



**REGULATION N°07/2013/CM/UEMOA
REGARDING REPURCHASE TRANSACTIONS
IN THE WEST AFRICAN ECONOMIC AND MONETARY UNION (WAEMU)**

**THE COUNCIL OF MINISTERS
OF THE WEST AFRICAN ECONOMIC AND MONETARY UNION (WAEMU)**

Having regard to the amended Treaty of the West African Economic and Monetary Union (WAEMU) dated 10 January 1994, in particular articles 2, 4-a), 6, 16, 21, 42, 43, 44, 45, 62, and 76-d;

Having regard to the Treaty of the West African Economic and Monetary Union (WAEMU) dated 20 January 2007, in particular article 30;

Having regard to the Statutes of the Central Bank of West African States (BCEAO) in the appendices of the WAEMU Treaty dated 20 January 2007, in particular articles 42 and 43;

Having regard to the Convention of 3 July 1996 on the creation of the Regional Council for Public Savings and Capital Markets;

Having regard to the Convention of 6 April 2007 governing the Banking Commission of WAEMU;

Having regard to the General Regulations on the organization, functioning and monitoring of the Regional Financial Market of WAEMU;

Having regard to Regulation N°08 15/2002/CM/UEMOA dated 19 September 2002 regarding payment systems in WAEMU member States;

Having regard to Regulation N°02 02/2010/CM/UEMOA dated 30 March 2010 regarding mutual Fund for the securitization of receivables and securitization transactions in WAEMU;

Considering that the development of repurchase transactions contributes to modernizing the monetary market of the Union and reinforcing its efficiency;

Acting on a joint proposal of the WAEMU Commission and BCEAO;

After consultation of the statutory Committee of Experts, as of 7 June 2013;

SHALL ADOPT THE FOLLOWING REGULATION:

PRELIMINARY TITLE: TERMINOLOGY

Article 1: Definitions

For the purposes of this Regulation, the following definitions shall apply:

1. **BCEAO or Central Bank:** Central Bank of the West African States;
2. **Banking Commission: Banking** Commission of the West African Monetary Union (WAMU);
3. **CREPMF** ("Conseil Régional de l'Epargne Publique et des Marchés Financiers"): Regional Council for Public Savings and Capital Markets;
4. **Credit Institutions:** Bank and financial institutions carrying out banking operations;
5. **Pooled Fund for the Securitization of Receivables or PFSR** ("Fonds Commun de Titrisation des Créances" or "FCTC"): Vehicle dedicated to the acquisition of receivables, funded by the issue of negotiable securities;
6. **Mutual Investment Fund:** Co-ownership of transferable securities in charge of the joint management of securities accounts;
7. **UCITS:** Undertaking for Collective Investment in Transferable Securities;
8. **WAEMU:** West African Economic and Monetary Union;
9. **WAMU:** West African Monetary Union;

TITLE I: GENERAL PROVISIONS

Article 2: Purpose and Intent

This Regulation lays down the legal framework for repurchase transactions in the member States of the West African and Monetary Union (WAEMU).

The provisions of this Regulation shall not apply to the repurchase transactions carried out at BCEAO counters.

Article 3: Repurchase Agreements

A repurchase agreement is the transaction through which a legal entity, a mutual investment fund or a mutual fund for the securitization of receivables transfers, for an agreed price, full ownership of the securities or instruments defined in article 4 to another legal entity, a mutual investment fund or a fund for the securitization of receivables, and through which the transferor and the transferee respectively and irrevocably commit to, for the former, repurchase the securities or instruments, and for the latter, to transfer them back at the agreed price and date.

Article 4: Eligible securities or instruments

The securities or instruments concerned by article 3 above are the following:

1. securities registered on the official listing of a WAEMU or foreign market;
2. debt securities negotiable on a regulated WAEMU or foreign market;
3. securities issued by the Treasuries of WAEMU member States;
4. private instruments;
5. generally, any receivable, to the exclusion of bank certificates, that is represented on a market by a negotiable security.

However, repurchasing or entering into sale private instruments is exclusively reserved for credit institutions.

Article 5: Characteristics of Eligible Securities or Instruments

The repurchase agreement shall concern securities or instruments that are not liable, during the full duration of the transaction, to be subject to the payment of a right to dividend, thus giving right to a tax credit or an interest payment subject to the withholding tax provided by the taxation in force in the relevant WAEMU member State.

