arrangements will be preferred. BFM is interested in working with a Partner that is open to options, able to offer alternative solutions, capable to customize its solutions to the market, and willing to be a proactive player for the overall success of the project.

3.7. PROJECT MANAGEMENT SKILLS

Superior project management skills and processes are expected from the bidders, and from the staff dedicated to the project, that must fulfill the requisites indicated. The proven previous experience in similar project is a paramount benchmark that will be highly considered.

3.8. EQUITY PARTICIPATION

Last but not least, the availability to take full majority (100%) of equity stake in the company if required, or a demonstrated flexibility concerning the proportion of capital necessary for the investment (minimum capital share of 51%, but flexibility to go above it, if necessary), do represent an important indication of the bidders' interest and commitment in the project and in the country, therefore a relevant criterion for the proposals evaluation.

ANNEXURES

ANNEXURE 1: References of similar experience (indicate one project per sheet)

Identification of project	Name of project	
	Country	
	Award date	
	Completion date	
	Duration of involvement	
Description	Short description of the project	
	Description of activities undertaken in the project, including any management functions	
Reference	Name of people who can act as referee on behalf of the reference site. Give name, title and telephone number for each contact.	

Please indicate whether your role was as:

- a) an information provider (Private Credit Bureau) in its own right; or
- b) only providing software developed and deployed by them (e.g. third parties); or
- c) a member in a consortium, where the provider's software solution was deployed; or
- d) simply providing consultancy services

ANNEXURE 2: Information on bidders' consortium membersTo be completed in respect of **all members** of a consortium

Identification of company	Company Name	
	Legal Form	
	Head office address	
	Telephone number	
	Fax number	
	Registration number	
	Role in the project (prime contractor, sub-contractor)	
Identification of a contact person who is authorized to answer requests about the bid	Name	
	Title	
	Postal address	
	Telephone number	
	Fax number	
	E-mail address	
Profile of company and coverage	Number of employees	
	Total turnover of the last three financial years	
	Percentage of turnover relating to projects that is similar in nature to the present proposed activity	
	Presence in the region (existing operations only) and outside the region.	

ANNEXURE 3: Offer letter

**BANKY FOIBEN'I MADAGASIKARA
RUE REVOLISIONA SOSIALISTA
ANTANINARENINA
101-ANTANANARIVO
MADAGASCAR**

Dear Sirs,

Having examined the Request for Proposal documentation, the receipt of which is hereby duly acknowledged, we, the undersigned, offer to supply and establish a Private Credit Bureau solution in conformity with the Request for Proposal requisites and documentation attached herewith and made part of this proposal.

We undertake, if our proposal is accepted:

1. To commence delivery within (__) days from signature of the final contractual documentation and to complete delivery of all the items specified in the contract within (__) calendar days calculated from the commencement date.
2. To complete all associated services specified in the contract within (__) calendar days from the day the credit grantors provide a sufficient representative cross-sample of data, provided by at least n. (__) of the bureau member financial institutions in a mutually agreed data format.

We agree to abide by this proposal for a period of 180 days from the date fixed for the submission of proposals and it shall remain binding upon us and may be accepted at any time before the expiration of that period.

Until a formal contract is prepared and executed, this proposal, together with BFM's written acceptance thereof, and BFM's notification of award, shall constitute a binding Contract between the parties.

We understand that BFM is not bound to accept the lowest or any proposal it may receive.

Dated...../...../....2018

Signature _____

ANNEXURE 4 : Non-disclosure agreement

Purpose:

- (a) The *Banky Foiben'i Madagasikara* (BFM) is seeking to establish a Private Credit Bureau in MADAGASCAR("the Purpose")
- (b) The parties: BFM and the International Bidder are aware that certain confidential information and other material have been disclosed or may be disclosed between BFM and the International Bidder including without limit, trade and business secrets and other proprietary information and material belonging to either of the parties hereto, their group companies or associated organizations including but not limited to information relating to each other's operations, systems, software, processes, methodologies, plans, know-how, data, ideas, customers, suppliers, personnel, prices, profitability or other business, commercial or financial affairs ("Confidential Information") and are desirous of protecting same.

NOW IT IS HEREBY AGREED as follows:

1. The Recipient will only use the Confidential Information strictly for the Purpose;
2. All confidential information disclosed by either of the parties hereto (the "Discloser") to the other party (the "Recipient") in connection with the Purpose or negotiations or informal discussions concerning the Purpose and whether the Confidential Information is conveyed verbally, by demonstration, in writing or in any other medium or form will be treated as strictly confidential by the Recipient
3. Except for reasons and on the basis set out in paragraph 6, the Recipient will not disclose any of the Discloser's Confidential Information to any third party without the prior written approval of the Discloser, such written approval not to be unreasonably withheld
4. The intellectual property rights of any such Confidential Information remains (unless otherwise expressly agreed in writing between the Recipient and Discloser) the exclusive property of the Discloser (or its licensor's) and such Confidential Information is only permitted to be used by the Recipient strictly for the Purpose;
5. The Recipient will take all reasonable steps to protect the Discloser's Confidential Information from disclosure and discovery and that these steps will be no less than the steps which the Recipient would take to prevent the unauthorized disclosure or discovery of its own Confidential Information of a similar nature;
6. The Recipient will only divulge the Discloser's Confidential Information to those employees who need to know it strictly for the Purpose but only after making them

aware of the confidential nature of the information and taking all reasonable steps to ensure that they will adhere to obligations equivalent to those imposed by this agreement. Notwithstanding the earlier provisions of this paragraph 6, the Recipient of the Confidential Information will be responsible to the Discloser of the Confidential Information for the failure of any party to whom the Recipient discloses the Confidential Information to observe the obligations in this agreement regarding the use and secrecy of the Confidential Information, only to the extent that the Recipient has control over the third party;

7. The Recipient will notify the Discloser of any unauthorized disclosure or use of the Discloser's Confidential Information and the Recipient will take all steps necessary (including but not limited to any required by the Discloser) to minimize the effect of such disclosure or use and to prevent any further disclosure or use;
8. The Recipient will promptly return all documents, papers, software, disks and other items (and all copies of them) within its reasonable reach which contain any of the Discloser's Confidential Information under this agreement to the Recipient (whether or not these were supplied to or created by the Recipient) and cease using all such information, whenever asked to do so in writing by the Discloser;
9. The Recipient will not have any confidentiality obligations under this agreement with respect to information which, through no wrongful act of the Recipient:
 - 9.1. is already in the Recipient's possession prior to disclosure by the others not subject to any restrictions on use or disclosure and the Recipient can demonstrate this from its written records;
 - 9.2. is independently developed (but only where this is without reference to the Discloser's Confidential Information);
 - 9.3. is lawfully obtained from a third party under no restriction on use or disclosure and the Recipient is not aware that the third party is breaching any obligation of confidentiality relating to the information disclosed;
 - 9.4. becomes publicly known; or
 - 9.5. is required to be disclosed by law or by any other competent regulatory authority.
10. The Discloser's Confidential Information is valuable and damages may not be an adequate remedy for any breach of the provisions of this agreement by the Recipient and that the Discloser will be entitled to injunctive or other equitable relief for any actual or threatened breach of the provisions of this agreement by the Recipient (without the need for the Discloser to prove any special damage);

11. The Discloser gives no warranties (expressed or implied) in respect to the information provided to Recipient under this agreement;
12. The disclosure of information relating to the Purpose does not confer a right to use it for anything other than the Purpose;
13. The Recipient will in its best ability maintain all confidentiality notices or proprietary markings placed upon or within the Confidential Information and will not remove, destroy, deface or obscure such markings.
14. Except to the extent strictly necessary for the Purpose, the Recipient will not copy, reproduce or record in writing any Confidential Information.
15. Each party's obligations under this agreement will continue for a period of 5 years from the date of this agreement subject to termination clause as contained in paragraph 18.
16. Subject to both parties' obligations under this agreement, either party may enter into agreements or negotiations with third parties or make disclosures to such third parties whether or not relating to the Purpose and may pursue its business even where this is in competition with the other party.
17. This agreement will be governed by and construed in accordance with the laws of MADAGASCAR and any dispute shall be subject to the exclusive jurisdiction of Madagascar courts.
18. This agreement shall take effect from the date first above specified and shall remain in full force and effect, until a mutual agreement is set in writing between the parties to terminate this agreement.

