

**LAW OF BANKING IN AFGHANISTAN**

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## CHAPTER I GENERAL PROVISIONS

### Article 1. Principal definitions

Wherever used in this Law, the following terms shall have the following meanings:

"*administrator*" means any person who is a member of the Board of Supervisors, the Management Board or the Audit Committee of a bank, and for any office of a bank "*administrator*" shall mean any officer of the bank assigned to work at that office;

"*Afghanistan*" means the Islamic State of Afghanistan;

"*bank*" means a person engaging in the business of receiving money deposits or other repayable funds from the public for the purpose of making credits or investments for his own account;

"*bank holding company*" means a company that is regulated by the bank regulator of the country where it maintains its head office and that has one or more subsidiaries with banking licenses;

"*banking license*" means an indefinite authorization issued by Da Afghanistan Bank granting the right to a company to engage in the business of receiving money deposits or other repayable funds from the public and extending credits or investments for its own account;

"*banking activities*" means the activities that are listed in Article 33;

"*branch office*" means a place of business forming a legally dependent part of a bank where all or some banking activities are conducted; for the purposes of this Decree Law, all domestic branch offices of a non-resident bank shall be treated as a single

branch office; all communications from Da Afghanistan Bank to any such branch office may be validly made to the branch office notified by the non-resident bank to Da Afghanistan Bank or failing such notification to a branch office selected by Da Afghanistan Bank;

"*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 and to pay interest or other charges on such amount, whether secured or unsecured; any extension of the due date of a debt; any guarantee issued; and 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;

"*debt security*" means any negotiable instrument of indebtedness and any other instrument equivalent to such instrument of indebtedness, and any negotiable instrument giving the right to acquire another negotiable debt security by subscription or exchange; negotiable debt securities may be in certificated or in book-entry form;

"*deposit*" means a sum of money paid to a person and credited to a current account or to a savings deposit account maintained with that person, terms under which the deposit will be repaid or transferred to another account, with or without interest or a premium, either on demand or at a time or in circumstances agreed by or on behalf of the depositor and that person;

"*domestic*" when applied to a juridical person means a juridical person whose head office is located in Afghanistan, and when applied to an office means an office whose principal place of business is located in Afghanistan;

*“dormant account”* has the meaning given in Article 36;

*“fit and proper person”* means a person who may be regarded as honest and trustworthy and whose professional qualifications, background and experience, financial position, or business interests do not disqualify that person in the judgment of Da Afghanistan Bank to be an owner, administrator or conservator of a bank; no person shall be regarded as a fit and proper person if he has been convicted by a criminal court of an offense for which he was or could have been sentenced to imprisonment without the option of a fine unless such sentence was or would have been motivated by his religious or political views or activities, or if he has been declared bankrupt by a court of law, or if he, on grounds of personal misconduct unrelated to his religious or political views or activities, has been disqualified or suspended by a competent authority from practicing a profession;

*“Da Afghanistan Bank”* means the central bank of Afghanistan;

*“Financial Services Tribunal”* and *“Tribunal”* mean the Financial Services Tribunal established by Article 108 of the Law for Da Afghanistan Bank;

*“non-resident”* when applied to a juridical person or office means a juridical person or office that is not a domestic juridical person or office;

*“person”* means a natural person or a juridical person, or both;

*“qualifying holding”* means a direct or indirect holding in an undertaking which represents 10 percent or more of the capital or the voting rights or which makes it possible to exercise significant influence over the management of the undertaking in which the holding subsists;

“*representative office*” means a place of business forming a legally dependent part of a bank where no deposits or other repayable funds may be received from the public;

"*subsidiary*" means any juridical person in which another person or group of persons acting in concert holds the equivalent of fifty percent or more of the voting shares, or a qualifying holding that permits such other person or group of persons to exercise effective control over the management or policies of the juridical person in which the holding subsists.

## **Article 2. Prohibited activities and sanctions**

1. No person shall engage in the business of receiving money deposits or other repayable funds from the public for the purpose of making credits or investments for his own account in Afghanistan without a banking license issued by Da Afghanistan Bank, other than a person listed in paragraph 2.

2. The following persons shall be exempt from the requirements of this Law:

- 1) persons licensed and supervised pursuant to legislation of Afghanistan other than this Law to receive deposits or other repayable funds from the public for the purpose of making credits or investments for their own account in Afghanistan;
- 2) persons who fund the credits they make exclusively from non-repayable capital subscriptions and the proceeds of credits received from financial institutions or debt securities issued in the capital markets; and



- 3) 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; exemptions so granted by Da Afghanistan Bank may be conditional or limited in time, or they may be partial and list certain provisions of this Law that shall apply to the person receiving the exemption.

3. No one shall use the word "bank" or derivatives of the word "bank" in respect of a business, product or service without a banking license issued by Da Afghanistan Bank, unless such usage is established or recognized by law or international agreement, or unless it shall be clear from the context in which the word "bank" is used that it does not concern banking activities. 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, provided that the word "representative office" is added. Banks whose banking license has been revoked shall carry in their name the words "bank in liquidation."

4. Da Afghanistan Bank shall be empowered to enter the offices and to examine the accounts, books, documents and other records of any person if Da Afghanistan Bank determines that there are reasonable grounds to suspect that such person engages in activities that are incompatible with the preceding provisions of this Article 2; immediately upon the request of Da Afghanistan Bank, law enforcement officials shall, if necessary by use of force, assist Da Afghanistan Bank to gain access to the premises of such person and to examine the accounts, books and other records of such person.

5. If Da Afghanistan Bank determines that a person engages in activities that are incompatible with the preceding provisions of this Article 2, Da Afghanistan Bank shall serve an order upon that person promptly to cease such activities. If Da Afghanistan Bank determines that, within one calendar week from the date of service of its order, the activities have not ceased, Da Afghanistan Bank shall apply to the Financial Services Tribunal and the Tribunal

may upon such application decide that the assets, books and records of that person be seized and secured by Da Afghanistan Bank. Within one calendar week following the date of its decision, the Tribunal shall commence hearings concerning the matter in which shall participate Da Afghanistan Bank, the person addressed by the order of Da Afghanistan Bank, and such other interested parties as the Tribunal may invite. Upon conclusion of the hearings, the Tribunal shall either decide upon the liquidation of the assets of that person in accordance with Article 63 or lift the seizure and decide if and to what extent, Da Afghanistan Bank must pay damages to such person as determined by the Tribunal. In case of a liquidation, the proceeds of liquidation shall be used to pay judicial expenses and other costs of Da Afghanistan Bank, depositors and other creditors of the person concerned, in that order of preference, while any remaining assets shall be transferred to their owner or be forfeited to the State.

**Article 3. Public consultation procedure for banking regulations**

1. If Da Afghanistan Bank proposes to issue a regulation pursuant to this Law, it shall publish a draft of the proposed text of the regulation in the manner appearing to it to be best calculated to bring the proposed regulation to the attention of the domestic banking industry. The draft shall be accompanied by an explanation of the purpose of the proposed regulation and a notice that comments about the proposed regulation may be made to Da Afghanistan Bank within a specified time of not less than one month after the date of publication of the draft.

2. In preparing the final text of the regulation, Da Afghanistan Bank shall have regard to any comment made to it in accordance with paragraph 1. If the regulation is issued, Da Afghanistan Bank shall publish an account in general terms of the comments made to it in accordance with paragraph 1 and its response to them. If the text of the regulation differs from

the draft published under paragraph 1 to an extent which, in the opinion of Da Afghanistan Bank, is significant, Da Afghanistan Bank shall also publish a general review of the difference.

3. The provisions of paragraphs 1 and 2 shall not apply to a proposed regulation 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; such decision shall be explained in the preamble to the regulation.

**Article 4. Treatment of foreign interest in domestic banking activities**

1. Non-resident banks and non-resident bank holding companies may be permitted by Da Afghanistan Bank to have qualifying holdings in banks licensed by Da Afghanistan Bank, and to maintain domestic subsidiaries under banking licenses and domestic branch offices and domestic representative offices under permits issued by Da Afghanistan Bank, unless Da Afghanistan Bank determines that such holdings or the activities of such subsidiaries or offices would be contrary to the orderly development and proper functioning of the national banking system of Afghanistan.

2. In regulating and supervising domestic subsidiaries of non-resident banks and bank holding companies, domestic branch and representative offices of non-resident banks, and non-resident branch and representative offices of domestic banks, Da Afghanistan Bank shall closely cooperate with the foreign bank regulators concerned, on a basis of reciprocity, ensuring timely exchanges of information adequate to discharge its supervisory responsibilities while preserving the confidential nature of such information. To that end, Da Afghanistan Bank shall enter into cooperative agreements with foreign bank regulators.

**Article 5. Immunity from suit**

No person shall be liable in damages for any act or omission in the discharge or purported discharge of his functions under this Law while a member of the Supreme Council of Da Afghanistan Bank, or while a Governor, Deputy Governor, officer, employee or agent of Da Afghanistan Bank, or while a conservator or receiver appointed pursuant to this Law, unless it is shown that the act or omission was in bad faith.

