

**No: 56**

**Date: 26/5/1394**

**Legislative Decree of the President of Islamic Republic of Afghanistan**  
**On issuance of Banking Law of Afghanistan**

**Article one:**

As per the mandate under Article 79 of the Constitution, I hereby issue the Banking Law approved by the Cabinet of Islamic Republic of Afghanistan under resolution number (17) dated 21/5/1394.

**Article two:**

The Minister of Justice and the State Minister for Parliamentary Affairs are assigned to present this Decree to National Assembly within (30) days from the date of its first meeting.

**Article three:**

This Decree is in effect upon the issuance and along with the text of the above mentioned law and resolution of the Cabinet shall be published in the Official Gazette.

**Mohammad Asharaf Ghani**  
**President of Islamic Republic of Afghanistan**

# BANKING LAW OF AFGHANISTAN

## CHAPTER I GENERAL PROVISIONS

### Basis

#### **Article 1:**

- (1) To regulate the banking affairs in the country, this law is promulgated in the light of articles 10 and 11 of the Constitution of Afghanistan.
- (2) The Government shall take necessary measures for encouragement, promote and support of the Islamic Banking.

### Definitions

#### **Article 2:**

In this Law, the following terms shall have the following meanings:

- 1- “**Bank**” means a legal person engaging in the business of receiving money deposits or other repayable funds from the public and making credits for its own benefit, and includes Islamic bank and conventional bank
- 2- “**Islamic Bank**” means a bank which operates in accordance with Islamic shariah.
- 3- “**Conventional Bank**” means a bank operating in accordance with traditional banking practice.
- 4- “**Bank Holding Company**” means an enterprise that controls a bank;
- 5- “**Control**” means any situation in which, a person alone or acting in concert with one or more other persons:
  - holds beneficial ownership of at least 50% of any category of voting shares or capital of an enterprise;
  - has the power to elect a majority of the board of supervisors, or any similar body, of an enterprise; or
  - has the ability to exert a dominant influence over the management or policies of the enterprise; or
  - Has the Power to issue, based on a custom or formal or informal arrangement, instructions or directions to a majority of the members of the board of supervisors of an enterprise, or shareholders beneficially owning at least 50% of any category of voting shares or capital of the enterprise.
- 6- “**Banking License**” means a written document, issued by Da Afghanistan Bank, allowing an eligible enterprise to establish a bank and conduct the banking activities.
- 7- “**Branch Office**” means a dependent part of a bank where all or some banking

activities are conducted;

- 8- “**Representative Office**” means a place of business forming a dependent part of a bank which is located separate from the head office of the bank, does not conduct banking activities, and the principal activities of which are to conduct market research, represent the bank, and protect its interests in a foreign countries.
- 9- “**Credit**” means:
  - any disbursement or commitment to make a disbursement of a sum of money in exchange for a promise to repay of the amount disbursed, with or without interest;
  - other charges on such amount;
  - any extension of the due date of a debt;
  - any guarantee issued;
  - any receipt of postpaid good or services;
  - any honoring of a customer’s overdrafts;
  - any purchase of a debt security or other promise to pay sum of money and to pay interest either directly or by a discounted purchase price;
- 10- “**Debt Security**” means any bond, debenture, or any other form thereof which can be negotiated through subscription or exchange. Debt securities may also be in book-entry form. The term “debt security” does not include promissory notes, bill of exchange, and checks as defined in the Negotiable Instruments Law.
- 11- “**Deposit**” means a sum of money placed with a person by another person, and is:
  - repayable to the depositor under mutually agreed terms and conditions;
  - if agreed between the parties, transferable to other persons upon the instruction of the depositor in compliance with law.
  - an unconditional liability of the person receiving the deposit; and
  - not dependent on any transactions between the depositor and the person receiving the funds concerning the provision of goods, services, or any type of collateral or security.
- 12- “**Domestic Bank**” means a legal person who received its banking license from Da Afghanistan Bank.;
- 13- “**Dormant Account**” means a deposit account, the holder of which has not evidenced any interest in the amounts on deposit by recorded transaction or written correspondence with the bank holding that account for ten years;
- 14- “**Exposure**” means any asset or off-balance sheet item, including without limitation:
  - a loan or direct or indirect commitment to disburse money in exchange for a

right to repayment of the amount disbursed and outstanding and to the payment of interest or other charges on such amount,

- any extension of the due date of a debt, any guarantee or letter of credit issued, debt securities, and similar forms of credits or credit commitments granted by a bank to a client, and
  - shares, participation in the capital, and other types of investments in another juridical person by a bank.
- 15- **“Large Exposure”** means any exposure to a single person or group of connected persons that exceeds ten percent of regulatory capital of the bank.
- 16- **“Fit and Proper Person”** means a person who in the judgment of Da Afghanistan Bank is of honesty, trustworthiness, fairness, integrity and has ability to make sound and effective decision in his personal, financial and business activities and possesses good skills and experience for conducting the intended activities of the bank.

A legal person is considered to be a fit and proper person if in the judgment of Da Afghanistan Bank all members of its board of supervisors and management board, or equivalent governing bodies, and persons with qualifying holdings in such enterprise have these qualities.

No person shall be regarded as a fit and proper person if he:

- has been convicted by an authorized court of an offense for which he was sentenced to imprisonment unless such sentence was motivated by his religious or political views or activities, or
  - has been declared bankrupt by an authorized court of law,
  - on grounds of personal or professional misconduct, has been disqualified or his authority in conducting financial affairs is under suspension by a competent authority.
  - is an associate, a representative of a person which would not be regarded as a fit and proper person according to first, second and third sub-paragraphs of this paragraph.
  - has a beneficial owner which would not be regarded a fit and proper person according to the first, second and third sub-paragraphs of this paragraph.
- 17- **“Person”** means both natural and legal person.
- 18- **“Da Afghanistan Bank”** means the Central Bank of Afghanistan which operates under the Law of Da Afghanistan bank.
- 19- **“Non-Resident Bank”** means a bank whose place of incorporation is in a country other than Afghanistan;
- 20- **“Qualifying Holding”** means having, alone or acting in concert with one or more other persons, the beneficial ownership of at least 5% of any category of voting

shares or capital of an enterprise; or the ability to exert a significant influence over the management or policies of an enterprise.

- 21- “**Enterprise**” means association of two or more than two persons as joint owners under an agreement, which is registered and operates under the law for making profit.
- 22- “**Subsidiary**” means any legal person that is controlled by another legal person;
- 23- “**Parent Company**” means a legal person that controls another legal person.
- 24- “**Beneficial Ownership**” means:
  - direct ownership;
  - indirect ownership, through one or more controlled enterprises; or
  - the ability in fact to realize the benefits of share ownership in an enterprise, through any contract, agreement or understanding with another person, whether written or unwritten, formal or informal, with or without formal legal ownership of such shares, (including where shares are held by one or more trustees, legal representatives, agents, nominees, or other similar persons).
- 25- “**Beneficial Owner**” means natural person(s) who ultimately owns or controls a legal person or system.
- 26- “**20% participation**” means beneficial ownership, alone or acting in concert with one or more other persons, of 20% or more of any category of voting shares or capital of an enterprise.
- 27- “**30% participation**” means beneficial ownership, alone or acting in concert with one or more other persons, of 20% or more of any category of voting shares or capital of an enterprise.
- 28- “**Close Links**” means a situation in which two or more persons are linked through a 20% participation or control relationship;
- 29- “**Associated Enterprise**” means a legal person in which another legal person holds a 20% participation;
- 30- “**Group of Enterprises**” means a parent company, its subsidiaries, and all associated enterprises of the parent company and its subsidiaries;
- 31- “**Banking Group**” means a group of companies engaged exclusively or mainly in banking or similar activities, as determined by Da Afghanistan Bank’s regulations.
- 32- “**Ultimate Parent Company**” means the enterprise in a group that is not a subsidiary of any other enterprise. Where there is any doubt as to which enterprise in a group is the ultimate parent company, Da Afghanistan Bank shall make this

determination;

- 33- “**Financial Institution**” means a bank, pension fund, investment fund, securities underwriter, broker, or dealer; insurance company; leasing company; and any other enterprise engaging primarily in activities that are incidental to financial sector activities as determined by Da Afghanistan Bank’s regulations.
- 34- “**Supervised Financial Institution**” means: a financial institution, or the parent company, or subsidiaries thereof which are mainly or exclusively financial institutions that is subject to prudential supervision in Afghanistan or in its home country.
- 35- “**Independent Member**” of the board of supervisors of a bank means a member who:
- is not a member of the management board or employee of the bank or of any enterprise in the same group as the bank;
  - does not have a qualifying holding in the bank or of any enterprise in the same group as the bank;
  - is not a significant borrower from the bank, or a member of the board of supervisors, management board, or any equivalent body, or employee of a significant borrower from the bank as defined by regulation of Da Afghanistan Bank;
  - does not have a business relationship with the bank, or with any enterprise in the same group as the bank, that could impair his independence, as defined by regulation of Da Afghanistan Bank;
  - is not a close relative of a person described in any of subparagraphs 1) to 4).
- 36- “**Close Relative**” of a person includes parents, spouse, son, daughter, sister, brother, and other relatives of the person, up to the second degree.
- 37- “**Related Persons**” of a bank are:
- enterprises that are members of the same group of enterprises as the bank;
  - members of the board of supervisors and management board of the bank, or of any enterprise that is a member of the same group of enterprises as the bank (or equivalent bodies), and close relatives of these persons;
  - any person having a qualifying holding in the bank, or in any enterprise in the same group of enterprises as the bank, and close relatives of these persons;
  - enterprises in which persons referenced in subparagraphs (2) and (3) have a 20% participation;

- 38- “**Undercapitalized**” means failure to meet any required minimum capital level, in any category, pursuant to this Law or Da Afghanistan Bank regulations.
- 39- “**Significantly Undercapitalized**” means having a capital level, in any category, of less than two-thirds of the level required by this Law or Da Afghanistan Bank regulation
- 40- “**Critically Undercapitalized**” means having a capital level, in any category, of less than one third of the level required by this Law or Da Afghanistan Bank regulations;
- 41- “**Purchase and Assumption Transaction**” means a transaction in which a financially sound bank purchases assets and assumes liabilities from a bank in conservatorship or receivership;
- 42- “**Regulatory Capital**” means the sum of core and supplemental capital, plus subordinated debt under certain conditions, minus certain deductions. The components of core and supplemental capital, the conditions under which subordinated debt may be included in the calculation of regulatory capital, and items that must be deducted in determining regulatory capital, are determined by Da Afghanistan Bank’s regulations.
- 43- “**Leverage Ratio**” means the ratio of core capital to total assets without regard to risk-weighting;
- 44- “**Liquid Assets**” mean the sum of: cash in vault; current account with DAB; demand deposits with banks; time deposits with banks; loans to banks; other receivables from banks; loans to other financial institutions; claims under securities, repurchase agreements; foreign securities – securities issued by counterparts in the trading account; foreign debt securities – securities issued by category counterparties in the held-to-maturity account; foreign debt securities – securities issued by category counterparties in the available-for-sale account.
- 45- “**Corporate Governance**” means rules and practices by which a board of supervisors ensures accountability, fairness, and transparency in a bank’s relationship with its all stakeholders.
- 46- “**Electronic Money**” means a monetary value as represented by a liability of its issuer which is accepted by natural or legal persons other than the issuer, stored electronically, and issued upon receipt of funds, for the purpose of making payment transactions as defined in the regulations of Da Afghanistan Bank;
- 47- “**Capital Distribution**” means any payment of a dividend or any other distribution of money or other property by an enterprise to its owners made on account of that ownership. The term does not include a stock dividend or rights to purchase shares

in an enterprise.

- 48- **“Correspondent Banking Relationship”** means a relation in which a bank provide another bank with financial services including transfer of money and payment of checks, based on mutual agreement and other banking related services.
- 49- **“Islamic Investment Account”** means an account opened with an Islamic bank or an Islamic banking window into which a customer deposits funds to be invested by the Islamic bank in compliance with the Shariah.
- 50- **“Islamic Banking Window”** refers to a department or division of a conventional bank that engages in Islamic banking activities and provides Islamic banking services;
- 51- **“Shariah Board”** means the group of Shariah scholars that endorses and approves the compliance of banking products and activities of Islamic bank or an Islamic banking window with Shariah principles.
- 52- **“Mudharabah”** means a contract in which one party provide the funds (Rabbul Mal) and the other party carries out the management of the business (Mudarib).
- 53- **“Musharaka”** means a contract made between two or more partners that contribute funds to a business and participate on the basis of profit and loss sharing.
- 54- **“Murabaha”** means a sales contract upon which the seller buys on behalf of the buyer specific goods and sells them to the buyer at cost price plus an agreed mark-up to be paid to the seller at an agreed time.
- 55- **“Ijara”** is an agreement whereby the owner of an asset transfers its usufruct to a lessee for a specific period against an agreed rental.
- 56- **“Istesna”** means a contract in which the customer requests a manufacturer to produce and deliver to him a specific good at an agreed price and time.
- 57- **“BaiMuajjal”** means a contract in which the seller undertakes to deliver to the buyer the goods against payment on a deferred basis.
- 58- **“Bai Salam”** means a contract in which the seller undertakes to deliver to the buyer the goods on a future date agreed on, against spot payment.
- 59- **“Wadiah”** means a contract in which the depositor deposits cash or other assets with an Islamic bank for safekeeping.
- 60- **“Qardul Hassana”** means a contract upon which a party places funds with another party and receives the same amount at a specified date in the future.
- 61- **“Shell Bank”** means a bank, or an enterprise engaged in similar activities, incorporated in a jurisdiction in which it has no substantial physical presence, and which is not part of any group that is subject to supervision on a consolidated basis.
- 62- **“Banking Deposit Insurance Fund”** means an authority which operates for



the purpose of market based financial stability growth, attracts trust of the public on banking system through insuring the secured deposits of depositors before the risk and encourages banks for making efforts in implementing corporate governance and providing facilities in resolving issues of weak banks.

- 63- **“Bad Faith”** means the will and desire of a person in emergence of a criminal act or violation of the law.

### **Prohibition of acceptance of the deposits and use of “bank” in a title**

#### **Article 3:**

- (1) No person shall engage in the business of receiving money deposits or other repayable funds from the public without a banking license issued by Da Afghanistan Bank,

The following persons are exempted from the provision of paragraph 1 of this article:

- 1- persons who fund the credits they make from non-repayable capital subscriptions and the proceeds of credits received from financial institutions or debt securities issued in the capital markets; [and]
  - 2- persons who, by virtue of the nature or size of their business or the origin of their resources, are exempt by Da Afghanistan Bank from the requirements of this Law. Such exemptions may be conditional or limited in time, or they may be partial. Da Afghanistan Bank shall specify and list certain provisions of this Law that shall apply to such person.
- (2) No person shall use the word “bank” or derivatives of the word “bank” in respect of a business, product or service without a banking license, unless such usage is established or recognized by law or international agreement, or unless where the word “bank” is used it does not concern banking activities.
- (3) Representative offices shall not use the word “bank” in their name, except in cases where the word “bank” forms an integral part of the name of the bank to which they belong. Banks for which a receiver has been appointed shall carry in their name the words “bank in receivership.”

### **Investigations of suspected unlicensed activities**

#### **Article 4:**

- (1) If Da Afghanistan Bank becomes informed that any person is transacting or carrying on banking transactions or banking or bank like activities in contravention of Article 2, or has engaged in such activities, it may, by written authorization, designate one or more representatives of Da Afghanistan Bank.
- (2) The representative referred to in paragraph (1) of this article may take the following actions without prior notice, with assistance of law enforcement officers:

- 1- enter any premises which Da Afghanistan Bank has reason to suspect are occupied or used by any person for the purpose of or in connection with such contravention, and for this subparagraph, “premises” includes any building or structure, or part of a building or structure, whether above or below the surface of the land or water, or any vehicle, vessel or aircraft.
  - 2- search and examine any book, record, statement, document or other item used, or which is suspected of being used, in connection with the such contravention;
  - 3- direct that the premises, and anything on the premises, should be left undisturbed as long as the search of the premises for any book, record, statement, document or item which is suspected of being used for such contravention;
  - 4- seize or make a copy of any book, record, statement, documents or other item suspected of being used for such contravention, or seize any money found on the premises;
  - 5- question any person who is present on the premises, or the members of the governing bodies, employees, auditors, or partners of any person conducting business on the premises; and record their explanations;
  - 6- by serving a notice in writing to any person who has control over or custody of any book, record, statement, document or other item connected to such activity, require the person to produce the book, record, statement, document or other item to any designated representative of Da Afghanistan Bank, on the date and at the time specified in the notice;
- (3) A designated representative of Da Afghanistan Bank is required to exhibit to the relevant or responsible person the written authorization issued by Da Afghanistan Bank, while performing a function under paragraph (1) of this Article .
- (4) In any situation referred to in paragraph (2) of this article, no person shall:
- 1- hinder or obstruct any designated representative of Da Afghanistan Bank in the performance of his or her functions;
  - 2- refuse or fail to comply with any request made by any such designated representative in the performance of such representative’s functions;
  - 3- Refuse to answer any question asked by any such designated representative.
  - 4- wilfully furnish false or misleading information to any such designated representative; or
  - 5- falsely hold himself or herself out as such a designated representative.

**Temporary orders pending further investigation**

**Article 5:**

- (1) To implement the provision of article 4.1 , Da Afghanistan Bank may issue the following temporary order:
- 1- summarily suspending the business of any such person,

- 2- prohibiting any such person, or any enterprise controlled by that person, from taking any action to withdraw, transfer, remove, dissipate, or dispose of any funds, assets or other property.
  - 3- issue a written instruction to any bank or other financial institution to freeze summarily any account or accounts at such bank or financial institution which are maintained by, or under the control of, such person or any enterprise controlled by that person, and to retain all moneys in any such account, pending the further instructions of Da Afghanistan Bank.
- (2) Any person that is the subject of an order under paragraph 1 of this Article may within 10 calendar days file a petition for review of such order before the Commission. The filing of a petition for review has no postponing effect on the order.
- (3) The Commission may dissolve, limit or suspend the order, only if it determines that:
- 1- it is unlikely that the relevant person has directly or indirectly contravened the prohibition in Article 3 of this Law;
  - 2- such person will suffer irreparable injury if the order is not dissolved, limited or suspended;
  - 3- dissolving, limiting or suspending the order will not result in serious prejudice to any other person; and
  - 4- the public interest requires dissolving, limiting or suspending the order or instruction.
- (4) An order or instruction issued under paragraph 1 of this Article shall remain in effect:
- 1- pending the issuance of any order under Article 6 of this Law,
  - 2- subject to paragraph 5 of this Article, until the order is dissolved, limited or suspended by the Commission.
  - 3- until Da Afghanistan Bank determines that it is no longer necessary.
- (5) If Da Afghanistan Bank appeals against a decision of the Commission dissolving, limiting or suspending an order pursuant to paragraph 3 of this Article, the order or instruction shall remain in effect pending a final judgment by the court.

### **Orders to cease unlawful deposit-taking**

#### **Article 6:**

- (1) If Da Afghanistan Bank determines that a person has contravened any prohibition of Article 3 of this Law, Da Afghanistan Bank shall, in writing:
- 1- order the immediate cessation of the deposit-taking activities of that person; and
  - 2- order that person to repay depositors all money so obtained, along with principal, profits obtained from such deposits, any interest on such deposits and other amounts which may be owed by that person in respect of those moneys. :

- (2) Da Afghanistan Bank shall specify in the order referred to in paragraph (1) the date and manner in which the amount shall be paid.
- (3) Before Da Afghanistan Bank issues an order pursuant to paragraph 1 of this Article, it shall provide the affected person with at least 15 business days written notice of the proposed action and an opportunity to make written representations before Da Afghanistan Bank, if he is not satisfied with the order. The procedure for submission of such representations shall be determined by Da Afghanistan Bank.
- (4) If the representations referred to in paragraph (3) does not granted by Da Afghanistan Bank, such person may within 10 business days seek review of such order before the Commission.
- (5) The Commission shall fix a hearing date on the application within one week, and the hearing shall commence within one month following such date. The standards of Article 120 of this Law shall apply to decisions of the Commission under this Article.
- (6) The hearings shall be held before the commission according to the related procedure, and participants in the hearing shall include the relevant person, one or more representatives of Da Afghanistan Bank, and such other interested persons as the Commission may invite.
- (7) Based upon the evidence adduced at the hearing, the Commission shall either affirm or dissolve the order of Da Afghanistan Bank.
- (8) If such person fails or refuses to comply with an order issued under paragraph 1 of this article, Da Afghanistan Bank shall apply to the Commission for an order liquidating the business of that person.
- (9) The Commission shall fix a hearing date on the application within one week, and the hearing shall commence within one month following such date.
- (10) The hearing shall be held before the Commission, in accordance with procedural rules promulgated by the Commission. Participants in the hearing shall include the relevant person, one or more representatives of Da Afghanistan Bank, and such other interested persons as the Commission may invite.
- (11) If the Commission determines that such person has failed or refused to comply with order referred to in paragraph (1), it shall order the liquidation of the business of that person.
- (12) The liquidation shall be overseen by Da Afghanistan Bank in accordance with procedures determined by Da Afghanistan Bank.
- (13) In case of a liquidation, the proceeds of liquidation shall be used to pay expenses and other costs of the Commission and Da Afghanistan Bank, depositors and other personal creditors or creditors of the relevant business, in [that] order of

preference, while any remaining assets shall be transferred, as the case may be, to their owner or be forfeited to the State.

### **Legal protection**

#### **Article 7:**

- (1) Neither Da Afghanistan Bank, nor any person who is a member of the Supreme Council of Da Afghanistan Bank, Governor, Deputy Governor, employee or agent of Da Afghanistan Bank, members of financial dispute resolution commission and its employees and the person who is appointed as conservator or receiver pursuant to this Law, or who previously held such positions, in the course of their official duties pursuant to provisions of this law and Da Afghanistan Bank law, shall be held liable for damages and prosecution, unless proven by the plaintiff that such action, delay in action or omission was in bad faith.
- (2) In case any person specified in paragraph 1, is found to be liable under this article, damage awards shall consist only of reasonable compensatory damages.
- (3) The Commission shall review a claim of civil damages:
  - 1- brought against Da Afghanistan Bank or any person specified in paragraph 1 of this article.
  - 2- in connection with actions or lack of, or delay in action of Da Afghanistan Bank or such person in the course of their official duties under this law or the law of Da Afghanistan Bank.
- (4) The claimant shall present a claim of civil damages specified in paragraph 2 to the Commission, by setting forth in detail the factual and legal basis for the claim, the amount of alleged damages and the means of calculation of such damages
- (5) The claimant shall bring a claim of civil damages specified in paragraph 3 to the Courts unless the claimant has first obtained a decision of the Commission on his claim.
- (6) The Commission shall make a preliminary assessment of the claim referred to in paragraph 3 of this article within 30 days set a date for a hearing on the matter, and notify the claimant and defendant of the date of the hearing. The hearing shall be held no less than 30 days, or more than 60 days, following such notification.
- (7) The hearing shall be held in accordance with procedural rules promulgated by the Commission. Participants in the hearing shall include the claimant, one or more representatives of Da Afghanistan Bank, or any other defendant, and such other interested persons as the Commission may invite.
- (8) The Da Afghanistan Bank shall indemnify a person specified in Article 7.1 against costs incurred in the defense to claims in respect of civil liabilities brought against such person

in connection with actions or lack of, or delay in, action of such person in the course of his official duties under this Law or the Law of Da Afghanistan Bank

- (9) The Supreme Council of the Da Afghanistan Bank shall establish the procedures for indemnification of legal costs under paragraph 8, and such procedures shall specify the matters in the selection of attorneys, the reasonableness of legal costs, and the timing of payments of indemnification.
- (10) When a person, who has received indemnification under paragraph 8, is held liable for the civil liabilities, the person shall reimburse the Da Afghanistan Bank the amount which has been paid to the person as the indemnification.
- (11) The Da Afghanistan Bank shall indemnify a person specified in paragraph 1 of this Article against costs incurred in the defense to criminal charges brought against such person in connection with actions or lack of, or delay in, action of such person in the course of his official duties under this Law or the Law of Da Afghanistan Bank. Paragraph 12 shall apply to the indemnification under this paragraph.
- (12) When a person, who has received indemnification under paragraph 11, is convicted of the criminal offense, the person shall reimburse the Da Afghanistan Bank the amount which has been paid to the person as the indemnification.
- (13) Granting of a banking license by Da Afghanistan Bank, shall not constitute a warranty by Da Afghanistan Bank as to a bank's financial stability
- (14) No person specified in paragraph 1 of this Article, shall be liable for any losses incurred through the insolvency or financial performance of any bank

## **CHAPTER II ESTABLISHMENT AND LICENSING OF BANKS**

### **Creation of banks**

#### **Article 8:**

Banks may be established by one or more legal or natural persons as founders and shareholders.

### **Legal structure of banks**

#### **Article 9:**

- (1) Banks shall be registered as corporations or limited liability companies its legal type shall be specified by regulation of Da Afghanistan Bank.
- (2) Banks shall not change their legal structure or organization without the prior written authorization of Da Afghanistan Bank.
- (3) The Law on Corporations and Limited Liability Companies shall apply to banks provided that whenever there is a difference between the Law on Corporations and Limited Liability Companies and the Law on Banking on any matter, including but

not limited to matters relating to corporate governance, the provisions of this Law on Banking shall apply.