IN WITNESS, WHEREOF the party hereto have executed this agreement
DATED/...../.....2018-

(Name of Bidder)

(Signature)

DIRECTOR / SECRETARY

IN WITNESS WHEREOF the party hereto have executed this agreement
this day of2018 - On behalf of BFM

**The governor,
Alain H. RASOLOFONDRAIBE**

ANNEXURE 5 : Selection criteria for sites-visits

The proposed sites must answer to the following technical and business criteria:

- be a full-fledged credit bureau operation
- hosting the system / database
- be based on consumer and commercial functionality
- have been implemented within the last three years and be based on a similar technology platform as outlined in the bidder responses to the RFP
- directly managed by the bidder's staff
- include Value Added Services distribution

The site is also expected to host operations and staff able to demonstrate the bidder's experience in undertaking the following activities:

- Working with data providers to assist them to submit data to the Bureau
- Providing training to bureau staff and customers and promoting Bureau usage by lenders
- Showing how the project met the milestones and established the Bureau in a professional, timely, and efficient manner
- Providing both technical and business support to the Bureau and Bureau members, particularly in the local environment.
- Ensuring efficient and timely software release management processes and providing high quality bug fixes or up-grades, and
- Ensuring that highly competent, capable and committed staffs that possess the relevant skill sets are deployed to provide the required level of service and support, and that they are available in the local environment.

NOTE: During the site visit it is a requirement to meet with at least two PCB clients/users, one of which could be a non-bank, to seek feedback and clarification.

The visiting team will seek clarification in respect of the above questions from the selected customers of the Bureau. Ideally, they should be able to comment from both a consumer as well as commercial lending perspective.

ANNEXURE 6: Management consultancy services

Bidder must at least meet the following requirements in terms of management consulting

1. Transitional Management Support

- Bidder to provide advice and direction in managing the transition from green field to launch of the credit bureau for a minimum period of three years thereafter,
- Bidder to ensure smooth and continual commitment to the project and to ensure the transfer of bureau operations knowledge to the local management team.
- Bidder may want to consider the local secondment and full participation of its representative/s in the PCB management team until the cross-fertilization fully happens.

2. Business Plan verification, Organizational issues

- Inputs and recommendations on the business strategy
- Bi-annual reviews of actual performance against the business plan in the first years after the bureau is in operation.
- Develop the organization chart for the PCB and the related detailed job descriptions for key roles such as General Manager, Chief Technology Officer, Chief Finance Officer, Chief Marketing Officer, Head of Call Centre / Customer Care, Legal officer, and Compliance Officer as well as an in-depth selection process and in conjunction with the Board identify suitable employees to occupy the key positions.

3. Development of PR and Marketing Strategy

- Provide a Public Relations Strategy (PR) and carry out tasks relating to identifying the right agency to carry out such PR exercises and execute a suitable road map as well as providing appropriate documentation, approach papers, seminar contents, promotional material, membership agreements and a code of conduct.
- Develop in conjunction with the PCB management the initial marketing strategy for the bureau, including the methodology for identifying potential customers, developing marketing kits and member kits, marketing letters and scripts, marketing presentations and other literature to create awareness.
- Recommend marketing strategies to maximize the reach, efficiency and comprehensiveness of PCB services and products.
- As part of future reviews, validate the initial strategy with the PCB Board and recommend midterm course adjustments.
- To train marketing staff on delivery of presentations and related matters in respect of different stake holders

4. Website Development and Design

Support to the website development and design of the PCB, which will serve as the PCB presence on the Internet.

5. Training of Member (Banks and Non-Banks) Staff

Train the member users and staff on the following:

- Usage and features of the web based credit reporting system
- Input File format requirements
- Bureau Service Operations

6. Training of Credit Bureau Team

- Prepare a detailed comprehensive training manual and materials for training the operational, technical, financial and marketing personnel with respect to the use of the Software & Bureau operations. The training methodology will include a “Train the Trainer” program.
- Developing all training material, presentations etc. for all stake holders
- The training plans must include those for internal staff (marketing, operations, IT, etc), for presentations to regulators and other authorities, credit grantors (who will be clients of the bureau)
 - Identifying training needs of staff
 - Detailed and comprehensive training manual and materials
 - Training methodology
 - Training staff on IT, audit and other operational procedure implementation
 - Call center and customer service staff training including handling customer complaints
 - Create a training curriculum for adoption by PCB
 - Training in respect of IT will include day-to-day operation of the bureau, monitoring of system, operation logs and problem identification & resolution.

7. Data Management Support and Consultancy

Provide guidance in optimum data, backup and storage management in line with available technology infrastructure, legal compliance requirements and ease of management.

8. Support Development of New Products and Services

Identifying and conceiving products that could be developed for Madagascar market and with developing a business plan for these products

9. Bureau Operations Process Consultancy and Development of Operations Process Manual

Provide consultancy services in the area of bureau operations processes best practices. Develop bureau operations process guidelines and in the development of a handbook/manual on the bureau operations processes.

ANNEXURE 7: Datasheet

REFERENCE	CLAUSE / CONTENT
1	<ul style="list-style-type: none"> • The name of the assignment/project: Establishment of the Private Credit Bureau of Madagascar • The method of selection is: Open tender • Both technical and financial proposals are requested: Yes
2	<p>The objectives, and description of the assignment are:</p> <ul style="list-style-type: none"> • The procurement of a technical and strategic (equity)Partner to fund, develop, customize, operate, and manage a world-class private credit information reporting system (Private Credit Bureau) for Madagascar, based on best international practice. • The selected bidder must implement and provide for the on-going management/operations of the technical solution, providing as well domain expertise to potential data providers / users of the system so as to optimize utilization and performance.
3	<p>The need for continuity for downstream work is envisaged: Yes</p> <ul style="list-style-type: none"> • The contracted bidder will be expected to enter into a support and maintenance agreement with the PCB for the provision of on-going system support. • Further assistance may be required to modify the initial solution to accommodate changes in the market. • Additional involvement, in the future, will be sought for the development of Value Added credit bureau services (e.g. credit scoring, fraud prevention etc.) as and when appropriate.

4	<ul style="list-style-type: none"> • Clarifications may be requested by potential bidders: yes • Clarification and complementary information must be requested by: e-mail only • Deadline for clarification requests is: March 27, 2018 • Coordinates for requesting clarifications are: <table border="1" data-bbox="391 583 1598 1094"> <thead> <tr> <th>NAME</th> <th>POSITION</th> <th>E-MAIL</th> <th>TEL.</th> </tr> </thead> <tbody> <tr> <td>Mrs. Sylvia.M. RASOARILALA</td> <td>Directeur de la Documentation et des Centrales d'Information (DDI)</td> <td>s.rasoarilala@bfm.mg</td> <td>(261) 20 22 236 73/ 20 22 627 81/ 22 642 26 Ext. 4105</td> </tr> <tr> <td>Mr. Hajanirina RANDRIANARISON</td> <td>Fondé de Pouvoirs de la DDI</td> <td>h.randrianarison@bfm.mg</td> <td>(261) 20 22 236 73/ 20 22 627 81/ 22 642 26 Ext. 4018</td> </tr> <tr> <td>Mr. Andry Nirina RAVELOJAONA</td> <td>Fondé de Pouvoirs auprès de la DDI</td> <td>a.ravelojaona@bfm.mg</td> <td>(261) 20 22 236 73/ 20 22 627 81/ 22 642 26 Ext. 4011</td> </tr> </tbody> </table>	NAME	POSITION	E-MAIL	TEL.	Mrs. Sylvia.M. RASOARILALA	Directeur de la Documentation et des Centrales d'Information (DDI)	s.rasoarilala@bfm.mg	(261) 20 22 236 73/ 20 22 627 81/ 22 642 26 Ext. 4105	Mr. Hajanirina RANDRIANARISON	Fondé de Pouvoirs de la DDI	h.randrianarison@bfm.mg	(261) 20 22 236 73/ 20 22 627 81/ 22 642 26 Ext. 4018	Mr. Andry Nirina RAVELOJAONA	Fondé de Pouvoirs auprès de la DDI	a.ravelojaona@bfm.mg	(261) 20 22 236 73/ 20 22 627 81/ 22 642 26 Ext. 4011
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5	<ul style="list-style-type: none"> • Proposals should be submitted in French • Other documents that are part of the assignment must be written in: French 																
6	<p>Minimum requirements for bidders to participate do exist : Yes</p> <ol style="list-style-type: none"> Must have executed with success at least two (2) developments and implementation of credit information sharing systems / projects of similar type (Private Credit Bureau and/or Public Credit Registry) in the past ten (10) years. The above developments must include the participation, as data providers/users of the system, of regulated entities (e.g. banks, MFI, etc.) as well as of non-regulated entities (e.g., telecom operators, utilities, retailers, etc.). <u><i>BFM must be granted permission to verify the level of satisfaction of users.</i></u> Must have a demonstrable previous experience of having developed and operated systems based on the Hub & Spokes model (1 system hosting data from and supplying information services to one or more countries different from where the system is residentially located) 																