**CHAPTER II LICENSES AND PERMITS**

**Article 6. Banking licenses and permits**

1. Da Afghanistan Bank has the exclusive right to issue and to revoke banking licenses, and to issue and to revoke permits for banks to operate branch offices and representative offices.

2. Banking licenses and permits 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 by Da Afghanistan Bank, unless they specify another effective date.

3. By its decision to grant a banking license or permit, Da Afghanistan Bank may attach conditions or restrictions to the banking license or permit; these may subsequently be modified by Da Afghanistan Bank.

4. Banking licenses may be issued only to companies established and registered pursuant to the law of Afghanistan that have an initial authorized and paid-in capital of not less than 250 million afghanis or such higher amount as shall be specified by regulation of Da

Afghanistan Bank for the purpose.

**Article 7. Applications for banking licenses and permits; fees**

1. Banking licenses and permits shall be applied for in writing to Da Afghanistan Bank. Applications shall be in such form and detail, and shall be accompanied by such documents, as shall be prescribed by regulation of Da Afghanistan Bank.

2. Before it approves an application for a banking license or a permit, Da Afghanistan Bank shall be authorized to carry out financial, criminal, personal and professional background checks of owners of qualifying holdings in the bank and administrators of the bank for which the application is pending. To that end, financial institutions and the national and local tax collection and law enforcement authorities shall provide such information to Da Afghanistan Bank as Da Afghanistan Bank shall request.

3. In order to cover part of its expenses associated with bank licensing and supervision, Da Afghanistan Bank shall charge and collect an application fee on account of each request for a banking license or permit as well as a maintenance fee for each year that a banking license or permit is in effect.

4. Applications for a banking license or permit shall be rejected if Da Afghanistan Bank is not satisfied that the conditions specified by or pursuant to this Law for issuing such license or permit are fulfilled. Da Afghanistan Bank shall publish by regulation standards that it will apply in evaluating applications for a banking license or permit.

**Article 8. Licensing procedure for companies that are not yet established**

1. For companies that are not yet established, the procedure for a banking license consists of two stages, namely, a first stage beginning with the submission of a preliminary application for a banking license by the founders of the company, and a second stage beginning with the submission of a final application for a banking license by the company after it has been established and registered. The applications shall be accompanied by supporting documents showing that the applicable general conditions specified by Article 12 for issuing the banking license are met in accordance with regulations issued by Da Afghanistan Bank. During the application process, Da Afghanistan Bank may require that additional documentary evidence be submitted in support of the application.

2. When, after having received a preliminary application for a banking license and having met with the applicants and the proposed administrators of the bank, Da Afghanistan Bank determines that the preliminary application and supporting documents are satisfactory, Da Afghanistan Bank shall notify the applicants that their preliminary application is complete.

3. Within three months from the date of the applicant's notification that the preliminary application for a banking license is complete, Da Afghanistan Bank shall approve or reject the application, and shall send the applicants a copy of its decision; except that for preliminary applications submitted by one or more non-resident applicants this period shall be six months. Decisions approving a preliminary application:

- 1) must prescribe the minimum amount of capital of the bank to be subscribed and paid in before a banking license may be issued; in determining the minimum amount of capital of the bank, Da Afghanistan Bank will take account of, in

particular, the business plan and banking activities proposed for the bank in the documents supporting the application;

- 2) must list any conditions or restrictions that would be attached to the banking license when issued; and
- 3) may impose special conditions to be met by the applicants before a banking license may be issued, explaining in detail what must be done to meet the special conditions.

Decisions rejecting a preliminary application, specifying conditions or restrictions to be attached to the banking license, or imposing special conditions on the applicants, must explain the grounds on which the application was rejected or give the reasons for the conditions or restrictions.

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. Within six months from the date of the decision approving the preliminary application, the company for which the application was made shall be established and registered in the respective registry by Afghanistan as a company, the minimum amount of capital prescribed by Da Afghanistan Bank shall be subscribed and paid in, and a final application for a banking license shall be submitted to Da Afghanistan Bank by the company, failing which the decision approving the preliminary application shall terminate. A final application shall be accompanied by such supporting documents as shall be required by regulation of Da Afghanistan Bank, including:

- 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.

5. As soon as Da Afghanistan Bank determines that the final application and supporting documents provided pursuant to paragraph 4 are satisfactory and payments of capital subscriptions have been received in the account of the company with Da Afghanistan Bank in an aggregate amount at least equal to the minimum amount prescribed by Da Afghanistan Bank, Da Afghanistan Bank shall issue the banking license and send a written notice thereof to the applicants. Da Afghanistan Bank shall specify the conditions concerning the funds held in the account of the company with Da Afghanistan Bank, and provide for their release to the extent applicable.

**Article 9. Licensing procedure for existing companies**

1. Companies 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 properly registered and that the applicable general conditions specified by Article 12 for issuing the banking license are met in accordance with regulations issued by Da Afghanistan Bank. During the application process, 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 administrators of the bank, Da Afghanistan Bank determines that the application and supporting documents provided are satisfactory, Da Afghanistan Bank shall notify the applicant that the application is complete. Thereafter, the procedure specified in paragraphs 3, 4 and 5 of Article 8 shall be followed, except that the capital subscriptions to be paid in shall not exceed the amount required to bring the total paid-in capital of the bank to the



minimum level of capital required by Da Afghanistan Bank.

**Article 10. Procedure to obtain permits for offices**

1. No domestic bank shall maintain a domestic or non-resident branch office or a non-resident representative office, and no non-resident bank shall maintain a domestic branch office or a domestic representative office, without a permit issued by Da Afghanistan Bank.

2. The permit for a branch office or a representative office shall be requested by submitting to Da Afghanistan Bank an application supported by documents showing that the applicable general conditions specified by Article 12 for issuing the permit are met in accordance with regulations issued by Da Afghanistan Bank. During the application process, Da Afghanistan Bank may require that additional documentary evidence be submitted in support of the application.

3. When, after having received an application for a permit for a branch office or a representative office and having met with the owners of the bank and the proposed administrators of the office, Da Afghanistan Bank determines that the application and supporting documents provided are satisfactory, Da Afghanistan Bank shall notify the bank that the application is complete.

4. Within three months from the date of its notification that the application for a permit for a branch office or a representative office is complete, Da Afghanistan Bank shall approve or reject the application, and shall send the bank a copy of its decision. When the application is approved Da Afghanistan Bank shall promptly issue the permit. The permit shall describe the nature and scope of the activities that the office may engage in and shall list any

conditions or restrictions attached to the permit. Decisions rejecting an application for a permit or attaching conditions or restrictions to the permit, shall explain the grounds on which the application was rejected or give the reasons for the conditions or restrictions.

5. No permit shall be issued by Da Afghanistan Bank for a non-resident branch office or a non-resident representative office of a domestic bank unless Da Afghanistan Bank is satisfied, following consultations with the bank regulator of the country where the office is to be located, that the office will be adequately supervised by that bank regulator in close cooperation with Da Afghanistan Bank.

#### **Article 11. Cooperation with foreign bank regulator**

Banking licenses for domestic subsidiaries of non-resident banks or non-resident bank holding companies and permits for domestic branch offices and domestic representative offices of non-resident banks may be issued only if an agreement or arrangement of cooperation has been concluded between Da Afghanistan Bank and the competent foreign authorities that supervise the banking activities of the non-resident bank or bank holding company concerned, specifying the allocation of responsibilities between Da Afghanistan Bank and the foreign authorities for supervising the proposed subsidiary, branch office or representative office and the rules and procedures governing exchanges of information between Da Afghanistan Bank and the foreign authorities on the administration, operation and financial condition of the non-resident bank or bank holding company and the proposed subsidiary, branch office or representative office.

**Article 12. General conditions for issuing a banking license or a permit**

1. Taking into account the need to ensure the sound and prudent management of banks, a banking license may be issued pursuant to this Law only if Da Afghanistan Bank is satisfied:

- 1) that in its administration and operations the bank will comply with the requirements of the law of Afghanistan;
- 2) that the initial capital of the bank will be at least equivalent to the minimum specified by regulation of Da Afghanistan Bank and that it will be sufficient to support the banking activities that the bank plans to engage in;
- 3) that no facts are known that warrant the assumption that the influence that would be exercised on the bank by one or more of its owners with a qualifying holding in the bank would threaten the sound and prudent management of the bank;
- 4) that the relationship between the bank and a non-resident enterprise with a qualifying holding in the bank will not hinder Da Afghanistan Bank in the discharge of its supervisory responsibilities because that enterprise would not be supervised effectively in the country or countries where it has its head office or a subsidiary or branch office or because the supervisory authorities of one or more of those countries would not cooperate with Da Afghanistan Bank;
- 5) that the owners having a qualifying holding in the bank, when natural persons, will be fit and proper persons and, when legal persons, have administrators who will be fit and proper persons;

- 6) that the administrators of the bank will be fit and proper persons;
- 7) that the internal control and risk management procedures of the bank will be adequate;
- 8) that the business plan and financial projections for the bank are adequate;
- 9) that, if the application concerns a subsidiary of a non-resident bank or a bank holding company, the bank or bank holding company has a relevant license 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) that, if the application concerns the subsidiary of a non-resident bank or a non-resident bank holding company, the bank regulator of the country where the head office of the non-resident bank or bank holding company is located has authorized the establishment and licensing of the subsidiary and, following consultations between Da Afghanistan Bank and that bank regulator, that the non-resident bank or bank holding company is adequately supervised on a consolidated basis by that regulator;
- 11) that, if the application concerns the subsidiary of a bank or bank holding company that has one or more non-resident banking subsidiaries, and following consultations between Da Afghanistan Bank and the foreign authorities supervising the activities of the other banking subsidiaries, that the other banking subsidiaries are adequately supervised on a consolidated basis by such foreign authorities;

- 12) that membership of the proposed bank in a group of companies will not hinder Da Afghanistan Bank in the discharge of its supervisory responsibilities; and
- 13) that such other conditions as Da Afghanistan Bank may specify by regulation will be met.