### **Bank charter and by-laws**

#### **Article 10:**

- (1) Each bank shall have a charter and by-laws that upon approval by Da Afghanistan shall take effect and be registered with the central register of banks.
- (2) Each amendment of the charter and by-laws of a bank shall require the prior written authorization of Da Afghanistan Bank.

### **Banking licenses**

#### **Article 11:**

- (1) Da Afghanistan Bank is the sole authority to issue banking licenses.
- (2) Banking licenses may be issued only to companies incorporated and registered pursuant to the laws of Afghanistan that have an initial authorized and paid-in capital of not less than 1 billion Afghanis or such higher amount as shall be specified by related regulation.
- (3) Initial capital of a bank must be paid in cash or cash equivalents.
- (4) Banking licenses issued pursuant to this Law shall be granted for an indefinite period of time and shall not be transferable. They take effect on the date of their issue, unless the law specifies otherwise.
- (5) Da Afghanistan Bank shall specify in the license the type of the bank is conventional and Islamic.
- (6) By its decision to grant a banking license, Da Afghanistan Bank may, when necessary, attach conditions or restrictions to the banking license; these may subsequently be modified by Da Afghanistan Bank.

### **Applications for banking licenses; fees**

#### **Article 12:**

- (1) Banking licenses shall be applied for in writing to Da Afghanistan Bank. Conditions for submission and review of applications, and making decision on it shall be prescribed by regulation of Da Afghanistan Bank.

- (2) Before it approves an application for a banking license, Da Afghanistan Bank shall in addition to the concepts of the term stated under Paragraph 16 of Article 2 of this law, gather comprehensive information about persons expected to have qualifying holdings in the bank and proposed members of the board of supervisors and management board of the bank for which the application is pending, for the following purpose:
  1. Financial and tax status check
  2. Personal background check
  3. Professional background check
  4. Criminal background check
- (3) Any relevant agencies required to cooperate with Da Afghanistan Bank, to collect information referred to in paragraph (2).
- (4) In order to cover part of its expenses associated with licensing, permits and other applications and supervision, Da Afghanistan Bank may require a fee.
- (5) The size of fees referred to in paragraphs 4 and the payment method shall be determined in relevant regulation.
- (6) Applications for a banking license shall be rejected if the conditions for review of an application referred to in paragraph 2 of this Article are not fulfilled.

### **Licensing procedure for companies that are newly established**

#### **Article 13:**

- (1) For newly established companies, a banking license shall be issued upon completion of the following stages:
  - 1- The submission of a preliminary application for a banking license by the founders of the company; and
  - 2- The submission of a final application for a banking license by the company after it has been established and registered which shall ensure the fulfillment of conditions specified in paragraph 1 and 2 of Article 12 of this Law and related regulations.
  - 3- During the application review process, Da Afghanistan Bank may require that additional documentary evidence be submitted.
- (2) After having received a preliminary application and having met with the applicants and the proposed members of the board of supervisors and management board of the bank, and when Da Afghanistan Bank determines that the preliminary application is complete, Da Afghanistan Bank shall notify the applicants about the matter.
- (3) Within three months from the date of issuing the notification mentioned in paragraph 2 of this Article, Da Afghanistan Bank shall approve or reject the application, and shall send the applicants a copy of its decision; for preliminary applications submitted by non-resident applicants this period shall be six months and decisions concerning



such matter shall contain:

- 1- the minimum amount of capital of the bank to be subscribed and paid in before a banking license may be issued.

Da Afghanistan Bank shall determine such minimum amount of capital taking account of the business plan and banking activities proposed for the bank in the documents supporting the application.

- 2- listing of any conditions or restrictions that would be attached to the banking license when issued;
- 3- an explanation of what must be done to meet the special conditions required to be met before a banking license may be issued; and
- 4- in the event of rejecting a preliminary application, or specifying conditions or restrictions to be attached to the banking license, the reasons therefore.

(4) If the preliminary application for a banking license is approved, Da Afghanistan Bank shall open an account on its books in the name of the prospective bank to receive capital subscription payments.

(5) Within six months from the date of preliminary approval, the applicants is required to:

- 1- establish and register the company in accordance with the respective law, and
- 2- subscribe and pay in the minimum amount of capital prescribed by Da Afghanistan Bank and,
- 3- Submit a final application for a banking license to Da Afghanistan Bank under the name of the company.

(6) If the applicants fail to fulfill the requirements specified in paragraph (5), the decision approving the preliminary application shall be withdrawn.

(7) The applicant shall also present the following supporting documents while filling the final application under subparagraph 2 of paragraph 1 :

- 1- documentary evidence that the company has been established and registered and that any special conditions imposed by Da Afghanistan Bank have been met; [and]
- 2- a written representation issued on behalf of the company that there has been no material change in the information accompanying the earlier application or detailing any material change in such information.

(8) If Da Afghanistan Bank determines that the final application and the provisions of paragraph 3 of this Article are complied with, Da Afghanistan Bank shall issue the

banking license and send a written notice thereof to the applicants.

- (9) Upon service of the notice referenced in paragraph 8 of this article, Da Afghanistan Bank shall specify the conditions concerning the funds held in the account of the company with Da Afghanistan Bank, and allow the bank to withdraw an authorized portion of the funds.

### **Licensing procedure for existing companies**

#### **Article 14:**

- (1) An existing company may apply for a banking license by submitting to Da Afghanistan Bank an application supported by documents showing that the company has been established and registered and that the provisions of Article 13 of this law and the relevant regulations., Da Afghanistan Bank may require that additional documentary evidence be submitted in support of the application.
- (2) When, after having received an application for a banking license and having met with the owners and the proposed members of the board of supervisors and management board of the bank, Da Afghanistan Bank determines that the application and supporting documents provided are complete, Da Afghanistan Bank shall notify the applicant about the matter.
- (3) The procedure specified in paragraphs 3, 4 and 5 of Article 13 of this law shall be followed.
- (4) The capital required to be paid in shall not exceed the minimum level of capital required by Da Afghanistan Bank.

### **General conditions for issuing a banking license**

#### **Article 15:**

Da Afghanistan Bank may issue a banking license only if Da Afghanistan Bank is satisfied that:

- 1- in its administration and operations the bank will comply with the requirements of the law of Afghanistan;
- 2- the by-laws of the bank conform to all legislations of Da Afghanistan Bank;
- 3- the initial capital of the bank will be at least equivalent to the minimum specified by regulation of Da Afghanistan Bank, sufficient to support the banking activities that the bank plans to engage in;
- 4- all persons expected to have qualifying holdings in the bank meet the requirements of Article 21 of this Law and regulations of Da Afghanistan Bank;
- 5- the relationship between the bank and any person with whom the bank will have close links will not hinder Da Afghanistan Bank in the discharge of its

- supervisory responsibilities;
- 6- the internal control and risk management policies and procedures of the bank will be adequate;
  - 7- The bank has an appropriate business plan and financial projections in place;
  - 8- if the bank will be part of a group, the requirements of Article 120 of this Law will be satisfied.
  - 9- if the application concerns a subsidiary of a non-resident bank or bank holding company, the bank or bank holding company has a relevant license or equivalent authorization from the country where its head office is located and is committed to ensure, on terms and conditions satisfactory to Da Afghanistan Bank, the due and punctual payment of the future liabilities of the bank.
  - 10- Such other conditions as may be specified in related regulation.

### **Special conditions for licensing**

#### **Article 16:**

Da Afghanistan bank may issue banking licenses for domestic subsidiaries of non-resident supervised financial institutions if:

- 1- the competent authority of the country where the applicant is located has issued its consent for the establishment of the bank in Afghanistan;
- 2- following consultations between Da Afghanistan Bank and that competent authority referred to in paragraph 1, Da Afghanistan Bank is satisfied that the applicant is adequately supervised on a consolidated basis by that authority;
- 3- if the applicant has other subsidiaries or associated enterprises that are supervised financial institutions in third countries, Da Afghanistan Bank has determined, following consultations with the competent authorities in such countries, that such subsidiaries or associated enterprises are adequately supervised on a consolidated basis by such foreign authorities;
- 4- an agreement of cooperation has been concluded between Da Afghanistan Bank and the competent foreign supervising authorities referenced in paragraphs 1, 2 and 3 of this Article, which specifying the allocation of powers and responsibilities regarding the supervision of the applicant and the subsidiary in Afghanistan; and procedures governing exchanges of information between Da Afghanistan Bank and such foreign authorities.

### **Banks' Central Registry Office**

#### **Article 17:**

- (1) Da Afghanistan Bank shall establish a central register to record the name, address and registration number; the date on which the license or permit was issued by Da

Afghanistan Bank; the charter and by-laws of the bank concerned; and the addresses of offices abroad, if any; for branch offices and representative offices the name and address to which the bank belong; and information referenced in article 12 concerning the members of the board of supervisors and management board of the bank or the office including the scope of their authority and their specimen signatures.

- (2) The central register shall record, in case of conservatorship or receivership, the date on which a conservator or receiver is appointed for such bank, or upon which such office is closed
- (3) Banks shall notify Da Afghanistan Bank in writing within three days of any change in the information referenced in this article.

### **Expiration of banking license**

#### **Article 18:**

A banking license shall expire:

- 1- if the bank has not conducted any banking activities within six months after the date of its issuance;
- 2- in the event of the merger or amalgamation of the bank under this Law, upon the entry of the new bank in the register of banks;
- 3- in the event of a reorganization or division of the bank under this Law
- 4- upon the voluntary surrender of the bank's license;
- 5- upon the appointment of a receiver for the bank in accordance with this Law.

### **Voluntary surrender of banking license**

#### **Article 19:**

- (1) A bank may apply to Da Afghanistan Bank in writing to surrender its banking license. The application shall be accompanied by a liquidation plan and by the financial statements, together with a report of an independent external auditor acceptable to Da Afghanistan Bank. Within three months Da Afghanistan Bank shall decide on the request.
- (2) The request provided in paragraph 1 of this Article may be approved by Da Afghanistan Bank upon approval of the liquidation plan, and satisfaction that the bank is solvent and will have adequate liquid funds to pay its liabilities to depositors and other creditors upon surrender of the banking license, taking Article 162 of this law into consideration. Upon request, the decision of Da Afghanistan Bank shall be communicated in writing to the bank, giving the grounds thereof.
- (3) Decisions referenced in paragraph 2 of this Article shall be registered in the central register of banks and have immediate effect. The decision shall be published in a

- newspaper of general circulation in the country.
- (4) Da Afghanistan Bank shall monitor the progress of voluntary liquidation of a bank. The bank and persons carrying out the liquidation shall furnish Da Afghanistan Bank with any information required by Da Afghanistan Bank.
  - (5) During the voluntary liquidation process, the former bank shall continue to be subject to the provisions of this Law.
  - (6) If, in the opinion of Da Afghanistan Bank, any of the grounds for receivership of the bank in accordance with this Law is present, or it otherwise becomes impractical to complete the voluntary liquidation of a bank in a manner that protects the bank's depositors, Da Afghanistan Bank may appoint a receiver for the bank in accordance with Chapter XII of this Law.
  - (7) A conventional bank may apply to Da Afghanistan Bank to terminate its Islamic banking window. Da Afghanistan Bank may approve such request upon being satisfied that the bank is solvent and has an adequate plan for termination of the Islamic banking window's activities.

### **Reorganization of banks**

#### **Article 20:**

- (1) The reorganization, amalgamation, merger or division of a bank, including a bank for which a conservator or receiver has been appointed under this Law, shall be permitted only with the written authorization of Da Afghanistan Bank.
- (2) Authorizations referenced in paragraph (1) shall be granted only if:
  1. the resulting bank or banks have or is qualified to get a banking license under this law,
  2. Da Afghanistan Bank determines that the best interests of the bank's depositors would be protected.
- (3) In the event that a bank's license expires in connection with reorganization, Da Afghanistan Bank shall publish notice of this fact in a newspaper of general circulation in Afghanistan within 5 days of such expiration.

## **CHAPTER III QUALIFYING HOLDINGS IN BANK**

### **Requirements for acquisition of qualifying holdings**

#### **Article 21:**

- (1) No person may, without the prior written authorization of Da Afghanistan Bank, acquire a qualifying holding, 20% participation, 30% participation, or control of a bank. Legal persons having qualifying holdings in banks must be financial institutions.
- (2) The authorization of Da Afghanistan Bank referenced in paragraph 1 shall be requested by submitting to Da Afghanistan Bank a written application accompanied

by supporting documents showing that the applicable conditions specified by paragraph 3 of this Article for granting the authorization are met. Da Afghanistan Bank may require that additional documentary evidence be submitted in support of the request.

(3) Da Afghanistan Bank may issue the authorization referenced in paragraph 1 of this Article only under the condition:

- 1- that the applicant, and its beneficial owner, are fit and proper persons;
- 2- that Da Afghanistan Bank can satisfactorily identify the source of the funds to be used for the proposed acquisition;
- 3- if any of the funds referenced in paragraph (2) will be supplied by another person, the influence exercised on the bank by such person, and its beneficial owner, would not be detrimental to the bank or its depositors;
- 4- that the applicant is financially sound;
- 5- the influence that would be exercised on the bank as a result of the acquisition would not threaten the sound and prudent management of the bank;
- 6- that, if as a result of the acquisition, the bank would become part of a group, the conditions of Article 134 of this Law would be satisfied;
- 7- that, if as a result of the acquisition the bank would become a subsidiary of a non-resident supervised financial institution, the requirements of Article 16 of this Law will be satisfied;
- 8- that the acquisition would not hinder Da Afghanistan Bank in the discharge of its supervisory responsibilities because of close links between the bank and any person;
- 9- that it is determined that the acquisition would not result in, or increase the risk of, the bank's involvement in criminal activities, money laundering or terrorist financing;
- 10- that it is determined that bank would not become part of a parallel banking structure as a result of the acquisition;
- 11- Da Afghanistan Bank satisfactorily identifies the actual beneficial owner or owners of the shares in question;
- 12- that, if the applicant is a non-resident of Afghanistan, the acquisition would not be contrary to, or constitute a potential threat to, the orderly development and proper functioning of the national banking system of Afghanistan;
- 13- that such other conditions as Da Afghanistan Bank may specify by circulars and guidelines would be met.

(4) Within three months from the date that the application is submitted to Da Afghanistan Bank, the application shall be approved or rejected, and the applicant shall be sent a copy of the decision by Da Afghanistan Bank.

If the authorization under paragraph (2) has been issued for a non-resident applicant, this period shall be six months.

Da Afghanistan Bank may fix a maximum period for completing such acquisition. Decisions rejecting an application must explain the grounds on which the application is rejected.

- (5) If any person does not observe the maximum period allowed for completing the acquisition of such participation referenced in paragraph 4 of this Article, Da Afghanistan Bank shall cancel its authorization for the acquisition, and shall provide the person with written notice of such cancellation. In addition, that person may be subject to an order of Da Afghanistan Bank containing any of the provisions referenced in Paragraph 4 of Article 24 of this Law.
- (6) For purposes of the definitions of “qualifying holding,” “20% participant,” “30% participant,” and “controller:”
  1. a person is not considered to have a qualifying holding, or to be a controller of an enterprise, solely due to his status as a member of the board of supervisors, management board, or any equivalent body of such enterprise, or solely because members of such bodies are accustomed to act upon advice given by him in his professional capacity; and
  2. A bank is not considered to have a qualifying holding, or to be a “20% participant,” “30% participant,” or “controller” in an enterprise solely through the good faith acquisition of shares reaching or exceeding these benchmarks through foreclosure on collateral, in order to partially or fully satisfy a doubtful claim, or to avoid a loss in connection with a debt previously contracted.
  3. a bank is considered to have a qualifying holding, or to be a “20% participant,” “30% participant,” or “controller” in the enterprise if shares acquired in this manner are not disposed of within one (1) year from the date of acquisition.

### **Disposals and reductions of qualifying holdings**

#### **Article 22:**

- (1) No person may sell or otherwise dispose of a qualifying holding in a bank before providing written notification of Da Afghanistan Bank.
- (2) Unless providing written notification to Da Afghanistan Bank, no person may reduce his qualifying holding in a bank, so that the proportion of the voting rights or of the capital held by him would fall below 20 percent, 30 percent or 50 percent or so that the bank would cease to be under his control,
- (3) In the situation referenced in paragraph (2), such person is required to inform Da Afghanistan Bank of the size of his holding in the bank that he would retain.

## **Reporting of qualifying holdings**

### **Article 23:**

- (1) Each bank must inform Da Afghanistan Bank in writing within 3 business days:
  - 1- after acquiring knowledge that any person has acquired a qualifying holding, 20% participation, 30% participation, or control of the bank;
  - 2- after acquiring knowledge that any person has ceased to have a qualifying holding, 20% participation, 30% participation, or control of the bank, and the amount, if any, of that person's remaining holding in the bank; or
  - 3- if any person has acquired a qualifying holding, 20% participation, 30% participation, or control of the bank without the prior written authorization of Da Afghanistan Bank.
- (2) Every bank shall, within one month before the close of its financial year, inform Da Afghanistan Bank in writing of the persons having qualifying holdings and the sizes of such holdings.

## **Unauthorized acquisitions**

### **Article 24:**

- (1) If Da Afghanistan Bank has reason to suspect that a person may have violated, or is violating, the requirement stated in Paragraph 1 of Article 21 of this Law, Da Afghanistan Bank may:
  - 1- require the submission of relevant information from any such person, and from any enterprise controlled by such person;
  - 2- enter and inspect the premises at which that person is suspected of having committed the violation, or at which that person may have books, records, documents or other relevant information; and examine, copy or take possession, if necessary, of any relevant books, records, or documents of that person.
- (2) Any person suspected {of committing such violence}, and persons in charge of such enterprise are required to provide information on the enterprise's business activities, upon the request of Da Afghanistan Bank.
- (3) Persons in charge of such enterprise and employees shall provide such information required by Da Afghanistan Bank even after they have left their positions or employment with the enterprise.
- (4) If persons referred to in paragraph (2) make delay or refuse to cooperate, upon the request of Da Afghanistan Bank, law enforcement officials shall, if necessary by use of force, assist Da Afghanistan Bank in such investigations.



- (5) If Da Afghanistan Bank determines that a person has violated the requirements of Article 21.1 of this Law, it shall issue an order:
- 1- requiring that person to dispose of any shares held, directly or indirectly in the bank, or such part of such shareholding as Da Afghanistan Bank deems appropriate, by a date specified in the order;
  - 2- Prohibiting that person from influencing, or attempting to influence in any manner the management or policies of the bank.
- (6) Pending the issuance of a final order, Da Afghanistan Bank may preclude the person referenced in paragraph 5 of from participating in any manner in the conduct of the affairs of the bank, including the direct or indirect exercise of voting rights in the bank.

### **Revocation of authorization**

#### **Article 25:**

- (1) If, at any time, Da Afghanistan Bank determines that one or more of the conditions specified or referred to in Article 21 of this Law do not apply with respect to a person having a qualifying holding in a bank, Da Afghanistan Bank may revoke its authorization and shall apply the provisions referenced in Article 5 of this Law.
- (2) Before Da Afghanistan Bank issues an order in accordance with paragraph 1 of this Article, it shall provide the person having the qualifying holding with prior written notice and an opportunity to make written representations, unless the person consents to the issuance of the order. Such notice shall be given at least 15 days prior to the proposed date for issuance of the order.
- (3) The procedures for submission and review of the representations in accordance with paragraph 1 of this Article shall be determined by circulars and guidelines of Da Afghanistan Bank.
- (4) From the date of an order given pursuant to paragraph 1 of this Article until the person named in the order has sold or otherwise disposed of his holding in the bank or such part of his holding in the bank as is specified in the order, the exercise of the voting rights and the membership in the board of supervisors of the bank of any member appointed by that person shall be suspended. Voting rights so suspended shall not be taken into account for the purpose of determining the quorum for any session, including any extraordinary session, of the general meeting of shareholders.
- (5) Upon the request of Da Afghanistan Bank, the Commission may appoint a special and autonomous administrator who shall be authorized to exercise the voting rights of, and to exercise the authorities of any person whose voting rights are suspended pursuant to paragraph 4 of this Article.

## **Exceptions from requirements for prior authorization**

### **Article 26:**

- (1) The requirements of Paragraph 1 of Article 21 do not apply if a person acquires a qualifying holding, 20% participation, 30% participation, or control of a bank:
  - 1- as a result of foreclosure in connection with a debt previously contracted in good faith and for which the shares served as collateral;
  - 2- Through inheritance or other circumstances over which the person has no control.
- (2) In the situations described in paragraph 1 of this Article, the person in question must:
  - 1- inform Da Afghanistan Bank in writing within 30 days of the acquisition;
  - 2- not take any action directed at influencing the management or policies of the bank, or vote shares so acquired, unless and until he has received the written approval of Da Afghanistan Bank in accordance with this Law.
- (3) A request for authorization under paragraph 2 of this Article must be submitted within 60 days of acquisition, unless the person intends to dispose of any shares associated therewith within a given period of time, in which case he must notify Da Afghanistan Bank without delay.
- (4) If Da Afghanistan Bank does not approve an application under paragraph 3 of this Article, the applicant must reduce his holding in the bank to a level below a qualifying holding, or such other level as Da Afghanistan Bank may direct, within a time period set by Da Afghanistan Bank.

## **Information requirements for persons with qualifying holdings**

### **Article 27:**

- (1) Every person having a qualifying holding in a bank shall submit its annual financial statement and a list of enterprises that he controls to Da Afghanistan Bank.
- (2) Any enterprise having the qualifying holding shall provide the name of each newly appointed member of its board of supervisors and management board, or equivalent bodies, together with information confirming that each such person, and their beneficial owners, is fit and proper person, within 10 days after such appointment.
- (3) If the person having the qualifying holding is a bank holding company, this must also include confirmation that each such person has necessary professional qualifications and experience to perform his duties as required by Article 123 of this Law.

- (4) Da Afghanistan Bank may at any time require that persons having qualifying holdings in banks, enterprises that these persons control, and their beneficial owners, submit further details with regard to information referenced in paragraph (1 and 2), determining whether or not the circumstances under which Da Afghanistan Bank's authorization under Article 21 of this Law was given are still applicable.

**CHAPTER IV**  
**BANK SUBSIDIARIES, ASSOCIATED ENTERPRISES, BRANCHES AND**  
**REPRESENTATIVE OFFICES**

**Procedures for establishment or acquisition of subsidiaries by bank**

**Article 28:**

- (1) A bank may establish or legally acquire a subsidiary, in Afghanistan or abroad, only with the prior written approval of Da Afghanistan Bank.
- (2) A bank may have only financial institutions as subsidiaries.
- (3) To obtain approval under paragraph 1 of this Article, a bank must submit to Da Afghanistan Bank an application containing the following information:
- 1- a certified copy of the charter and by-laws of the subsidiary (or in the case of a subsidiary to be established, a draft of the proposed charter and by-laws);
  - 2- the amount of the bank's proposed investment in the subsidiary, expressed in terms of the percentage of the bank's capital to be invested and the percentage of the subsidiary's capital or voting shares to be held by the bank;
  - 3- identification of all members of the board of supervisors and management board (or equivalent bodies) of the subsidiary, or persons proposed for such positions, information pertaining to their professional experience and qualifications, and information confirming that each of them, and their beneficial owners, are fit and proper persons;
  - 4- the expected ownership structure of the subsidiary, including the identification of any other persons having or proposed to have qualifying holdings in the subsidiary;
  - 5- the existing or proposed business activities of the subsidiary;
  - 6- financial information about the subsidiary;
  - 7- the procedures designed to control the bank's risk resulting from its ownership of the subsidiary, and to maintain the separate corporate existence of the bank and the subsidiary; and

- 8- any other information that Da Afghanistan Bank deems necessary or appropriate to fulfill its obligations under this Law.
- (4) Da Afghanistan Bank may deny an application under paragraph 3 of this Article on the following grounds:
- 1- non-submission of required information by the applicant;
  - 2- Da Afghanistan Bank determines that any member of the subsidiary's board of supervisors or management board, or equivalent body, and its beneficial owner, are not fit and proper persons, or does not have suitable professional experience and qualifications to perform their duties;
  - 3- Da Afghanistan Bank determines that any other person having, or proposing to have, a qualifying holding in the subsidiary, and its beneficial owner, are not fit and proper persons;
  - 4- Da Afghanistan Bank determines that the submitted policies or procedures are not adequate to protect the bank from the risks resulting from its ownership of the subsidiary, or to ensure the separate corporate existence of the bank and the subsidiary;
  - 5- Da Afghanistan Bank determines that the bank or its depositors could be harmed due to the anticipated activities of the subsidiary;
  - 6- the subsidiary is engaged, or proposes to engage, in business activities that are not permitted for bank subsidiaries; or
  - 7- Da Afghanistan Bank determines that the requirements of Article 136 of this Law or paragraph 2 of Article 36 of this Law would not be satisfied.
- (5) Da Afghanistan Bank must approve or deny the application referenced in paragraph 3 of this Article within 60 days of receiving such application. In case of denial, the applicant must be notified in writing of the reasons.
- (6) Da Afghanistan Bank may attach any conditions to its approval under this Article and fix a maximum period for completing the establishment or acquisition of the subsidiary.

**Information requirements for banks regarding subsidiaries**

**Article 29:**

A bank must notify Da Afghanistan Bank in writing:

- 1- within 10 days of the acquisition or establishment of a subsidiary;
- 2- within 10 days of all amendments and additions to the charter and by-laws of its

subsidiaries;

- 3- of its decision to relinquish control of a subsidiary, at least 30 days prior to the intended relinquishment; and upon relinquishment of control of a subsidiary, within 10 days following such relinquishment.