Article 6: Authorized intermediaries

Repurchase transactions may only be carried out through credit institutions, Management and Intermediation Companies, Undertakings for Collective Investment in Transferable Securities (UCITS), or any other organization duly empowered for this purpose, under the terms specified in an Instruction from BCEAO or CREPMF, each within the limits of their respective assignments.

The empowered intermediaries referred to in paragraph 1 above must ensure that the repurchase transactions performed through their services are regular and in compliance with the provisions of this Regulation and those of the framework agreement provided in the following article 7.

TITLE 11: TERMS AND CONDITIONS FOR THE IMPLEMENTATION OF REPURCHASE TRANSACTIONS

Article 7: Framework Agreement

Repurchase transactions shall be subject to a written agreement concluded between the parties involved.

In particular, a framework agreement governs the relations between parties, according to the standard template established in a BCEAO instruction.

The framework agreement, any repurchase agreement, or any right or obligation ensuing from the Agreement for one of the parties may not be transferred or assigned by this party without the prior agreement of the other party. These transfers or assignments shall be declared to BCEAO by the acting party.

Article 8: Delivery of Securities or Instruments

Any security or instrument delivery shall be carried out in such a way as to give the recipient full ownership of the delivered securities.

Delivery terms and conditions are determined as follows:

1. Newly created materialized securities or instruments are said to be delivered if, at the time of entry into repurchase, they are effectively and materially delivered to the transferee or the authorized agent of the transferee. Order form instruments must be first be endorsed, in accordance with the current regulations.
2. Both dematerialized and materialized securities or instruments held in a central depository but transferred from account to account shall be said delivered if, at the time of entry into repurchase, they are subject to registration in an account opened in the name of the transferee with an empowered intermediary, a central depository, or as the case may be, with the issuer.

Article 9: Transfer Price

The transferor shall deliver or have delivered to the transferee the securities or instruments entered into repurchase for the payment of the transfer price.

Article 10: Payment or Delivery Delays

The terms governing the handling of payment or delivery delays at the date of transfer or reassignment are defined in the framework agreement regarding repurchase transactions.

Article 11: Entry into force of the repurchase agreement

The repurchase agreement shall take effect as soon as the parties give their mutual consent. The completion of each repurchase is followed by the exchange of written confirmations. The absence of confirmation shall in no way affect the validity of the repurchase transaction.

The repurchase agreement may be relied on against third parties as of the delivery of the securities or instruments carried out in accordance with the terms determined in article 8 above.

Any disagreement regarding the terms of a confirmation shall be promptly notified to the other party. In such a case, each party shall refer to the terms and conditions laid down by the framework agreement.

Article 12: Additional Deliveries

The parties may agree upon additional deliveries, in full ownership, of securities, instruments or sums of money, in order to take into account the evolution of the value of the securities or instruments initially entered into repurchase.

Article 13: Switching Securities

The parties may agree, at any time, to switch securities or instruments that have been entered into repurchase or transferred as additional deliveries, for other securities or instruments, as provided for in article 4 above, subject to the condition that the value of the new securities at the switching date be at least equal to the value of the original securities.

The switch shall be carried out under the terms stipulated in article 8 above, through the transfer of the ownership of the switched securities from the assignor to the assignee, and by the transfer of the securities originally entered into repurchase from the assignee to the assignor.

This switch shall have no novation effect on the relevant repurchase or the already created additional delivery. Therefore, the parties remain bound to the obligations laid down in the terms and conditions mutually agreed upon for the relevant repurchase, the reassignment agreement thus affecting the switched securities.

Article 14: Reassignment

At the date set for the reassignment, the transferor shall pay the agreed price to the transferee, and the latter shall transfer back the securities or instruments to the transferor.

Article 15: Offsetting Payables and Receivables

The payables and receivables pertaining to repurchase transactions that may be relied on against third parties shall be offset in accordance with the terms and conditions provided for by the framework agreement.

The provisions of this article shall apply notwithstanding any contrary provision.

TITLE III: TERMINATION OF REPURCHASES

CHAPTER 1: TERMINATION

Article 16: Grounds for Termination

Amortization, the drawing of lots leading to reimbursement, exchanges, conversions, or the exercise of a subscription warrant, shall terminate the repurchase transaction.

The repurchase transactions concluded under the framework agreement established between the parties may be terminated, in the event of default by one of them or new circumstances, under the conditions provided for in chapter I and II of this Title.