2. Taking into account the need to ensure the sound and prudent management by banks of their branch offices and representative offices, a permit for such office may be issued pursuant to this Law only if Da Afghanistan Bank is satisfied:

- 1) that in its administration and operations the office will comply with the requirements of the law of Afghanistan;
- 2) that the administrators of the office will be fit and proper persons;
- 3) that the internal control and risk management procedures of the office will be adequate;
- 4) that the business plan and financial projections for the office are adequate;
- 5) that, if the application concerns a domestic branch office of a non-resident bank, the bank is licensed to receive deposits or other repayable funds from the public in the country where its head office is located;
- 6) that, if the application concerns a domestic branch office or a domestic representative office of a non-resident bank, that bank 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 on account of the branch office or representative office;
- 7) that, if the application concerns a domestic branch office or a domestic representative office of a non-resident bank, the bank regulator of the country where the head office of the bank is located has authorized the establishment of the office and will adequately supervise the bank;

- 8) that, if the application concerns a non-resident branch office or a non-resident representative office of a domestic bank, the bank regulator of the country where the office is to be located will adequately supervise the office in close cooperation with Da Afghanistan Bank; and
- 9) that such other conditions as Da Afghanistan Bank may specify by regulation will be met.

### **Article 13. Register of banks**

1 A central register shall be kept by Da Afghanistan Bank for inspection by the public. The register shall record for each licensed bank, for each domestic branch office and for each domestic representative office: the name, address and registration number; the date on which their banking license or permit was issued or revoked by Da Afghanistan Bank; the charter and other statutory documents of the bank concerned; and the addresses of offices abroad, if any; for branch offices and representative offices the name and address of the bank to which they belong; and information concerning the administrators of the bank or the office including the scope of their authority to commit the bank or the office and their specimen signatures.

2. The register shall record the date on which bankruptcy proceedings are opened against such bank or office or on which such bank or office is closed.

3. Banks shall notify Da Afghanistan Bank in writing within three days of changes originating with them in the information recorded in the register concerning them or their offices.

### **Article 14. Revocation of banking license or permit**

1. The banking license of a bank may be revoked only by decision of Da Afghanistan

Bank on one or more of the following grounds:

- 1) the license has been obtained on the ground of false or fraudulent statements or other irregularities that occurred in connection with the license application;
- 2) the bank has not made use of the banking license within six months after the date of its effectiveness, or the bank has ceased for more than six months to engage in the business of receiving money deposits or other repayable funds from the public or making credits or investments for its own account;
- 3) the bank no longer possesses the minimum amount of capital and reserves required by law or by regulation of Da Afghanistan Bank or can no longer be relied upon to fulfill its obligations towards its creditors, and in particular no longer provides security for the assets entrusted to it;
- 4) the bank conducts its administration or operations in an unsound or imprudent manner or otherwise violates a law, or a regulation or order of Da Afghanistan Bank, or any condition or restriction attached to a license, permit or authorization issued to the bank by Da Afghanistan Bank;
- 5) the bank, or bank holding company or bank of which the bank is a subsidiary, or a subsidiary of the bank, has engaged in criminal activities;
- 6) any of the conditions listed in sub-paragraphs 3, 4, 5, 6 and 7 of paragraph 1 of Article 12 is not being fulfilled;
- 7) the bank fails to comply with an order given to it by Da Afghanistan Bank or any other requirement imposed on it by law or by regulation of Da Afghanistan Bank;
- 8) the bank has become a subsidiary of another enterprise without the prior written

authorization of Da Afghanistan Bank or the provisions on qualifying holdings set out in Article 21 have not been observed;

- 9) the bank or bank holding company of which the bank is a subsidiary has lost its operating license;
- 10) the owner or owners of the bank have decided to dissolve or to liquidate the bank;
- 11) a reorganization, amalgamation, merger or division of the bank has occurred without the written authorization of Da Afghanistan Bank, or the bank has otherwise ceased to exist as a legally or operationally independent entity;
- 12) Da Afghanistan Bank is hindered in supervising the bank because 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; or
- 13) Da Afghanistan Bank is hindered in supervising the bank because the bank is a member of a group of companies, or because the bank is a subsidiary of a non-resident bank or a non-resident bank holding company that is not adequately supervised; or
- 14) bankruptcy proceedings have been opened against the bank.

2. The permit for a branch office or representative office may be revoked only by decision of Da Afghanistan Bank on one or more of the following grounds:

- 1) the permit has been obtained on the ground of false or fraudulent statements or other irregularities that occurred in connection with the permit application;
- 2) the bank holding the permit has lost its banking license, or bankruptcy



- proceedings have been opened against the bank, or its owners have decided to dissolve or to liquidate the bank;
- 3) the bank holding the permit has not made use of the permit within twelve months after the date of its effectiveness;
  - 4) the bank holding the permit or the office conducts its activities in an unsound or imprudent manner threatening its solvency or its liquidity, or otherwise violates a law, or a regulation or order of Da Afghanistan Bank, or any condition or restriction attached to a permit or authorization issued for the office by Da Afghanistan Bank;
  - 5) the bank holding the permit or the office has engaged in criminal activities;
  - 6) any of the conditions listed in sub-paragraphs 2 and 3 of paragraph 2 of Article 12 is not being fulfilled;
  - 7) the bank holding the permit or the office fails to comply with an order given to it by Da Afghanistan Bank or any other requirement imposed on it by law or by regulation of Da Afghanistan Bank;
  - 8) the bank holding the permit has decided to close the office;
  - 9) Da Afghanistan Bank is hindered in supervising the office because all or part of the administration, books and records of the office have been moved outside Afghanistan without the prior written consent of Da Afghanistan Bank; or
  - 10) Da Afghanistan Bank is hindered in supervising the office because the bank holding the permit for the office is not supervised as necessary.
3. Decisions to revoke a banking license or permit pursuant to this Article shall be

in writing and include the grounds on which they are taken. Each such decision shall be promptly served on the bank concerned and be registered in the central register of banks by Da Afghanistan Bank. The requirement of service of such decision on a non-resident bank may be met by serving the decision on its branch office or representative office addressed by the decision.

4. Decisions to revoke a banking license of a domestic bank or a permit for a branch office of a non-resident bank pursuant to this Article shall include the appointment of a conservator to take control of the assets, books and records of the bank or branch office in accordance with Article 54.

5. Decisions taken pursuant to this Article shall take effect at the time that they are served on the bank concerned in accordance with paragraph 3.

#### **Article 15. Revocation of banking license or permit upon request**

1. A bank may apply to Da Afghanistan Bank in writing to revoke its banking license or its permit for a branch office or a representative office. The application shall be accompanied by a liquidation plan adopted by the bank and by the financial statements of the bank as of a date preceding the application by not more than three months, together with a report of an independent external auditor acceptable to Da Afghanistan Bank. Within ninety days after its receipt of the request, Da Afghanistan Bank shall decide on the request.

2. The request may be approved only if Da Afghanistan Bank approves the liquidation plan, and if Da Afghanistan Bank is satisfied that the bank or office will be liquidated in accordance with the provisions of Article 62 and that the bank is solvent and will have adequate liquid funds to pay its liabilities to depositors and other creditors upon revocation of the banking license or permit.

3. The decision of Da Afghanistan Bank shall be communicated in writing by Da

Afghanistan Bank to the bank as soon as possible, giving, in the event of a denial of the request, the grounds therefor.

4. Decisions to revoke a banking license or permit upon request pursuant to this Article shall be promptly registered in the central register of banks by Da Afghanistan Bank and have immediate effect.

#### **Article 16. Publication of decisions to revoke banking license or permit**

1. Within five days from the date of the decision to revoke a banking license of a bank or a permit for a domestic branch office or representative office, Da Afghanistan Bank shall publish the decision in a newspaper of general circulation and in the Official Gazette.

2. From the time that a banking license or permit is revoked, the bank or office concerned shall carry in its name the words “in liquidation” and shall be prohibited from engaging in any of the activities authorized by the banking license or permit, except as required for winding up such activities. As soon as possible thereafter, the bank or office shall be liquidated under Article 62 or Article 63. During the winding up of its affairs, the bank or office shall otherwise continue to be subject to the provisions of this Law as if it were still operating under its banking license or permit.

### **CHAPTER III ORGANIZATION, OWNERSHIP AND ADMINISTRATION**

#### **Article 17. Creation of banks**

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

**Article 18. Legal structure of banks**

Banks shall be registered as companies. The specific legal type shall be specified by regulation of Da Afghanistan Bank. Banks shall not change their legal structure or organization without the prior written authorization of Da Afghanistan Bank.