	<p>d) Must own, or operate and maintain, or manage for third parties, at the date of the proposal submission, at least two (2) sites operating in other countries, with a similar configuration.</p> <p>e) Must be willing to invest/ in the PCB share capital in a proportion of 51% at least, and up to 100%.</p> <p>f) Must prove experience in supplying upgrades and services comparable to the ones requested by this project, as well as additional Value Added Services (e.g. bureau scores, alerts, etc.).</p> <p>g) The appointed Project Leader must have at least (10) ten years of experience in development/ implementation of credit reporting applications in credit information sharing / financial sectors.</p> <p>h) Analysts assigned to the project must have experience of at (5) five years in programming, systems analysis and systems engineering in the credit reporting domain.</p> <p>i) Proven capacity of existing help-desk to deliver 24x7 support.</p> <p>j) Proven experience in data warehousing and management as well as in credit risk analysis.</p> <p>k) Proven knowledge of the legal best practice concerning the privacy and confidentiality of personal information, and ability to deal with the issues deriving from the enforcement of credit reporting regulations or laws, particularly as far as consumer's relations are concerned.</p> <p>l) <u>Key technical staff fluent in French (spoken and written) must be available throughout the various phases of the project.</u></p>
7	Training is a specific, integrated component of this assignment: Yes
8	All costs must be submitted in the currency: US\$. Bidders allowed to state local cost in the national currency: No
9	Proposals validity: 180 days after the submission date

10	<p>Copies of the proposals to be submitted: in one main envelope containing</p> <ul style="list-style-type: none">• Technical proposal- an envelope with 1 a hard copy, 1 electronic copy(*) and• Financial proposal - a <u>sealed envelope separate</u> from the technical proposal, and containing 1 hard copy of the financial proposal, and 1 electronic copy.• Drafting: proposals to be drafted using Microsoft Office Word.• Paper size / font: A4, Times New Roman 12• Maximum number of pages including annexes: 100 pages (<u>proposals including more than 100 pages will be disqualified</u>) <p>(*) 1 copy of the technical proposal <u>only</u>, must also be e-mailed to the addressed provided</p>
11	<p>The proposal submission address is:</p> <div data-bbox="472 936 1533 1486" style="background-color: #e0e0e0; padding: 10px; text-align: center;"><p>BANKY FOIBEN’I MADAGASIKARA</p><p>Attention of: Mr. Alain H. RASOLOFONDRAIBE Governor of Banky Foiben’i Madagasikara</p><p>Adress: Rue Revolisiona Sosialista Antaninarenina Antananarivo – 101 - MADAGASCAR Ref : RFP/BIC E-mail: cab.gov@bfm.mg</p><p>Tél. : +(261) 20 22 217 51 Mobile + (261) 34 05 325 67 / 32 02 539 67 / 34 12 866 20 Internet web site : www.banque-centrale.mg</p></div> <p>Information on the envelopes should also include:</p> <ol style="list-style-type: none">1. Outer sealed envelope:<ul style="list-style-type: none">• Name of bidder• Address of bidder• Submission date• Name of assignment• <u>Do not open, except in presence of the Evaluation Committee</u> (must be indicated in the envelope)

	<p>2. Inner sealed envelopes:</p> <ul style="list-style-type: none">• Technical Proposal• Financial Proposal shows: <u>Do Not Open with the Technical Proposal</u> (must be clearly indicated on this envelope).
12	<ul style="list-style-type: none">• Proposals must be submitted no later than the following date and time: The day May 11, 2018 - at 04:30 p.m. Antananarivo time.• Proposals will be publicly opened on: The day 15 May, 2018 – at 10:00 a.m. Antananarivo time.
13	Contracts negotiations to be held in: Antananarivo (Madagascar)

	Score card template for the assessment of the technical proposals (<i>not binding, BFM reserves itself the right to amend it or totally change variables, attributes, points, or even to not utilize the scorecard</i>)	Points
i)	Bidders specific experience related to the assignment –<i>max total points:</i> Sub Criteria: <ul style="list-style-type: none"> • Number of similar projects previously undertaken • Previous experience of MFIs and telecoms inclusion in credit bureau system • Own Value Added Services development internal capacity • Previous experience in developing markets • Previous experience in francophone Africa 	35 0-15 0-5 0-5 0-5 0-5
ii)	Work plan / methodology compliance with RFP Requirements-<i>max total points:</i> Sub Criteria: <ul style="list-style-type: none"> • Proposed solution development methodology • Proved existing experience with large Hub & Spokes solutions • Conformity of deliverables as requested • Timeframe, duration, and phasing 	35 0-10 0-10 0-10 0-5
iii)	Qualifications / competence of key staff for the assignment –<i>max total points:</i> Sub Criteria: <ul style="list-style-type: none"> • Project leader’s proven previous experience of similar markets/projects • Team’s demonstrable knowledge of PCB development /operations 	20 0-10 0-10
iv)	Suitability of the transfer of knowledge program (training) –<i>max total points:</i> Sub Criteria: <ul style="list-style-type: none"> • Post-implementation support / maintenance plan • Training during development 	20 0-10 0-10
v)	Commitment to the project and local participation –<i>max total points:</i> Sub Criteria: <ul style="list-style-type: none"> • Readiness to invest in Madagascar and size of the investment • Readiness to operate in Madagascar • Readiness to employ local resources after roll-out 	20 0-10 0-5 0-5
	TOTAL SCORE	130
	NOTE: <ul style="list-style-type: none"> • Minimum technical score required to pass: 90points • Technical proposals scoring less than 90 points will be disqualified, and annexed financial proposal will not be opened • The formula for determining the financial scores is the following: $SF = 100 \times FM/E$ <i>in which SF is the financial score, FM is the lowest price and E the price of the proposal under consideration</i> • Weights for Technical and Financial Proposals: Technical = 0.8 / Financial = 0. 	

ANNEXURE 8: Financial proposal submission form

**BANKY FOIBEN'I MADAGASIKARA
RUE REVOLISIONA SOSIALISTA
ANTANINARENINA
ANTANANARIVO - 101
MADAGASCAR**

**Attention of: Monsieur Alain H. RASOLOFONDRAIBE
Governor of Banky Foiben'i Madagasikara**

Mr. Governor,

We, the undersigned, offer to provide the services for the development of a Private Credit Bureau in Madagascar region, in accordance with your Request for Proposal dated (enter date) and our Proposal (Technical and Financial Proposals). Our attached Financial Proposal is for the sum of (*Amount in words and figures*). This amount is in US dollars and is exclusive of the local taxes. Our financial proposal is composed as follows:

Items	Fees	Notes
Software license fee	\$	
Localization/customization fee	\$	
Maintenance and support fees	\$	
Hardware and material	\$	
3 rd party Software (if any)	\$	
Other (specify, if any)	\$	
TOTAL	\$	

WARRANTY PERIOD

Our Financial Proposal shall be binding upon us subject to the modifications resulting from Contract negotiations, up to expiration of the validity period of the Proposal, i.e., (enter date). Commissions and gratuities, if any, paid or to be paid by us to agents relating to this Proposal and Contract execution, if we are awarded the Contract, are listed below:

Name and Address of Agents	Amount and Currency	Purpose of Commission or Gratuity
_____	_____	_____

We understand you are not bound to accept any Proposal you receive.
Yours sincerely,

Authorized Signature:

Name and Title of Signatory: _____, Name of Firm: _____
Address: _____

**ANNEXURE 9: Credit Information Law n. 2017-045 of Feb 15, 2018 governing the activity
and control of credit bureau**



ont été ou pourraient être incluses dans la Base de données d'un BIC, en raison d'une relation contractuelle de crédit ou de prestation de services avec les Fournisseurs de données établis à Madagascar.

Code de conduite : Document engageant, qui formalise les principes et les normes de comportement à la conduite des activités et des opérations des BIC.

Consentement : Ecrit manifestant la volonté explicite du Client, personne physique, d'autoriser les Fournisseurs de données de partager les informations le concernant, y compris ses données personnelles, avec les Utilisateurs et le BIC et pour consulter auprès du BIC son historique de crédit, des informations sur sa solvabilité et des services à valeur ajoutée.

Données publiques : Données qui figurent dans les registres, archives, listes, ou toutes autres données qui sont recueillies, conservées, traitées et détenues par un organisme public ou parapublic et dont la nature publique et l'accessibilité permanente au public sont garanties par la loi.

Données à caractère personnel : Toute information, de quelque nature qu'elle soit et indépendamment de son support, relative à une personne physique identifiée ou identifiable, directement ou indirectement, par référence à un nom, un numéro d'identification ou à un ou plusieurs éléments qui lui sont propres. Ces éléments sont notamment physiques, physiologiques, psychiques, financiers, économiques, culturels ou sociaux.