### **Orders to terminate control of subsidiaries**

#### **Article 30:**

- (1) Should a bank establish or acquire a subsidiary without obtaining the approval of Da Afghanistan Bank, it is required to terminate, according to a written order as issued by Da Afghanistan Bank, its control of the subsidiary within the specified time period. Any sale or other transfer of beneficial ownership of the subsidiary's shares must be to persons who are not related persons of the bank as defined in this Law.
- (2) Da Afghanistan Bank may by order revoke its approval for a bank to establish or acquire a subsidiary if it determines that:
  - 1- the circumstances under which such approval was given are no longer applicable; or
  - 2- the subsidiary has engaged in criminal activities, money laundering, or terrorist financing.
- (3) If approval of Da Afghanistan Bank for establishing or obtaining such subsidiary is revoked under paragraph 2, the bank must take the actions specified in paragraph 1 of this Article.
- (4) The procedures applicable to enforcement orders pursuant to Article 111 of this Law shall apply to orders issued under this Article.

### **Associated enterprises of banks**

#### **Article 31:**

- (1) A bank may establish or legally obtain only financial institutions as associated enterprises.
- (2) A bank must notify Da Afghanistan Bank at within 60 days to establish or acquire an associated enterprise in Afghanistan, and must obtain the prior written approval of Da Afghanistan Bank to establish or acquire a foreign associated enterprise. The conditions provided for in subparagraphs (2) through (6) of paragraph 3 of Article 28 of this law shall also apply to a notification or application under this paragraph.
- (3) Da Afghanistan Bank may prohibit the intended acquisition or establishment of an associated enterprise by a bank for the reasons set forth in subparagraphs (2), (3), (5), (6) and (7) of paragraph 4 of Article 28 of this Law as applied to the associated enterprise.

- (4) If no objection is received from Da Afghanistan Bank within the 60-day time period referred to in paragraph 1 of this Article, the bank is allowed to acquire or establish the domestic associated enterprise.
- (5) The provisions of Article 28.5 and Article 28.6 of this Law shall apply to decisions by Da Afghanistan Bank on applications by a bank to establish or acquire a foreign associated enterprise.
- (6) A bank must notify Da Afghanistan Bank:
  - 1- within 10 days of the acquisition or establishment of an associated enterprise;
  - 2- at least 30 days prior to reducing its holding in an enterprise, such that it would no longer be an associated enterprise of the bank; and within 10 days of doing such action.
- (7) Da Afghanistan Bank may by order require a bank to terminate its investment in an associated enterprise on the same grounds as are specified in Article 30 of this Law.
- (8) The procedures applicable to enforcement orders pursuant to Article 111 of this Law shall apply to orders issued under paragraph 8.

**Responsibilities of banks regarding acquisitions of subsidiaries and associated enterprises**

**Article 32:**

- (1) A domestic bank that establishes or acquires a subsidiary or associated enterprise, in Afghanistan or abroad, must ensure that:
  - 1- the subsidiary or associated enterprise will furnish the bank with all necessary information,
  - 2- the subsidiary or associated enterprise will permit Da Afghanistan Bank to perform onsite inspections and obtain any information from the subsidiary or associated enterprise; and
  - 3- this will not result in close links with other persons that would impair the ability of Da Afghanistan Bank to perform its functions under this Law.
- (2) Da Afghanistan Bank may prohibit the establishment or acquisition of a subsidiary or associated enterprise by a bank or by order, may require the termination of the relationship stated in subparagraph 3 of paragraph 1 of this article, if the conditions set forth in paragraph 1 of this Article are not satisfied.
- (3) Each bank shall keep at its head office a copy of the current financial statements of each of its subsidiaries and associated enterprises.

## **Establishment of branches by domestic banks**

### **Article 33:**

- (1) A domestic bank that wishes to establish a branch, regardless of whether inside or outside the country, is required to obtain a written permit from Da Afghanistan Bank.
- (2) An application under paragraph 1 of this Article shall include:
  - 1- the business plan including a description of intended activities at the proposed branch, its organizational structure, and the provisions for oversight of the branch's activities by the applicant bank;
  - 2- the address of the proposed branch;
  - 3- names of all persons proposed as managers of the branch, and confirmation that these persons meet the requirements of Article 58 of this Law; and
  - 4- any other information that Da Afghanistan Bank deems necessary or appropriate to fulfill its obligations under this Law.
- (3) Da Afghanistan Bank may reject an application under paragraph 1 of this Article if:
  - 1- establishment of the branch would not be in the interest of depositors or potential depositors of the bank;
  - 2- the staff, premises or equipment of the proposed branch office do not meet regulatory requirements established by Da Afghanistan Bank;
  - 3- the business plan does not provide for effective oversight of the branch by the bank; or
  - 4- the applicant bank has not submitted appropriate information according to what required by Da Afghanistan Bank.
- (4) Da Afghanistan Bank may by order revoke its permit under paragraph 1 of this Article if:
  - 1- the branch does not commence operations within six months after the permit is approved;
  - 2- operations of the branch are discontinued for more than six months;
  - 3- the circumstances under which permit was given are no longer applicable;
  - 4- the permit was granted on the basis of false or incomplete information; or
  - 5- the bank fails to submit information concerning the activities of the branch as required by Da Afghanistan Bank.

## **Establishment of branches of foreign banks in Afghanistan**

### **Article 34:**

- (1) A foreign bank that wishes to establish a branch in Afghanistan is required to obtain a written permit from Da Afghanistan Bank.
- (2) The application reference in paragraph 1 shall include
  - 1- the information required by Article 33.2 of this Law;
  - 2- written confirmation that the bank holds a valid license or equivalent document in its home country;
  - 3- the consent of the relevant foreign competent authority for the establishment of a branch in Afghanistan;
  - 4- three years of audited financial statements of the applicant bank verifying the sound financial condition of the bank, all three of which must have an unqualified external auditor's opinions,
  - 5- information relating to any enforcement measures or sanctions currently in effect, or taken with regard to the applicant bank by the competent authority in its home country, or any jurisdiction in which it operates, within the past 3 years;
  - 6- whether the branch will be covered by deposit insurance in the home country and financial information relating to the deposit insurance system of the home country;
  - 7- Information confirming that the requirements of subparagraphs (1), (3), (4), (11), and (12) of Paragraph 3 of Article 21 of this Law are satisfied relating to all persons having qualifying holdings in the applicant bank.
- (3) The permit under paragraph 1 is granted to only a bank that gets a rating not lower than "A" or an equivalent rating issued by an internationally-recognized credit rating agency whose ratings are approved for use by Da Afghanistan Bank;
- (4) Da Afghanistan Bank may reject an application under paragraph 1 of this Article:
  - 1- on any of the grounds provided in Article 33.3 of this Law;
  - 2- if it is not satisfied, based on the information submitted in accordance with paragraph 2 of this Article, of the prospects for sound and prudent management of the branch and protection of the depositors of the branch; or
  - 3- if the activities of the applicant bank could be contrary to, or could pose a threat to the orderly development and proper functioning of the national banking system of Afghanistan.



### **Approval of branch establishment**

#### **Article 35:**

- (1) Da Afghanistan Bank shall grant or refuse the application for a permit under Articles 33 or 34 of this Law within 60 days after the receipt of a complete application. In the event of refusal of the application Da Afghanistan Bank shall provide the reasons.
- (2) Da Afghanistan Bank may grant a permit referenced in paragraph 1 of this Article subject to any conditions it deems appropriate to fulfill its relevant obligations under this Law.

### **Cooperation with foreign competent authorities**

#### **Article 36:**

- (1) Da Afghanistan Bank shall consult with the appropriate foreign competent authority before approving an application:
  - 1- by a domestic bank to establish or acquire a foreign supervised financial institution as a subsidiary or associated enterprise, or to establish a foreign branch;
  - 2- by a foreign bank to establish a branch in Afghanistan.
- (2) Da Afghanistan Bank shall approve an application referred to in paragraph 1 of this Article only if:
  - 1- Da Afghanistan Bank is satisfied that the legislation and regulations of the foreign jurisdiction require, and the foreign competent authority effectively exercises, supervision on a consolidated basis; and
  - 2- an agreement of cooperation has been concluded between Da Afghanistan Bank and the foreign competent authority, specifying the allocation of powers and responsibilities and procedures governing exchanges of information between Da Afghanistan Bank and the foreign competent authority regarding the supervision of the subsidiary, associated enterprise or branch.
- (3) Da Afghanistan Bank shall promptly inform the appropriate foreign competent authority of any approval under Paragraph 1 of this Article, and shall co-ordinate the procedure for supervision of the subsidiary or branch with such competent authority.
- (4) If Da Afghanistan Bank revokes its permit or approval referred to in paragraph 1 of this Article, it shall immediately notify the appropriate foreign competent authority.

## **Notification requirements regarding branches**

### **Article 37:**

- (1) A domestic bank, or a foreign bank operating a branch in Afghanistan, must notify Da Afghanistan Bank in writing of:
  - 1- the establishment of a branch approved under Articles 33 or 34 of this Law, within 10 days after such establishment;
  - 2- all intended alterations in the information specified in paragraphs 2 of Article 33 of this Law, at least 30 days before such alterations are to become effective;
  - 3- its decision to close the branch, at least 30 days prior to the intended closure;
- (2) Further to paragraph 1 of this article, A foreign bank that has a branch in Afghanistan must also notify Da Afghanistan Bank in writing of:
  - 1- any changes in the information referenced in Article 34.1 of this Law, within 10 days of any such changes; and
  - 2- any situation in which the branch may become incapable of meeting its obligations to its depositors, or where this has occurred, without delay after such situation occurs.

## **Multiple branches of foreign banks**

### **Article 38:**

- (1) A foreign bank that has an operating branch in Afghanistan is obliged to submit an application to Da Afghanistan Bank, in accordance with Article 34 of this Law prior to opening of any subsequent branch in Afghanistan.
- (2) Da Afghanistan Bank may waive the requirements of paragraph 1 of this Article and Article 34 of this Law with respect to establishment of a new branch, provided that such required information would be duplicative of information that Da Afghanistan Bank already possesses, or if Da Afghanistan Bank can make a decision on the application based on the information it already possesses.
- (3) A foreign bank that has more than one branch operating in Afghanistan must submit to Da Afghanistan Bank a declaration naming one of its branches as the responsible administrative center authorized to represent all of its other branches.
- (4) Da Afghanistan Bank may perform all its communications in respect of branch offices of such foreign bank through the branch office referred in to paragraph 3.

## **Capital of foreign bank branches in Afghanistan**

### **Article 39:**

The conditions and limitations of capital requirements for domestic banks shall be applicable to branches of foreign banks operating in Afghanistan.

## **Application of this Law to branches of foreign banks**

### **Article 40:**

Branches of foreign banks operating in Afghanistan are subject to the provisions of this Law and regulations of Da Afghanistan Bank, as determined to be appropriate by Da Afghanistan Bank.

## **Relocation of a branch**

### **Article 41:**

- (1) A domestic bank shall notify Da Afghanistan Bank in writing at least 30 days in advance of its intent to relocate a domestic or foreign branch.
- (2) A foreign bank shall notify Da Afghanistan Bank in writing at least 30 days in advance of its intent to relocate a branch within Afghanistan.
- (3) During the process of relocating a branch, the banks stated in paragraphs 1 and 2 of this Article shall provide Da Afghanistan Bank with any information that Da Afghanistan Bank deems necessary to fulfill its obligations under this Law.
- (4) Any bank referred to in paragraphs 1, 2 shall notify Da Afghanistan Bank in writing no more than 10 days after the relocation of a branch.

## **Closure of foreign branch in Afghanistan**

### **Article 42:**

- (1) Where a foreign bank decides to close its branch in Afghanistan, it shall submit to Da Afghanistan Bank for its approval a liquidation plan which must guarantee the satisfaction of all obligations of the branch to its clients in Afghanistan. Da Afghanistan Bank shall approve or disapprove the plan within one month, and shall monitor the progress of such plan during its implementation.
- (2) The foreign bank and branch are required to provide Da Afghanistan Bank with information and access to the branch premises as necessary to accomplish the liquidation process.
- (3) Da Afghanistan Bank may revoke its approval of the liquidation plan and carry out the forcible liquidation of the branch if it determines that the conditions under which such liquidation plans has been approved are no longer satisfied, and in particular the branch is incapable of fulfilling its obligations and liabilities to its clients. For this purpose, the provisions of Chapter XIII of this Law shall apply as appropriate as determined by Da Afghanistan Bank.

## **Corrective measures regarding branch of foreign banks**

### **Article 43:**

- (1) If Da Afghanistan Bank determines that a branch office of a foreign bank located in Afghanistan has engaged in any violation referenced in Article 107 of this Law, it may, after notifying the relevant foreign competent authority, issue an order:
  - 1- requiring the branch to cease such violations or practices, and/or to take corrective measures acceptable to Da Afghanistan Bank in accordance with Article 108 of this Law;
  - 2- requiring the dismissal or replacement of the branch managers responsible for such violations, practices, transactions or conditions;
  - 3- revoking its permit in accordance to the Article 44 of this Law; or
  - 4- precluding the foreign bank from initiating further transactions in Afghanistan.
- (2) In urgent cases, Da Afghanistan Bank may take any of the measures specified in paragraph 1 of this Article without notifying the relevant competent authority, and shall provide immediately such notification.
- (3) The procedures for issuing enforcement orders set forth in Article 111 of this Law shall apply to orders issued to domestic branches of foreign banks.

## **Revocation of approval for foreign branch in Afghanistan**

### **Article 44:**

- (1) Da Afghanistan Bank may revoke its permit under Paragraph 1 of Article 34 of this Law:
  - 1- on any of the grounds specified in Paragraph 4 of Article 33 of this Law;
  - 2- If the activities or financial situation of the foreign bank or branch pose a serious danger to the interests of the branch's depositors in Afghanistan; or
  - 3- in any situations under Article 43 of this Law.
- (2) Da Afghanistan Bank shall revoke a permit issued under Paragraph 1 of Article 34 of this Law if:
  - 1- the foreign bank has lost its license or equivalent authorization to operate in its home country;
  - 2- Da Afghanistan Bank determines that the branch is, or is likely to become, incapable of meeting its obligations to its depositors.

- (3) If Da Afghanistan Bank revokes its permit in accordance with paragraphs 1 and 2 of this Article, it may:
- 1- require the foreign bank to adopt and adhere to a liquidation plan for the branch, acceptable to Da Afghanistan Bank; or
  - 2- appoint the a receiver to carry out the liquidation of the branch in accordance with the provisions of this Law and procedures established by Da Afghanistan Bank.
- (4) Before Da Afghanistan Bank revokes its approval for a branch under Paragraph 4 of Articles 33 of this Law, it shall provide the bank concerned with at least 15 days written notice of the proposed revocation. If not satisfied with such decision, the branch of foreign bank may make written representations before Da Afghanistan Bank in accordance with respective procedure specified in regulation of Da Afghanistan Bank.
- (5) Within 5 days from the date of its decision to revoke a permit to establish a branch under this Article, Da Afghanistan Bank shall publish the decision in a newspaper of general circulation of the country.

#### **Establishment of representative office of foreign banks in Afghanistan**

##### **Article 45:**

- (1) A foreign bank that wishes to open a representative office in Afghanistan shall notify Da Afghanistan Bank in writing at least 30 days prior to the proposed establishment of the representative office. The notification shall contain:
- 1- the name and address of the headquarters of the bank;
  - 2- confirmation that the bank holds valid license or equivalent authorization in its home country;
  - 3- information on the financial situation of the bank;
  - 4- name and proposed headquarters of the representative office;
  - 5- proposed activities of the representative office;
  - 6- names of the proposed managers of the representative office;
  - 7- written confirmation of the applicant foreign bank that it will be responsible for all the liabilities resulting from the operation of the representative office.
- (2) Da Afghanistan Bank shall confirm to the bank the receipt of the notification referenced in paragraph 1 of this Article.

- (3) The representative office may commence its activities only after the bank has received the confirmation from Da Afghanistan Bank as set forth in paragraph 2 of this Article.
- (4) A foreign bank shall notify Da Afghanistan Bank in writing:
  - 1- within 10 days of establishing a representative office in Afghanistan;
  - 2- of its decision to close a representative office inside Afghanistan, at least 30 days prior to the intended date of such closure; and minimum within 10 days after the implementation of the decision.
- (5) Da Afghanistan Bank shall by order require a foreign bank to close its representative office in Afghanistan if:
  - 1- the foreign bank loses its license to conduct banking operations in its home country; or
  - 2- The representative office engages in activities not permitted by this law or regulations of Da Afghanistan bank.
- (6) Before Da Afghanistan Bank issues an order in accordance with paragraph 5 of this Article, it shall provide the bank concerned with at least 15 days written notice of the proposed order.
- (7) If not satisfied by such order referred to in paragraph 5 of this article, the foreign bank may submit its written representations before Da Afghanistan Bank in accordance with related procedure.
- (8) Da Afghanistan Bank may conduct inspections of representative offices of foreign banks in Afghanistan to ensure compliance with this Law and regulations of Da Afghanistan Bank.

### **Representative offices abroad of Afghan banks**

#### **Article 46:**

- (1) Domestic banks shall notify Da Afghanistan Bank in writing:
  - 1- at least 10 days prior to opening a representative office outside of Afghanistan;
  - 2- of its intent to close a representative office outside of Afghanistan, at least 30 days prior to the intended date of such closure; and within 10 days of closing a representative office outside of Afghanistan.
- (2) Da Afghanistan Bank shall by order require a domestic bank to close its representative office abroad if the representative office engages in activities not permitted by this law or regulations of Da Afghanistan Bank.

- (3) Before Da Afghanistan Bank issues an order in accordance with paragraph 2 of this Article, it shall provide the bank concerned with at least 15 days written notice of the proposed order.
- (4) If not satisfied by such order referred to in paragraph 2 of this article, the domestic bank may submit its written representations before Da Afghanistan Bank in accordance with related regulation.
- (5) Da Afghanistan Bank may conduct inspections of representative offices abroad of domestic banks to ensure compliance with this Law and related regulation.

## **CHAPTER V BANK CORPORATE GOVERNANCE**

### **Governance structure of banks**

#### **Article 47:**

- (1) Each bank shall have the following governance structure:
  - 1- a general meeting of shareholders;
  - 2- a board of supervisors; and
  - 3- a management board.
- (2) Before a bank appoints a person to serve on its board of supervisors or management board, the bank must propose the issue to Da Afghanistan Bank as well as submit documents pursuant to Article 12 of this law, during an application for a banking license, and shall obtain Da Afghanistan Bank's authorization.

### **General meeting of shareholders**

#### **Article 48:**

- (1) The general meeting of shareholders of a bank "which in this law referred to as general assembly of shareholders" shall have the following duties and powers:
  - 1- to adopt the procedures of the bank and amendments thereto;
  - 2- to adopt the by-laws of the bank and amendments thereto, provided that the general meeting of shareholders may authorize the board of supervisors to perform these functions,
  - 3- to appoint and to dismiss the members of the board of supervisors and determine their remuneration;
  - 4- to adopt increases in the authorized capital of the bank and to determine the terms and conditions on which shares of the bank may be issued;
  - 5- to approve the annual reports and financial statements of the bank, upon the recommendation of the board of supervisors of the bank;

- 6- to decide on the sale, merger, amalgamation, dissolution and closure of the bank;
  - 7- to appoint the bank's external audit firm, taking into account the recommendation of the board of supervisors.
  - 8- to establish and close subsidiaries, branches and representative offices of bank.
- (2) According to the value of the shares in the capital of the bank, each shareholders have voting power proportionate to their shares in capital, and can be used in general assembly by each shareholders directly or through their representatives.
- (3) At least one regular session of the general meeting of shareholders shall be held each year after completion of the external audit of the balance sheet and financial statements of the bank for the preceding financial year, and no later than 3 months after the end of that financial year.
- (4) Extraordinary sessions of the general meeting of shareholders may be convened at the request of the board of supervisors, the management board, shareholders together holding 20 percent or more of total voting rights, or Da Afghanistan Bank.
- (5) Written notice of the date, place and time of each session of the general meeting of shareholders, together with the agenda for that session, shall be sent to the shareholders using postal or email service at least one month in advance. In urgent issues such notice may be given seven days in advance.
- (6) The general meeting of shareholders shall not decide on issues that are not on the agenda.

### **Membership of the board of supervisors**

#### **Article 49:**

- (1) The members of board of supervisors of a bank shall be uneven number of not less than 3 and more than to 9 persons, who are appointed by the general meeting of shareholders of the bank for a period of four years; they may be reappointed for subsequent terms of equal length. The board of supervisors shall designate a member of the board of supervisors to be chairman of the board of supervisors.
- (2) At least two-thirds of the members of the board of supervisors and including the Chairman must be independent members. Shareholders of a bank, their representatives and close relatives may not constitute a majority of the members of the board of supervisors of that bank.
- (3) A member of the board of supervisors of a bank may own shares of the bank, or the bank's parent bank holding company, in his or her individual name, in an amount determined by Da Afghanistan Bank. Members of the board of supervisors who own such shares may be permitted to receive all or a portion of their remuneration in the



form of bank or bank holding company shares in accordance with policies approved by the board of supervisors.

- (4) In the event of a vacancy on the board of supervisors, the remaining members may appoint a person to fill the vacancy on a temporary basis until the next session of the general meeting of the shareholders.

### **Duties and powers of the board of supervisors**

#### **Article 50:**

The board of supervisors of a bank shall have the following duties and powers:

- 1- convene each session of the general meeting of shareholders and adopt the agenda for each such session;
- 2- approve the bank's organizational structure;
- 3- make decisions regarding the establishment and dissolving of subsidiaries, branch offices and representative offices of the bank;
- 4- appoint, dismiss and determine the remuneration of the bank's management board;
- 5- oversee the work of the bank's management board;
- 6- approve the bank's business strategy and annual budget;
- 7- approve the policies pursuant to which the bank will conduct its business, including the bank's risk management policy, and policies for dealing with conflicts of interest, and ensure that they are adhered to; and require the management board to implement those policies;
- 8- determine the conditions under which credits may be granted by bank employees, and which credits require approval of the board of supervisors;
- 9- ensure the establishment, functionality, appropriateness and adequacy of internal controls and risk management for the bank;
- 10- ensure the integrity of the bank's financial reporting, including financial reporting to Da Afghanistan Bank;
- 11- ensure the appropriate functionality of internal audit function;
- 12- make recommendations to the general meeting of shareholders on matters requiring shareholder approval;
- 13- make recommendations to the general meeting of shareholders concerning appointment of the external audit firm for the bank;
- 14- ensure that the bank has an annual external audit, which includes the auditor's

- opinion of the truth and accuracy of the bank's financial statements;
- 15- make decisions concerning capital distributions, subject to requirements of this Law and regulations of Da Afghanistan Bank, and what amount of the net profit of the bank shall be transferred to any reserve of the bank;
  - 16- make decision concerning procedure of capital distributions, subject to requirements of this law and related regulations, and the amount of net profit of the bank which is determined as reserve fund.
  - 17- Decide on other matters placed in the competence of the board of supervisors by the bank's charter or by-laws.
  - 18- Ensure the implementation of instructions and orders of Da Afghanistan bank.

### **Meetings of the board of supervisors**

#### **Article 51:**

- (1) The board of supervisors shall meet regularly, at least once a month
- (2) Special meetings may be called if:
  - 1- the bank becomes undercapitalized;
  - 2- it is requested by the audit committee or external auditor of the bank; or
  - 3- it is requested by Da Afghanistan Bank.
- (3) Da Afghanistan Bank may require a bank to hold a special meeting of its board of supervisors if Da Afghanistan Bank deems it necessary, and to consider the matters set forth in a written notice of Da Afghanistan Bank.
- (4) The quorum of the board of supervisors is a two third majority of the members and the decisions are taken by a simple majority of the votes of its present members who has voting right. In case of a tie vote, the Chairman shall cast the deciding vote. Members may not abstain from voting except as permitted or required by this Law
- (5) The board of supervisors shall designate an employee of the bank who is not a member of the board of supervisors as secretary to the board. Minutes of each meeting of the board of supervisors shall be kept and shall be signed by the person chairing the meeting, and by the secretary and other members present.

### **Audit committee**

#### **Article 52:**

- (1) The board of supervisors of each bank shall establish an audit committee of uneven number of not less than 3 and more than 9 members, the majority of whom shall consist of independent members of the board of supervisors or any other qualified persons. At least one member of the audit committee shall have sufficient experience and expertise in banking, accounting, or financial management.

- (2) Prior to appoint a person as an audit committee member, upon application for the banking license, the board of supervisors shall submit proposal to Da Afghanistan Bank along with relevant information and documents in accordance with article 12 of this law, and obtain the approval of Da Afghanistan Bank.
- (3) None of the members of the audit committee may be members of the management board or employees of the bank or an enterprise in the same group as the bank.
- (4) The audit committee of a bank shall have the following duties and responsibilities :
  - 1- review the annual financial statements of the bank before the statements are approved by the board of supervisors;
  - 2- review such other financial reports of the bank as the audit committee deems necessary;
  - 3- review and evaluate the bank's policies regarding internal controls, and make recommendations to the board of supervisors regarding their approval;
  - 4- oversee the implementation and maintenance of the bank's internal controls by the bank's management board;
  - 5- periodically review the effectiveness of the bank's internal controls with the help of the bank's internal audit function and management board, and report its findings to the board of supervisors, together with appropriate recommendations for changes it deems necessary;
  - 6- recommend to the board of supervisors an audit firm to conduct the bank's external audit;
  - 7- discuss with the bank's external auditors about the annual audit of the bank's financial statements; and
  - 8- perform other tasks, related to the above, as determined by the board of supervisors.
- (5) The audit committee shall meet at least once per quarter, and may meet more frequently if the committee deems it to be necessary. The quorum of the audit committee is completed by existence of two third majority of the members and decisions are taken by a majority vote of the committee members who are present. Members may not abstain from voting except where voting would lead to a conflict of interest.
- (6) The audit committee may only call a meeting of the board of supervisors of the bank to consider any matter of concern to the committee.
- (7) The audit committee may hire its own legal and auditing experts.