CHAPTER II: DEFAULT

Article 17: Definition of Default

For the purposes of the implementation of this Regulation, default by one of the parties shall constitute one of the following:

1. Failure to comply with any provision of the regulatory text governing repurchase transactions or the framework agreement pertaining to it, and which has not been remedied upon notification of the abovementioned failure by the non-defaulting party.
2. The declaration, by one of the parties to the other, of an inability or refusal to settle all or part of its debts or to fulfill all of its obligations, or any equivalent procedure;
3. The interdiction to one of the parties to issue securities or any equivalent procedure;
4. The de facto cessation of activity, the opening of a mutual agreement liquidation procedure, or any other equivalent procedure concerning one of the parties;
5. The opening of a procedure for preventive settlement, legal redress, asset liquidation, or any other equivalent legal procedure concerning one of the parties;
6. Any event liable to lead to the nullity, non-opposability, or disappearance of any collateral or guarantee granted by one of the parties in favor of the other party by a separate deed, under one or several repurchase agreements, or any event referred to above in points 3 to 5 affecting a third party having delivered its personal guarantee under a repurchase agreement.

Article 18: Rights of the Non-Defaulting Party

The occurrence of a default case as provided for in article 17 above confers to the non-defaulting party the right, upon simple notification of the defaulting party, to suspend the execution of its payment and delivery obligations and to terminate all on-going repurchase transactions between the parties. This notification shall specify the type of default claimed and the chosen termination date, in accordance with the provisions of the framework agreement.

Article 19: Reassignment Incidents

When the default stems from the non-payment by the transferor of the reassignment price at the date set for the above-mentioned reassignment, the securities or instruments remain with the transferee.

When the default stems from the non-resale by the transferee of the securities or instruments at the date set for the above-mentioned resale, the amount of the assignment remains with the transferor.

The non-defaulting party shall, in addition, have a right to ordinary law recourses against the defaulting party.

Article 20: Unwinding of a Repurchase Agreement Transaction by the Account Holder or Custodian

The account holding intermediary or custodian of securities that proceeds to the unwinding of the transaction following a delivery or settlement default recognized at the date and within the conditions stemming from securities exchange rules or, failing that, an agreement concluded between the parties, may invoke the provisions of this article to acquire the ownership of the instruments or cash received from the counterparty.

Notwithstanding any contrary provision, no other creditor of the defaulting client may claim any right on the financial instruments or cash referred to in the first paragraph above;

CHAPTER III: NEW CIRCUMSTANCES AND EFFECTS

Article 21: New Circumstances

For the purposes of the implementation of this Regulation, new circumstances for a party shall consist of one of the following events:

1. The entry into force of a new regulation or the amendment of a law or any legally binding text resulting in the unlawfulness of a repurchase for the concerned party, or the necessity to implement a new tax deduction or withholding on an amount that this party must receive from the other party under the above-mentioned repurchase agreement.
2. Any merger or demerger affecting the concerned party or any asset sale carried out by this party, leading to the evident and substantial deterioration of its activity, assets, or financial situation;

When a new circumstance shall lead directly to the occurrence of a default case, this default case is said not to have occurred and the provisions of this Chapter are thus applicable.

Article 22: Effect of New Circumstances Relating to Regulatory Issues

In the event that a new circumstance should occur, as defined above in article 21, point 1, any party that recognizes the new circumstance shall notify the other party of it at the earliest opportunity, and mention the repurchases affected by this new circumstance.

In this case, the parties shall suspend the execution of their payment and delivery obligations for the affected repurchases only, and shall pursue in good faith a mutually satisfying solution during a period of thirty (30) days at the most.

At the end of the period referred to in paragraph 2 above, if no mutually satisfying solution can be found, either each party or the party receiving an amount smaller than the anticipated amount, may notify the other of the termination of only the repurchase agreements affected by the new circumstance. The notification shall specify the chosen termination date.

Article 23: Effects of New Circumstances Resulting from an Action Affecting the Assets of a Party

During the occurrence of a new circumstance, as defined above in article 21, point 2, all repurchase agreements shall be considered to be affected by the above-mentioned circumstance. In this case, the non-concerned party shall have the right, upon simple notification to the other party, to suspend the execution of its payment and delivery obligations and to terminate all on-going repurchase agreements between the parties. The notification shall specify the chosen termination date.

CHAPTER IV: EFFECTS OF THE TERMINATION

Article 24: Termination Balance

Upon the termination date, the parties shall be released from any payment or delivery obligation for the terminated repurchases.

Termination shall confer entitlement, for the terminated repurchases, to the payment of a termination balance calculated in accordance with the terms and conditions determined in the framework agreement provided for in article 7 above.