**Article 19. Charter and by-laws**

1. Each bank shall have a charter that is approved by Da Afghanistan Bank and is deposited and registered with the central register of banks. Each amendment of the charter of a bank shall require the prior written authorization of Da Afghanistan Bank and must be registered with the central register of banks.

2. To be approved by Da Afghanistan Bank, charters of banks must include such provisions as shall be specified by regulation of Da Afghanistan Bank, in addition to those required by company law of Afghanistan.

3. Each bank shall be governed by by-laws, adopted by its general meeting of shareholders, which in compliance with its charter shall establish:

- 1) the structure of the organization and administration of the bank, including its operational and administrative units, their sub-units and functions, supervisory positions, and reporting relationships;
- 2) the duties of each departmental director and the units under his direction and supervision;
- 3) the functions of the audit committee and other permanent internal committees; and
- 4) the limits of the authority of the administrators of the bank to enter into

transactions in the name and for the account of the bank.

**Article 20. Capital structure of banks**

1. Every bank must at any time be able to show that its assets exceed its liabilities to third parties 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 require by regulation.

2. No bank shall decrease its capital and reserves by repurchasing shares or distributing capital or reserve assets to its owners without the prior written authorization from Da Afghanistan Bank.

**Article 21. Restrictions on qualifying holdings in banks**

1. No person may, without the prior written authorization of Da Afghanistan Bank, acquire a participation in a bank that alone or together with his existing participation in the bank constitutes a qualifying holding in that bank.

2. No person who has a qualifying holding in a bank may, without the prior written authorization of Da Afghanistan Bank, acquire a participation in that bank if such participation constitutes an increase of his qualifying holding in that bank causing the proportion of the voting rights or the capital held by him to reach or to exceed 20 percent, 33 percent or 50 percent or causing the bank to become a subsidiary of that person.

3. No person who has a qualifying holding in a bank may acquire a participation in another enterprise that constitutes a qualifying holding in that enterprise or increase such qualifying holding in that enterprise to reach or to exceed 20 percent, 33 percent or 50 percent of the voting rights or the capital held by him, before informing Da Afghanistan Bank thereof

in writing.

4. If a person acquires a participation that constitutes a qualifying holding in an enterprise that has a qualifying holding in a bank, or increases such qualifying holding in that enterprise to reach or to exceed 20 percent, 33 percent or 50 percent of the voting rights or the capital held by such person, that enterprise must promptly obtain the approval of Da Afghanistan Bank thereof in writing.

5. The authorization of Da Afghanistan Bank required for any person by paragraph 1, paragraph 2 or paragraph 4 may be requested by submitting to Da Afghanistan Bank a written application accompanied by supporting documents showing that the applicable conditions specified by paragraph 6 for granting the authorization are met in accordance with regulations issued by Da Afghanistan Bank. During the authorization process, Da Afghanistan Bank may require that additional documentary evidence be submitted in support of the request.

6. Da Afghanistan Bank may issue the authorization only to a person applying for the authorization if Da Afghanistan Bank is satisfied that the following conditions are met:

- 1) that the applicant is a natural person who is a fit and proper person;
- 2) that the applicant is a legal person whose administrators are fit and proper persons;
- 3) that the applicant has not engaged in criminal activities;
- 4) that no facts are known that warrant the assumption that the influence that would be exercised on the bank as a result of the acquisition would threaten the sound and prudent management of the bank;
- 5) that, as a result of the acquisition, the bank would not become a subsidiary of an enterprise afterwards will neither be a bank nor a bank holding company;

- 6) that, if as a result of the acquisition the bank would become a subsidiary of a non-resident bank or a non-resident bank holding company, the bank regulator of the country where the head office of the non-resident bank or bank holding company is located has given its authorization to the acquisition;
- 7) that the acquisition would not hinder Da Afghanistan Bank in the discharge of its supervisory responsibilities because a non-resident enterprise which would be linked to the bank as a result of the acquisition would not be effectively supervised in the country where its head office is located or because the supervisory authorities of that country could not be expected to cooperate with Da Afghanistan Bank; and
- 8) that such other conditions as Da Afghanistan Bank may specify by regulation would be met.

7. 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; except that for applications submitted by a non-resident applicant this period shall be six months. If Da Afghanistan Bank issues the authorization, it may fix a maximum period for completing the acquisition. Decisions rejecting an application must explain the grounds on which the application is rejected.

8. If any person acquires a participation without the prior written authorization of Da Afghanistan Bank required by paragraph 1 of this Article or fails to observe the maximum period allowed by Da Afghanistan Bank for completing the acquisition of such participation, that person may be ordered by Da Afghanistan Bank in writing that, before a date stated in the order, that person must dispose of his holding or such part of his holding in the bank as shall be specified in the order.

9. No person may dispose of a qualifying holding in a bank before informing Da

Afghanistan Bank thereof in writing. 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, 33 percent or 50 percent or so that the bank would cease to be his subsidiary, before informing Da Afghanistan Bank in writing of the size of his holding in the bank that he would retain.

10. Banks must without delay inform Da Afghanistan Bank of any acquisition or disposal of holdings in their capital, including stock redemptions by one or more shareholders, that cause such holdings to exceed or fall below one of the thresholds referred to in paragraph 2 or paragraph 9, as soon as they acquire knowledge thereof and within three business days at the latest. Banks shall also, within thirty days after the close of its financial year, inform Da Afghanistan Bank in writing of the names and addresses of shareholders having qualifying holdings and the sizes of such holdings.

11. If, at any time, Da Afghanistan Bank determines that it is no longer satisfied that one or more of the conditions specified or referred to in paragraph 6 apply with respect to a person having a qualifying holding in a bank, Da Afghanistan Bank may order that person before a date stated in the order to dispose of his holding in the bank or such part of his holding in the bank as shall be specified in the order.

12. From the date of an order given by Da Afghanistan Bank pursuant to paragraph 8 or paragraph 11 until the person named in the order has 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 attaching to the shares of capital stock of the bank to be disposed of shall be suspended and the membership in the Board of Supervisors of the bank of any member appointed by or on behalf of 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 plenipotentiary session, of the General Meeting of Shareholders.



13. Upon the request of Da Afghanistan Bank, the Financial Services Tribunal may appoint a special administrator who shall be authorized to exercise the voting rights and to replace any member of the Board of Supervisors suspended pursuant to paragraph 12. The special administrator shall be autonomous in the exercise of such voting rights and in carrying out the responsibilities of the member of the Board of Supervisors whom he replaces.

**Article 22. Administrative structure of banks**

1. Each bank shall be administered by a General Meeting of Shareholders as the supreme decision making organ of the bank, a Board of Supervisors as the organ responsible for supervision of the administration and operation of the bank, a Management Board as the responsible executive body carrying out day-to-day administration of the bank, and an Audit Committee responsible for accounting procedures and controls as well as for internal audits. Other boards and committees may be established by the bank's By-laws.

2. Before a person is appointed to serve on the Board of Supervisors, on the Management Board or on the Audit Committee of a bank, the bank must obtain the written authorization of Da Afghanistan Bank of the proposed appointment. Together with its request for authorization, the bank shall submit to Da Afghanistan Bank with respect to that person such documents as would have been required concerning that person if the request for authorization of membership of the person had been submitted to DAB in an application for a banking license pursuant to Article 9.

**Article 23. General Meeting of Shareholders**

1. The General Meeting of Shareholders of a bank shall have the following duties

and powers:

- 1) to adopt amendments to the Charter of the bank;
- 2) to adopt the By-Laws of the bank and amendments thereto;
- 3) to determine the general interest rate policies of the bank, the categories of assets that shall be suitable for investment of the liquid resources of the bank, and the other general financial, accounting, administrative and personnel policies of the bank;
- 4) to determine the organizational structure of the bank;
- 5) to establish and close subsidiaries, branch offices and representative offices of the bank;
- 6) to decide on the participation of the bank in the capital stock of other financial institutions;
- 7) to appoint and to dismiss the members of the Board of Supervisors, the Management Board and the Audit Committee of the bank and to determine their remuneration; such remuneration may not be tied to the financial condition or to the financial results of the bank;
- 8) to determine the powers of the administrators of the bank to enter into commitments in the name and for the account of the bank and the extent to which such powers may be delegated, except that the powers of members of the Board of Supervisors shall not be subject to delegation;
- 9) to adopt guidelines for the disclosure of commercial interests by the administrators of the bank under Article 28, and amendments to such guidelines;
- 10) to determine the budget of the bank, the terms and conditions of employment of the administrators of the bank, and the general structure of the conditions of employment of bank employees, agents;

- 11) to adopt increases in the authorized capital of the bank and to determine the terms and conditions on which shares of capital stock of the bank may be issued;
- 12) to approve the annual reports and financial statements of the bank, but only upon the recommendation of the Audit Committee of the bank; to determine the net income of the bank; and to decide what amount of such net income shall be transferred to any reserve or paid out as dividend to shareholders;
- 13) to establish special reserves on the books of the bank; and
- 14) to decide on the sale, merger, amalgamation, closure and liquidation of the bank.