### **Risk management committee**

#### **Article 53:**

- (1) The board of supervisors of each bank shall establish a risk management committee, the majority of which shall consist of independent members of the board of supervisors. At least one member of the risk management committee shall have expertise in risk management and banking.
- (2) to assists the board of supervisors in developing, approving, and monitoring the implementation of the bank's risk management policies, the risk management committee shall:
  - 1- review and evaluate the bank's proposed policies, strategies, limits and procedures for risk management, and report its findings to the board of supervisors, together with appropriate recommendations for changes it deems necessary,
  - 2- ensure that the bank's risk management program is conducted in accordance with the policies, strategies and limits approved by the board of supervisors and with relevant laws and regulations of Da Afghanistan Bank;
  - 3- monitor the implementation of these policies, strategies and limits through receipt of reports from senior management and/or the bank's risk management function;
  - 4- submit reports to the board of supervisors on the effectiveness of the bank's risk management process;
  - 5- Perform other tasks assigned to it by the board of supervisors relative to the bank's risk management program.
- (3) The board of supervisors of a bank may assign some or all of the functions referred to in this Article to the audit committee.

### **Exceptions to establish committees**

#### **Article 54:**

- (1) The requirements to establish an audit committee and risk management committee do not apply in a bank that has a board of supervisors consisting of 5 members, provided that the board of supervisors, as a whole, performs the functions that would otherwise be performed by the relevant committee or committees.
- (2) The requirement to establish an audit committee does not apply to banks that are subsidiaries of bank holding companies, provided that:
  - 1- the bank holding company is established under the laws of Afghanistan;

- 2- the bank holding company beneficially owns all of the voting shares of the bank;
- 3- the bank holding company has an audit committee that performs, on behalf of the bank, the functions referenced in Article 52 of this Law; and
- 4- the bank holding company has a written policy guaranteeing that the board of supervisors of the bank has full and timely access to all submissions, deliberations, and reports of the audit committee that pertain to the bank.

### **Establishment of other committees**

#### **Article 55:**

The board of supervisors may establish other committees as it deems appropriate. Minutes of each meeting of each committee of the board of supervisors shall be kept after it is signed by the person chairing the meeting.

### **Management board**

#### **Article 56:**

- (1) The management board of a bank shall consist of at least 5 members.
- (2) The management board of a bank shall include:
  - 1- chief executive officer
  - 2- deputy chief executive officer;
  - 3- chief operation officer, chief credit officer and chief finance officer.
  - 4- such other officials as may be specified in the bank's charter or by-laws or deemed appropriate by the board of supervisors.
- (3) The same person may perform more than one of the functions specified in paragraph 2 of this Article, so long as all of the functions are covered.
- (4) The salary and remuneration of members of the management board, their appointment and dismissal shall be determined and approved by board of supervisors.
- (5) Shareholders of banks, their representatives, and close relatives may not serve as management board member of such banks.
- (6) The bank's management board shall:
  - 1- organize the work and direct the day-to-day business operation of the bank, pursuant to the strategies and policies approved by the board of supervisors, and monitor the day-to-day activities of the bank's employees;

- 2- implement the business strategy and policies of the bank approved by the board of supervisors;
- 3- identify and assess regularly all significant risks involved in the activities of the bank and ensure the monitoring and control of the extent of such risks in accordance with the policies approved by the board of supervisors;
- 4- develop the organizational structure of the bank and its branches that is suitable for the bank's overall strategy as determined by the board of supervisors, and submit the proposed structure for approval by the board of supervisors;
- 5- develop and implement systems for monitoring the activities of the bank, ensure adherence to such systems, assess the sufficiency thereof regularly and improve them in accordance with the policies established by the board of supervisors;
- 6- ensure that all employees of the bank are aware of the provisions of legislation relating to their duties of employment and of the principles approved by the board of supervisors;
- 7- ensure monitoring of the compliance of the activities of the bank and its employees with legislation and the policies approved by board of supervisors;
- 8- ensure the existence and functioning of systems to guarantee that information necessary for employees of the bank to perform their duties is communicated to them in a timely manner;
- 9- ensure the safety and regular monitoring of information technology systems used by the bank and systems used for the safekeeping of assets of clients;
- 10- inform the board of supervisors of all discovered violations of legislation, internal rules or other rules approved by board of supervisors;
- 11- present periodic overviews of the activities and financial situation of the bank to the board of supervisors;
- 12- immediately inform the board of supervisors and Da Afghanistan Bank in writing of any deterioration in the financial situation of the bank, or danger of such deterioration, and any other facts that may materially affect the financial situation of the bank, and in particular if the bank becomes undercapitalized.

### **Compliance Function**

#### **Article 57:**

- (1) Banks are required to establish a compliance function in order to ensure the routine monitoring of compliance with this law, other legislations, corporate governance rules, codes and policies applicable to the bank and to ensure that deviations are reported to the competent authorities.
- (2) In case of material deviations, the head of the compliance function referred to in Paragraph 1 of this Article, shall report such material deviations directly to the board

of supervisors.

- (3) Da Afghanistan Bank may issue guidance on what constitutes a competent authorities and material deviation referred to in Paragraphs (1 and2) of this Article.

### **Qualifications for members of the board of supervisors and management board**

#### **Article 58:**

- (1) A person shall be eligible to serve as a member of the board of supervisors, or the management board of a bank if:
  - 1- he is a fit and proper person;
  - 2- he has sufficient professional experience and qualifications to perform his duties, as referenced in paragraphs 2 through 4 of this Article and as determined by Da Afghanistan Bank;
  - 3- he has not been deprived of the right to sit on the Board of which he is or is proposed to be a member;
  - 4- he is not a government employee other than in a teaching capacity; the teaching capacity exception is not for Management Board members.
  - 5- he is not a close relative of a person having, or being the beneficial owner of, a qualifying holding in the bank.
- (2) In addition to requirements set forth in paragraph 1 of this article, every member of board of supervisors of a bank must have a suitable professional background via previous work in business, accounting, law, academia or supervision of financial institutions. At least one member of the board of supervisors shall have expertise in banking, accounting, or financial management in order to facilitate that person's membership on the audit committee.
- (3) In addition to requirements set forth in paragraph 1 of this article, the chief executive officer of a bank must have a degree of higher education and at least five years' practical experience in the financial field in a management capacity.
- (4) In addition to requirements set forth in paragraph 1 of this article, other members of the management board of a bank must have:
  - 1- a degree of higher education, and professional qualifications and experience suitable for the position to be held.
  - 2- at least three years of experience in the banking field in positions comparable to that for which he is proposed, or
  - 3- at least six years of comparable experience in other financial institutions, or other comparable professional activities.

## **Fiduciary duties**

### **Article 59:**

- (1) To better perform their professional duties, Members of the board of supervisors and management board must:
  - 1- perform their duties honestly and in good faith with a view to the best interests of the bank and its depositors;
  - 2- exercise such duties by using required skills.
  - 3- avoid conflicts of interest between the bank's interests and his or her own personal or business interests.
- (2) Members of the board of supervisors and management board are personally liable for damage caused to the bank for violations of the duties referred to in paragraph 1 of this Article.
- (3) If a member of the board of supervisors and management board fail to perform their duties under paragraph (1) of this Article and causes a loss to a bank, shareholders of the bank shall have right to bring a derivative action on behalf of the bank against such persons, in accordance with Article 48 of the Law on Corporations and Limited Liability Companies.
- (4) Other terms and performance of board of supervisors will be regulated in a separate bill.

## **Risk management and internal controls**

### **Article 60:**

- (1) Each bank must have a comprehensive and adequate system for identification, measurement, monitoring and control of all risks to which the bank is exposed. The system shall be approved by the board of supervisors.
- (2) Each bank shall have internal controls and information systems that are appropriate for the size of the bank and the nature, scope, and risk of its activities.
- (3) The internal controls and information systems referenced in paragraph 2 of this article shall include, at a minimum:
  - 1- an organizational structure that establishes clear lines of authority and responsibility for disbursing funds on behalf of the bank, and monitoring compliance with the policies established by the bank's board of supervisors;
  - 2- clear guidelines for delegation of authority and responsibility;



- 3- guidelines to evaluate the adherence of the bank to its risk management policies and procedures;
  - 4- provisions to ensure timely and accurate financial, operational and regulatory reports;
  - 5- procedures to safeguard and manage assets;
  - 6- provisions to ensure compliance with applicable related laws and regulations.
  - 7- review by the bank's internal audit function, audit committee and full board of supervisors of the effectiveness of the internal control systems.
- (4) The bank's system of internal controls shall be approved by the board of supervisors, and shall be subject to periodic assessment by the bank's internal audit function.

### **Internal audit function**

#### **Article 61:**

- (1) Each bank shall establish an internal audit function, which shall:
- 1- assess the suitability and sufficiency of the bank's internal controls for its activities, in accordance with Article 60 of this Law;
  - 2- regularly monitor compliance with the requirements, rules of procedure, limitations and other rules established by the board of supervisors or the management board;
  - 3- Observe the provisions considered in the legislation and related procedures.
  - 4- analyze the deficiencies discovered in the activities of the bank and the employees thereof, cases of failure to perform duties and excess of authority;
  - 5- prepare proposals for the elimination of the deficiencies referred to in subparagraph 4 and for measures to prevent errors;
  - 6- discuss with the bank's board of supervisors, audit committee and/or management regarding subparagraphs (1) through (5) of this paragraph;
  - 7- prepare reviews of the activities of the unit and submit the reviews to the board of supervisors and management of the bank pursuant to the procedure prescribed or approved by the board of supervisors; and
  - 8- Perform other tasks related to the above as determined by the board of supervisors.
- (2) The internal audit function reports to the board of supervisors, either directly or through the board's audit committee.

## **Requirements for employees of the internal audit function**

### **Article 62:**

- (1) The director and employees of the internal audit function must be fit and proper persons, and have the education, professional experience and qualifications necessary for the work of the internal audit function.
- (2) The director of the internal audit function shall be appointed to and removed from office by the board of supervisors of the bank.
- (3) The bank shall recruit a number of employees sufficient for the performance of the duties assigned to the internal audit.

## **Responsibilities of the internal audit function's employees**

### **Article 63:**

The employees of the internal audit unit are responsible to:

- 1- examine all documents of the bank;
- 2- attend meetings of the board of supervisors and audit committee;
- 3- require explanations from the employees of the bank concerning deficiencies and errors discovered in their work, and the elimination of such deficiencies.
- 4- monitor the work of the bank at each stage without restrictions;
- 5- act pursuant to procedures approved by the board of supervisors

## **Disclosure of commercial interests**

### **Article 64:**

- (1) Each member of the board of supervisors and the management board shall disclose in full to the board of supervisors, or a Committee designated by the board of supervisors, the significant commercial interests that s/he or members of his household have, directly or indirectly. Such disclosures shall be made annually in accordance with guidelines adopted by the board of supervisors.
- (2) Whenever any matter related to business interests of a member of the board of supervisors or the management board, or any committee with decision making authority, comes up for discussion, the member concerned shall provide complete information at the beginning of the discussion, shall not participate in the discussion and his presence shall not be counted as necessary for the purpose of constituting a quorum.

## **Secrecy obligations**

### **Article 65:**

- (1) Present and past members of the board of supervisors and management board and employees of a bank shall be required to keep secret, not to use for personal gain

and not to disclose it to others, unless required by law, any information that they obtained in the course of their services to the bank.

- (2) Information referred to in paragraph 1 of this article may be disclosed to:
- 1- the officers, staff and agents of Da Afghanistan Bank, including the inspectors, auditors, conservators and experts appointed by Da Afghanistan Bank in accordance with this Law;  
  
other state authorities and departments authorized by the law for this purpose, or the court of a competent jurisdiction;
  - 2- a private credit bureau or public credit registry, if such bureau or registry has been duly authorized by Da Afghanistan Bank to receive such information.

## **CHAPTER VI ACTIVITIES AND OPERATIONAL REQUIREMENTS OF BANKS**

### **Banking activities**

#### **Article 66:**

- (1) Banks may engage in the following activities:
- 1- receiving money deposits in the form of demand deposits, or other types of deposit or other repayable funds, bearing interest or not;
  - 2- extending credits whether secured or not by collateral or liens, including:
    - extending consumer and mortgage credit, without limitation;
    - financing of commercial transactions, including purchasing negotiable instruments at
    - discount without recourse;
    - factoring, with or without recourse; and
    - financial leasing services;
  - 3- buying and selling for its own account or for account of customers:
    - money market instruments (including checks, bills of exchange, promissory notes and certificates of deposit);
    - foreign currencies;
    - precious metals and precious stones;
    - exchange and interest rate instruments;

- stocks, bonds and other securities, in accordance with provisions of the law and regulations of Da Afghanistan Bank;
  - forward contracts, swap agreements, futures, options, and other derivatives relating to currencies;
  - swap agreements;
- 4- entering into contingent commitments, including guarantees and letters of credit, for its own benefit and for the benefit of customers;
  - 5- providing clearing, settlement and transfer services for money, securities, and payment instruments (including checks; credit, debit and other payment cards; travelers' checks; and bank drafts, wire transfers, and preauthorized debits and credits);
  - 6- money brokering;
  - 7- safekeeping and administration of valuables, including securities; providing services as portfolio manager of securities or as financial adviser or as financial agent;
  - 8- providing financial information and credit reference services, including general market economy information;
  - 9- issuing electronic money;
  - 10- providing credit-related insurance to borrowers in connection with credit granted by the bank;
  - 11- anything that shall be incidental to the activities referenced in subparagraphs (1- 10) of this paragraph.
- (2) Banks are required to conduct the activities referenced in paragraph 1 of this Article in a sound and prudent manner and in accordance with the requirements of the law, any conditions or restrictions attached to a bank's license, approvals issued by Da Afghanistan Bank, and regulations, guidelines and orders issued by Da Afghanistan Bank.
  - (3) Domestic banks must conduct their operations in Afghanistan, except as permitted by provisions this Law pertaining to branch offices, representative offices and subsidiaries abroad.
  - (4) No bank shall move all or any part of its administration, operations, books or records outside Afghanistan without the prior written consent of Da Afghanistan Bank.

## **Prohibited activities**

### **Article 67:**

- (1) No bank shall engage in, as an agent, partner or co-owner, directly or indirectly through one or more subsidiaries, in wholesale or retail trade, manufacturing, transportation, agriculture or fisheries, mining, building, or other business activities except for activities that are authorized by Article 66 of this law and Islamic banking chapter.
- (2) With the prior written authorization of Da Afghanistan Bank, a bank may carry on or participate in the carrying on of activities referred to in paragraph 1 of this article for a period of not more than 5 years, to the extent necessary to obtain satisfaction of claims.
- (3) Not more than two extensions of the initial period referenced in paragraph 2 of this Article may be granted by Da Afghanistan Bank, for no longer than one year apiece.

## **Capital requirements for banks**

### **Article 68:**

- (1) Every bank shall be obliged at all times to have its assets exceed its liabilities to third parties, calculated in accordance with international accounting standards or international financial reporting standards, by an amount at least equal to the minimum amount of its initial paid-in capital prescribed by Da Afghanistan Bank at the time that its banking license is issued or such higher amount as Da Afghanistan Bank shall determine.
- (2) No bank shall decrease its capital by repurchasing shares or engaging in a capital distribution without the prior written authorization from Da Afghanistan Bank.
- (3) No bank may increase its capital by issuing shares in exchange for assets other than cash or cash equivalents.
- (4) Each bank shall ensure that the value of its regulatory capital is equivalent to not less than 12 percent of the total value of its assets determined on a risk-adjusted basis, or such higher percentage as specified by related regulations, whereby not less than one-half of regulatory capital shall consist of core capital.
- (5) Da Afghanistan Bank may by related regulation require that banks maintain a specified leverage ratio not lower than 4 percent.
- (6) Da Afghanistan Bank may, based on the particular circumstances of a bank, and having regard to the risks arising from the activities of the bank increase the risk-adjusted regulatory capital or leverage ratio requirements applicable to that bank.

## **Liquidity**

### **Article 69:**

- (1) Each bank shall maintain a minimum amount of liquid assets as may be prescribed by regulations of Da Afghanistan Bank from time to time, having regard to the risks arising from the activities of the bank and such other factors as Da Afghanistan Bank considers relevant.
- (2) Da Afghanistan Bank may, based on the particular circumstances of a bank, and having regard to the risks arising from the activities of the bank and such other factors as Da Afghanistan Bank considers relevant, increase the liquidity ratio applicable to that bank.

## **Classification of assets and provisioning for losses**

### **Article 70:**

- (1) Each bank shall value its assets on a regular basis and use all measures in compliance with the principles of sound banking management and law to collect claims.
- (2) Banks are required to value all claims on the basis of the likelihood of payment thereof. Claims on which the full or partial payment is unlikely shall be written off to the extent that is valued as unlikely to be paid.
- (3) Each bank shall periodically allocate reserves for the coverage of losses arising from loans and similar claims and other assets, as well as from assumed off-balance sheet contingent liabilities.
- (4) Da Afghanistan Bank shall establish the procedures for the valuation, assessment of the quality, and classification of loans, similar claims, other assets and off-balance sheet contingent liabilities, and the method of calculating reserves based on such classifications.

## **Reserves to cover general banking risks**

### **Article 71:**

- (1) Each bank shall form reserves in order to deal with general risks to which the bank is exposed, and cover possible losses arising from conducting its activities. The size of such reserves and the ways of their formation, maintenance and usages shall be prescribed in related regulation
- (2) Da Afghanistan Bank may require a bank that conducts risky business operations or that shows an unusually high increase in their exposure to various types of risks, to establish higher obligatory reserves.

## **Foreign exchange position**

### **Article 72:**

- (1) The overall net foreign-exchange position of a bank shall not exceed a percentage of the regulatory capital of the bank as determined by related regulation

- (2) The methods for calculating net open currency positions, the overall net foreign exchange position and the limitations on net open currency positions shall be established by related regulations.

**Limits on exposures**

**Article 73:**

- (1) No bank shall have an exposure to a person or a group of connected persons if:
- 1- the aggregate outstanding principal amount of all its exposures to that person or group of connected persons would exceed the equivalent of fifteen percent of the bank's regulatory capital, or such higher percentage as may be specified by related regulation.
  - 2- the aggregate outstanding amount of large exposures to the person or group of connected persons, would exceed the equivalent of two hundred percent of the bank's regulatory capital, or such higher percentage not to exceed six hundred percent as may be specified by related regulation.
- (2) The limitations specified in paragraph 1 of this Article shall not apply to any principal amount of credit that is fully secured by collateral and readily sellable in the market as defined by regulation of Da Afghanistan Bank;
- (3) No bank shall grant the secured credit referred to in sub-paragraph 2 of paragraph 1 of this article if as a result thereof the aggregate outstanding principal amount of all its secured credits to such person or group of connected persons would exceed 15 percent of the bank's regulatory capital, or such higher percentage as specified by related regulation.
- (4) Da Afghanistan may prescribe by regulation exemptions from the limitations of paragraph 1 of this Article for:
- Transactions related to Da Afghanistan Bank.
  - Transactions with, or guaranteed by, a government.
  - Transactions between banks with a maturity of one year or less.

For the purposes of applying this Article a group of connected persons shall be deemed to include any borrower and other person with whom such borrower is connected directly or indirectly in such a way that the financial soundness of any of them may affect the financial soundness of the other or others or the same factors may affect the financial soundness of some or all of them, or if as a result of the structure of their relationship the other person is ultimately responsible for or benefits from the exposure outstanding; and Da Afghanistan Bank may exercise discretion in determining whether persons constitute a group of connected persons on a case by case basis.

- (5) A bank shall by its credit risk policies require board approval of any large exposure.

### **Relations between banks and their customers**

#### **Article 74:**

- (1) The relations between banks and their customers shall be governed by agreements between them whose terms and conditions may not be abrogated unilaterally by one of the parties, unless provided otherwise by the agreements.
- (2) Each bank shall be free to determine by written agreements with its customers the terms and conditions on which it does business with its customers, including: rates of interest, fees and charges payable by the bank on bank account balances, or payable by its customers on credits and other financial services provided by the bank. The repayment terms of credits provided by banks, interest and other charges payable on any amount of debt to banks shall be payable only for the days on which such amount has been outstanding.
- (3) Banks shall provide to their customers adequate information concerning the terms and conditions associated with deposits, savings and bank credit in such form and substance as determined by this law and regulations issued by Da Afghanistan Bank.
- (4) All disputes between domestic banks and their domestic customers, and all claims of domestic customers on non-resident banks on account of activities of domestic representative offices of the banks, shall be settled by the commission, and if the commission decision or order is not satisfactory for one of the parties, the dispute is adjudicated by the relevant courts of Afghanistan.

### **Dormant account**

#### **Article 75:**

- (1) On the first business day of the following calendar year, each bank shall:
  - 1- dispatch by registered post a notice to the holder of each dormant account at his last known address containing particulars of the dormant account; and
  - 2- publish in at least one local newspaper the name of the account holder and the particulars of the dormant account.
- (2) Not less than 90days after the notice and publication referenced in paragraph 1 of this Article, if the account holder cannot be located, the bank shall make a detailed report to Da Afghanistan Bank and shall turn over the amount on deposit in dormant account to Da Afghanistan Bank, to be held in a special account at Da Afghanistan Bank. Da Afghanistan Bank may use the funds in such special account for such purposes as it may determine.
- (3) If for a period of ten years following the date of transfer by the bank of the amount referenced in paragraph 2 of this Article to Da Afghanistan Bank, any person furnishes



to Da Afghanistan Bank satisfactory proof of ownership, is entitled to the immediate repayment of the amounts so transferred by Da Afghanistan Bank.

- (4) After expiration of the period referenced in paragraph 3 of this article, any remaining unclaimed amounts shall be transferred to the Ministry of Finance for inclusion in the revenues of the Government of Afghanistan.

#### **Payment of debt in advance of maturity**

##### **Article 76:**

- (1) Each debtor of a bank may pay all or part of his debt to the bank at any time in advance of its agreed maturity date.
- (2) Prepayments referenced in paragraph 1 of this Article may be made subject to a contractually agreed prepayment fee.
- (3) With respect to debt payable in installments, the bank may elect to apply partial [prepayments] proportionately to all installments or only to the latest installment.
- (4) Any other covenants excluding or restricting the right of prepayment referenced in paragraphs 1, 2, or 3 of this Article shall be null and void.
- (5) In each agreement which a bank finances by credit, the bank shall specify the payment fees, if any, prior to payment of the principal amount of the credit.

#### **Secured debts**

##### **Article 77:**

- (1) Banks shall be free to require their clients to secure their respective obligations by collateral, guarantees or other commitments.
- (2) In the event of a payment default on debt to a bank secured by a pledge of or a lien on movable goods, or by a mortgage on immovable property or other registered goods, the movable and immovable goods or property may be sold in accordance with law. The bank may participate in the bidding for the goods or property.
- (3) For the event that the goods or property referenced in paragraph 2 of this article cannot be sold, by public auction, or in market for a price that is at least equal to the amount of the debt together with sales costs, the interested parties may agree by a separate agreement to sell the goods or property in a different way, or failing such agreement the authorized court may decide at the request of any of the parties, that the goods or property shall be sold.
- (4) The bank may purchase the goods or property, in cases referred to in paragraph 3 of this Article.
- (5) After deduction of the amount of the outstanding debt and costs, and payment of debts owed to any other person to whom the goods or property are pledged by the debtor, the

bank shall pay the balance of the purchase price to the owner.

- (6) If the sales price of the goods or property referred to in paragraph 2 of this article net of costs is insufficient to cover the amount of the outstanding debt, the unpaid amount remains an obligation of the debtor to the bank.

### **Records of transactions and commitments**

#### **Article 78:**

- (1) Banks shall keep on file for at least ten years the pertinent documents for each one of their transactions, as follows:
  - 1- the application and all contract documents pertaining to the transaction (including credit, guarantee and collateral agreements);
  - 2- the financial records of the bank's counter parties (including borrowers and guarantors), and any other documentary evidence on which the bank relied in approving the transaction;
  - 3- a signed written record of the decision of the bank approving the transaction;
  - 4- the account agreements of bank with its customers; [and]
  - 5- such other documents as Da Afghanistan Bank may specify by regulation
- (2) Bank is also required to keep the records mentioned in paragraph 1 of this Article in electronic form.