Article 25: Determination of the Termination Balance

The payables and receivables pertaining to the terminated repurchase agreements in accordance with the framework agreement and that may be relied on against third parties shall be offset. A termination balance to be received or paid shall be established.

Article 26: Costs and Expenses

The termination of repurchase agreements shall confer entitlement to a party, upon default of the other party, to the reimbursement of the costs and expenses incurred that the former is able to justify, including those incurred by the legal proceedings undertaken, as the case may be.

TITLE IV: TAX AND ACCOUNTING PROVISIONS

Article 27: Compensation of the Transferee

The compensation of the transferee, under any form, shall constitute a debt revenue. With regard to accounting and tax, it shall be treated as an interest.

If the duration of the repurchase agreement covers the payment date of the revenues linked to the securities or instruments of the repurchase, the transferee shall transfer them to the transferor, who shall record them with revenues of the same type. These transfers are subject to the same taxation system as the securities or instruments of the repurchase.

Article 28: Gains or Losses of the Sale

Upon default of one of the parties, the gain or loss of the sale of the securities and instruments shall be equal to the difference between their real value at the default date and their acquisition price in the books of the transferor. It shall be included in the taxable income of the transferor, under the fiscal year during which the default occurred. These securities or instruments shall be said to be deducted from the securities or instruments of the same type having the most recent subscription date prior to defaulting.

Article 29: Transferor Accounting Treatment

The repurchase agreement shall lead, in the books of the transferor, to maintaining the securities or instruments entered into repurchase on the assets side of its balance sheet, and to recording the amount of its debt to the transferee as a liability. Debt securities or instruments shall be individualized under a specific heading in the books of the transferor. In addition, the amount of the securities or instruments entered into repurchase, disaggregated according to the type of asset concerned, must be included in the appendices of the annual financial statements.

Subject to the provisions of this article, for the implementation of the provisions of the tax legislation in the various Union member States, the securities or instruments recorded under the heading mentioned in the previous paragraph shall be said not to have been sold.

The depreciation of the securities or instruments that are the subject of a repurchase agreement may not result in the constitution, by the transferee, of a tax-deductible allowance.

Article 30: Transferee Accounting Treatment

The securities or instruments received under repurchase agreements shall not be recorded in the balance sheet of the transferee. The transferee shall record the amount of its receivables from the transferor under assets in its balance sheet.

When entering into repurchase securities or instruments previously received under a purchase agreement, the transferee shall record in the liabilities side of its balance sheet the amount of this transfer, thus representing the debt in securities or instruments which, at the end of the fiscal year, is valued at the market price of these assets.

The differences in value shall be recorded in order to determine the taxable income of the fiscal year.

When entering into repurchases securities or instruments previously received under a purchase agreement, the transferee shall record in the liabilities side of its balance sheet the amount of the debt to the new transferee.

The amounts indicative of the receivables and payables as referred to in this article shall be individualized in the books of the transferee.

TITLE V: PROVISIONS ON MONITORING

Article 31: Monitoring Organizations

BCEAO, the Banking Commission of WAEMU, and CREPMF shall be responsible, each within the limitations of their respective assignments, to guarantee the compliance to the provisions of this Regulation by the organizations referred to in article 6 above. They shall ensure the proper functioning of the market of repurchase transactions.

The organizations referred to in the aforementioned article 6 shall notify BCEAO of their repurchase transactions in accordance with the terms and conditions laid down by the Central Bank.

Article 32: Outcome of Repurchase Transactions Conducted in Breach of Regulation

The repurchase transactions conducted in breach with the provisions of this Regulation shall be null and void.

TITLE VI: OTHER PROVISIONS AND FINAL PROVISIONS

Article 33: Terms and Conditions of Implementation

This Regulation shall apply exclusively to the repurchase transactions concluded after its signature.

Following consultation, Instructions from BCEAO and CREPMF, each within the limits of their respective assignments, shall specify, as necessary, the terms and conditions of the implementation of this Regulation.

Article 34: Amendment of the Regulation

This Regulation may be amended by the Council of Ministers of the Union by request of BCEAO, on the basis of a joint proposal by the WAEMU Commission and BCEAO.

Article 35: Entry into Force

This Regulation shall take effect on the date of its signature and shall be published in the Official Journal of the Union.

This Regulation shall render void and replace all previous provisions on the same matter, including articles 31 to 41 of Regulation n°15/2002/CM/UEMOA of 19 September 2002 regarding payment systems in the Member States of the West African and Monetary Union (WAEMU).

Done at Dakar, 28 June 2013

For the Council of Ministers

The President

Abdel Karim KONATE