2. Shareholders shall have voting rights corresponding to their holding of shares of capital stock of the bank. Each shareholder may exercise his voting rights at the General Meeting of Shareholders through an agent.

3. Regular and extraordinary sessions of the General Meeting of Shareholders may be held. Notices of the date, place and time of each session of the General Meeting of Shareholders, together with the agenda for that session, are sent to the shareholders at least thirty days before the meeting date, except that, if in an emergency urgent issues require a decision of the General Meeting of Shareholders, such notice may be given less than thirty days before the meeting date but should be given at least seven days before the meeting date to the extent practicable under the circumstances. No decisions shall be made on issues that are not on the agenda sent together with the notice. At least one regular session shall be held each year two months after completion of the external audit of the balance sheet and financial statements of the bank for the preceding financial year. Extraordinary sessions may be convened at the request of shareholders together holding 20 percent or more of total voting rights, the Board of Supervisors, the Management Board, and the Audit Committee.

**Article 24. Board of Supervisors**

1. The Board of Supervisors of a bank shall have the following duties and powers:
  - 1) to supervise the administration and operation of the bank;
  - 2) to advise the Management Board and the General Meeting of Shareholders;
  - 3) to convene by notice each session of the General Meeting of Shareholders and to adopt the agenda for each session, except that the agendas for sessions convened at the request of shareholders, the Management Board or the Audit Committee shall be adopted by them;
  - 4) to authorize transactions of the bank requiring a decision of the General Meeting of Shareholders if such authority is urgently needed;
  - 5) to warn the Management Board if it discovers an infraction by the bank of an applicable law or regulation, and to bring the infraction to the attention of Da Afghanistan Bank and the General Meeting of Shareholders, unless the Board of Supervisors decides that bringing the infraction to the attention of shareholders or Da Afghanistan Bank is unnecessary on the grounds that the infraction was a unique event and has ceased, that its adverse effects have been corrected, and that appropriate measures have been taken to prevent its recurrence, provided that the relevant findings shall be recorded in the minutes;
  - 6) to give instructions to the Management Board but only if and to the extent that these are needed to ensure sound and prudent management of the bank;
  - 7) to suspend members of the Board of Managers and members of the Audit

Committee who become disqualified to serve pursuant to a provision of this Law or in circumstances where their continued presence on the Management Board or the Audit Committee would be incompatible with the need to ensure sound and prudent management of the bank, and to replace them temporarily with other persons, until the suspended members have been reinstated or permanently replaced by the General Meeting of Shareholders; and

- 8) to represent the bank to the exclusion of the Management Board in all cases where the Board of Supervisors determines that there is a conflict of interest between the bank and two or more members of the Management Board.

Decisions taken by the Board of Supervisors pursuant to sub-paragraphs 4 to 8 shall be placed on the agenda of the next following session of the General Meeting of Shareholders.

2. The Board of Supervisors of a bank shall have an uneven number of not less than three and up to nine members. Board members shall be natural persons appointed by the General Meeting of Shareholders of the bank for a period of not more than four years; they may be reappointed for subsequent terms of equal length. The majority of members of the Board of Supervisors shall not be associated with the bank through ownership, management function, or employment, except as related to their function as members of the Board of Supervisors. The General Meeting of Shareholders shall designate a member of the Board of Supervisors to be Chairman of the Board of Supervisors.

3. A person shall not become a member of the Board of Supervisors of a bank, or shall by decision of the General Meeting of Shareholders of the bank be relieved of his membership of the Board of Supervisors, in the event that he is ineligible pursuant to Article 27.

4. The Board of Supervisors may take valid decisions by a simple majority of the

votes of its members participating in the meeting. Members may not abstain from voting.

**Article 25. Management Board**

1. The Management Board of a bank shall be responsible for the management and execution of the bank's activities.

2. The Management Board shall have an uneven number of not less than three members. The members of the Management Board shall be appointed by the bank's General Meeting of Shareholders for periods of not more than [four] years; they may be reappointed for subsequent terms of equal length. The General Meeting of Shareholders shall designate a member of the Management Board to be Chairman of the Management Board.

3. A person shall not become a member of the Management Board of a bank, or shall by decision of the General Meeting of Shareholders of the bank be relieved of his membership of the Management Board of the bank, in the event that he is or becomes ineligible pursuant to Article 27.

4. The Management Board may take valid decisions by a simple majority of the votes of its members participating in the meeting. Members may not abstain from voting.

**Article 26. Audit Committee**

1. The Audit Committee of a bank shall have the following duties and powers:

- 1) to establish appropriate accounting procedures, establish effective accounting and risk management controls for the bank, supervise compliance with such procedures and controls, and audit the bank's accounts and records;

- 2) to monitor compliance with the laws and regulations applicable to the bank and report to the Board of Supervisors thereon;
- 3) to deliver opinions on any matters submitted to it by the Board of Supervisors; and
- 4) to review operations and transactions of the bank on the basis of plans adopted by the Audit Committee, at the request of the Board of Supervisors, at the request of shareholders together holding more than 10 percent of total voting rights, or as specified by the charter of the bank.

2. The Audit Committee shall have an uneven number of not less than three members appointed by the General Meeting of Shareholders of the bank for periods of not more than four years; they may be reappointed for subsequent terms of equal length. The General Meeting of Shareholders shall designate a member of the Audit Committee to be Chairman of the Audit Committee.

3. Every person who is dismissed by the General Meeting of Shareholders of the bank or is ineligible pursuant to Article 27 shall not become a member of the Audit Committee.

4. The Audit Committee may take valid decisions by a simple majority of the votes of its members participating in the meeting. Members may not abstain from voting.

#### **Article 27. Ineligibility of administrators**

A person shall not be eligible to serve as a member of the Board of Supervisors, the Management Board or the Audit Committee of a bank if:

- 1) he is not a fit and proper person;
- 2) he already serves as member of another Board or Committee of the bank;
- 3) he has by law been deprived of the right to sit on the Board or Committee of which he is or is to be a member;

- 4) he is an employee of a state authority or a municipal body other than in a teaching capacity; or
- 5) he is related to an administrator of the bank by marriage, blood or kinship up to the second degree, or he is the adopted child or foster child of an administrator of the bank.

**Article 28. Disclosure of commercial interests**

1. Each member of the Board of Supervisors, the Management Board and the Audit Committee shall disclose in full to his Board or Committee the significant commercial interests that he or members of his household have, directly or indirectly. Such disclosures shall be made upon first becoming a member and annually thereafter, in accordance with guidelines adopted by the General Meeting of Shareholders.

2. Whenever any matter related to such interest comes up for discussion in such Board or Committee, or in any other committee or working group of the bank with decision making authority, the member concerned shall disclose his interest at the beginning of the discussion, shall not participate in the discussion, shall absent himself from the meeting while discussions on the matter are ongoing, shall take no part in the decision on such matter, and his presence shall not be counted for the purpose of constituting a quorum.

**Article 29. Secrecy obligations**

Present and past administrators and employees of a bank shall be required to keep secret, not to use for personal gain and not to permit to be examined by others unless required by law, any information that they obtained in the course of their services to the bank, except that such information may be disclosed to the officers, staff and agents of Da Afghanistan



Bank, including the inspectors, auditors, conservators and experts appointed by Da Afghanistan Bank, and to such other persons by order of a court of competent jurisdiction.

**Article 30. Reorganization of banks**

The reorganization, amalgamation, merger or division of a bank, including a bank whose banking license has been revoked, shall be permitted only with the prior written authorization of Da Afghanistan Bank. Authorizations shall be granted only if the resulting bank or banks shall have or receive a banking license.

**Article 31. Restrictions on holdings of banks**

1. No bank may, without the prior written authorization of Da Afghanistan Bank, acquire a participation in a legal entity that constitutes or increases a qualifying holding of the bank in that legal entity if as a result of that acquisition:

- 1) the legal entity would become a subsidiary of the bank;
- 2) the book value of that holding would exceed 10 percent of the unimpaired capital and reserves of the bank; or
- 3) the aggregate book value of all such holdings of the bank would exceed 40 percent of the unimpaired capital and reserves of the bank.

Da Afghanistan Bank is authorized to increase these percentages by regulation to 15 percent and 60 percent, respectively.

2. Shares held temporarily during a financial reconstruction or rescue operation, or during the normal course of underwriting, or as a result of the realization of security given in

the course of its operations, or in a bank's own name on behalf of others in trust shall not be counted as qualifying holdings for the purpose of calculating the limits specified in paragraph 1. Shares acquired as described in this paragraph shall be disposed of by the bank without undue delay, except for shares held in trust.

3. The authorization of Da Afghanistan Bank required for a bank by paragraph 1, may be requested by submitting to Da Afghanistan Bank a written application accompanied by documents showing:

- 1) a certified copy of the decision of the bank authorizing the planned acquisition;
- 2) the sizes of the qualifying holdings of the bank in other enterprises, including the qualifying holding that would result from the planned acquisition;
- 3) the sizes of the qualifying holdings of other enterprises in the bank;
- 4) the principal business activities of the legal entity in which the bank plans to acquire a participation and of the other enterprises referred to in subparagraphs 2) and 3) and the locations of their head offices;
- 5) if as a result of the planned participation a legal entity would become a subsidiary of the bank, a list of the administrators of the legal entity and, for each of the administrators such documents as would have been required concerning that administrator if the request had been a banking license application pursuant to Article 9; and
- 6) if the legal entity in which the bank plans to acquire a participation is a non-resident bank, a certificate recently issued by the bank regulator of the country where the head office of the non-resident bank is located that the non-resident bank is licensed to engage in the business of receiving deposits and other repayable funds from the public in that country, and that the bank regulator does not object to the planned acquisition.