Données sensibles : Données à caractère personnel révélant l'origine raciale, les données biométriques, les données génétiques, les opinions politiques, les convictions religieuses ou autres convictions, l'appartenance syndicale et celles qui se rapportent à la santé ou à l'orientation sexuelle des personnes.

Entités supervisées : Etablissements de crédit définis par la loi relative à l'activité et au contrôle des établissements de crédit.

Entités non supervisées : entreprises commerciales, détaillants, entreprises de services publics, entité dont les activités comprennent l'octroi de crédits ou qui offrent des options de paiement en différé, les agences de recouvrement ou agences assimilées, non supervisées par BFM ou par la CSBF.

Fournisseurs de données : Fournisseurs de biens ou de services identifiés par BFM comme susceptibles de communiquer au BIC des informations liées à l'historique de crédit ou de paiement d'une personne physique ou morale, tels que établissements de crédit et autres institutions financières ou organismes assimilés, opérateurs de téléphonie fixe et mobile, établissements publics, sociétés de fourniture d'eau, de gaz et d'électricité, ainsi que toutes autres institutions privées ou publiques approuvées par BFM.

La liste des Fournisseurs de données est fixée par une instruction de BFM.

Informations sur le crédit ou Information(s) : les informations incluant des données à caractère personnel et qui concernent notamment les antécédents de crédit, l'historique de paiement d'une personne physique ou morale de droit privé, public ou parapublic, sa solvabilité, sa capacité d'emprunt ou de remboursement, l'ensemble des risques de crédit, le volume des prêts, leur maturité, leurs modalités et conditions, les remboursements, les garanties et autres engagements, les données à caractère financier ou de service ou de paiement non nécessairement lié à un prêt, qui permettent d'évaluer, à tout moment, la situation financière, l'exposition à des risques financiers, la probabilité de performance de paiement de toute personne physique ou morale concernée.

Personnes apparentées à un Fournisseur de données ou à un Utilisateur : Toute personne physique ou morale ayant avec le Fournisseur de données ou l'Utilisateur au moins l'une des qualités

ou des relations suivantes :

1. un administrateur ou un dirigeant ;
2. tout actionnaire qui détient, directement ou indirectement, une part égale ou supérieure à cinq pour cent (5%) des droits de vote ;
3. une entreprise dans laquelle il détient, directement ou indirectement, au moins vingt-cinq pour cent (25%) des droits de vote ;
4. une entreprise dans laquelle les personnes visées aux 1^{er} et 2^o points sont des dirigeants, des administrateurs ou détiennent, directement ou indirectement, au moins vingt-cinq pour cent (25%) des droits de vote ;
5. un conjoint, un parent en ligne directe ou un allié jusqu'au premier degré de l'une des personnes visées aux 1^{er} et 2^o points ainsi que les entreprises dans lesquelles ils sont dirigeants, administrateurs ou détiennent, directement ou indirectement, au moins vingt-cinq pour cent (25%) des droits de vote ;
6. une entreprise que, seul ou avec d'autres, le Fournisseur de données ou l'Utilisateur contrôle directement ou indirectement ;
7. une entreprise contrôlée directement ou indirectement par une personne ou une entité contrôlant le Fournisseur de données ou l'Utilisateur ;
8. toute autre catégorie de personnes jugée apparentée au Fournisseur de données ou à l'Utilisateur par BFM.

Rapport de solvabilité : Communication d'information sur le crédit faite par un BIC, sur support écrit ou électronique ou de toute autre manière, concernant l'historique de crédit ou les antécédents de paiement des engagements d'un Client ainsi que d'autres données pertinentes recueillies par le BIC en vue de déterminer l'éligibilité ou l'historique du Client en matière de crédit, sa capacité à rembourser ses emprunts ou à payer les engagements financiers qu'il souscrit.

Scoring ou credit scoring : Méthodologie statistique développée à partir des informations recueillies par un BIC, qui permet d'évaluer la solvabilité ou le profil de risque d'un demandeur de crédit.

Services à Valeur Ajoutée : Services développés par un BIC, liés ou dérivés de tout traitement informatique ou analyse statistique, ou consolidation des informations fournies par les Utilisateurs, Fournisseurs de données, ou d'autres sources dûment autorisées fondées sur des logiciels ou non.

Traitement d'Informations : Opération ou ensemble d'opérations et/ou de procédures techniques, automatisées ou non, électroniques ou manuelles, qui permettent de collecter, de compiler, d'organiser, de stocker, d'analyser, d'élaborer, de sélectionner, d'extraire, de comparer, de partager, de transmettre, de corriger ou d'effacer les informations contenues dans une Base de données.

Utilisateur: Etablissement de crédit, entreprises de services, ou autres Fournisseurs de données ayant le droit d'accéder à la base d'Informations d'un BIC en vertu d'un contrat avec le BIC, afin d'obtenir des Rapports de solvabilité et tous autres services fournis par un BIC, conformément aux dispositions de la présente loi.

Article 3 : Champ d'application

La présente loi s'applique aux BIC, aux Fournisseurs de données et aux Utilisateurs exerçant leurs activités sur le territoire de la République de Madagascar ainsi qu'à leurs Clients respectifs.

TITRE II. DU ROLE DE BANKY FOIBEN'I MADAGASIKARA

Article 4 : Autorité de régulation et de contrôle

BFM est l'autorité de régulation et de contrôle de l'activité des BIC.

A ce titre, BFM contrôle la bonne application par les BIC, les Entités supervisées et les Entités non supervisées de la présente loi, des textes réglementaires ou des instructions prises pour son application.

La Commission de Supervision Bancaire et Financière, en coordination avec BFM, est habilitée dans le cadre de ses contrôles découlant de la loi relative à l'activité et au contrôle des établissements de crédit à vérifier la bonne application de la présente loi par les établissements de crédit.

Article 5 : Mission de régulation et de contrôle

En tant qu'autorité de régulation et de contrôle, BFM est habilitée à :

- examiner toute demande d'Agrément aux fins d'exercer l'activité de BIC ;
- délivrer l'Agrément aux BIC ;
- élaborer les normes de gestion et celles relatives à toutes prestations de services d'informations sur le crédit régies par la présente loi ;
- contrôler les conditions d'exercice, les règles de conduite appropriées et les pratiques acceptables en matière d'informations sur le crédit ;
- s'assurer que les BIC, les Fournisseurs de données, et les Utilisateurs, mettent en place des procédures avancées de sécurité pour protéger leurs systèmes et bases de données et appliquent les standards et meilleures pratiques internationaux permettant d'assurer la confidentialité, la protection et la préservation de l'ensemble des données des Clients, et de leurs droits ;
- prononcer les sanctions disciplinaires et les mesures coercitives prévues par la présente loi à l'encontre d'un BIC ou d'un Fournisseur sur le crédit en cas de violation des dispositions de la présente loi ou de tous textes réglementaires pris pour son application ;
- approuver le Code de conduite mis en place par les BIC et veiller à son application ;
- édicter toutes instructions d'application de la présente loi ;
- établir des règles relatives à la demande d'Agrément ;
- établir la liste des Fournisseurs de données.

La responsabilité de BFM ne peut être engagée pour les Informations ou les divulgations de faits auxquelles elle procède en exécution de sa mission de régulation et de contrôle au titre de la présente loi.

Article 6 : Modalités de contrôle

Dans l'exercice de sa mission BFM effectue des contrôles sur pièce et/ou sur place.

A cet effet, BFM a :

- Accès aux bases de données complètes, aux livres, registres, contrats, procès-verbaux de réunions et tout autre document en possession ou sous le contrôle d'un administrateur, dirigeant ou employé de tout BIC.
- Le droit d'exiger de tout administrateur, directeur, employé, auditeur, d'un BIC de lui fournir les renseignements ou de produire les livres, registres ou documents qui sont en sa possession ou sous son contrôle, incluant la faculté pour BFM de fixer par voie d'instruction le contenu et la périodicité des reportings.

Le contrôle par BFM de la conformité à la présente loi, des textes réglementaires ou des instructions

prises pour son application peut, en tant que de besoin, s'étendre à toute structure qui gère, stocke, conserve, sauvegarde, fournit ou utilise des données ou informations sur le crédit. Ni les Fournisseurs de données, ni les Utilisateurs, ni les BIC ne peuvent s'opposer aux contrôles effectués par BFM, par toute autre Institution d'audit dûment mandatée par BFM ou par toute Autorité de contrôle dûment habilitée par la loi en vigueur.

Les Fournisseurs de données ne peuvent opposer à BFM le secret professionnel dans l'accomplissement de ses missions de régulation et de contrôle des activités des BIC.