### **Requirements for transactions with related persons**

#### **Article 79:**

- (1) A bank may not undertake any transaction with any of its related persons unless it has the prior written approval of a majority of the bank's board of supervisors. The board shall not make any decision pending full disclosure of all material terms and conditions of the transaction.
- (2) The board of supervisors shall specify in the minutes of the decision meeting that the transaction referenced in paragraph 1 of this article is fair to, and in the best interest of, the bank.
- (3) The bank must maintain a written record of the approval of the transaction referenced in paragraph 1 of this article, including the names of those members of the board of supervisors approving of the transaction.
- (4) A member of a bank's board of supervisors shall not participate in the consideration or approval of any transaction between the bank and:
  - 1- himself;

- 2- any of his close relatives;
  - 3- any enterprise in which he or any of his close relatives has a qualifying holding, or serves as a member of the board of supervisors, management board, or equivalent body.
- (5) The requirements of paragraph 1 of this Article do not apply to:
- 1- deposits in the bank made by its related persons in the normal course of business;
  - 2- making deposits in a bank that is a member of the same group, in the ordinary course of correspondent business, subject to any restrictions that Da Afghanistan Bank may prescribe by regulations or orders.
  - 3- granting credit fully secured by a deposit account in the bank granting the credit and meeting conditions specified by Da Afghanistan Bank;
  - 4- granting credit fully secured by obligations of, or guaranteed as to principal and interest by, a central government or central bank whose long-term rating is not lower than “A,” or an equivalent level by an internationally-recognized rating agency whose ratings are approved for use by Da Afghanistan Bank;
  - 5- selling a loan to a related person of the bank without recourse.
- (6) For credit to be granted by a bank, such related person is required to provide appropriate collateral having:
- 1- a fair market value of at least 100 percent of the amount of such credit in the case of credits of the type described in subparagraphs (3) or (4) of paragraph 4 of this Article;
  - 2- a fair market value of at least 120 percent of the amount of such credit, in the case of all other credits.
- (7) Outstanding exposures to related persons of a bank must not exceed the following aggregate limits:
- 1- 5% of the regulatory capital of the bank, in the case of exposures to any related person of the bank, close relatives of that person, and enterprises in which that person or any of his close relatives has a 20% participation;
  - 2- 25% of the regulatory capital of the bank to all related persons of that bank combined.
- (8) The bank shall promptly report to the board of supervisors of the bank or a committee thereof every transaction with a related person of that bank, except for

transactions described in paragraph 4 of this Article.

- (9) If credit has been provided by the bank to the related person in violation of the provisions of this Article or Article 80, such credit must be immediately repaid.
- (10) Members of the management board and the board of supervisors who approved or does not object to approval of shall be personally liable, jointly and severally, for payment of principal of, and interest and other charges on any such credit which approved with their knowledge of details of the transaction referred to in paragraph (8) of this article and without their objection.
- (11) For purposes of this Article and Article 80 of this Law, a transaction will be deemed to be a transaction with a related person to the extent that proceeds of the transaction are transferred to, or used for the benefit of, that related person.

### **Prohibited transactions with related persons**

#### **Article 80:**

- (1) A bank may not sell any asset or assets to a related person at below fair market value or engage in any other transaction with a related person on more favorable terms or conditions than to persons who are not related to the bank.
- (2) A bank may not purchase a low quality asset from a related person, or accept a low quality asset as collateral for a loan to a related person. For purposes of this Article, an asset is a "low quality asset" if:
  - 1- it is classified as "substandard," "doubtful," or "loss" by the bank itself or in the most recent report of inspection by Da Afghanistan Bank;
  - 2- it is in non-accrual status;
  - 3- payments are more than 30 days past due; or
  - 4- it has been restructured, or its terms or conditions renegotiated due to the financial difficulties or unsatisfactory financial condition of the borrower.
- (3) A bank shall not grant credit to any person where the proceeds are to be used to:
  - 1- pay an obligation to a related person of the bank;
  - 2- purchase an asset from a related person of the bank; or
  - 3- invest in the business of a related person of the bank.

### **Reports of transactions with related persons**

#### **Article 81:**

- (1) Each bank must submit a quarterly report to Da Afghanistan Bank on all outstanding transactions with its related persons. The report must include:

- 1- those undertaken or completed since its previous report
  - 2- the name of the related person in question, the amount of the transaction, and a summary of its terms and conditions. Transactions specified in paragraph 4 of Article 79 of this Law are exempted from this requirement.
- (2) Da Afghanistan Bank may require banks to provide more frequent reporting of their transactions with their related persons, and may require the reporting of information beyond that specified in paragraph 1 of this Article pertaining to such transactions.
- (3) Da Afghanistan Bank may require such reporting referred to in paragraph 2 of this article from individual banks on a case-by-case basis by written notification to the bank, or from all banks, or certain categories of banks by related regulation
- (4) Each bank must maintain internal controls and records to ensure compliance with the requirements of this Article.

### **Prohibition on granting credit**

#### **Article 82:**

No bank shall grant credit to any person if:

- 1- it is intended to be used for purchasing shares in that bank, or
- 2- It became known that the proceeds of such credit will be used directly or indirectly for purchasing shares in that bank.

### **Investments by banks in other enterprises**

#### **Article 83:**

- (1) A bank may make investment in other enterprises, provided the bank ensures that it has in place the necessary policies and procedures, as well as the financial and managerial capability, to undertake and monitor investments in other enterprises.
- (2) A bank must obtain the prior written authorization of Da Afghanistan Bank before making any equity investment that would exceed:
  - 1- 10% of the regulatory capital of the bank in any single enterprise; or
  - 2- 40% of the regulatory capital of the bank in all enterprises in the aggregate.
- (3) Da Afghanistan Bank may increase the respective limitations specified in paragraph 2 of this Article to 15% and 60%.
- (4) The procedures and criteria for applying for the authorization referenced in paragraph 2 of this Article shall be established by Da Afghanistan Bank. Da Afghanistan Bank shall make a decision on an application for such authorization within 60 days of receipt of a complete application.
- (5) Da Afghanistan Bank may give the authorization referred to in paragraph 2 of this article subject to any conditions it deems necessary to fulfill its obligations under this

Law.

- (6) The limitations in paragraph 2 or 3 of this Article do not apply to:
  - 1- securities purchased by a bank subsidiary acting as a securities underwriter;
  - 2- securities held temporarily during a financial transaction or rescue operation;
  - 3- securities taken by a bank as a result of foreclosure on a debt; or
  - 4- securities held by a bank in its own name on behalf of others in trust.
- (7) Securities referred to in subparagraphs (1) through (3) of paragraph 6 of this Article must be disposed of within 1 year of their acquisition.
- (8) A bank may not have a qualifying holding in any enterprise that is not a financial institution.
- (9) If a bank acquires an investment without the prior written authorization of Da Afghanistan Bank under paragraph 2 of this Article, that bank shall be ordered by Da Afghanistan Bank in writing before a date stated in the order, to dispose of the investment or any part of the investment as determined by Da Afghanistan Bank.
- (10) Da Afghanistan Bank may revoke an authorization under paragraph 2 of this article and require a bank to dispose of all or any part of the relevant investment if it determines that:
  - 1- the circumstances under which the authorization was given are no longer applicable;
  - 2- the investment would threaten the financial stability of the bank or endanger the interests of the bank's depositors.
- (11) The procedure of Articles 111 of this Law shall apply to orders issued by Da Afghanistan Bank pursuant to paragraph 9 of this Article and to decisions by Da Afghanistan Bank to revoke an authorization pursuant to paragraph 10 of this Article.

### **Customer identification**

#### **Article 84:**

- (1) No bank shall maintain accounts on its books or provide services to undisclosed persons.
- (2) Each bank shall take the following actions while establishing banking accounts for its customers:
  - 1- register the identity of each person who opens an account in the bank or otherwise uses the bank for activities including transfers of funds or securities, securities transactions, or the negotiation of payment instruments, or such other

activities as Da Afghanistan Bank shall specify by related regulations

- 2- require adequate information to the bank about the identity of any other person who is a beneficiary of such account or for whose account such activities are conducted; and register the identity of each such person
- 3- maintain proof of the identity of its customers and each such beneficiary.

### **Prohibition on banking services in support of crimes**

#### **Article 85:**

- (1) No bank shall maintain an account or provide services to or for the benefit of a person where the bank knows, or has reasonable grounds to suspect, that such account or services would support, or aid in the furtherance or perpetration of, any criminal activity, money laundering or terrorist financing.
- (2) Each bank shall report to Da Afghanistan Bank within 5 business days any request or instruction to the bank by any person to maintain such account or to provide such services referenced in paragraph 1 of this article.

### **Prohibition on relationships with shell banks**

#### **Article 86:**

No bank operating in Afghanistan, whether a domestic bank or a branch of a foreign bank, shall:

- 1- enter into a correspondent relationship with a shell bank, or with any bank that it has reason to know allows its accounts to be used by a shell bank; or
- 2- continue any such relationship on or after the effective date of this Law.

### **Requirements for correspondent banking relationships**

#### **Article 87:**

Any domestic bank or branch of a foreign bank operating in Afghanistan that proposes to enter into, or continue a correspondent relationship with a respondent foreign bank must:

- 1- require that any such relationship is subject to the approval of the chief executive officer of the bank or chief administrator of a foreign bank branch operating in Afghanistan, or a person designated by the chief executive officer or chief administrator;
- 2- gather sufficient information about the respondent bank to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the bank and the quality of supervision to which it is subject;
- 3- assess the respondent bank's anti-money laundering and anti-terrorist financing controls;

- 4- document the respective responsibilities of each bank referred to in this article; and
- 5- with respect to payable-through accounts, be satisfied that:
  - the respondent bank has verified the identity of the customers having direct access to accounts of the Afghan bank or branch,
  - ongoing due diligence on the customers is performed,
  - the respondent bank is able to provide relevant customer due diligence data to the Afghan bank or branch, upon request.

## **CHAPTER VII Islamic Banking**

### **Islamic Banking license**

#### **Article 88:**

- (1) Pursuant to this law, Islamic banking licenses are issued by Da Afghanistan Bank based on its discretion.
- (2) Islamic banks shall conduct their operations in a sound and prudent manner and in accordance with the requirements of this law, the Shariah principles, the regulations issued by Da Afghanistan Bank, and any conditions and restrictions attached to their Islamic banking license., and
- (3) Islamic banks and their Shariah Boards shall be responsible for all matters relating to the compliance with the Shariah and Da Afghanistan Bank shall have no responsibility to ensure such compliance.
- (4) To the extent compliant with the Shariah principle, the provisions of this law shall apply to Islamic Banks.

### **Conversion of banks**

#### **Article 89**

- (1) A conventional bank licensed under this law and having its headquarters in Afghanistan may convert to an Islamic bank or establish an Islamic banking window after being granted an Islamic banking license by the Da Afghanistan Bank. Such license is granted based on the discretion of the Da Afghanistan Bank.
- (2) Da Afghanistan Bank may grant an application of a conventional bank for authority to convert to an Islamic bank or to open an Islamic banking window, after it concludes, based on its review of the proposed Shariah Board and the bank's operating procedures, that there is reasonable assurance that the applicant's operations as an Islamic bank or as an Islamic banking window will be conducted in a sound and prudent manner
- (3) The approvals and licenses referred to under this article shall be subject to the terms and conditions set by related regulations.



- (4) A conventional bank may terminate operations of its Islamic banking window.

### **The Shariah Board**

#### **Article 90:**

- (1) An Islamic bank or a conventional bank operating an Islamic banking window shall establish a Shariah Board, which shall be responsible for the compliance of the Islamic bank or Islamic banking window's activities, operations and products with the Shariah principles.
- (2) The Shariah Board shall be comprised of not less than three Islamic scholars appointed and dismissed by the general meeting of shareholders of the bank.
- (3) The Shariah Board members shall have the necessary qualifications prescribed in the related regulation, and as a minimum, shall have experience in Islamic banking operations.
- (4) The term of appointment of the Shariah Board members is three years and members may be reappointed for subsequent terms of equal length.
- (5) The Shariah Board shall designate one of its members as chairman.
- (6) Shariah Board members may not hold executive, managerial, or supervisory positions within the Islamic bank.
- (7) The Shariah Board shall take valid decisions by a simple majority of the votes of its members. In case of a tie vote, the chairman of the Shariah Board shall cast the deciding vote.
- (8) An Islamic Banking window shall appoint an experienced Sharia scholar with required qualifications.

### **Islamic banking activities**

#### **Article 91:**

(1) Islamic banks may engage in the following activities subject to the provisions of their banking license, the Islamic Sharia, and related regulations :

- 1- Receiving money deposits and other repayable funds, including investment accounts;
- 2- Financing operations and making investment, including Mudarabah, Murabahah, Musharakah, Sukuk, Qardul Hassan, Ijarah, Istisna, Bai Salam, Wadiah, Bai' muajjal and other financial and banking activities and securities as approved by the Shariah Board;.
- 3- Financing, purchasing, selling, safeguarding, and leasing movable and immovable goods and properties
- 4- Issuing securities, including Sukuk;
- 5- Performing foreign exchange services
- 6- Providing various types of banking and financial services to their customers and to

the public as shall be determined by related issued by the Da Afghanistan Bank

- (2) Da Afghanistan Bank shall issue procedures to acquire the Islamic banks the immovable properties
- (3) The provisions of this chapter shall apply to domestic branches of non- resident Islamic banks.

## **CHAPTER VIII ACCOUNTING AND AUDITS**

### **Financial year**

#### **Article 92:**

The financial year of banks shall begin on the first day of *Jadi* and end on the last day of *Qaus* of the next year.

### **Financial statements and statistical reports**

#### **Article 93:**

- (1) Banks shall maintain accounts and records, and prepare quarterly and annual financial statements, adequate to reflect in accordance with international accounting standards or international financial reporting standards, their respective operations and financial condition, in accordance with related regulations prescribed by Da Afghanistan Bank. The financial statements of a bank shall reflect the operations and financial condition of its subsidiaries both on an individual and on a consolidated basis.
- (2) Each non-resident bank with one or more domestic branch offices or representative offices shall observe the requirements of this Article concerning development of separate accounts and records and pro forma financial statements for each such office.

### **External audit**

#### **Article 94:**

- (1) Each domestic bank shall appoint an independent external auditor with qualifications and experience acceptable to Da Afghanistan Bank.
- (2) External auditors shall perform the following tasks in compliance with standards established by related regulation.
  - 1- advise the bank on maintaining proper accounting systems and procedures;
  - 2- advise the bank on the effectiveness of its internal controls and risk management systems and procedures;
  - 3- prepare and present to the board of supervisors of the bank an annual report together with an external auditor's opinion as to whether the financial statements present a full and fair view of the financial condition of the bank in

accordance with the provisions of this Law;

4- Provide information to Da Afghanistan Bank immediately about:

- any act by any member of the board of supervisors or management board, shareholder, employee or agent of the bank that constitutes fraud, embezzlement, or a material violation of a provision of this Law or any related regulation issued by Da Afghanistan Bank;
- any situation which results in a material loss for the bank or could endanger its continued operation;
- the resignation or dismissal of the auditor prior to the conclusion of the audit, with a statement of the reasons.
- any matter that would, in the judgment of the auditor, cause his report to be qualified; or

(3) Disclosure to Da Afghanistan Bank of any of the facts referred to in paragraph 2 of this Article made by an external auditor shall not be considered a violation of banking secrecy or confidentiality of information rule, and the auditor shall not be held responsible for consequences thereof.

(4) Each domestic branch office of non-resident banks and their external auditors shall also observe the requirements of this Article.

(5) If a bank has one or more subsidiaries or associated enterprises, the external audit must audit those companies both individually and on a consolidated basis with the bank as prescribed by international accounting standards and international financial reporting standards.

(6) By way of an exception to paragraph 5 of this Article, with the approval of Da Afghanistan Bank, a subsidiary or associated enterprise need not be included in the external audit of a bank if:

- 1- such subsidiary or associated enterprise generated less than 5 percent of the revenue of bank during the previous fiscal year;
- 2- such subsidiary or associated enterprise accounts for less than 5 percent of the consolidated assets of the bank; or
- 3- in the opinion of Da Afghanistan Bank, the inclusion of the subsidiary or associated enterprise in the audit would distort the financial situation of the group.

(7) Da Afghanistan Bank may review, and obtain copies of, the external auditor's related working papers in connection with any audit performed under this Article, and may require an external auditor to provide additional explanations concerning the conducted audit.

- (8) Da Afghanistan Bank may require that the external auditor of a bank, or branch of a foreign bank operating in Afghanistan, report to Da Afghanistan Bank on the extent of the procedures of the auditor or auditors in the annual audit.
- (9) Da Afghanistan Bank may require the external auditor referred to in paragraph 7 to enlarge or extend the scope of that audit, or direct that any other particular procedure be performed in any particular case, and report to Da Afghanistan Bank thereon.

**Publication of financial statements, auditor's report and corporate governance report**

**Article 95:**

- (1) The board of supervisors of each domestic bank shall, not later than three months after the end of each financial year, submit to its general meeting of shareholders:
  - 1- its audited consolidated financial statements, together with the report of its external auditors for that financial year; and
  - 2- a report on the bank's corporate governance system for that financial year, which shall include at a minimum:
    - a description of the features of the bank's internal control and risk management systems, and the bank's assessment of the effectiveness of those systems;
    - identification of the members of the bank's board of supervisors, board committees, and management board; and
    - the total number of meetings of the board of supervisors and its committees held during the most recently-completed financial year and the number of those meetings attended by each member; and
    - such other information as may be prescribed by regulations of the Da Afghanistan Bank.
- (2) Each domestic bank shall, within 15 days after the general meeting of the bank's shareholders approves the audited financial statements :
  - 1- provide such financial statements, external auditor's report, and corporate governance report referred to in paragraph 1 of this Article to Da Afghanistan Bank; and
  - 2- publish such statements and reports in an official newspaper of general circulation in Afghanistan.
- (3) Further to requirements set forth in paragraph 1 of this article, each domestic bank shall:

- 1- exhibit the financial statements and reports referred to in paragraph 1 of this Article in a conspicuous place in each of its offices and branches, in Afghanistan or abroad, and keep it so exhibited throughout the following twelve months;
  - 2- Provide copies of the financial statements and reports referred to in paragraph 1 of this Article to any person requesting such copies, for a reasonable fee, not exceeding the administrative costs of providing such services.
- (4) Each non-resident bank with one or more domestic branch offices in Afghanistan shall:
- 1- submit to Da Afghanistan Bank its audited financial statements prepared on a consolidated basis as well as pro forma financial statements for its branch offices in Afghanistan, together with external audit reports, for the most recently completed financial year, no later than the date when such statements and reports for the non-resident bank as a whole are submitted to the non-resident bank's home country competent authority;
  - 2- publish the statements and reports referred to in subparagraph 1 of this paragraph in an official newspaper of general circulation in Afghanistan, within 15 days of their submission to Da Afghanistan Bank;
  - 3- exhibit such statements and reports in a conspicuous place in each of its branch offices in Afghanistan throughout the current financial year;
  - 4- make copies of the statements or reports referred to in subparagraph 1 of paragraph 4 of this Article available to any person requesting such copies, for reasonable fees, not exceeding the administrative costs of providing such services .
- (5) If a material error becomes evident in any report which has been published under this Article, Da Afghanistan Bank shall be promptly informed of the error and a corrected report shall be issued and published.

#### **Meetings between Da Afghanistan Bank and external auditors**

##### **Article 96:**

- (1) Da Afghanistan Bank shall periodically, and at least once a year, arrange trilateral meetings with each bank, or branch of a foreign bank operating in Afghanistan, and its external auditors to discuss matters relevant to Da Afghanistan Bank's supervisory responsibilities that arise in the course of the audit of the bank.
- (2) Da Afghanistan Bank may, if it considers it necessary in the performance of its functions under this Law, arrange bilateral meetings with external auditors of banks or branches of foreign banks operating in Afghanistan.

## **CHAPTER IX REPORTING**

### **Reporting by banks**

#### **Article 97:**

- (1) Each bank operating within the territory of Afghanistan must prepare and provide to Da Afghanistan Bank reports covering:
  - 1- its financial condition, including capital adequacy, solvency, and profitability, of itself, its subsidiaries and associated enterprises;
  - 2- its liquidity position;
  - 3- its administration and operations;
  - 4- nonperforming loans and loan losses and provisioning;
  - 5- its foreign-currency positions;
  - 6- interest rates;
  - 7- monetary statistics;
  - 8- large exposures and credits; and
  - 9- such other reports, as may be prescribed by related regulations of Da Afghanistan Bank in accordance with internationally accepted supervisory and statistical standards and practices.
  - 10- Islamic Bank according to its different operation from a conventional bank shall provide additional reports.
- (2) The reports referenced in paragraph 1 of this Article shall be prepared in such form and detail and shall be submitted at such times as shall be prescribed by regulations of Da Afghanistan Bank.
- (3) Each domestic branch office and representative office of a non-resident bank shall prepare and submit to Da Afghanistan Bank reports concerning its administration and operations. The reports shall be prepared in such form and detail and shall be submitted at such intervals as shall be prescribed by related regulation.
- (4) Da Afghanistan Bank may impose sanctions on banks, financial institutions and their agents, in accordance with Article 108 of this Law, in the event of incomplete or late reporting, non-reporting, and inaccurate reporting, or filing false or misleading reports.
- (5) All nonbank financial institutions and agents operating in Afghanistan are also subject to the requirements of this Article, to the extent deemed appropriate by Da

Afghanistan Bank, unless they have been specifically exempted by Da Afghanistan Bank.

### **Compilation of statistical information**

#### **Article 98:**

- (1) Banks and other financial institutions and agents, as well as any other firm or organization that is involved in the granting of credit, shall be obligated to prepare and provide to Da Afghanistan Bank, or another organization authorized by Da Afghanistan Bank, information on specific transactions, individuals, or firms that are needed, and compilation of statistics concerning its supervisory, policy, and statistical functions.
- (2) Da Afghanistan Bank shall compile and aggregate statistical information received from banks and other financial institutions as required to meet its policy needs for the public, and fulfill obligations to international organizations
- (3) Da Afghanistan Bank is prohibited from disseminating to the public statistical information and data that reveals the identity of individual persons or firms, unless already in the public domain or for carrying out the functions of a private or public credit registry. Otherwise, the perpetrator shall be punished in accordance with law.
- (4) Da Afghanistan Bank may provide information mentioned in paragraph 1 and 2 of this Article to supervisors or other authorities for the execution of supervisory duties if such supervisors and authorities are authorized in accordance with the laws or regulations on confidentiality of banking and financial records to receive such information.

### **Inspections**

#### **Article 99:**

- (1) Each domestic bank and each of its subsidiaries and associated enterprises, as well as branch offices and representative offices of nonresident banks operating in Afghanistan, shall be subject to inspections by inspectors of, or auditors appointed by, Da Afghanistan Bank.
- (2) In the case of foreign subsidiaries and associated enterprises of domestic banks, or branch offices and representative offices of nonresident banks operating in Afghanistan, such inspectors or auditors referenced in paragraph 1 of this Article may include persons appointed by the relevant foreign competent authority, as agreed between Da Afghanistan Bank and such foreign competent authority.
- (3) In their inspections pursuant to paragraphs 1 and 2 of this Article, Da Afghanistan Bank and its auditors shall be authorized:
  - 1- to enter any office of the bank or its subsidiary or associated enterprise and to examine there the accounts, books, documents and other records of the bank or

the subsidiary or associated enterprise; [and]

- 2- to obtain from members of the board of supervisors and management board or equivalent bodies, employees and agents of the bank or its subsidiary or associated enterprise information on any matter relating to the administration and operations of the bank or the subsidiary or associated enterprise.
- (4) Each domestic bank and each of its subsidiaries and associated enterprises, and its domestic branch offices and representative offices, shall permit the inspectors and auditors appointed by Da Afghanistan Bank to enter their premises and shall cooperate fully with them in carrying out their duties.
- (5) Da Afghanistan Bank may, if necessary, ask for law enforcement officials' assistance to gain access to the accounts, books and other records of such bank or subsidiary or associated enterprises.
- (6) Da Afghanistan Bank shall not be authorized to carry out inspections or to prepare reports or provide information at the request of persons or agencies except when requested by foreign bank regulators, and except as provided in this Law or ordered by an authorized court.
- (7) Da Afghanistan Bank shall prepare a report of the inspection and within three months following completion of each inspection of a bank or its subsidiary or associated enterprise, or of a branch office or representative office, send a copy of the report to the bank, subsidiary, associated enterprise or office.

## **CHAPTER IXX**

### **PROMPT CORRECTIVE ACTION AND ENFORCEMENT MEASURES**

#### **Notification of undercapitalized status**

##### **Article 100:**

- (1) In the event that a bank becomes undercapitalized, significantly undercapitalized, or critically undercapitalized, the bank must immediately inform Da Afghanistan Bank of this fact, in writing.
- (2) Da Afghanistan Bank may also determine the undercapitalization referred to in Paragraph 1 of this article based on its own calculation and shall promptly inform the bank of its determination, in writing.

#### **Capital restoration plan**

##### **Article 101:**

- (1) Promptly upon receiving or providing a notification in accordance with Article 100 of this Law, Da Afghanistan Bank shall provide the bank with written notice of its intent to issue an order:



- 1- requiring the bank to submit to Da Afghanistan Bank for its approval a capital restoration plan, or to revise any previously submitted capital restoration plan to the satisfaction of Da Afghanistan Bank, as the case may be; and
  - 2- Imposing any restrictions under Articles 102, 103 or 104 of this Law that Da Afghanistan Bank deems appropriate.
- (2) The bank shall contain in its capital restoration plan referred to in subparagraph 1 of paragraph 1 of this Article details of how the bank will restore its capital to the required level, and the time period within which the bank expects to achieve compliance.