4. Within three months from the date of an application for authorization of Da Afghanistan Bank submitted pursuant to paragraph 3, Da Afghanistan Bank shall issue the authorization, unless it determines:

- 1) that the requirements of paragraph 3 have not been met;
- 2) that, if as a result of the planned participation a legal entity would become a subsidiary of the bank, one or more administrators of that entity are not fit and proper persons;
- 3) that facts are known that warrant the assumption that the planned acquisition would threaten the sound and prudent management of the bank, or that justify the suspicion that the legal entity in which the bank plans to acquire a participation has engaged in criminal activities; or
- 4) that the planned acquisition would hinder Da Afghanistan Bank in the discharge of its supervisory responsibilities: A) because a non-resident enterprise which would be linked to the bank as a result of the planned acquisition is not effectively supervised in the country where its head office is located or B) because the supervisory authorities of that country are not expected to cooperate with Da Afghanistan Bank.

If Da Afghanistan Bank issues its authorization, it may fix a maximum period for completing the acquisition. Decisions rejecting an application must explain the grounds on which the application is rejected.

5. If a bank acquires a participation without the prior written authorization of Da Afghanistan Bank required by this Article or fails to observe the maximum period allowed by Da Afghanistan Bank for completing the acquisition, that bank may be ordered by Da Afghanistan Bank in writing that, before a date stated in the order, it must dispose of its qualifying holding or such part of its qualifying holding as shall be specified in the order.

6. If, at any time, Da Afghanistan Bank determines that an enterprise in which a bank has a qualifying holding:

- 1) engages in criminal activities;
- 2) as a result of its relationship with the bank, threatens the sound and prudent management of the bank;
- 3) is a bank that has lost its banking license; or
- 4) is a non-resident bank that is not effectively supervised in the country where it has its head office or whose supervisory authorities do not cooperate with Da Afghanistan Bank;

Da Afghanistan Bank may order the bank before a date stated in the order to dispose of its qualifying holding in the enterprise or such part of its qualifying holding in the enterprise as shall be specified in the order.

#### **CHAPTER IV OPERATIONAL REQUIREMENTS**

##### **Article 32. General banking principles**

1. Banks shall conduct their administration and operations in a sound and prudent manner and in accordance with the requirements of the law, any conditions and restrictions attached to their banking license or permits issued by Da Afghanistan Bank, and the regulations, guidelines and orders issued by Da Afghanistan Bank.

2. Banks shall: maintain adequate capital and liquid resources; make adequate provision for depreciation of assets, for discharge of liabilities, and for losses; maintain adequate accounting and other records of business; observe sufficient and effective risk controls; and ensure that their assets are diversified as to risk of loss.

3. Da Afghanistan Bank shall by regulation prescribe detailed standards of conduct for banks which Da Afghanistan Bank shall use in its prudential supervision.

4. Whenever an administrator of a bank discovers that the capital of the bank is less than the capital required by law or by regulation of Da Afghanistan Bank, the administrator must promptly notify Da Afghanistan Bank thereof.

5. Da Afghanistan Bank shall issue separate regulations to apply the provisions of this Chapter or regulations issued by Da Afghanistan Bank pursuant to this Chapter shall apply to domestic branch offices of non-resident banks.

**Article 33. Banking activities**

Banks may engage in the following activities subject to the provisions of their banking license:

- 1) receiving money deposits (in the form of demand deposits, time 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 without limitation: consumer and mortgage creditfinancing 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 (including underwriting and brokerage services): 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 and other securities; and forward contracts, swap agreements, futures, options, and other derivatives relating to currencies, stocks,

- bonds, precious metals or interest rates;
- 4) entering into contingent commitments, including guarantees and letters of credit, for its own account and for the account of customers;
  - 5) providing clearing, settlement and transfer services for money, securities, payment orders and payment instruments (including checks; credit, debit and other payment cards; travelers' checks; and bank drafts, wire transfers, and pre-authorized debits and credits);
  - 6) money broking;
  - 7) safekeeping and administration of valuables, including securities;
  - 8) providing services as portfolio manager of securities or as financial adviser or as financial agent;
  - 9) providing financial information and credit reference services, including general economic and market information; and
  - 10) anything that shall be incidental to the foregoing and such other activities, not prohibited by Article 34, as Da Afghanistan Bank may by regulation authorize as banking activities.

**Article 34. Prohibited activities**

No bank shall engage in or participate as an agent, partner or co-owner in wholesale or retail trade, manufacturing, transportation, agriculture or fisheries, mining, building, insurance or other business activities except for activities that are authorized by Article 33.

Notwithstanding the foregoing, and with the prior written authorization of Da Afghanistan Bank, a bank may temporarily carry on or participate in the carrying on of such activities to the extent necessary to obtain satisfaction of claims; Da Afghanistan Bank may require the bank to

cease such activities by a date specified in the authorization.

**Article 35. Prudential requirements**

1. When prescribed by regulation of Da Afghanistan Bank, each bank shall observe the maximum and minimum ratios, exposures and other prudential requirements to be maintained by it concerning its assets, off-balance sheet items and various categories of capital and reserves. Such regulations shall prescribe the common procedures and methods of calculation to be followed in their application. The regulations shall take effect not earlier than one month after their publication or such longer period of time as shall be necessary to afford the banks a reasonable opportunity to adjust their assets or liabilities to comply with the regulations. No prudential requirement imposed by Da Afghanistan Bank shall have retroactive effect.

2. In particular, banks shall observe the following requirements when prescribed by regulation of Da Afghanistan Bank:

- 1) requirements concerning their liquid resources in relation to the value or change in value of their assets (including guarantees and collateral received), or in relation to their liabilities; banks shall be permitted to meet the requirements concerning liquid resources by maintaining with Da Afghanistan Bank money deposits of an equivalent value;
- 2) requirements concerning the maximum aggregate amount of all or certain categories of their credits and investments;
- 3) requirements, prescribed in response to exceptional circumstances, concerning the rate of interest, maturity and other conditions applicable to any type or form of financing extended or received (including deposits) or applicable to

contingent liabilities;

- 4) requirements concerning the classification and evaluation of assets, and provisions to be made on the basis of such classification and evaluation, and the time when earnings on non-performing loans may no longer be accounted for as income except as received in cash; and
- 5) prohibitions, restrictions or conditions concerning:
  - a) the types or forms of credits and investments made, and liabilities assumed (contingent or otherwise);
  - b) matching as to maturity and interest in respect of assets and liabilities (contingent or otherwise); and
  - c) unhedged positions, exceeding a specified ratio, in foreign currencies, precious metals or precious stones; exchange and interest rate instruments; stocks and other securities; and forward contracts, swap agreements, futures, options, and other derivatives relating to currencies, stocks, bonds, precious metals or interest rates.

3. Each bank shall ensure that at all times the value of its regulatory capital, including its unimpaired capital and reserves, shall be 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 regulations issued by Da Afghanistan Bank, whereby not less than one-half of regulatory capital shall consist of core capital. In applying this paragraph, the meaning of the terms “regulatory capital” and “core capital” shall be defined, and the values of regulatory capital, core capital and assets shall be determined, in accordance with the provisions of regulations issued by Da Afghanistan Bank.



4. No bank shall grant credit to a person if as a result thereof:
  - 1) the aggregate outstanding principal amount of all its credits to that person would exceed or increase the amount by which such aggregate outstanding principal exceeds the equivalent of fifteen percent, or such higher percentage as specified by regulations issued by Da Afghanistan Bank, of the bank's unimpaired capital and reserves; or
  - 2) the aggregate amount of principal of large loans that have credit risks, as defined in a regulation of Da Afghanistan Bank, would exceed or increase the amount by which such aggregate outstanding principal exceeds the equivalent of two hundred percent, or such higher percentage as specified by regulations issued by Da Afghanistan Bank, of the bank's unimpaired capital and reserves.

5. The limitations specified in paragraph 4 shall not apply to any principal amount of credit that is fully secured by readily marketable collateral as defined by regulation of Da Afghanistan Bank; however, no bank shall grant such secured credit if as a result thereof the aggregate outstanding principal amount of all its secured credits to the person receiving such credit would exceed or increase the amount by which such aggregate outstanding principal exceeds the equivalent of 15 percent of the bank's unimpaired capital and reserves, or such higher percentage as specified by regulations issued by Da Afghanistan Bank.

6. For the purposes of applying this Article or any regulations issued pursuant thereto, a person shall be deemed to include any other person with whom such person 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 in fact ultimately responsible for the credit outstanding.

**Article 36. Relations between banks and their customers**

1. The relations between banks and their customers shall be governed by agreements between them whose terms and conditions may not be changed unilaterally by one of the parties, except as provided by the agreements.