Article 7 : Convention de coopération

BFM peut conclure, dans le cadre de l'application de la présente loi, une convention de coopération avec d'autres autorités de régulation, d'autres administrations publiques ou organismes nationaux ou étrangers chargés d'enquête.

En outre, le contrôle par BFM d'un Fournisseur de données dans le cadre de l'application de la présente loi, lorsque celui-ci est soumis le cas échéant à une autorité de régulation, s'exerce en coordination avec ce dernier sans préjudice des dispositions particulières applicables audit Fournisseur de données.

TITRE III

DE L'OCTROI ET DU RETRAIT D'AGREMENT D'UN BIC

Article 8 : Agrément

Nul ne peut exercer l'activité de BIC sans avoir été préalablement agréé par BFM.

Il est interdit à toute entité autre qu'un BIC d'utiliser une dénomination sociale et nom commercial, une publicité ou d'une façon générale toutes mentions ou expressions faisant croire qu'elle est agréée en tant que BIC ou tendant à créer une confusion à ce sujet.

Article 9 : Demande et modalités d'Agrément

La demande d'Agrément est formulée par écrit par le demandeur, personne morale auprès de BFM.

BFM communiquera une réponse écrite à toute demande d'Agrément dans un délai de quatre-vingt-dix (90) jours calendaires à compter de la date de dépôt de la demande.

Une instruction de BFM fixe les éléments constitutifs du dossier de demande d'Agrément.

Article 10 : Complément d'informations

BFM est habilitée à recueillir tout complément d'informations jugé utile à l'instruction de la demande.

Le délai de quatre-vingt-dix jours (90) jours calendaires prévu à l'article 9 ci-dessus peut être prorogé par BFM pour une période supplémentaire ne dépassant pas trente (30) jours à compter du dépôt du dossier complété par le demandeur.

Tout refus d'Agrément de BFM doit être dûment motivé et notifié au demandeur.

Article 11 : Interdiction de cession ou de transfert de l'Agrément

Un demandeur ayant obtenu l'Agrément de BFM est autorisé à exercer son activité sur tout le territoire

de la République de Madagascar.

L'Agrément ne peut faire l'objet de cession ou de transfert, sous quelque forme que ce soit excepté dans les cas soumis à l'approbation de BFM prévus à l'alinéa 1^{er} de l'article 19 de la présente loi.

Article 12 : Suspension et retrait d'Agrément

La suspension ou le retrait d'Agrément à un BIC est prononcé par BFM soit :

1. à la demande du BIC concerné, moyennant un préavis de douze (12) mois ;
2. d'office lorsque:
 - le BIC cesse volontairement ses activités sur une période d'un (1) mois ;
 - le BIC manque de façon grave ou répétée à la réglementation le régissant ;
 - le BIC adopte un comportement contraire au Code de conduite ;
 - les conditions auxquelles l'Agrément est subordonné ne sont plus remplies ;
 - le BIC est déclaré en redressement judiciaire ou en liquidation judiciaire au sens de la loi sur les procédures collectives d'apurement du passif ;
 - les informations transmises à BFM à l'appui de la demande d'Agrément se sont avérées fausses ou trompeuses ;
 - le BIC n'a pas commencé à développer le système d'informations sur le crédit nécessaires à la réalisation de ses activités dans un délai de six (6) mois à compter du jour de la première publication au Journal Officiel et sur le site internet de BFM de son Agrément ;
 - le BIC a procédé au transfert de son siège social hors de la République de Madagascar, y compris à la suite de toute opération de fusion par absorption ou d'apport à une société nouvelle.
3. A titre de sanction, en application des dispositions de l'article 53 de la présente loi.

En tout état de cause, une notification préalable à la décision de suspension ou de retrait doit être adressée par BFM au BIC concerné par tout moyen laissant trace écrite de réception dans un délai minimum d'un (1) mois avant la prise d'effet de la décision.

La notification indique clairement les motifs de la suspension ou du retrait, et BFM donne au BIC la possibilité de présenter ses observations dans un délai de quinze (15) jours à compter de la réception de la notification préalable.

Article 13 : Cessation d'activités

Le BIC dont l'Agrément a été suspendu ou retiré doit cesser ses activités dans les délais fixés par la décision de retrait ou de suspension de l'Agrément.

Le BIC doit prendre toutes les mesures nécessaires pour transférer l'intégralité de sa Base de données à BFM ainsi que toute copie électronique de secours. Les modalités de ce transfert sont fixées par voie d'instruction de BFM.

Article 14 : Interdiction d'exercer

Le BIC, en cas de retrait d'Agrément, ne peut plus exercer directement ou indirectement, les activités visées à l'article 28 ci-dessous, sous peine des sanctions prévues par la présente loi.

Le retrait d'Agrément du BIC s'étend automatiquement aux bureaux et aux succursales du BIC implantés sur le territoire de la République de Madagascar.

Article 15 : Rétablissement de l'Agrément

BFM peut rétablir l'Agrément d'un BIC suspendu lorsque les motifs de la suspension ont été régularisés.

Article 16 : Publication

BFM publie les décisions d'octroi, de suspension, de retrait et de rétablissement de l'Agrément suspendu d'un BIC au Journal Officiel ainsi que sur son site internet.

L'Agrément prend effet au lendemain du jour de la première publication au Journal Officiel ou sur le site internet de BFM.

BFM communique également la décision de retrait aux Fournisseurs de données et aux Utilisateurs.

La décision de retrait peut faire l'objet d'un recours devant le Conseil d'Etat dans les conditions du droit commun.

**TITRE IV
DES CONDITIONS D'EXERCICE DES BIC**

**CHAPITRE I
DES CONDITIONS LIEES AUX SOCIETES**

Article 17 : Forme juridique, capital social des BIC et dépôt de garantie

Les BIC sont constitués sous forme de société anonyme à capital fixe. Ils doivent avoir leur siège social à Madagascar et leurs actions doivent revêtir la forme nominative.

Tout BIC doit disposer d'un capital social d'un montant minimum défini par instruction de BFM qui doit être entièrement libéré au jour de l'Agrément.

Un dépôt de garantie dont le montant et les modalités sont fixées par instruction de BFM devra être constitué auprès de BFM avant tout octroi d'Agrément.

Article 18 : Seuil de participation

Les Fournisseurs de données ou les Utilisateurs ou les Personnes apparentées sont autorisés à acquérir des actions dans un BIC dans la limite de cinq pour cent (5%) du capital social, individuellement, et de quarante-neuf pour cent (49%) collectivement.

Article 19 : Autorisation préalable

Les opérations de fusion, de scission, d'apport partiel d'actifs, d'absorption, de cession d'actions portant sur plus de vingt pour cent (20%) du capital social, de mise en gérance, de cession de fonds de commerce et, plus généralement, toutes opérations ayant une incidence directe ou indirecte sur le contrôle de l'actionariat ou sur l'administration des BIC doivent être préalablement approuvées par BFM.

Sont également soumises à autorisation préalable de BFM, les opérations suivantes effectuées par les BIC :

- toute modification de la dénomination sociale, ou du nom commercial ;
- tout transfert du siège social ;
- toute dissolution anticipée ;
- toute cessation de l'ensemble de ses activités.

Dans tous les cas, le BIC ne peut vendre, ni louer ni transférer ses fichiers d'informations sur le crédit qu'à un autre BIC agréé en application de la présente loi et, sous réserve d'une autorisation préalable de BFM.

Article 20 : Délai

Les autorisations préalables prévues à l'article 19 ci-dessus sont accordées dans le délai de trente (30) jours calendaires.

A défaut de réponse dans le délai trente (30) jours précité, lesdites autorisations sont réputées accordées.

Article 21 : Conformité

Les BIC sont tenus de se conformer (i) à l'ensemble de la législation et de la réglementation qui leur est applicable, (ii) aux instructions de BFM, (iii) aux standards et meilleures pratiques internationaux en vigueur en la matière.

Article 22 : Comptes

Les BIC doivent tenir au lieu de leur siège social et/ou de leur principal établissement une comptabilité pour l'ensemble des opérations réalisées à Madagascar conformément aux dispositions législatives et réglementaires relatives à la comptabilité des entreprises.

Les comptes des BIC doivent être certifiés par un ou plusieurs commissaires aux comptes, conformément aux dispositions de la loi sur les sociétés commerciales.

Les BIC doivent communiquer à BFM leurs comptes annuels dûment approuvés dans un délai de trente (30) jours à compter de la date d'approbation desdits comptes dans les conditions prévues par la loi sur les sociétés commerciales.