### **Restrictions applicable to undercapitalized banks**

#### **Article 102:**

- (1) An undercapitalized bank may not:
- 1- engage in new activities without the prior written approval of Da Afghanistan Bank;
  - 2- increase its risk-weighted assets more than 5% per fiscal year without the prior written approval of Da Afghanistan Bank. Such assets include on balance sheet and off balance sheet items that are risk weighted.
  - 3- carry out a capital distribution;
  - 4- make discretionary payments to the members of its board of supervisors or management board.
- (2) The restrictions of Article 103 of this law also apply to any undercapitalized bank that fails to submit an acceptable capital restoration plan within the time period required by this Article, or fails to implement a plan approved by Da Afghanistan Bank.
- (3) Da Afghanistan Bank may also impose any of the restrictions of Article 103 of this law on an undercapitalized bank if it determines such restrictions to be necessary in order to successfully implement the capital restoration plan approved by Da Afghanistan Bank

### **Restrictions applicable to significantly undercapitalized banks**

#### **Article 103:**

A significantly undercapitalized bank is prohibited from doing any of the items in paragraph 1 of Article 102 of this Law, and, in addition, may not, without the prior written approval of Da Afghanistan Bank:

- 1- pay interest rates on deposits in excess of market rates;

- 2- increase risk-weighted assets more than 1.25% per quarter. Such assets include on balance sheet and off balance sheet items that are risk weighted
- 3- increase the salary or privileged compensation, or pay any bonus to any member of its board of supervisors or management board;
- 4- engage in any transactions with any related person of the bank;
- 5- transfer any assets to any related person of the bank; or
- 6- accept deposits from correspondent banks, including renewals and rollovers of existing deposits.

**Additional measures applicable to certain banks**

**Article 104:**

- (1) Da Afghanistan Bank may by order require any significantly undercapitalized bank, and any undercapitalized bank that fails to submit a capital restoration plan on time or does not adhere to a capital restoration plan approved by Da Afghanistan Bank, to take one or more of the following actions:
  - 1- endeavor to sell enough shares so that the bank will be adequately capitalized after the sale;
  - 2- endeavor to be acquired by a parent company, or to merge with another bank;
  - 3- alter, reduce, or terminate any activity which is undertaken by the bank or its subsidiary or associated enterprise when Da Afghanistan Bank determines such activity poses excessive risk to the bank;
  - 4- dismiss or replace any member of the board of supervisors or management board, or elect an entirely new board of supervisors or management board;
  - 5- divest itself of, or liquidate, any subsidiary or associated enterprise that Da Afghanistan Bank determines is in danger causing a significant risk to the bank;
  - 6- take any other action that Da Afghanistan Bank determines to be necessary for the bank to become adequately capitalized.
- (2) Da Afghanistan Bank in all cases can issue removal order of a person stated in Article 108 of this Law.

**Criteria for approving requests by undercapitalized or significantly undercapitalized banks**

**Article 105:**

Da Afghanistan Bank will grant approval to an application under sub-paragraph (1 and2) of Paragraph (1) of Article 102 or Article 103 of this Law only if:

- 1- Da Afghanistan Bank has approved the bank's capital restoration plan, or any revisions

to the plan required by Da Afghanistan Bank;

- 2- Da Afghanistan Bank determines that the bank is implementing the plan referred to in subparagraph 1 of this article in a satisfactory way and is able to meet the goals of the plan by the approved target dates; and
- 3- Da Afghanistan Bank determines that the proposed action is consistent with, and will advance the objectives of, the plan.

### **Measures relating to critically undercapitalized banks**

#### **Article 106:**

- (1) If a bank becomes critically undercapitalized, Da Afghanistan Bank shall without delay, and in no event more than 30 days after being notified, or making the determination that the bank is critically undercapitalized, either appoint a conservator for the bank, or appoint a receiver for the bank.
- (2) Until a conservator or receiver is appointed for a critically undercapitalized bank, such bank is subject to all restrictions provided for in Articles 103, 104, and 105 of this law.
- (3) A critically undercapitalized bank under paragraphs (1 and 2) of this article, may not:
  - 1- accept any new deposits;
  - 2- make any payment of principal or interest on its subordinated debt, or other senior debt with characteristics of capital;
  - 3- enter into any significant transaction that is not in the normal course of business, including any investment, expansion acquisition, sale of assets, or any action for which the bank is required to provide notification to, or seek approval of, Da Afghanistan Bank under this Law; or
  - 4- make any material change in accounting methods.

### **Measures in cases of violations or practices endangering banks**

#### **Article 107:**

- (1) It considered to be a violation by a bank or any member of the bank's board of supervisors, management board, person with a qualifying holding in a bank, or any other person participating in the conduct of the affairs of a bank, if:
  - 1- failed to observe any provision of this Law, or any regulation or written order of Da Afghanistan Bank, or written agreement with Da Afghanistan Bank made pursuant to this Law;
  - 2- failed to observe any condition or restriction attached to the banking license of the bank or to an authorization issued to the bank or person by Da Afghanistan Bank; or

- 3- engaged or participated in any unsafe or unsound practice relative to the bank.
- (2) In the event of any of the violations set forth in paragraph 1 of this Article, Da Afghanistan Bank may:
- 1- enter into a written agreement with the bank or person on remedial measures to be taken;
  - 2- issue a written order requiring the bank or person to take any remedial action as Da Afghanistan Bank deems necessary.
  - 3- issue a written order imposing a monetary fine.
- (3) A fine imposed subparagraph (3) of paragraph 2 of this Article shall:
- 1- the seriousness of the violation;
  - 2- the impact or potential impact of the violation on the bank or its depositors;
  - 3- the extent to which the violation was intentional or repeated; and
  - 4- the financial capability of the bank or person in question; and

### **Removal orders**

#### **Article 108:**

- (1) Da Afghanistan Bank may, by an order in writing, require the removal of a person from his position as a member of the board of supervisors or management of a bank, if Da Afghanistan Bank determines that the person is not suitable to hold that position because the person:
- 1- has become disqualified to hold the given position by failing to meet the qualification requirements under Article 58;
  - 2- has violated any fiduciary duty under Article 59 of this law in fulfilling his responsibilities; or
  - 3- has engaged in any violation or other actions specified in paragraph 1 of Article 107 of this Law.
- (2) In making a determination under paragraph 1 of this Article, Da Afghanistan Bank must consider the seriousness of the factors set forth in that paragraph, and whether the interests of the depositors and creditors of the bank have been, or are likely to be, adversely affected by the person's continuing to hold his position as a member of the board of supervisors or management.
- (3) In any order issued under paragraph 1 of this Article, Da Afghanistan Bank may, in addition:

- 1- prohibit the person from further participation in any manner in the conduct of the affairs of the bank;
  - 2- prohibit the person from direct or indirect exercise of voting rights in the bank;
  - 3- require the person to dispose of all or any part of his ownership (direct or indirect) in the bank; and/or
  - 4- prohibit the person from holding any position in, or participating in any manner in the conduct of the activity of, any bank or any enterprise in the same group as the bank, without the prior written approval of Da Afghanistan Bank.
- (4) Da Afghanistan Bank may issue any order under this Article against any person after he has ceased to be a manager or member of the board of supervisors or management board of a given bank.
- (5) The provisions of this Article apply in the same manner to members of board of supervisors and management board of companies in the same group as a bank.

#### **Suspension of persons charged with criminal offenses**

##### **Article 109:**

- (1) If any person referred to in paragraph 1 of Article 108 of this Law is officially charged with any criminal offense, or with any offense entailing money laundering or terrorist activities, Da Afghanistan Bank may issue a written order suspending such person from his position in the bank, and prohibiting his participation in any manner of the conduct of the affairs of the bank, pending the final determination of the competent court.

This provision shall not apply to an offense based on the person's religious or political views or activities

- (2) If such person is convicted of any such criminal offense, and the conviction is not subject to further appellate review, Da Afghanistan Bank shall issue a written order removing such person from his position in the bank, and, may include in such an order any or all of the items set forth in paragraph 3 of Article 108 of this Law.

#### **Disposal of shares pursuant to enforcement orders**

##### **Article 110:**

In the event that any person is required to sell or dispose of voting shares of a bank pursuant to an order issued in accordance with Article 108 or 109 of this Law and does not do so within the prescribed period of time, Da Afghanistan Bank may order the sale of such voting shares at public auction or in any other manner it deems appropriate.

#### **Procedures for enforcement orders**

##### **Article 111:**

- (1) Before Da Afghanistan Bank issues an order in accordance with Articles 101, 107, or 108 of this Law, it shall provide the affected bank or person with at least 15 days prior

written notice. The bank or person affected by the order may submit written representations to Da Afghanistan Bank, unless the bank or person consents to the issuance of the order.

- (2) A bank that notifies Da Afghanistan Bank that it is undercapitalized or significantly undercapitalized is not entitled to prior notice of a proposed order by Da Afghanistan Bank requiring it to submit a capital restoration plan, but is entitled to such notice and the opportunity to submit written representations if Da Afghanistan Bank proposes to impose additional restrictions in accordance with Article 102, 103 or 104 of this Law.
- (3) The procedures for submission and consideration of representations in accordance with paragraph 1 of this Article shall be determined by related regulation.

### **Temporary orders**

#### **Article 112:**

If Da Afghanistan Bank determines, based on the allegations set forth in the written notice referred to in paragraph 1 of Article 111 that the violations or unsound and imprudent practices of the bank are likely, prior to the conclusion of the process, to lead to insolvency of the bank, a significant dissipation of assets or earnings of the bank, a weakening of the condition of the bank, or other danger to the interests of the bank's depositors or to the public interest; or that the books or records of the bank are so incomplete or inaccurate that Da Afghanistan Bank is unable, through the normal supervisory process, to determine the financial condition of the bank or the details of any transaction that may have a material effect on the financial condition of the bank, Da Afghanistan Bank may issue a temporary order:

- 1- the case of a notice relating to Article 107 of this law, requiring the bank to take any action Da Afghanistan Bank deems appropriate to prevent any of the circumstances described in his Article, or to correct record-keeping deficiencies.
- 2- the case of a notice relating to Article 108 of this law, suspending any person to whom the notice pertains from his position, and prohibiting his further participation in any manner in the conduct of the affairs of the bank.

### **Temporary freezes**

#### **Article 113:**

- (1) In connection with a written notice referred to in paragraph 1 of Article 111 of this Law, if Da Afghanistan Bank determines that it is necessary to preserve any assets, funds, or other property belonging to, or under the direct or indirect control of, any person subject to the notice, pending a final order to be issued in accordance with Article 107, 108 or 109 of this Law, Da Afghanistan Bank may issue a temporary order:
  - 1- prohibiting any such person, or any enterprise controlled by any such person, from taking any action to withdraw, transfer, remove, dissipate, or dispose of

any such funds, assets or other property; and

- 2- appointing one or more representatives of a Da Afghanistan Bank to administer such temporary order.
- (2) In connection with a temporary order issued pursuant to paragraph 1 of this Article, Da Afghanistan Bank may issue a written instruction to any bank or other financial institution to freeze summarily any account or accounts at such bank or institution that are maintained by, or under the control of, any person subject to such temporary order, or any enterprise controlled by that person, and to retain all moneys in any such account, pending the further instructions of Da Afghanistan Bank.

### **Effectiveness of temporary orders and asset freezes**

#### **Article 114:**

- (1) A temporary order issued under Article 112 or 113 of this Law shall remain in effect:
  - 1- pending a determination by Da Afghanistan Bank in accordance with Article 107, 108 or 109 of this Law on whether to issue the proposed order;
  - 2- subject to paragraph 2 of this Article, until it is dissolved, limited, or suspended by the Commission in accordance with Article 115 of this Law;
  - 3- in the case of an order based on a determination specified in paragraph 1 of Article 112 of this Law, upon a determination by Da Afghanistan Bank by examination or otherwise, that the bank's books and records are accurate and reflect the true financial condition of the bank.
- (2) If Da Afghanistan Bank appeals against a decision of the Commission dissolving, limiting or suspending a temporary order pursuant to paragraph 2 of Article 115 of this Law, the temporary order shall remain in effect pending a decision on the appeal by the Supreme Court.

### **Commission review of temporary orders**

#### **Article 115:**

- (1) Within 10 business days after a bank or other person has been served with a temporary order in accordance with Article 109, 112 or 113 of this Law, such bank or person may submit a petition to the Commission for review of the temporary order. The filing of such a petition for review has no postponing effect on the temporary order.
- (2) The Commission may dissolve, limit, or suspend the enforcement, operation, or effectiveness of the temporary such order pending the completion of the proceedings specified in Article 109 or 111, as the case may be, only if the Commission determines that:
  - 1- there is a substantial likelihood that the petitioner will prevail on the merits of

- the case;
- 2- the petitioner will suffer irreparable injury if the petition is not granted;
  - 3- granting the petition will not result in harm to Da Afghanistan Bank or the bank in question; and
  - 4- it is in the public interest to grant the petition.

**Issue, effect and termination of orders**

**Article 116:**

- (1) Each order or temporary order given to a bank pursuant to this Law shall be in writing and shall include the actions that the bank is ordered to take. Each such order or temporary order may specify the time by which, or period of time during which, it is to be complied with.
- (2) Da Afghanistan Bank may specify in any such order the time by which, or period of time during which, the conditions provided in the orders under paragraph 1 of this article shall be complied with.
- (3) Da Afghanistan Bank shall serve such order or temporary order given to a bank upon the head office of the bank; if the orders and temporary orders are concerning a domestic branch office or representative office of a nonresident bank, they may be served upon that office.
- (4) Da Afghanistan Bank shall attach to such order or temporary order a copy of the text of the decision of Da Afghanistan Bank to give that order, stating the reasons, and the provision of the law authorizing Da Afghanistan Bank to give the order or temporary order.
- (5) Each such order or temporary order remains in effects and shall be fully complied with as of the time of its service upon the bank, until it expires in accordance with its terms, or it is replaced by another order or temporary order of Da Afghanistan Bank, or it is annulled upon review by a decision of the Commission, or it is rescinded by Da Afghanistan Bank by notice in writing to the bank.
- (6) Da Afghanistan Bank may rescind an order or temporary order if Da Afghanistan Bank determines that it is no longer necessary.
- (7) An order or temporary order by Da Afghanistan Bank overrides any provision of the charter of the bank, any license, permit or authorization issued to the bank by Da Afghanistan Bank, and any contract or arrangement to which the bank is a party, whether taking effect before or after the order or temporary order, if such provision presents an impediment to compliance with the order or temporary order; however, payment or transfer of money pursuant to an order of a court or a process of execution shall be an exception to this rule.



### **Commission review of final enforcement orders**

#### **Article 117:**

- (1) Any person against whom a final order is issued pursuant to Article 101, 107, 108, or 109 of this Law (other than an order issued with the consent of that person) may file a petition for review of the order by the Commission within 30 days of the date of service of the order.
- (2) The Commission, based on the record of the decision of Da Afghanistan Bank, may affirm, terminate, or set aside the order, in whole or in part, or may remand the matter to Da Afghanistan Bank for further proceedings.
- (3) The commencement of proceedings for review under paragraph 1 of this Article does not postpone the effect of the order or any requirements set forth in the order.

## **CHAPTER XI SUPERVISION**

### **Transparency of group structures**

#### **Article 118:**

- (1) Each group that contains a bank must adopt an organizational structure which allows Da Afghanistan Bank to determine:
  - 1- the ultimate controllers of the group;
  - 2- the business activities of each enterprise in the group;
  - 3- the financial situation of the group and each of its individual enterprises;
  - 4- the risk profile of the group and each of its individual enterprises;
  - 5- the effectiveness of the group's procedures and practices regarding risk management, internal controls and corporate governance at the group level; and
  - 6- the business, financial and other relationships between the members of the group.
- (2) Any group containing a bank must have an organizational structure that does not impede Da Afghanistan Bank's ability to perform its supervisory duties, or the internal or external audit functions.
- (3) A bank that is a member of a group must function as a separate legal entity from the rest of the group, and be able to identify its assets, liabilities, revenues, expenses, and risk profile, separate from the group.

## **Applicability of prudential requirements to groups containing banks**

### **Article 119:**

- (1) The following provisions of this Law apply to banking groups on a consolidated basis as well as to each bank with the group:
  - 1- capital adequacy requirements (Article 68);
  - 2- limits on exposures (Article 73); and
  - 3- investments in other enterprises (Article 83).
- (2) Da Afghanistan Bank may by regulations apply other provisions of this Law to banking groups.
- (3) Each group that contains a bank must have policies and procedures regarding capital adequacy, investments, large exposures, and foreign exchange risk that are adequate for its business activities.
- (4) The ultimate parent company of the group is responsible for ensuring compliance with the requirements under paragraph 3 of this article.
- (5) Da Afghanistan Bank shall review the policies and procedures specified in paragraph 3 of this article for each such group at least annually to ensure their suitability for these purposes, and to ensure that such policies and procedures are being complied with. Da Afghanistan Bank may require any adjustments to such policies and procedures that, in its judgment, are necessary to protect the bank or banks in the group.
- (6) Da Afghanistan Bank may require a bank to hold additional capital, or to operate with a capital adequacy ratio above the ratio that would normally be applicable, if Da Afghanistan Bank determines that the capital of the group is not sufficient to protect the bank.

## **Risk management systems and internal controls**

### **Article 120:**

- (1) Each group that contains a bank must have risk management systems and internal controls that are appropriate for the group's activities. Such systems and internal controls must be subject to review and updating on a regular basis.
- (2) The ultimate parent company of the group is responsible for ensuring that the requirements under paragraph 1 of this article are met for the entire group.

## **Capital adequacy of bank holding companies**

### **Article 121:**

Each bank holding company shall maintain adequate capital, as determined by Da Afghanistan Bank, for the conduct of its business and to allow it to serve as a source of financial strength for each bank in its group.

## **Governance of bank holding companies**

### **Article 122:**

- (1) All persons elected or appointed as members of the board of supervisors, or management board, or equivalent bodies of a bank holding company must be fit and proper persons and must have sufficient professional experience and qualifications to perform their duties.
- (2) The members of the board of supervisors and management board, or equivalent bodies, of bank holding companies must comply with the requirements of article 59 regarding the fiduciary duties.
- (3) Da Afghanistan Bank may promulgate corporate governance standards for bank holding companies in related regulations.

## **Activities of bank holding companies**

### **Article 123:**

A bank holding company may engage only in financial activities, management of financial institutions, and activities that are incidental to these activities.

## **Investments by bank holding companies**

### **Article 124:**

- (1) All bank holding companies must ensure that they have in place the necessary policies and procedures, as well as the financial and managerial capability, to undertake and monitor investments in other enterprises.
- (2) A bank holding company may not have a qualifying holding in any enterprise that is not a financial institution.
- (3) Paragraph 2 of this Article does not apply in case a bank holding company acquires a qualifying holding in an enterprise in satisfaction of a debt previously contracted in good faith, provided that the holding company's beneficial ownership is reduced to a level below that of a qualifying holding within 1 year.

## **Subsidiaries and associated enterprises of bank holding companies**

### **Article 125:**

- (1) A bank holding company may have only financial enterprises as subsidiaries and associated enterprises.
- (2) A bank holding company must provide at least 60 days' prior written notification to Da Afghanistan Bank before establishing or acquiring a domestic subsidiary or associated enterprise.
- (3) The notification referenced in paragraph 2 must include:

- 1- the name of the enterprise and the expected amount of the bank holding company's beneficial ownership;
  - 2- the type or types of business activities engaged in by the enterprise;
  - 3- financial information about the enterprise;
  - 4- information concerning the management of the enterprise;
  - 5- an organizational chart showing the structure of the resulting group;
  - 6- information concerning the expected relationship between the bank and the proposed subsidiary or associated enterprise.
  - 7- other information as may be requested by Da Afghanistan Bank.
- (4) Da Afghanistan Bank may prohibit the establishment or acquisition of a subsidiary or associated enterprise by a bank holding company if:
- 1- it would be detrimental to the interests of its depositors; or
  - 2- It impedes the requirements of Article 118 of this Law to be satisfied.
- (5) If no objection is received within 60 days following the submission of a notification under paragraph 2 of this Article, the bank holding company may proceed with the intended establishment or acquisition.
- (6) A bank holding company that establishes or acquires a subsidiary or associated enterprise, in Afghanistan or abroad, must ensure that:
- 1- the subsidiary or associated enterprise will furnish the bank holding company with all of the information necessary to allow it to meet its obligations under this Law.
  - 2- It permits Da Afghanistan Bank to perform onsite inspections and obtain any information from the subsidiary or associated enterprise as may be necessary for fulfilling the requirements under this law; and
  - 3- the establishment or acquisition of the subsidiary or associated enterprise will not result in close links with other persons that would impair the ability of Da Afghanistan Bank to perform its functions under this Law.
- (7) Da Afghanistan Bank has the right not to allow a bank holding company to establish or acquire a subsidiary or associated enterprise, or, by order, to require the termination of that relationship, if in the opinion of Da Afghanistan Bank the conditions set forth in paragraphs 4 or 6 of this Article are not satisfied.
- (8) Each bank holding company shall keep at its head office a copy of the financial statements of each of its subsidiaries and associated enterprises.

- (9) The procedures for issuing orders under Article 111 of this Law shall apply to orders issued under this Article.

### **Foreign subsidiaries and associated enterprises of bank holding companies**

#### **Article 126:**

- (1) A bank holding company must obtain the prior written approval of Da Afghanistan Bank before establishing or acquiring a foreign subsidiary or associated enterprise. An application for approval must include the information referenced in paragraph 3 of Article 125 of this Law. If the proposed foreign subsidiary or associated enterprise is a supervised financial institution, information concerning the financial supervisory regime in the relevant foreign jurisdiction in question.
- (2) If the proposed foreign subsidiary or associated enterprise is a supervised financial institution, Da Afghanistan Bank shall consult with the relevant foreign competent authority following receipt of the application under paragraph 1 of this article.
- (3) Da Afghanistan Bank may deny an application under paragraph 1 of this article for the same reasons specified in paragraph 4 of Article 125 of this Law, or under following circumstances:
- 1- the legislation of the home state of such enterprise does not require, or the relevant competent authority does not exercise, effective supervision on a consolidated basis; or
  - 2- effective cooperation with the relevant foreign competent authority is not feasible.
- (4) Da Afghanistan Bank may attach any conditions to an approval under paragraph 1 of this Article that it deems appropriate to fulfill its obligations under this Law.
- (5) Da Afghanistan Bank shall co-operate with regard to responsibility and the principles of supervision of such subsidiary referred to in paragraph 1 of this article with the relevant foreign competent authority.

### **Reports by bank holding companies**

#### **Article 127**

- (1) In addition to the reports required by Article 23 of this Law, each bank holding company shall submit to Da Afghanistan Bank an annual report to Da Afghanistan Bank containing:
- 1- the administrative structure of the group of which the bank holding company is a member, including the name and principal business activity of each member of the group and the amount of the bank holding company's beneficial ownership;

- 2- the holding company's assessment of the effectiveness of its group's risk management, internal controls and corporate governance practices for the previous year; and
  - 3- such other information as Da Afghanistan Bank deems necessary to fulfill its obligations under this Law.
- (2) A bank holding company must notify Da Afghanistan Bank in writing without delay of:
- 1- any facts or circumstances that may materially affect the financial situation of the bank holding company or any of its subsidiaries or associated enterprises;
  - 2- any significant changes in the organizational structure of the group of which it is the ultimate parent company; and
  - 3- any information that Da Afghanistan Bank may require regarding persons having a qualifying holding in the bank holding company.
- (3) Da Afghanistan Bank may require the submission of other reports or information from bank holding companies and other enterprises in bank holding companies' groups, as it deems necessary to fulfill its obligations under this Law.

**Satisfaction of reporting requirements by ultimate parent company**

**Article 128:**

- (1) Where a group contains more than one bank holding company, the ultimate parent company shall submit the reports under Article 127 of this Law
- (2) All companies of the group are responsible for providing the ultimate parent company with information sufficient to ensure that the requirement of paragraph 1 of this article can be satisfied.

**Qualifying holdings in bank holding companies**

**Article 129:**

The provisions of Chapter III of this Law apply with regard to bank holding companies in the same manner as to banks, as deemed reasonably appropriate by Da Afghanistan Bank in order to carry out its functions under this Law.

**Inspections of bank holding companies**

**Article 130:**

The provisions of Article 99 of this Law shall apply to bank holding companies, their subsidiaries and associated enterprises in the same manner as they apply to banks, their subsidiaries and associated enterprises.

## **External audits of bank holding companies**

### **Article 131:**

- (1) The provisions of Articles 94, 95 and 96 of this Law apply to bank holding companies in the same manner as they apply to banks.
- (2) In the case of a group that contains more than one bank holding company, the ultimate parent bank holding company of the group shall satisfy the provisions of paragraph 1 of this Article in such ways deemed appropriate by Da Afghanistan Bank.

## **Measures and corrective actions regarding acquiring qualifying holdings in banks**

### **Article 132:**

- (1) The provisions of Article 107, 108 and 109 of this Law apply, in the same manner as to banks, to the following persons:
  - 1- subsidiaries and associated enterprises of banks;
  - 2- bank holding companies, their subsidiaries and associated enterprises;
  - 3- other persons having qualifying holdings in banks and bank holding companies, and enterprises that these persons control; and
- (2) In taking action under paragraph 1 of this Article, Da Afghanistan Bank must consider whether the violation, practice, transaction or condition associated with unsound and imprudent operation has had, or is likely to have, a detrimental effect on the financial stability of the relevant bank or the interests of the bank's depositors.
- (3) If the relevant violations, practices, transactions or conditions associated with unsound and imprudent operation are not corrected by the persons referred to in paragraph 1 of this article within a period of time determined by Da Afghanistan Bank, Da Afghanistan Bank may take any or all of the following measures:
  - 1- in the case of a subsidiary or associated enterprise of the bank, to suspend any further investment by the bank in such subsidiary or associated enterprise;
  - 2- in the case of a bank holding company, to suspend the exercise of the company's control of the bank including the direct or indirect exercise of voting rights;
  - 3- in the case of any non-bank enterprise in the group, to suspend further transactions, whether direct or indirect, between such enterprise and the bank;
  - 4- in the case of enterprises controlled by other persons having qualifying holdings in the bank or bank holding company, or other persons participating in the conduct of the affairs of the bank or bank holding company, to suspend the participation in the affairs of the bank or bank holding company including the direct or indirect exercise of voting rights by such persons, and suspend further transactions (direct or indirect) by the between the bank and such person and enterprises controlled by him.