2. Each bank shall be free to determine by or pursuant to 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, as well as the repayment terms of credits provided by the bank. 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. Da Afghanistan Bank may issue regulations requiring banks to provide to their customers adequate information concerning the terms and conditions associated with deposits, savings and bank credit in such form and substance as the regulations shall specify.

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 branch offices of the banks, shall be adjudicated by the courts of Afghanistan, except for matters specifically within the jurisdiction of the Financial Services Tribunal.

5. Amounts on deposit in an account at a bank, including Da Afghanistan Bank, are subject to special rules if the accounts are considered dormant accounts. If an account holder has not evidenced any interest in the amounts on deposit by recorded transaction or written correspondence with the bank for ten years, on the first business day of the following calendar year the bank shall dispatch by registered post a notice to the account holder at his last known address containing particulars of the dormant account and publish in at least one local

newspaper and in the Official Gazette the name of the account holder and the particulars of the dormant account. Not less than thirty days after such notice and publication, 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 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. In this case for a period of ten years any owner who, to the satisfaction of Da Afghanistan Bank furnishes proof of ownership, is entitled to the immediate repayment of the amounts by Da Afghanistan Bank. After expiration of such period, any remaining unclaimed amounts shall be transferred to the Ministry of Finance for inclusion in the revenues of the Government of Afghanistan.

**Article 37. Payment of debt in advance of maturity**

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. Such prepayments may be made subject to a contractually agreed prepayment fee related to the amount prepaid. 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. Covenants excluding or restricting this statutory right of prepayment shall be null and void. Each agreement by which a bank provides credit shall specify the prepayment fees, if any, that are applicable to prepayment of the principal amount of the credit.

**Article 38. Secured debt**

1. Banks shall be free to determine in agreement with their counterparties whether their respective obligations shall be secured by collateral, guarantees or other commitments. No bank shall accept shares in its own capital stock as security for a debt to the bank without the

prior written authorization from Da Afghanistan Bank.

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 or other registered goods, the goods may be sold by public auction or through a broker on a public exchange in accordance with law. The bank may participate in the bidding for the goods. For the event that the goods cannot readily be sold by public auction or on a public exchange for a price that is at least equal to the amount of the debt together with sales costs, the interested parties may agree by notarized agreement, or failing such agreement the court may decide at the request of any interested party, that the goods shall be sold otherwise or that the bank may purchase the goods for a price determined by or in accordance with the provisions of that agreement or a decision of the court. After deduction of the amount of the outstanding debt and costs, the balance of the purchase price shall be paid promptly to the debtor who owned the goods after having satisfied any other person to whom the goods are proven to be pledged by the debtor. If the sales price of the goods 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.

**Article 39. Records of transactions and commitments**

1. Banks shall keep on file for at least ten years the pertinent documents for each one of their transactions, namely:

- 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 with its customers; and
- 5) such other documents as Da Afghanistan Bank may specify by regulation.

2. Records may be kept in electronic form to the extent that adequate data recovery systems and procedures are in place. Da Afghanistan Bank may issue regulations setting out detailed systems requirements.

**Article 40. Bank credit to related persons**

1. No bank may extend credit to a related person:
  - 1) if the credit and its financial terms and conditions have not been approved by its Management Board or its Board of Supervisors; or
  - 2) if the credit is granted to an administrator of the bank and the credit would cause the aggregate amount of credit disbursed by the bank to that person and outstanding to exceed the equivalent of 25 percent of the annual remuneration of that person, or if the credit would cause the aggregate amount of credits disbursed to all related persons and outstanding to exceed or increase the amount by which such aggregate exceeds the unimpaired capital and reserves of the bank; except that the foregoing percentage limits shall not apply to any principal amount of credit that is secured in compliance with standards prescribed for that purpose by regulation of Da Afghanistan Bank by a mortgage on property whose appraised value at the time that the credit is granted exceeds

the principal amount of the credit by not less than one-third of that principal amount; or

- 3) if the credit is granted on terms and conditions that are less favorable to the bank than the terms and conditions that are offered by the bank to the public in the ordinary course of business when the credit is granted.

2. Every credit provided by a bank to a related person shall be promptly reported to the Audit Committee of the bank. If credit has been provided by a bank to a related person in violation of the provisions of paragraph 1, such credit must be immediately repaid, and the members of the Management Board and the Supervisory Board shall be personally liable, jointly and severally, for payment of principal of, and interest and other charges on, credit granted in violation of paragraph 1 with their knowledge and without their objection.

3. For the purposes of this Article, a related person means:

- 1) any administrator of the bank;
- 2) any person who is related to an administrator of the bank by marriage, blood or kinship up to the second degree, or who is the adopted child or foster child of an administrator of the bank; and
- 3) any person who alone or in concert with one or more others or through one or more others has a qualifying holding in the bank, and any enterprise in which any such person or the bank or any administrator of the bank has alone or in concert with one or more others or through one or more others a qualifying holding, and any administrator of such person or enterprise.

**Article 41. Prevention of banking services in support of crime**

1. No bank shall maintain accounts on its books or provide services to or for the

benefit of undisclosed persons.

2. Each bank shall register the identity of each one of its clients who maintains an account with 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 regulation. Each bank shall require each such client to provide 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 shall register the identity of each such other person. Banks shall maintain proof of the identity of the persons so registered.

3. No bank shall maintain an account on its books or provide services to or for the benefit of a person, and each bank shall report to Da Afghanistan Bank any request or instruction to maintain such account or to provide such services, if there are substantiated reasons to suspect that such person engages in transactions connected with money laundering, terrorism or another criminal activity. Da Afghanistan Bank may by regulation issue rules concerning the form, time and content of such reports.

## **CHAPTER V ACCOUNTS, REPORTS AND INSPECTION**

### **Article 42. Accounts, financial statements, and statistical reports**

1. Banks shall maintain at all times accounts and records, and prepare quarterly and annual financial statements, adequate to reflect in accordance with consistently maintained sound accounting practices their respective operations and financial condition, in such form

and detail and in accordance with such accounting standards as shall be prescribed by regulation of Da Afghanistan Bank.

2. The financial statements of a bank shall also reflect the operations and financial condition of its subsidiaries both on an individual and on a consolidated basis.

3. Each non-resident bank with one or more domestic branch offices or representative offices shall observe the requirements of this Article through separate accounts and records for each such office and pro forma financial statements for all such offices on a consolidated basis.

4. All banks operating within the territory of Afghanistan must provide to Da Afghanistan Bank annual, quarterly, or more frequent reports covering monetary statistics, income and expense reports, nonperforming loans and loan losses and provisioning, foreign-currency positions, interest rates, and other reports of activities as Da Afghanistan Bank may require and in accordance with international statistical standards and practices. All nonbank financial institutions and agents operating in Afghanistan are also subject to statistical reporting requirements as Da Afghanistan Bank may require.

5. Da Afghanistan Bank may compile and aggregate statistical information received from banks and other financial institutions as needed to meet its policy needs, to inform the public, and fulfill obligations to international organizations. Banks and other financial institutions and agents may be obligated by Da Afghanistan Bank to provide to Da Afghanistan Bank information on specific transactions, individuals, or firms that is needed to compile statistics and to carry out its supervisory, policy, and statistical functions.

6. Da Afghanistan Bank is proscribed under penalty of law from disseminating to the public statistical information and data that reveals the identity of individual persons or firms, unless already in the public domain.

7. Da Afghanistan Bank may provide information on specific transactions,



individuals, or firms to supervisors or other authorities for the execution of their official duties if such supervisors and authorities are specifically enumerated in legislation or regulations on confidentiality of banking and financial records to receive such information.

8. Da Afghanistan Bank may impose sanctions on banks, financial institutions and agents, and their management in the event of incomplete or late reporting, non-reporting, inaccurate reporting, or knowingly filing false or misleading reports.

### **Article 43. Audit**

1. Each domestic bank shall appoint an independent external auditor with qualifications and experience acceptable to Da Afghanistan Bank, who shall in compliance with standards issued by regulation of Da Afghanistan Bank:

- 1) assist the bank in maintaining proper accounting systems and procedures
- 2) assist the bank in maintaining proper financial control and risk management systems and procedures;
- 3) prepare for the Board of Supervisors of the bank an annual report together with an audit 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) inform Da Afghanistan Bank about any act by an administrator, employee or agent of the bank of which the external auditor has become aware that constitutes a material violation of a provision of this Law or any regulation or order issued by Da Afghanistan Bank; and
- 5) inform Da Afghanistan Bank about any irregularity or deficiency in its administration or operations of which the external auditor has become aware and which should be expected to result in a material loss for the bank.

2. Each non-resident bank with one or more domestic branch offices or representative offices shall observe the requirements of this Article for such offices on a consolidated pro forma basis as if such offices together constituted a single domestic bank.

**Article 44. Publication of financial statements and auditor's report**

1. Each bank shall, not later than three months after the end of each of its financial years, submit to Da Afghanistan Bank, and make available to its shareholders, and to the public upon request, its audited consolidated financial statements, together with the report of its external auditor, for that financial year.