Article 23 : Communication de documents

Les BIC doivent fournir, sur première demande de BFM, les renseignements, les éclaircissements, les justifications et l'ensemble des documents jugés utiles pour le contrôle de leurs activités et de leurs comptes ainsi que l'ensemble des données collectées, traitées, et/ou commercialisées.

Sur demande de BFM, les commissaires aux comptes d'un BIC sont tenus de lui communiquer tous rapports, documents et autres pièces, ainsi que tous renseignements et données.

Article 24 : Communication de documents par les Utilisateurs et Fournisseurs de données

Les dispositions de l'article 23 alinéa 1^{er} ci-dessus sont également applicables à tous les Utilisateurs et Fournisseurs de données en ce qui concerne le contrôle du respect de la législation et de la réglementation applicables au partage de données.

CHAPITRE II DES CONDITIONS LIEES AU PERSONNEL ET DIRIGEANTS DES BIC

Article 25 : Interdictions

Nul ne peut administrer, diriger ou gérer, à un titre quelconque, un BIC ou prendre des participations dans le capital d'un BIC s'il a été condamné, à Madagascar ou à l'étranger, comme auteur ou complice, ou du chef de l'une des infractions suivantes, notamment :

- crime et délit de droit commun,
- faux et usage de faux en écriture publique,
- faux et usage de faux en écriture privée,
- vol,
- recel,
- escroquerie,
- détournement de fonds,
- abus de confiance,
- délit d'initié,
- faux-monnayage,
- infractions relatives aux moyens de paiement,
- contrefaçon ou falsification de titres publics ou d'effets de commerce, d'actions, d'obligations, de coupons d'intérêt ou de billets de banque, pour contrefaçon ou falsification de sceaux, de timbres, de poinçons ou de marques,
- banqueroute frauduleuse,
- corruption de fonctionnaire public ou concussion,
- blanchiment de capitaux, financement du terrorisme,
- et, toute infraction pénale assimilée à l'une de celles énumérées ci-dessus.

Lorsque la décision de justice dont résulte l'une des interdictions visées ci-dessus est ultérieurement rapportée ou infirmée, l'interdiction cesse de plein droit, à condition que cette décision ne soit pas susceptible de recours.

Les mêmes interdictions s'appliquent aux faillis non réhabilités, aux personnes accusant des arriérés de plus de six (6) mois sur leurs remboursements de crédits, ainsi qu'à toutes personnes ayant enfreint les dispositions de la présente loi.

Le personnel, administrateur ou dirigeant d'un établissement de crédit ou tout autre Fournisseur de données et Utilisateur du BIC ne peuvent administrer, diriger ou gérer, à titre quelconque un BIC.

Article 26 : Liste du personnel

Les BIC doivent déposer et tenir à jour auprès de BFM la liste exhaustive des personnes exerçant des fonctions de direction, de gestion et d'administration y compris dans leurs filiales et/ou succursales.

Toute modification de la liste susvisée doit être notifiée à BFM trente (30) jours au moins avant la prise de fonction des nouveaux dirigeants.

Ces personnes doivent résider à Madagascar.

Article 27 : Secret professionnel

Les personnes qui concourent à la direction, à l'administration, au contrôle, au fonctionnement des BIC

ou au traitement des données sont tenues au secret professionnel, sous réserve des dispositions de la présente loi.

Il est interdit aux Fournisseurs de données et aux Utilisateurs d'utiliser les informations confidentielles à des fins autres que celles prévues par la présente loi.

TITRE V DE L'ACTIVITE DES BIC

CHAPITRE I DES DROITS ET OBLIGATIONS DES BIC

Article 28 : Activités autorisées

Les BIC sont, autorisés à exercer les activités suivantes :

- collecter et stocker des Informations sur le crédit et des Données à caractère personnel ;
- traiter et mettre à jour les Informations sur le crédit et les Données à caractère personnel ;
- recouper, fusionner différentes sources d'informations et établir des Rapports de solvabilité incluant la pratique du scoring par dérogation à l'article 3 alinéa 2 de la Loi n° 2014-038 sur la protection des Données à caractère personnel ;
- diffuser des Informations de crédit et des Rapports de solvabilité aux Utilisateurs ;
- développer et commercialiser des Services à Valeur Ajoutée aux Utilisateurs ;
- exercer toute autre activité reconnue comme étant connexe et préalablement autorisée par BFM.

Un BIC ne peut exercer d'autres activités que celles pour lesquelles il a été agréé ou pour lesquelles il a préalablement reçu l'approbation écrite de BFM.

Article 29 : Autres informations accessibles au BIC

Dans le cadre de leurs activités, les BIC peuvent collecter, conserver, traiter et transmettre dans les rapports de solvabilité et au titre des services à valeur ajoutée qu'ils fournissent, les informations suivantes :

- l'état civil ;
- les données publiques sur les décisions portant sur des dettes, dossiers de procédure d'insolvabilité, redressements judiciaires ou liquidations d'entreprises figurant dans les registres des greffes des cours et tribunaux ;
- les données figurant au Registre National du Commerce et des Sociétés et du crédit mobilier, au Cadastre et dans tout autre registre ou répertoire public existant sur le territoire de la République de Madagascar ;
- les données relatives à tout système de notation des bénéficiaires de crédit ;
- et toutes autres données ou informations à caractère public.

Article 30 : Obligations du BIC

Les BIC doivent satisfaire à l'ensemble des obligations édictées par BFM dans le cadre des instructions qui fixent notamment les conditions d'exercice par les Clients, du droit d'accès et de rectification des données qui les concernent et les délais de conservation des Informations sur le crédit.

Article 31 : Sécurité des données

Dans le but d'assurer une sécurité maximale des données, chaque BIC doit de surcroît :

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- élaborer des politiques et des procédures écrites à suivre par ses employés, ses agents et les parties contractantes ;
- imposer des contrôles d'authentification d'accès en interne et en externe ;
- veiller à ce qu'un contrat de prestation de services soit conclu avec un Utilisateur et que le Code de conduite soit applicable à ce dernier avant de lui divulguer des Informations ;
- informer et former les différents intervenants pour assurer la conformité aux politiques et aux procédures ;
- vérifier régulièrement l'utilisation et le respect du contrat de prestation de services, des politiques, des procédures, des contrôles mis en place et des exigences de la présente loi et des instructions prises pour son application ;
- prendre rapidement des mesures efficaces pour remédier aux lacunes observées vis-à-vis du non-respect du contrat d'abonnement, des politiques, des procédures, des contrôles mis en place et des exigences de la présente loi et des instructions prises pour son application ;
- tenir un registre d'accès aux Informations sur le crédit d'un Client et mettre à sa disposition le nom de chaque Utilisateur et la date à laquelle celui-ci a obtenu l'accès aux données dudit Client.

Article 32 : Tarifs

Les BIC facturent aux Utilisateurs les services d'informations qu'ils leur fournissent en fonction d'une grille tarifaire établie par les BIC et indiquant les tarifs des Rapports de solvabilité et des autres services.

Cette grille tarifaire ainsi que son éventuelle modification doivent faire l'objet d'une homologation dans les conditions fixées par instruction de BFM.

La grille tarifaire est communiquée à BFM, aux Associations Professionnelles des Etablissements de Crédit et autres Fournisseurs de données.

La grille tarifaire est portée à la connaissance du public par affichage dans les locaux du BIC.

Article 33 : Interdictions

Les BIC ne peuvent, en aucun cas, établir des critères opérationnels ou des politiques commerciales contraires aux dispositions de la législation en vigueur.

Ils ne peuvent ni conclure un contrat d'exclusivité avec les Utilisateurs ni empêcher les Fournisseurs de données et Utilisateurs de demander ou de fournir des informations à tout autre BIC agréé, ni établir des limites au nombre (i) de consultations que les Utilisateurs peuvent effectuer, ou (ii) de services qu'ils peuvent utiliser.

Article 34 : Moyens de transmission des données

La transmission par les BIC des Informations, données, Rapports de solvabilité, et les prestations de services s'effectuent par tout moyen technologique, appareil électronique ou système informatisé de traitement de l'information, via un réseau public ou privé de télécommunications, pour autant que ceux-ci remplissent les obligations de sécurité, de confidentialité, de protection des données, y compris personnelles, et d'intégrité prévues par la législation en vigueur.

Article 35 : Délocalisation

Les données collectées, les bases de données et les sites de sauvegarde, ne peuvent être délocalisés, conservés et maintenus dans un Etat étranger qu'après autorisation préalable de BFM, sous condition que le pays d'accueil puisse garantir un niveau de protection au moins similaire à celui assuré à Madagascar.

L'autorisation ou le refus d'autorisation de délocalisation des données doit être notifié au BIC dans les conditions fixées par instruction de BFM.