- (4) If the relevant violations, practices, transactions or conditions remain uncorrected after a further period of time determined by Da Afghanistan Bank after the imposition of the corrective measures specified in paragraph 3 of this Article, Da Afghanistan Bank may take any of the following remedial measures:
- 1- in the case of a subsidiary or associated enterprise of a bank, to order the bank to reduce its investment to the point where the enterprise is no longer a subsidiary or associated enterprise of the bank;
  - 2- in the case of a bank holding company, to sell or terminate its control over the bank;
  - 3- in the case of a subsidiary or associated enterprise of the bank holding company, require the bank holding company to sell or terminate its control (or 20% participation) in either the subsidiary or associated enterprise, as the case may be, or its control of the bank;
  - 4- in the case of enterprises controlled by other persons having qualifying holdings in the bank or bank holding company, to require such persons to sell their qualifying holdings in the bank or bank holding company.
  - 5- in the case of enterprises controlled by other persons participating in the conduct of the affairs of the bank or bank holding company, to take any measures Da Afghanistan Bank may deem appropriate to halt any further participation by such person and any further transactions between the bank and such enterprises.
- (5) In the events under paragraph (4) of this article, the provisions of Article 23 of this Law are applicable.
- (6) If a non-bank enterprise in a group is subject to supervision by financial sector supervisory body under the legislation of Afghanistan, Da Afghanistan Bank shall, before taking action against such entity under this Article, consult with that supervisory body in accordance with Article 133 of this Law.
- (7) Da Afghanistan Bank has the right to immediately take the measures identified in paragraphs 3 or 4 of this Article in an urgent situation to protect the bank or its depositors.

### **Cooperation between financial sector supervisors**

#### **Article 133:**

- (1) Where a bank is part of a group that includes one or more enterprises that are subject to supervision by another financial sector supervisory body under the legislation of Afghanistan, Da Afghanistan Bank and such other supervisory body shall jointly develop a plan for comprehensive supervision of the group and cooperate for supervisory purposes, taking into consideration the dominant business entity in the group. Such plan shall entail sharing of information between Da Afghanistan Bank and such other supervisory body or bodies for supervisory purposes.



(2) The cooperation referred to in paragraph 1 of this Article shall provide for the gathering and exchange of information between Da Afghanistan Bank and such other supervisory body with regard to at least the following items:

- 1- identification of the organizational structure of the group, including the ultimate controllers and managerial personnel who direct the business of the group;
- 2- changes in the ownership, management or organizational structure of the group;
- 3- the group's business and strategic policies;
- 4- the financial situation of the group, with particular emphasis on capital adequacy, related party transactions, intra-group exposures and profitability;
- 5- the corporate governance, risk management and internal control systems of the group;
- 6- procedures for collection of information from the group or the dominant business entity in the group, coordination of inspections of enterprises within the group, exchange of information among the financial sector supervisory bodies as appropriate to, and verification of such information;
- 7- adverse developments within the group that could seriously affect any bank in the group; and
- 8- enforcement measures taken or proposed to be taken with regard to any enterprise in the group.

(3) Where a bank has close links with another enterprise that is subject to supervision by another financial sector supervisory body under the legislation of Afghanistan, but where such bank and other enterprise do not constitute a group of enterprises as defined in this Law, Da Afghanistan Bank and such other supervisory body shall mutually cooperate and exchange information for purposes of supervision of such entities.

## **CHAPTER XII CONSERVATORSHIP**

### **Grounds for Appointing a Conservator**

#### **Article 134:**

(1) Da Afghanistan Bank may appoint a conservator for a bank if:

- 1- the bank is critically undercapitalized;
- 2- the bank cannot fulfill its obligations to its depositors or other creditors, or not able to

- provide security for the assets entrusted to it;
- 3- the bank is significantly undercapitalized and Da Afghanistan determines that conservatorship is necessary or appropriate in order to protect the interests of the bank's depositors or other creditors;
  - 4- the bank is undercapitalized and
    - fails to submit a capital restoration plan within the time period required by this Law;
    - fails to implement or achieve the results of such a plan that has been approved by Da Afghanistan Bank; or
    - Da Afghanistan Bank determines that there is no reasonable prospect of its becoming adequately capitalized;
  - 5- Da Afghanistan Bank determines that false or fraudulent statements or other irregularities occurred in connection with the bank's license application;
  - 6- the bank has ceased to engage in the business of receiving money deposits or other repayable funds from the public or making credits(loans);
  - 7- Da Afghanistan Bank determines that the bank has conducted its administration or banking operations in an unsound or imprudent manner or otherwise has violated any provision of law, or a regulation or order of Da Afghanistan Bank, or any condition or restriction attached to a license or permit issued by Da Afghanistan Bank;
  - 8- Da Afghanistan Bank has reasonable cause to believe that the bank or its directors, or any enterprise in the same group as the bank, have engaged or are engaging in criminal activities punishable by imprisonment of one year or more, in such a manner to jeopardize depositors' interests, have engaged or are engaging in money laundering, or terrorist financing;
  - 9- a person has acquired a qualifying holding in the bank without the prior written authorization of Da Afghanistan Bank as required by Article 21 of this Law;
  - 10- the bank or bank holding company of which the bank is a subsidiary has lost its operating license or is the subject of bankruptcy, liquidation, conservatorship, receivership or equivalent proceedings in Afghanistan or abroad;
  - 11- the bank impedes the Da Afghanistan Bank's supervisory responsibilities through failure to cooperate with Da Afghanistan Bank or its examiners and , including through concealment or failure to submit for inspection any of the bank's books, papers or records;
  - 12- the bank, by resolution of its directors or shareholders, requests the appointment of a conservator.
- (2) The decision by Da Afghanistan Bank to appoint a conservator shall specify the grounds upon which it is adopted. Such decision shall be promptly notified to the bank subject to conservatorship. The decision of Da Afghanistan Bank to appoint a conservator shall be recorded in the register kept pursuant to Article 17 of this Law.

## **Appointment and Removal of the Conservator**

### **Article 135:**

- (1) The conservator shall be appointed by Da Afghanistan Bank for a term, not exceeding 6 months, as specified in the decision required by Article 134 of this law. The term of appointment may be extended by Da Afghanistan Bank only twice, for a period not exceeding, in each case, three months.
- (2) If the circumstances under paragraph 1 of article 134 of this law on which the appointment of an conservator are not resolved after a period of twelve months, the bank's license shall be revoked and the receivership and liquidation process in accordance with this law shall commence.
- (3) Da Afghanistan Bank may appoint a person as conservator from the private sector or an official of Da Afghanistan Bank who meets the qualifications prescribed by Da Afghanistan Bank.
- (4) Da Afghanistan Bank shall provide written notice to the bank of the appointment of the conservator.
- (5) The decision of Da Afghanistan Bank appointing a conservator for a bank shall be effective at the time specified in the decision or, if no time is specified, at the time notice is given under paragraph 2 of Article 134 of this law.
- (6) As of the effective time of the decision referenced in paragraph 5 of this article , all powers, functions and responsibilities of the bank's shareholders and managers shall be vested in the conservator, unless the shareholders or managers by request of the conservator continue to carry out any activity provided under this law.
- (7) Any actions or decisions taken by or on behalf of the bank subject to conservatorship shall be null and void, unless they are taken by or under the authority of the conservator.
- (8) Da Afghanistan Bank may remove the conservator before the end of the term specified in paragraph 1 of this article and appoint a qualified replacement.
- (9) Da Afghanistan Bank must ensure that the bank at all times remains under the control of a conservator duly appointed under this law.
- (10) To obtain the prior approval of Da Afghanistan Bank, conservator is required to report to Da Afghanistan Bank any material interest in any transaction involving the bank in conservatorship. If a conservator fails to disclose a material interest or relationship as required, the contract may be set aside and Da Afghanistan Bank shall remove the conservator.

## **Powers and Duties of the Conservator**

### **Article 136:**

- (1) The conservator shall have full and exclusive powers to manage and operate the bank.
- (2) The conservator may take any action as or appropriate to carry on the business of the bank and preserve and safeguard its assets and property or to implement a plan that

has been approved by Da Afghanistan Bank.

- (3) The conservator shall act in accordance with the regulations, instructions and guidelines given by Da Afghanistan Bank at any time in the course of the conservatorship, and shall be accountable only to Da Afghanistan Bank for the performance of duties and the exercise of powers as conservator.
- (4) The conservator may delegate any of such powers or duties to other persons, in accordance with the instructions issued by Da Afghanistan Bank.
- (5) The conservator may employ, at the expense of the bank in conservatorship, independent attorneys, accountants and consultants, on such terms as Da Afghanistan Bank shall approve.
- (6) If the conservator has reasonable cause to believe that shareholders, directors, officers, attorneys, accountants or other professionals have engaged in criminal activities punishable by imprisonment of one year or more or in fraudulent activities, it shall immediately notify Da Afghanistan Bank and shall begin a proceedings to seek damages and restitution.
- (7) The conservator shall suspend the payment of any dividends or other form of capital distribution to shareholders, as well as any payment to directors other than for salaries or services provided to the bank upon request of the conservator.

### **Moratorium and Effect of Conservatorship on Proceedings and Contracts**

#### **Article 137**

- (1) Da Afghanistan Bank may impose a moratorium suspending some or all payments by a bank in conservatorship.
- (2) Without the written consent of Da Afghanistan Bank, a person may not begin or continue a proceeding in a court against a bank in conservatorship.
- (3) Without the written consent of Da Afghanistan Bank a person may not exercise rights under a mortgage, charge, or other security over the property of a bank in conservatorship, or issue any execution, attach any debt, or otherwise enforce or seek to enforce any judgment or order obtained in respect of a bank in conservatorship.
- (4) The consent of Da Afghanistan Bank may waive the application of paragraph 1 of this article to any creditor or class of creditors.
- (5) No right or obligation of a third party under any contract to which the bank in conservatorship is a party may be terminated, accelerated, or modified because of the appointment of the conservator or any action taken by the conservator.

### **Taking Control of the Bank**

#### **Article 138:**

- (1) Immediately upon appointment, the conservator shall secure the properties, offices, assets, books and records of the bank, and may take all necessary or appropriate steps aimed at such purpose, including without limitation:
  - 1- Changing the locks for external access to the bank's buildings and offices;

- 2- Changing the passwords to the bank's computers and granting access only to a limited number of employees;
  - 3- Taking new measures to control the access of the employees to the bank's premises and records.
  - 4- Taking such other actions as it deems necessary
- (2) In the course of the conservatorship, the conservator shall have unrestricted access to, and control over, the properties, offices, assets and the books of account and other records of the bank subject to conservatorship.
  - (3) Immediately upon request of the conservator, law enforcement officials shall assist the conservator to gain access to any premises of the bank and to gain control over and to secure such properties, offices, assets, books and records.
  - (4) Directors, officers and employees of the bank shall make available to the conservator all records and documentation pertaining to the bank and any additional information or report requested by the conservator.

### **Inventory and Plan of Action**

#### **Article 139:**

- (1) Not later than 30 days after the appointment, the conservator shall prepare and deliver to Da Afghanistan Bank an inventory of the bank's assets and liabilities. Such report will itemize the assets according to their different risk profiles and classify the non-performing loans.
- (2) Not later than 60 days after the appointment, the conservator shall prepare and deliver to Da Afghanistan Bank a report on the financial condition and future prospects of the bank subject to conservatorship. The conservator shall include in the report an assessment of the amount of assets likely to be realized in a liquidation of the bank.
- (3) In the report referred under paragraph 2 of this article, the conservator shall propose a plan of action which shall:
  - 1- Recommend returning the bank to compliance with the law by carrying out a plan of corrective actions that may include a capital increase; or
  - 2- if the bank cannot be rehabilitated, any other course of action designed to minimize disruption to depositors and preserve the stability of the banking sector.
- (4) The conservator shall promptly provide any additional report or information as requested by Da Afghanistan Bank.

### **Recapitalization by New Shareholders**

#### **Article 140:**

- (1) On the basis of the report produced under Article 139 and with the approval of Da Afghanistan Bank, the conservator may take actions, including those referred to in paragraph 2 of this article, to increase the bank's capital through the issuance of shares to new shareholders without offering shares to existing shareholders, if Da Afghanistan Bank determines that:
  - 1- an expedited resolution of a bank is needed to maintain financial stability is necessary;

- 2- the existing shareholders are no longer suitable to maintain a significant capital position in the bank; or
  - 3- There has been a failure to comply timely with a remedial measure under Chapter X requiring an increase in the bank's capital.
- (2) To carry out a recapitalization by new shareholders, the conservator shall:
- 1- Determine the extent of losses and prepare the bank's balance sheet covering the amount of such losses through the bank's profits, reserves and, if necessary, capital;
  - 2- If necessary to reflect losses, reduce the par value of outstanding shares, notwithstanding any other provision of law;
  - 3- Determine the amount and type of funding needed to bring the bank into compliance with all capital requirements;
  - 4- Require the bank to issue additional shares in the amount necessary to sell them to new investors.
- (3) The competent authority for regulating the securities market shall take the necessary action to permit any issuance of such securities within three business days.

### **Mergers Sales and Other Restructurings of Bank**

#### **Article 141:**

- (1) On the basis of the report produced under Article 139 and with the approval of Da Afghanistan Bank, the conservator may carry out a merger of the bank or a transfer, in whole or in part, of the bank's assets and liabilities. Such assets and liabilities may be transferred to a bridge bank.

For the purpose of this paragraph, a bridge bank is a bank established by the government or the Da Afghanistan bank for a temporary period for the purpose of resolving a failing bank

- (2) The formation, management and operation of a bridge bank shall be determined by related regulation.
- (3) In accordance with the instructions given by Da Afghanistan Bank, the conservator may approve a restructuring of the bank's liabilities through arrangements with the bank's creditors, including a reduction, modification, rescheduling and novation of their claims.
- (4) If the liabilities of the bank under the conservatorship that are transferred to another bank includes a transfer of insured deposits, and the value of the assets transferred to the other bank is less than the amount of transferred insured deposits, the difference up to the amount of the insured deposits transferred shall be paid by the Deposit Insurance Fund of Afghanistan to the other bank in accordance with the relevant legislations. After such transfer of liabilities of the bank and the use of deposit insurance funds, the license of the bank under conservatorship shall be revoked, the bank shall be placed in receivership, and the bank shall be liquidated in accordance with the provisions of this law.
- (5) In determining the rights and obligations between a bank for which the conservator has been appointed and its contractual counter parties, effect shall be given to the termination and set off provisions of eligible financial contracts between them, and the provisions of Article 159 shall apply mutatis mutandis.

(6) Measures under this Article may not be used to transfer property against which a liability is secured unless the liability and the benefit of the security interest is also transferred.

(7) The transactions and measures under this Article shall not be subject to any powers of a receiver under Article 145 of this law to void transactions entered into by the bank.

### **Expenses of the Conservatorship**

#### **Article 142:**

The conservator shall receive a remuneration determined by Da Afghanistan Bank. All costs and expenses incurred on account of the conservatorship shall be borne by and charged to the bank subject to such proceeding.

### **Termination of Conservatorship**

#### **Article 143:**

(1) The conservatorship shall terminate at the expiry of the term specified in the decision appointing the conservator or any extension of the term of such appointment as provided in Article 135 of this law.

(2) Conservatorship shall be terminated prior to the expiry of the term identified in paragraph 1 of this article, if Da Afghanistan Bank determines that:

1- grounds for appointment of the conservator have been remedied; or

2- The bank cannot be rehabilitated

(3) In the case of subparagraph 2 of paragraph 2 of this article, Da Afghanistan Bank shall issue a decision to revoke the bank's license and to commence a liquidation proceeding under the provisions of Chapter XIII of this law.

(4) In the case of a termination of conservatorship that does not involve a closure of the bank, the conservator shall carry out the duties of the bank's directors until nomination and/or election of a new board. Upon nomination and/or election of a new board, the conservator shall return control of the bank and its properties, offices, assets, books and records to the competent bodies.

(5) Da Afghanistan Bank may attach to its decision terminating conservatorship a recommendation by the conservator and a detailed report prepared by the conservator supporting the recommendation.

(6) Within 5 days of the termination of the appointment, the conservator shall prepare and submit to Da Afghanistan Bank a final report and accounting of the conservatorship.

## **CHAPTER XIII RECEIVERSHIP OF BANKS**

### **Exceptions on applicability of Law**

#### **Article 144:**

The provisions of the Law of Bankruptcy and any other legislation on the collective resolution of claims shall not apply to banks.

### **Petition for receivership**

#### **Article 145:**

- (1) Da Afghanistan Bank shall appoint a receiver for the bank's liquidation if, pursuant to paragraph 2 of Article 143 of this law, Da Afghanistan Bank determines that the bank cannot be rehabilitated and the bank's license is revoked.
- (2) Da Afghanistan Bank may also appoint a receiver in the following cases:
  - 1- the bank is critically undercapitalized;
  - 2- the bank cannot fulfill its obligations to its depositors or other creditors, or are not able provide security for the assets entrusted to it;
  - 3- the bank is significantly undercapitalized and Da Afghanistan determines that receivership is necessary or appropriate in order to protect the interests of the bank's depositors or other creditors;
  - 4- the bank is undercapitalized and:
    - fails to submit a capital restoration plan within the time period required by this Law;
    - fails to implement or achieve the results of such a plan that has been approved by Da Afghanistan Bank; or
    - Da Afghanistan Bank determines that there is no reasonable prospect of its becoming adequately capitalized;
  - 5- Da Afghanistan Bank determines that false or fraudulent statements or other irregularities occurred in connection with the bank's license application;
  - 6- the bank has ceased to engage in the business of receiving money deposits or other repayable funds from the public or making credits;
  - 7- Da Afghanistan Bank determines that the bank has conducted its administration or banking operations in an unsound or imprudent manner or otherwise has violated any provision of law, or a regulations, circulars or order of Da Afghanistan Bank, or any condition or restriction attached to a license or permit issued by Da Afghanistan Bank;



- 8- Da Afghanistan Bank has reasonable cause to believe that the bank or its directors, or any enterprise in the same group as the bank, have engaged or are engaging in criminal activities punishable by imprisonment of [one] year or more, in such a manner to jeopardize depositors' interests, have engaged or are engaging in, money laundering, or terrorist financing;
  - 9- the circumstances or conditions under which the bank's license was granted are no longer fulfilled;
  - 10- a person has acquired a qualifying holding in the bank without the prior written authorization of Da Afghanistan Bank as required by Article 21 of this Law;
  - 11- the bank or bank holding company of which the bank is a subsidiary is the subject of bankruptcy, liquidation, conservatorship, receivership or equivalent proceedings in Afghanistan or abroad; or has lost its operating license.
  - 12- a reorganization, amalgamation, merger or division of the bank, or sale of substantially all of the assets of the bank, has occurred without the written authorization of Da Afghanistan Bank;
  - 13- The bank has moved all or part of its administration, operations, books or records outside Afghanistan without the prior written consent of Da Afghanistan Bank;
  - 14- Da Afghanistan Bank determines that such appointment is necessary in the case of a bank that has voluntarily surrendered its banking license, in accordance with Article 19 of this Law.
  - 15- the bank has become member of a group of enterprises that in the opinion of Da Afghanistan Bank, does not conform to the requirements of Article 118 of this Law;
  - 16- Da Afghanistan Bank determines that the value of the bank's liabilities exceeds or is likely to exceed the value of the bank's assets.
- (3) The decision by Da Afghanistan Bank to appoint a receiver shall specify the grounds upon which it is adopted. Such decision shall be promptly notified to the bank. The decision of Da Afghanistan Bank appointing the receiver shall be recorded in the register kept pursuant to Article 17 of this Law.
- (4) The receiver may be a person from the private sector or an official of Da Afghanistan Bank who meets the qualifications prescribed by Da Afghanistan Bank.
- (5) The decision of Da Afghanistan Bank appointing a receiver for a bank shall be effective at the time specified in the decision or, if no time is specified, at the time notice is given under paragraph 3 of this article.

**Notice of receivership appointment**

**Article 146:**

Within 2 days after the date of the appointment of the receiver for a bank, Da Afghanistan Bank shall publish such matter in an official newspaper of general circulation in Afghanistan.

### **Powers and duties of the receiver**

#### **Article 147:**

- (1) The receiver is the sole legal representative of the bank subject to the receivership, and succeeds to all rights and powers of the shareholders of the bank relating to their shares of capital stock of the bank, the board of supervisors of the bank, and the Board of Management of the bank including the power to operate and to liquidate the bank. Claims against the bank are served on the receiver for the bank.
- (2) The receiver shall act in accordance with the regulations, circulars; instructions and guidelines given by Da Afghanistan Bank at any time in the course of the receivership, and shall be accountable only to Da Afghanistan Bank for the performance of duties and the decisions taken as receiver.
- (3) The receiver may delegate any of such powers or duties to other persons, in accordance with the instructions issued by Da Afghanistan Bank.

### **Effect of appointment of receiver**

#### **Article 148:**

The decision under paragraph 5 of article 145 of this law appointing a receiver shall have the following effects:

- 1- The acts performed by or on behalf of the bank are legally void and unenforceable, except for acts performed by or by authority of the receiver for the bank and acts deemed beneficial to the estate of the bank by the receiver and ratified by the receiver;
- 2- all current judicial proceedings against the bank are stayed; and no new judicial proceeding against the bank shall commence, except with the leave of the receiver;
- 3- All conservatory attachments and attachments in aid of execution resting on assets of the bank are lifted. Attachments placed and acts of execution performed after the appointment of the receiver shall be void, except for execution in accordance with the provisions of Article 161 of this Law of assets encumbered by a mortgage or lien to the extent of the debt secured by such encumbrance;
- 4- neither interest nor any other charge shall accrue on liabilities of the bank;
- 5- transfers of shares of the bank, except for transfers made with the prior consent of Da Afghanistan Bank, shall be void;
- 6- the bank shall carry in its name the words “in receivership,” shall engage only in those activities that are deemed by the receiver to be appropriate or necessary to carry out the receivership process.

### **Nullification of certain pre-appointment transactions**

#### **Article 149:**

- (1) The following transactions by a bank that would damage the interests of creditors of the bank, are done within five years before the appointment of the receiver, and that the bank and its counterparty in the act knew or had a reason to know that it would damage

the interests of creditors of the bank, may be declared null and void by the receiver:

- 1- any gratuitous transfer of bank assets;
  - 2- a payment or transfer to a related person or member of the staff of the bank, unless such related person or staff member shows to the satisfaction of the receiver that the payment or transfer was made in the ordinary course of business, concerned his employment by the bank, or was withdrawn from an account maintained with the bank and was not unusual in size, or proves that he did not know that the payment or transfer would damage interests of creditors of the bank;
  - 3- a payment or transfer is made before its due date or the transfer of collateral is made for a debt before the due date of the debt;
  - 4- the conclusion of a contract imposing obligations on the bank that are more onerous than those imposed on other parties to the contract;
  - 5- an arrangement between the bank and one or more others, other than an eligible financial contract defined in this Law, permitting an offset between rights and obligations of the bank and the other parties that without such arrangement would not have been deemed to be permissible before the time of the decision to appoint the receiver for the bank;
  - 6- any repurchase by the bank of shares from any shareholder of the bank, unless the repurchase was approved by Da Afghanistan Bank in accordance with this Law;
  - 7- any capital distribution, unless such distribution was approved by Da Afghanistan Bank in accordance with this Law;
  - 8- any payment by the bank that substantially exceeded the value of the goods, services, or other assets received by the bank in return;
  - 9- any transaction with the apparent purpose of concealing or withholding assets from creditors of the bank or the receiver, or otherwise to impair their rights; or
  - 10- any transaction based on a fraudulent or forged document.
- (2) The recipient of any transaction that is declared void under paragraph 1 of this Article must return the received money or other property to the receiver within a time period set by the receiver. If the property no longer exists, an equivalent amount of money, representing the value of the property as of the date of transfer by the bank, must be returned.
- (3) If a transferee of money or other property from the bank in a transaction that is declared void under paragraph 1 of this Article has transferred such money or other

property to another person, the receiver may recover such money, or other property or its value, from such other person only if the other person did not give fair value in exchange, and knew or had reason to know that the initial transfer from the bank could be declared void under this Law. If the receiver cannot recover such money or other property from such other person under this paragraph, it may recover an equivalent value from the original transferee.

- (4) In connection with a nullification undertaken under paragraph 1 of this Article, the receiver may issue a temporary order:
  - 1- prohibiting any recipient of any transaction referred to in paragraph 1 of this Article, or any enterprise controlled by any such person, from taking any action to withdraw, transfer, remove, dissipate, or dispose of any such funds, assets or other property; and
  - 2- appointing one or more representatives of the receiver to administer such temporary order.
- (5) In connection with a temporary order issued pursuant to paragraph 4 of this Article, the receiver may issue a written instruction to any bank or other financial institution to freeze summarily any bank account or accounts at such bank or institution that are maintained by, or under the control of, such person, or any enterprise controlled by that person, and to retain all moneys in any such account, pending the further instructions of the receiver
- (6) A person who is subject to a temporary order may within 10 days of receipt of such order, seek review of such order before the Commission. The provisions of Article 115 of this Law shall apply to review by the Commission of such orders.
- (7) Any disputes arising from a decision of the receiver to declare a transaction void in accordance with paragraph 1 shall be resolved by the Commission.