CHAPITRE II

DES OBLIGATIONS DES FOURNISSEURS DE DONNÉES ET DES UTILISATEURS

Article 36 : Obligations des Fournisseurs de données

Tout Fournisseur de données sur le crédit doit :

- obtenir le Consentement conformément à l'article 46 de la présente loi pour le partage des informations sur le crédit avec les BIC ;
- conserver le support sur lequel le Consentement a été recueilli en vertu des dispositions de la présente loi ;
- garder la confidentialité absolue à l'égard du contenu des Informations fournies aux BIC ;
- signer un contrat de prestation de services et un Code de Conduite avec les BIC ;
- fournir au BIC, dans les délais prévus au contrat de prestation de services et selon les dispositions du Code de Conduite, les informations sur les antécédents de crédit de leurs clients ayant consenti au partage et à la consultation des Informations sur le crédit les concernant. Ces informations doivent être exhaustives, fiables, précises, et à jour ;
- adhérer au Code de Conduite qui confère le statut de Fournisseur de données ;
- garantir au Client un droit d'accès à leurs données et de rectification de leurs données, le cas échéant.

Article 37 : Obligations des Utilisateurs

L'Utilisateur est soumis aux obligations suivantes :

- signer un contrat de prestation de services avec les BIC et adhérer au Code de Conduite qui lui confère le statut d'Utilisateur ;
- garder une confidentialité absolue à l'égard du contenu des Informations fournies par le BIC ;
- mettre en œuvre les moyens nécessaires pour imposer aux membres de son personnel ayant accès à des Données à caractère personnel figurant dans les Rapports de solvabilité fournis par les BIC, la plus stricte confidentialité concernant ces données ;
- informer le Client en cas de refus d'octroi de crédit et, lui fournir une copie du Rapport de solvabilité qui a servi de base à la décision en soulignant les données qui ont fondé la décision et en fournissant les motifs du refus précisant s'ils sont liés aux données ou services reçus du BIC ;
- s'interdire de communiquer les Informations et données contenues dans les Rapports de solvabilité pour tout motif autre que ceux visés à l'article 52 ci-après ou de les utiliser à des fins de prospection commerciale, de marketing, de publicité, d'études ou de ciblage des clients d'autres Utilisateurs.

Article 38 : Obligations de consultation et fourniture d'Informations

Les Entités supervisées doivent obligatoirement utiliser les Informations d'un BIC notamment pour :

- l'octroi de crédit ;
- le rééchelonnement ou la restructuration d'un crédit ;
- l'évaluation des portefeuilles clients ;
- toute activité connexe prescrite par BFM.

Lesdites Entités supervisées doivent également fournir périodiquement aux BIC en activité toutes les informations sur les bénéficiaires de crédit et leurs garants, existants dans leurs portefeuilles de crédit et qui ont donné leur Consentement conformément à l'article 46 de la présente loi.

Article 39 : Entités non supervisées

Les Entités non supervisées peuvent devenir Fournisseurs de données et/ou Utilisateurs.

A cet effet, ils signent des contrats de prestation de services et le Code de Conduite avec un BIC pour lui fournir les données et utiliser ses Informations dans le respect des dispositions de la présente loi et de ses textes d'application.

Dans un délai fixé par un texte réglementaire, les entités non supervisées sont obligées à fournir des données au BIC.

Article 40 : Principe de réciprocité

En vertu du principe de réciprocité, l'accès aux Informations et aux services produits par les BIC, par les Entités non supervisées est conditionné par la fourniture par ces dernières des Informations sur le crédit ou des habitudes de paiement relatives à leurs propres clients.

Article 41 : Données sensibles

Il est interdit aux Fournisseurs de données, aux Utilisateurs ainsi qu'aux BIC de collecter, conserver, traiter, diffuser, faire état dans un Rapport de solvabilité, ou sous toute autre forme, format ou support, de Données sensibles.

Il est en outre prohibé de fournir des informations sur les soldes et les transactions des comptes d'épargne, des autres comptes de dépôt ou autres produits similaires d'un Client qui ne sont pas en rapport avec ses lignes de crédit ou avec la demande de crédit qu'il a introduite.

TITRE VI DE LA PROTECTION DU CLIENT

CHAPITRE I : DES DROITS D'INFORMATION, D'ACCES ET DE RECTIFICATION

Article 42 : Obligation d'informations

Avant de requérir le consentement, les Fournisseurs de données et Utilisateurs sont tenus d'informer le Client que ses données feront l'objet d'un Traitement d'Informations, au sens de l'article 2 de la présente loi.

Article 43 : Saisine du BIC

Les BIC, Fournisseurs de données et Utilisateurs doivent mettre à la disposition des Clients les informations détaillées sur la procédure de saisine leur permettant d'accéder aux Informations sur le crédit les concernant, de les faire corriger ou radier, dans le délai établi par la présente loi.

Article 44 : Rapport de solvabilité

Le Rapport de solvabilité mis à la disposition d'un Client par le BIC doit être libellé sous une forme claire, complète et compréhensible.

Le Rapport est transmis au Client dans un délai n'excédant pas cinq (5) jours ouvrables à compter de la date de réception de la demande du Client et, gratuitement une fois par an.

Le Rapport de solvabilité contenant l'historique de crédit fourni au Client doit inclure :

- la liste des Utilisateurs qui ont accédé à ses données au cours des six (6) derniers mois ;
- les codes, variables utilisés dans le Rapport de solvabilité ainsi que leur signification ;
- l'identité des Fournisseurs de données dont les informations ont servi à l'élaboration du Rapport de solvabilité.

Article 45 : Réclamations

En cas de contestation par le Client des informations contenues dans un Rapport de solvabilité, ce dernier peut déposer une réclamation auprès du BIC, accompagnée des documents prouvant l'inexactitude des données.

La réclamation peut également être transmise au BIC par l'intermédiaire d'un établissement de crédit ou de tout autre Fournisseur de données avec lequel le Client entretient une relation contractuelle.

Les modalités et délais de traitement d'une réclamation sont fixés par instruction de BFM.

Durant la période de traitement d'une réclamation, le BIC est tenu de mentionner le différend dans le Rapport de solvabilité jusqu'à ce qu'une solution définitive soit trouvée.

Si le Client n'est pas satisfait de la suite donnée à sa réclamation par le BIC, le Fournisseur de données ou l'Utilisateur, il peut introduire une requête auprès de BFM qui se prononce dans un délai de trente (30) jours, à compter de la date de sa saisine.

Sans préjudice de réclamations auprès de BFM, le Client peut saisir les juridictions civiles compétentes.

CHAPITRE II : DE LA PROTECTION DES DONNEES A CARACTERE PERSONNEL

Article 46 : Consentement

Toute collecte et utilisation, tout partage et diffusion de Données à caractère personnel y compris les Informations sur le crédit, sont subordonnés à l'obtention du Consentement dont les modalités d'obtention sont fixées par instruction de BFM.

Article 47 : Effets du Consentement

Le Consentement permet la collecte, le traitement, le partage des données avec un BIC, avec les autres Utilisateurs, et les Fournisseurs de données. Le Consentement permet également la consultation d'un BIC et l'émission de Rapports de solvabilité et d'autres services fournis par celui-ci pour les fins prévues à l'article 52 de la présente loi.

Article 48 : Confidentialité

Les BIC, Fournisseurs de données et Utilisateurs sont tenus de préserver la plus stricte confidentialité des Données à caractère personnel qu'elles ont en leur possession.

Ils demeurent responsables du maintien de cette confidentialité vis-à-vis des Clients et BFM.

Article 49 : Collecte des données

Les Données à caractère personnel ne peuvent être recueillies qu'aux fins déterminées par la présente loi. Elles doivent être :

- collectées de façon honnête et licite, et non arbitraire ;
- traitées loyalement et licitement ;
- adéquates, pertinentes et non excessives au regard des finalités pour lesquelles elles sont collectées.

- et pour lesquelles elles sont traitées ultérieurement ;
- exactes, complètes et si nécessaire mises à jour ;
 - conservées sous une forme permettant à la fois l'identification des personnes concernées, la confidentialité et l'inaccessibilité pour tout tiers non autorisé, pendant une durée de cinq (5) ans.

Des mesures appropriées doivent être prises pour que les données inexactes, incomplètes, équivoques, périmées ou dont la collecte, l'utilisation, la communication ou la conservation sont interdites, soient rectifiées ou radiées.

Article 50 : Responsabilité

Le Fournisseur de données engage sa responsabilité civile et, le cas échéant, pénale pour toute collecte de renseignements relatifs à une personne physique n'ayant pas donné son Consentement.

Il engage également sa responsabilité en cas de transmission délibérée de données erronées à un BIC.