### **Finality in payment and securities settlement systems**

#### **Article 150:**

- (1) Irrevocable money and securities transfer orders entered by a bank into a payment or securities settlement system recognized as such by Da Afghanistan Bank shall be legally enforceable and binding on third parties, even in the event of appointment of the receiver.
- (2) Where a bank enters irrevocable money or securities transfer orders into a payment or securities settlement system on the day that appointment of the receiver for the bank, the transfer orders shall be legally enforceable and binding on third parties, unless the receiver proves that the system operator was aware of the appointment of the receiver before he agreed to such orders.
- (3) The transfer orders entered in the money payment or securities settlement system shall

be irrevocable at that time in accordance with the rules of that system.

- (4) Contracts and transactions referenced in paragraphs 1 and 2 of this Article concluded before the appointment of the receiver shall be enforceable and no case shall cause the unwinding of netting by a payment or securities settlement system recognized as such by Da Afghanistan Bank. For the purposes of this Article, “netting” means the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants in a settlement system either issue to, or receive from, one or more other participants in that system.

### **Payment of insured deposits**

#### **Article 151:**

- (1) The receiver shall pay the insured deposits in the bank for which a receiver has been appointed upon request of the depositor:
  - 1- in one or more payments as agreed between the depositor and the Corporation ;  
or
  - 2- Through payment to an institution that assumes the liabilities of the bank in receivership in a purchase-and-assumption transaction.
- (2) The total amount of the payment shall be the amount of the deposit as shown in the records of the bank, with interest if applicable. Such advance payments shall not be affected by rights of the bank to set off, or the subject to blocking orders under Article 155 of this Law.
- (3) Depositors do not need to register their claims to their deposits in accordance with Article 156 of this Law unless they disagree with the amount of their deposit as shown in the bank’s records.
- (4) Upon payment of insured depositors, the Corporation shall be subrogated to the claim of those insured depositors.
- (5) Deposits denominated in a foreign currency shall be reimbursed in Afghani at the midpoint between the official selling and buying transfer exchange rates quoted by Da Afghanistan Bank at the end of the day upon which the receiver was appointed for the bank.

### **Preliminary report of the receiver**

#### **Article 152:**

- (1) Within two weeks from the date of its appointment as receiver for a bank, the receiver shall submit to Da Afghanistan Bank an asset and property report listing:
  - 1- the assets of the bank, including claims of the bank on account of unpaid subscriptions of capital stock of the bank, loan and guarantee agreements, and agreements of purchase or sale, as well as the book values and estimated

- liquidation values of the assets;
- 2- the contracts pursuant to which property of the bank is held by the counter parties, including rental, lease and collateral agreements;
  - 3- the contracts pursuant to which the bank receives services;
  - 4- the significant transactions entered into by the bank during the period of thirty days immediately preceding the date of the receiver's appointment as receiver; and,
  - 5- a calculation of deposit insurance coverage.
- (2) The receiver shall update the report referenced in paragraph 1 of this Article quarterly and shall make it available to the creditors of the bank whose claims are included on the list of approved claims prepared pursuant to Article 157 of this Law.

### **Recommended plans by the receiver**

#### **Article 153:**

- (1) Immediately upon being appointed receiver for a bank, the receiver shall undertake an analysis of the financial condition of the bank. If such an analysis has previously been undertaken by any conservator for the bank, the receiver shall update that analysis.
- (2) Within 60 days of its appointment as receiver, unless this period is extended by Da Afghanistan Bank, the receiver shall present a written report to Da Afghanistan Bank, based on the analysis undertaken pursuant to paragraph 1 of this Article. The report may include a detailed plan to sell all or specified assets and liabilities of the bank to another entity or person, including a bridge bank, in accordance with Article 141 of this law.
- (3) In case of a partial sale of assets or liabilities under paragraph (2) of this article, the receiver shall specify in the report whether the proposed sale would treat creditors belonging to the same class in a non-discriminatory manner.

### **Decision of Da Afghanistan Bank on the receiver's recommended plan**

#### **Article 154:**

- (1) Within 30 days of the receipt of the report described in Article 153 of this Law, Da Afghanistan Bank shall make a decision whether to accept or reject the recommendation in the report.
- (2) If Da Afghanistan Bank rejects the receiver's recommended plan, it may direct the receiver to implement an alternative plan entailing any of the items specified in paragraph 2 of Article 153 of this Law.
- (3) Da Afghanistan Bank may change or amend the receiver's recommended plan in any way it deems appropriate, prior to or during the implementation of the plan.
- (4) The receiver shall provide quarterly progress reports to Da Afghanistan Bank during

the implementation of any plan referred to in paragraphs 1 and 2 of this Article.

- (5) Until the process of resolving the bank is completed, the former bank shall continue to be subject to the provisions of this Law as if it were still licensed, to the extent determined appropriate by Da Afghanistan Bank.
- (6) The provisions of article 137 of this law regarding moratorium shall apply to a bank for which the conservator is appointed.

### **Blocked Claims**

#### **Article 155:**

- (1) If the receiver reasonably believes that a depositor has caused a loss to the bank, or owes an obligation to the bank and there are serious doubts as to the ability or willingness of the depositor to repay that obligation, the receiver may announce a partial or complete suspension of the bank's liabilities regarding uninsured deposits or investment accounts of that person in the bank
- (2) The receiver shall notify the depositor of the order under paragraph 1 of this article within 3 business days.
- (3) The blocking order under paragraph 1 of this article shall remain in effect pending a determination whether the depositor has caused a loss to the bank, or that a depositor owes an obligation to the bank.
- (4) When a blocking order is declared, the receiver shall take measures aimed at preserving the approximate value of these deposits and investments in the bank together with interest accrued before and during the effective time of the blocking order.
- (5) A depositor whose account is blocked pursuant to an order issued under paragraph 1 of this Article may, within 10 days of receipt of such order, seek review of such order before the Commission. The provisions of Article 115 of this Law shall apply to review by the Commission of such orders.
- (6) Disputes between a depositor and receiver arising from blocking orders imposed under this Article shall be resolved by the Commission.

### **Registration of claims**

#### **Article 156:**

- (1) Creditors of a bank for which the receiver has been appointed must register their claims with the receiver in writing within 60 days from the date that the decision appointing the receiver for the bank is published. Da Afghanistan Bank may once extend this term for all creditors by 30 days. Creditors shall be given a registration receipt upon request. The claims referred to in paragraphs 1 and 2 of Article 157 of this law are expected from requirements of this article.
- (2) Claims shall be registered together with documentary evidence of the claim and the

following information:

- 1- the name and address of the creditor;
  - 2- the amounts of interest and other charges, penalties and taxes included in the principal amount of the claim; and
  - 3- details concerning any mortgage, lien or guarantee securing the claim, including the name and address of any guarantor.
- (3) The appointment of the receiver for a bank suspends the prescription of claims on account of deposits recorded in the books or records of the bank. The prescription of all other claims is suspended by their registration with the receiver.

### **Admission of claims**

#### **Article 157:**

- (1) Only claims that are registered in accordance with Article 156 of this Law may be admitted, except that claims on account of deposits recorded in the books or records of the bank and claims for the bank's employees' unpaid salaries (exclusive of bonuses, amounts due upon severance, or any other payment due the bank's employees in excess of their base salaries) shall be admitted for the amounts so recorded without registration.
- (2) Claims recorded in the books or records of the bank by the receiver shall be admitted without further proof. Claims registered for an amount that is less than the amount recorded by the bank shall be admitted only for the lesser amount.
- (3) Creditors of the bank with claims secured by a mortgage or lien resting on assets of the bank may register their claims for the amount by which the amount of the claim exceeds the expected sales value of the asset in a similar auction.
- (4) Claims whose value is uncertain may be admitted for a value estimated by the receiver.
- (5) After examining the registered claims, the receiver shall record the claims admitted by him on a list of admitted claims and the claims contested by him on a separate list specifying the reasons for his opposition. The mentioned lists shall for each claimant specify name and address, the amounts of his claims, and whether the claims are secured by collateral. Claims of equal ranking shall be listed together, in the order of their priority of payment.
- (6) The receiver shall complete the lists mentioned in paragraph 5 of this Article within thirty days from the deadline for claims. A creditor who wishes to contest a determination of the receiver may submit a petition for review to the Commission within 30 days of receiving the receiver's determination. Determinations by the receiver that are not contested shall be final.
- (7) The Commission shall set such dates for hearings of petition under paragraph 6 of this article, so that the creditor can submit evidence to prove their claims to the receiver and the Commission, provided that such hearings shall be held not later than sixty days



after the date on which the list of contested claims is submitted to the Commission.

- (8) Creditors shall be notified only once of the date of each hearing by mail (which may include electronic mail) and by notice published by the receiver.
- (9) Claims for which the creditor fails to appear at the hearing of which he has been notified by mail shall be regarded as rejected.
- (10) The commission shall notify in writing the creditors whose petitions for review have been rejected in. A copy of such notification shall be provided to the receiver.
- (11) The decision by the Commission on contested claims under paragraph 6 of this article shall be final, and needs to be communicated to the receiver, and recorded in a list kept by the receiver.
- (12) Creditors whose petitions for review have been approved by the Commission shall be notified by the Commission in writing. A copy of such notification shall be provided to the receiver.
- (13) The receiver shall not make payment on account of petitions that are rejected by the Commission. The creditor whose petition has been rejected by the Commission may appeal the decision of the Commission within two weeks after the date of receipt of notice of the decision.

### **Set off and netting**

#### **Article 158:**

- (1) No decision made under this Law shall prevent the set-off by operation of law of obligations between a bank for which the receiver has been appointed and its counter parties.
- (2) In determining the rights and obligations between a bank for which the receiver has been appointed and its contractual counter parties, effect shall be given to the termination and set off provisions of eligible financial contracts between them. The net termination value determined in accordance with an eligible financial contract between them shall be a claim of the bank on the counterparty or shall be admitted after its registration as a claim of the counterparty on the bank.

For purposes of this Law, “net termination value” means the net amount obtained after setting off the mutual obligations between the parties to an eligible financial contract.

- (3) For purposes of this Law, an “eligible financial contract” means any of the following agreements:
  - 1- a currency or interest rate swap agreement;
  - 2- a basis swap agreement;

- 3- a spot, future, forward or other foreign exchange agreement;
  - 4- an agreement providing for a cap, collar or floor transaction;
  - 5- a commodity swap agreement;
  - 6- a forward rate agreement;
  - 7- a repurchase or reverse repurchase agreement;
  - 8- a spot, future, forward or other commodity agreement;
  - 9- an agreement to buy, sell, borrow or lend, securities, to clear or settle securities transactions or to act as a depository for securities;
  - 10- any derivative, combination or option in respect of, or agreement similar to, an agreement referred to in sub-paragraphs (1) to (9) of this paragraph;
  - 11- any master agreement in respect to an agreement referred to in subparagraphs (1) to (10) of this paragraph;
  - 12- a guarantee of the liabilities under an agreement referred to in subparagraphs (1) to (11) of this paragraph; and
  - 13- any agreement prescribed by related regulations.
- (4) Except as provided by Article 150 of this Law, no set off shall be allowed with respect to claims acquired and debts assumed with respect to a bank after the appointment of the receiver for the bank takes effect or with respect to claims acquired and debt assumed securely before that decision takes effect.

**Termination of current contracts**

**Article 159:**

- (1) All current contracts or portions of contracts of a bank for which the receiver has been appointed for the delivery of goods or services, including contracts of sale, rental and lease contracts, hire purchase contracts and employment contracts, may be terminated unilaterally by the receiver within a reasonable time after its appointment.
- (2) Such counterparty referenced in paragraph 1 of this article may submit a claim to the Commission for compensation for breach of contract.
- (3) Compensation to counterparties as referenced in paragraph 2 of this article shall be determined as of the date of termination and shall be limited to actual direct damages incurred and shall not include any damage for lost profits or opportunity or non-monetary damages.
- (4) The claims for compensation under paragraph 2 of this article shall rank as general unsecured claims under subparagraph 8 of paragraph 1 of Article 162 of this law.

## **Negotiated settlements**

### **Article 160:**

- (1) The receiver for a bank may enter into negotiated settlements of claims with any creditor and debtor of the bank.
- (2) The negotiated settlements referenced in paragraph 1 of this article shall not be subject to review by the Commission or appeal to any court.

## **Secured claims**

### **Article 161:**

- (1) The receiver shall sell at public auction the assets securing approved claims of creditors against the bank or securing claims of the bank against others, except to:
  - 1- securities, foreign currencies and other assets that can be readily sold at market may be sold in the markets where they are traded; and
  - 2- Securities, foreign currencies and other assets of the bank that secure debts of the bank and that can readily be sold at market by the creditors holding the assets.
- (2) If the receiver determines that no reasonable price can be obtained for assets referred to in paragraph 1 of this article in a public auction, the receiver may sell the assets privately at a fair price as determined by the receiver.
- (3) The assets of a bank for which the receiver has been appointed other than the assets referred to in sub-paragraph (2) of paragraph 1 of this Article, must be placed at the disposal of the receiver upon his request.
- (4) Any dispute between the receiver and a secured creditor as to the value of an asset securing a claim shall be resolved by the Commission. In the event that the asset is sold at market or at public auction, the sales price at market or at public auction shall be conclusive as to the value of the asset.

## **Priority of payments**

### **Article 162:**

- (1) In the event of liquidation of a bank for which the receiver has been appointed, the assets of such bank shall be distributed among its creditors in the following order of priority:
  - 1- claims of Da Afghanistan Bank in relation to loans extended to the bank;
  - 2- all costs and expenses on account of the administration of the receivership;
  - 3- all costs and expenses on account of the administration of the conservatorship;
  - 4- claims in relation to insured deposits;

- 5- claims in relation to loans extended to the bank in the course of receivership
  - 6- claims on account of uninsured deposits that are not in the form of debt securities;
  - 7- taxes due over a period of not more than two years preceding the date of the commencement of the receivership;
  - 8- with the exception of creditors mentioned under sub-paragraph (9) of this paragraph , unsecured claims of creditors, including claims of employees concerning their main salaries that are outstanding; and
  - 9- claims of subordinated creditors
- (2) If there are not sufficient assets to pay all of the claimants in any category referenced in paragraph 1 of this Article in full, each claimant shall be paid on a pro rata basis according to his proportionate share of such assets.
- (3) Remaining assets shall be transferred to the persons who were reflected in the records of the bank as shareholders of the bank on the date of the appointment of the receiver for the bank, pro rata to their respective ownership shares.

### **No compromise with creditors**

#### **Article 163:**

Except as provided in Article 160 of this Law, there shall be no compromise with creditors concerning a bank for which the receiver has been appointed.

### **General meeting and committee of creditors**

#### **Article 164:**

- (1) There shall be no meeting of creditors concerning the liquidation of a bank for which the receiver has been appointed unless, at the request of the receiver supported by Da Afghanistan Bank, the receiver decides that such meeting is needed.
- (2) There shall be no committee of creditors concerning the liquidation of a bank for which the receiver has been appointed unless, at the request of the receiver supported by Da Afghanistan Bank, the receiver decides that such committee is desirable to represent and protect interests of one or more creditors.
- (3) The receiver, after making decisions authorizing a meeting of creditors or a committee of creditors shall specify the tasks and scope of their authorities.

### **Distribution**

#### **Article 165:**

- (1) The receiver may enter the approved claims with the same rank in the same class and list them according to their priority of payment and record them in a distribution schedule in accordance with Article 162 of this Law. Except for the provisions of

Article 151 of this Law, the amounts to be paid on claims of the same class shall be determined on the basis of the same percentage applied to the amount of available funds.

- (2) The receiver shall make the payments listed in the distribution schedule referenced in paragraph 1 of this article. Amounts included in a distribution schedule that cannot be paid because the creditors cannot be identified or contacted shall be deposited in an account with Da Afghanistan Bank.
- (3) The receiver shall publish a notice in one newspaper of general circulation in the country inviting the creditors referenced in paragraph 2 of this article to come forward.
- (4) The amounts so deposited shall remain available for payment to the creditors or their heirs until the statute of limitations for the claims as provided by the law has run out. If such creditors or their heirs do not come forward, the unpaid amount shall be transferred to the State.

**Authority to pursue claims against persons responsible for causing losses to a bank**

**Article 166:**

- (1) If it is determined that any member of the board of supervisors or management board of a bank for which the receiver has been appointed has caused losses to the bank through violations of applicable laws or related regulations or breaches of fiduciary duties, such persons shall be held personally liable to the extent of the damage they have caused to the bank.
- (2) Where any violation or breach of fiduciary duty mentioned in paragraph 1 of this Article has been committed at the direction, instigation or suggestion of any shareholder, person with a qualifying holding in the bank, or other person participating in the conduct of the affairs of the bank, or in order to provide benefits to them, whether directly or indirectly, the provisions of paragraph 1 of this Article shall also be applied to such shareholder or person.
- (3) The receiver for a bank has the authority to commence and pursue lawsuits to recover losses caused to a bank by the actions of persons specified in this Article before the appointment of the receiver for that bank. Such lawsuits may be commenced and pursued even after the receivership of the bank has been completed.
- (4) If independent contractors including attorneys, accountants and appraisers has caused financial damage to banks through negligence, unlawful actions, or failure to act in connection with services provided to the bank prior to the appointment of the receiver, the receiver also may commence and pursue lawsuits to recover such losses.

**Issuance of temporary order before hearings**

**Article 167:**

- (1) In connection with any lawsuit referred to in paragraph 3 of Article 166 of this Law,

the competent court may, upon the application of the receiver, issue a temporary order:

- 1- prohibiting any defendant, or any enterprise controlled by any defendant, from taking any action to withdraw, transfer, remove, dissipate, or dispose of any funds, assets or other property;
  - 2- placing any such funds, assets or property under the control of the court; and/or
- (2) To administer such temporary issued under paragraph 1 of this article, the competent court may appoint one or more persons to administer such temporary order.
- (3) The competent court may issue a temporary order under paragraph 1 of this Article if it finds that:
- 1- there is a substantial likelihood that the receiver will prevail on the merits of the case;
  - 2- granting the receiver's application will not result in significant harm to any other party to the case; and
  - 3- it is in the public interest to grant the receiver's application.
- (4) In connection with a temporary order issued pursuant to paragraph 3 of this Article, the competent court may, at the request of the receiver, issue a written instruction to any bank or other financial institution to freeze summarily any bank account or accounts at such bank or institution that are maintained by, or under the control of, any person subject to such temporary order, or any enterprise controlled by that person, and to retain all moneys in any such account, pending the further instructions of the court.
- (5) A temporary order issued under paragraph 1 of this Article shall remain in place pending a decision or other disposal of the case by the court.

### **Cross-border receivership**

#### **Article 168:**

In order to promote equal access of domestic and foreign creditors to the assets of a bank for which the receiver has been appointed with cross border activities:

- 1- if a domestic bank for which the receiver has been appointed has branch offices or representative offices in a foreign country, Da Afghanistan Bank shall cooperate as much as possible with the authorities of that country;
- 2- if a creditor of a domestic bank for which the receiver has been appointed has received partial payment on his claims in a foreign country, the balance of his claims may be presented for payment together with costs incurred in the Afghan proceeding;
- 3- the receiver decides to what extent foreign decisions regarding conservatorship, receivership, liquidation, bank rehabilitation measures, or other measures concerning the resolution or other winding up of the affairs of non-resident banks should be

recognized with respect to their branch offices and representative offices in Afghanistan; and

- 4- if a non-resident bank is in liquidation, receivership or any equivalent proceeding in the country where its head office is located or where it principally carries on business, Da Afghanistan Bank may, if it deems advisable in the interest of the creditors of that bank, authorize the transfer to the liquidator, receiver, or equivalent official in that country of such assets of the non-resident bank located in Afghanistan.

### **Termination of receivership**

#### **Article 169:**

- (1) The receivership of a bank shall be considered complete when all assets and liabilities of the bank have been sold or liquidated and the proceeds have been paid to the creditors of the bank or deposited with Da Afghanistan Bank to remain available for payment to creditors of the bank pursuant to paragraph 4 of Article 165 of this Law.
- (2) When the affairs of a bank in receivership have been completely wound up, the Supreme Council of Da Afghanistan Bank shall adopt a resolution that the bank shall be considered dissolved as of the date of the resolution, and shall direct where the books and records of the bank and the receivership shall be deposited.
- (3) Upon resolution referenced in paragraph 2 of this article, the central register of banks shall remove the bank from the registry.

### **Term of receivership**

#### **Article 170:**

The receiver shall carry out the completion of receivership of a bank in a reasonable time period.

### **Reports of receiverships**

#### **Article 171:**

- (1) The receiver shall maintain a full accounting of each receivership of a bank that it conducts under this Law.
- (2) With respect to each such receivership, the receiver shall make an annual accounting or report, as appropriate, available to Da Afghanistan Bank, the Ministry of Finance, and the Parliament.
- (3) The receiver shall make available the report mentioned in paragraph 2 of this article to any shareholder of the bank for which the receiver was appointed, or any other member of the public, upon request.
- (4) The receiver shall retain the accounting records for a period of 6 years, unless directed otherwise by a competent court.

**CHAPTER XIV  
PENALTIES PROVISIONS**

**Authorized use of word “Bank” and authorized acquisition of qualifying holdings**

**Article 172:**

- (1) Any person who contravenes the prohibitions in paragraphs 1 or 3 of Article 3 of this law shall be liable for a criminal penalty not exceeding 20 million Afghanis, or imprisonment for not more than 5 years, or both.
- (2) Any person who violates the requirement stated in paragraph 1 of Article 21 of this Law, or fails or refuses to comply with an order under paragraph 5 of Article 24 of this law, shall be subject to a criminal penalty of not more than 20 million Afghanis, or imprisonment for not more than 5 years, or both.

**Violation of laws and regulations of Da Afghanistan Bank**

**Article 173:**

- (1) A fine imposed subparagraph (3) of paragraph 2 of Article 107 of this law shall be for per violation or practice, or for each day that the violation or practice continues, as: in the case of a natural person, not more than 250,000 Afghanis; and in the case of a legal person, not more than 1 million Afghanis.
- (2) Da Afghanistan Bank may, in connection with the imposition of a fine upon a natural person under paragraph 1 of this article, prohibit a bank or any enterprise in the same group as the bank from paying such fine on behalf of such person.

**Chapter XV  
Miscellaneous Provisions**

**Appeals**

**Article 174:**

- (1) The Commission shall have no power to stay, reverse or set aside decisions to commence conservatorship or receivership or to stay, reverse or set aside decisions and actions taken in conservatorship and receivership.
- (2) A person, who is not satisfied with a decision of the commission, may file an appeal in competent court under this law. Where such an appeal concerns actions and decisions relating to conservatorship or receivership, the Supreme Court shall examine the lawfulness of decisions to commence conservatorship and receivership and other decisions and actions taken in conservatorship and receivership. The Court may award in such cases shall be limited to damages only and have no power in such cases to stay, reverse or set aside decisions to commence conservatorship or receivership or to stay, reverse or set aside decisions and actions taken in conservatorship and receivership including but not limited to purchase and



assumption transactions.

### **Transitional provisions**

#### **Article 175:**

Banks that are licensed and operating in the Republic of Afghanistan on the date of entry into force of this Law, persons with qualifying holdings in such banks, and enterprises that are members of the same groups as such banks, as well as branch offices and representative offices of foreign banks operating in the Republic of Afghanistan, shall have a period of 12 months from the date of entry into force of this Law to bring their operations into compliance with the requirements of this Law.

### **Superiority of the law**

#### **Article 176:**

In the case of conflict between the provisions of this law and other legislations, the provisions of this law shall prevail.

### **Enactment of banking regulations, procedures, guidelines and circulars**

#### **Article 177:**

- (1) Da Afghanistan Bank may propose regulations, and enact guidelines and circulars to better implement the provisions of this Law.
- (2) Da Afghanistan Bank shall publish on the designated website a draft of the proposed text of any regulations, circulars and guidelines to bring the proposed regulations, circulars and guidelines to the attention of the domestic banking industry, and shall send a copy of them to relevant persons to gather their comments and suggestions.
- (3) The relevant persons referenced in paragraph 2 of this article, may provide their comments to Da Afghanistan Bank in writing within a specified time of not less than one month after the date of publication of the draft.
- (4) The provisions of paragraphs 2 and 3 of this Article shall not apply to a proposed draft if Da Afghanistan Bank decides that the delay involved in complying with these provisions would be a serious threat to the interests of the banking system;

The guidelines and circulars under paragraph 1 of this article shall be for:

- 1- indicating the manner to exercise any of its functions and authorities under this Law;
- 2- explaining any provision of this Law for the guidance of banks in complying with its requirements;
- 3- indicating how Da Afghanistan Bank expects banks to conduct their business in order to meet the requirements of this Law or other laws ;
- 4- specifying business practices which, in the judgment of Da Afghanistan Bank, could be detrimental to the soundness or financial stability of banks, or the financial system as a whole.

- (5) The regulations, guidelines, and circulars proposed and issued by Da Afghanistan Bank in accordance with this Article may also pertain to bank holding companies, members of the board of supervisors or management board of banks and bank holding companies, persons having qualifying holdings in banks and bank holding companies, and enterprises in the same group as banks and bank holding companies.
- (6) Da Afghanistan Bank shall register and keep such procedures, guidelines and circulars under this paragraph.

**Entry into force**

**Article 178:**

This Law shall take effect upon the date of its issuance and shall be published in the Official Gazette, and as of effective date of this law, the Banking Law published in Official Gazette number 819, dated 1382/11/30 and any other provisions that conflict with this law, are nullified.