Toutefois, le Fournisseur de données sur le crédit ne peut voir sa responsabilité engagée en cas :

- de transmission de données erronées à un BIC lorsque les informations erronées sont imputables au Client ;
- d'utilisation non conforme des données par un BIC ou un Utilisateur à la présente loi ou ses textes d'application.

Article 51 : Utilisation non conforme

L'Utilisateur engage sa responsabilité civile et, le cas échéant, pénale pour toute demande de rapports de solvabilité non autorisée par le Client ou pour toute utilisation non conforme aux dispositions de la présente loi des Informations sur le crédit qui lui sont fournies.

En outre, l'Utilisateur ne peut en aucun cas utiliser les Informations sur le crédit à des fins de démarches commerciales.

Le BIC engage sa responsabilité en cas d'utilisation non conforme des données collectées.

Article 52 : Fourniture d'informations

Le BIC ne peut fournir des Informations sur un Client que pour les motifs suivants :

- en réponse à une requête de BFM ;
- dans le cadre d'une enquête judiciaire ou d'une poursuite consécutive à une décision de justice ;
- sur demande d'un Utilisateur, lors de l'analyse du dossier d'un Client ou de son garant ;
- à la demande, au renouvellement, refinancement, restructuration ou rachat du crédit ; analyse et évaluation du portefeuille existant ; pour le suivi périodique de portefeuilles et à des fins d'évaluation des risques ;
- sur demande du Client dans le cadre des droits d'accès, de vérification, de correction des informations qui le concernent conformément à la présente loi et des règlements y afférents ;
- le suivi des risques et les besoins de la Commission de Supervision Bancaire et Financière ;
- lors d'une vente à tempérament ;
- pour le recouvrement, la collecte et le traçage par un Fournisseur de données sur le crédit des clients bénéficiaires de crédit.

Le demandeur d'information auprès du BIC doit justifier que sa demande est formulée à des fins

autorisées par la présente loi et ses textes d'application.

Le BIC est autorisé à demander tout document pertinent justifiant que le Client a engagé ou a eu des engagements de paiement avec le Fournisseur de données.

TITRE VII DES SANCTIONS

CHAPITRE I : DES SANCTIONS DISCIPLINAIRES ET/OU PECUNIAIRES

Article 53 : Sanctions disciplinaires

Sans préjudice de poursuites judiciaires, BFM en cas de violation des dispositions de la présente loi par un BIC, peut prononcer une ou plusieurs des sanctions disciplinaires suivantes :

- l'avertissement ;
- le blâme ;
- la suspension ou l'interdiction d'effectuer certaines opérations et toutes autres limitations dans l'exercice de ses activités ;
- la suspension temporaire ou la révocation d'un dirigeant, administrateur ou commissaire aux comptes ;
- la suspension ou le retrait d'Agrément.

La suspension ou le retrait d'Agrément ne peuvent être prononcés qu'en cas de manquement aux dispositions des articles 22, 23, 25, 27, 28, 30, 31, 48,49 et 52 de la présente loi.

Les décisions de BFM prononçant les sanctions disciplinaires peuvent faire l'objet d'un recours devant le Conseil d'Etat dans les conditions de droit commun.

Article 54 : Sanctions pécuniaires

Sans préjudice de poursuites judiciaires, BFM peut prononcer une sanction pécuniaire allant jusqu'à cent millions (100.000.000) MGA à l'encontre de toute personne qui, participant de quelque manière que ce soit à l'administration, à la direction, à la gestion ou au contrôle d'un BIC, contrevient aux dispositions de l'article 25 de la présente loi.

Les sanctions pécuniaires sont directement prélevées sur le dépôt de garantie prévu à l'article 17 de la présente loi.

Les décisions de BFM prononçant les sanctions pécuniaires peuvent faire l'objet d'un recours devant le Conseil d'Etat dans les conditions de droit commun.

CHAPITRE II : DES SANCTIONS PENALES

Article 55 : Défaut de communication

Est puni d'une peine d'emprisonnement de un à 6 mois et d'une amende de dix millions MGA (10.000.000 MGA) à trente millions MGA (30.000.000 MGA) ou de l'une de ces deux peines, tout dirigeant de BIC, de Fournisseurs de données et d'Utilisateur qui :

- après une mise en demeure, ne donne pas suite aux demandes d'Informations de BFM, dans un délai de dix (10) jours ;
- fait obstacle, de quelque manière que ce soit, à l'exercice des pouvoirs de contrôle de BFM ;
- aura sciemment communiqué des renseignements inexacts et incomplets excepté lorsque les informations erronées sont imputables au Client ;
- aura sciemment dissimulé des Informations.

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Article 56 : Violation du secret professionnel

Est punie des peines prévues à l'article 378 du Code pénal, toute personne concourant au fonctionnement ou au contrôle d'un BIC, d'un Fournisseur de données ou d'un Utilisateur qui viole le secret professionnel.

Article 57 : Violation de la sécurité des données et des articles 46 et 52

Est puni d'une peine d'emprisonnement de un à six mois et d'une amende de dix millions MGA (10.000.000 MGA) à trente millions MGA (30.000.000 MGA) ou de l'une de ces deux peines, tout dirigeant, tout administrateur, tout employé d'un BIC qui n'assure pas la sécurité des données ou contrevient aux dispositions des articles 46 et 52 ci-dessus.

Article 58 : Divulgence d'informations confidentielles

Est puni d'une peine de un (1) à six (6) mois d'emprisonnement et d'une amende de dix millions MGA (10.000.000 MGA) à trente millions MGA (30.000.000 MGA) ou de l'une de ces deux peines, tout Fournisseur de données, tout Utilisateur ou toute personne physique ou morale ayant le droit d'accéder à l'information sur le crédit détenue par un BIC qui, volontairement, divulgue les informations confidentielles en violation de la présente loi.

Article 59 : Obtention frauduleuse d'informations

Est punie d'une peine de deux (2) à six (6) mois d'emprisonnement et d'une amende de dix millions MGA (10.000.000 MGA) à trente millions MGA (30.000.000 MGA) ou de l'une de ces peines, toute personne non autorisée qui obtient, en usant de manœuvres frauduleuses, de la part d'un membre du Conseil d'Administration, d'un dirigeant, du personnel d'un BIC ou des tiers, des informations concernant un Client, auprès d'un BIC ou d'un Utilisateur, et ce dans le but de nuire au Client.

Article 60: Violation des articles 8, 36 et 37

Est punie d'une peine de deux (2) à six (6) mois d'emprisonnement et d'une amende de dix millions MGA (10.000.000 MGA) à trente millions MGA (30.000.000 MGA) ou de l'une de ces peines :

- toute personne qui viole les dispositions de l'article 8 de la présente loi ;
- toute personne qui, participant de quelque manière que ce soit à l'administration, à la direction, à la gestion ou au contrôle d'un Fournisseur de données, contrevient aux dispositions de l'article 36 de la présente loi ;
- toute personne qui, participant de quelque manière que ce soit à l'administration, à la direction, à la gestion ou au contrôle d'un Utilisateur, contrevient aux dispositions de l'article 37 de la présente loi.

Article 61 : Partie civile

BFM peut se constituer partie civile dans le cadre des poursuites pénales engagées contre les Fournisseurs de données, les Utilisateurs ou les BIC.

TITRE VIII
DISPOSITIONS TRANSITOIRES ET FINALES

Article 62 : Dispositions spécifiques

Les dispositions de la présente loi relative à la protection des Données à caractère personnel prévalent sur les dispositions de la loi n°2014-038 sur la protection des Données à caractère personnel.

Article 63 : Délai de transition

Des délais fixés par instruction de BFM sont accordés à toutes les Entités supervisées et non supervisées à compter de la date d'Agrément du BIC pour adapter leurs systèmes afin de fournir périodiquement et obligatoirement les données aux BIC.

Article 64 : Données de la Centrale des Risques

Dès la publication d'octroi de son Agrément, BFM communique au BIC les données de la Centrale des Risques microfinance et bancaire des trois années qui précèdent la date de publication de son Agrément.

Article 65 : Textes d'application

Les modalités d'application des dispositions de la présente loi sont fixées par instruction de BFM et/ou textes réglementaires.

Article 66 : Entrée en vigueur

La présente loi sera publiée au Journal Officiel de la République.

Elle sera exécutée comme loi de l'Etat.

Promulguée à Antananarivo, le 15 février 2018

LE PRESIDENT DE LA REPUBLIQUE,
CHEF D'ETAT

Hery RAJAONARIMAMPINANINA

Pour ampliation conforme
Antananarivo, le 26 FEB 2018
LE SECRETAIRE GENERAL
DU GOUVERNEMENT,


FARATIANA Tsihoara Eugène

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