2. Each non-resident bank with one or more domestic branch offices or representative offices shall, not later than three months after the end of each of its financial years, submit to Da Afghanistan Bank, and make available to the public upon request, its audited financial statements prepared on a consolidated basis as well as the consolidated pro forma financial statements for such offices, together with the reports of the external auditor who audited such statements, for that financial year.

**Article 45. Reports and inspection**

1. Each bank shall prepare and submit to Da Afghanistan Bank reports concerning its administration and operations, liquidity, solvency, and profitability, and those of its subsidiaries, that will permit Da Afghanistan bank to assess compliance by the bank and its subsidiaries with this Law and the regulations and orders issued by Da Afghanistan Bank and to evaluate the financial condition of the bank and its subsidiaries on an individual and a consolidated basis. The reports shall be prepared in such form and detail and shall be submitted

at such intervals as shall be prescribed by regulation of Da Afghanistan Bank.

2. Each domestic bank and each of its subsidiaries shall be subject to on site inspections by inspectors of Da Afghanistan Bank or by auditors appointed by Da Afghanistan Bank. Such auditors may include employees of the authority of another country that is charged with the monetary or prudential supervision of banking activities in that country if it concerns the inspection of a domestic subsidiary, branch office or representative office of a non-resident bank whose head office is located in that country, or the inspection of a domestic bank that has a qualifying holding in such non-resident bank, or the inspection of a domestic bank in which such non-resident bank has a qualifying holding.

3. In their inspections pursuant to paragraph 2, Da Afghanistan Bank and its auditors shall be authorized:

- 1) to enter any office of the bank or its subsidiary and to examine there the accounts, books, documents and other records of the bank or the subsidiary; and
- 2) to require administrators, employees and agents of the bank or its subsidiary to provide all such information on any matter relating to the administration and operations of the bank or the subsidiary as they shall reasonably request.

Immediately upon the request of Da Afghanistan Bank, law enforcement officials shall, if necessary by use of force, assist Da Afghanistan Bank or its auditors to gain access to the premises of such bank or subsidiary and to examine the accounts, books and other records of such bank or subsidiary.

4. 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 to enable Da Afghanistan Bank to ensure that the activities of the branch office or representative office are in compliance with the law and its permit. The reports shall be prepared in such form and detail and shall be submitted at such intervals as shall be prescribed by regulation of Da Afghanistan Bank. Each domestic branch office and representative office of a non-resident bank shall be subject to on site inspections by inspectors of Da Afghanistan Bank or by auditors appointed by Da Afghanistan Bank in accordance with the provisions of paragraphs 2 and 3.

5. Each domestic bank and each of its subsidiaries, and each domestic branch office and representative office of a non-resident bank, shall admit and cooperate fully with the inspectors of Da Afghanistan Bank and the auditors appointed by Da Afghanistan Bank in carrying out their duties pursuant to this Article.

6. Da Afghanistan Bank shall not be authorized to carry out inspections or to obtain reports or information at the request of other persons or agencies except when requested by foreign bank regulators, and except as specifically authorized by this Law or as specifically ordered by an enforceable court decision.

7. Within one month following completion of each inspection of a bank or its subsidiary, or of a branch office or representative office, Da Afghanistan Bank shall write a report about the inspection and send a copy of the report to the bank or the office.

## CHAPTER VI ENFORCEMENT MEASURES

### **Article 46. Preventive actions**

1. Whenever Da Afghanistan Bank has reasonable cause to believe that the solvency or the liquidity of a bank is threatened because the bank is about to conduct its administration or operations in an unsound or imprudent manner or otherwise to violate a law, or a regulation or order of Da Afghanistan Bank, or any condition or restriction attached to a license, permit or authorization issued to the bank by Da Afghanistan Bank, Da Afghanistan Bank must notify the bank in writing of its finding and issue a written warning to the bank.

2. If, at any time thereafter, Da Afghanistan Bank determines that the bank fails to heed the warning, Da Afghanistan Bank must order the bank in writing to present to Da Afghanistan Bank, within two weeks of the date of the order, a plan of action that is adequate to prevent such violation.

3. If the bank fails to present such plan in time or if Da Afghanistan Bank determines that the plan presented by the bank is inadequate or if, subsequently, the bank fails to execute the plan, Da Afghanistan Bank must order the bank promptly to take such preventive action as Da Afghanistan Bank may specify.

### **Article 47. Plan to take corrective action**

1. Whenever Da Afghanistan Bank finds that the solvency or the liquidity of a bank is threatened because the bank:

- 1) conducts its administration or operations in an unsound or imprudent manner; or
- 2) is otherwise in violation of a law, or a regulation or order of Da Afghanistan

Bank, or any condition or restriction attached to a license, permit or authorization issued to the bank by Da Afghanistan Bank;

Da Afghanistan Bank must notify the bank in writing of its finding and give the bank an order to submit to Da Afghanistan Bank, within such period of time as the order may specify, a written plan of corrective action that identifies the existing weaknesses in the administration or operations of the bank, determines in detail the corrective measures required to remedy such weaknesses, offers a realistic time table for taking such measures, and estimates the effects of the measures on the administration, operations and financial condition of the bank during the execution of the plan.

2. Upon receipt of the plan, Da Afghanistan Bank shall invite the members of the Management Board and the members of the Board of Supervisors of the bank, and if it concerns a domestic branch office of a non-resident bank, the managers of that branch office, to a hearing where the plan and its execution are discussed; Da Afghanistan Bank may invite some or all owners of the bank to participate in the hearing. The hearing shall be concluded when a plan acceptable to Da Afghanistan Bank is adopted. Thereafter, the bank shall promptly carry out the plan, as modified with the prior written authorization of Da Afghanistan Bank, in close consultation with Da Afghanistan Bank.

**Article 48. Orders to take prompt corrective action**

1. Whenever Da Afghanistan Bank finds:
  - 1) that a bank fails to carry out a plan of corrective action adopted pursuant to Article 47; or
  - 2) that the solvency or the liquidity of a bank is threatened because the bank conducts its administration or operations in an unsound or imprudent manner, or is otherwise in violation of a law, or a regulation or order of Da Afghanistan

Bank, or any condition or restriction attached to a license, permit or authorization issued to the bank by Da Afghanistan Bank, and that corrective action is urgently required,

Da Afghanistan Bank must notify the bank in writing of its finding and must order the bank to take prompt corrective action specified by the order that is adequate to restore compliance within a reasonable period of time specified in the order.

2. Together with an order issued to a bank pursuant to paragraph 1, Da Afghanistan Bank may:

- 1) impose on the bank a fine up to the equivalent of one percent of the initial authorized and paid-in capital of the bank;
- 2) order the bank to conduct an external audit of its affairs, at the expense of the bank, by an auditor acceptable to Da Afghanistan Bank;
- 3) order the bank to do all or any of the following:
  - a) remove an administrator, officer or employee of the bank from office;
  - b) ensure that an administrator, officer or employee of the bank does not take part in the management or conduct of the business of the bank except as permitted by Da Afghanistan Bank;
  - c) appoint a person or persons acceptable to Da Afghanistan Bank as administrator of the bank for such term as the order specifies;
- 4) order the bank not to give any financial benefit to any person;
- 5) order the bank not to accept the deposit of any amount;
- 6) order the bank not to borrow any amount;

- 7) order the bank not to accept any payment on account of share capital, except payments for or pursuant to call options that fell due before the order was given;
- 8) order the bank not to repay any amount from shares;
- 9) order the bank not to pay any dividend on shares;
- 10) order the bank not to repay any money on deposit or advance;
- 11) order the bank not to pay or transfer any amount to any person, or order the bank not to create an obligation (contingent or otherwise) to do so;
- 12) order the bank not to undertake any financial obligation (contingent or otherwise) on behalf of any other person;
- 13) order the bank to increase the unencumbered equity capital of the bank; or
- 14) order the bank to make any change in the way in which the affairs of the bank are to be conducted or not to be conducted.

3. Without limiting the generality of paragraph 2, an order referred to in a sub-paragraph of that paragraph may:

- 1) deal with some or all of the matters referred to in that sub-paragraph;
- 2) deal with a particular class or particular classes of those matters; and
- 3) make different provision with respect to different matters or different classes of matters.

4. Da Afghanistan Bank shall issue specific guidelines regarding the use of the extraordinary measures set out in sub-paragraphs 10 and 11 of paragraph 12.

#### **Article 49. Hearings**

1. When Da Afghanistan Bank decides that an order shall be given to a bank pursuant to Article 46, Article 47 or Article 48, Da Afghanistan Bank shall serve the bank with a notice of charges including a statement of the facts constituting the alleged violation or threat



of violation supporting the order, describing the order that Da Afghanistan Bank proposes to issue, and scheduling a hearing that will be held to determine whether or not the proposed order should be given to the bank. The first session of the hearing shall be scheduled for a date not earlier than two weeks or later than four weeks after the date of service of the notice.

Subsequent sessions may be scheduled by Da Afghanistan Bank by notice to the bank; the date and place of each session shall be notified to the bank in writing not less than two weeks before that date, unless the bank otherwise agrees. The hearing shall conclude when after a session Da Afghanistan Bank advises the bank that no further sessions are needed.

2. Unless the bank appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the proposed order, in which case the proposed order may be given and served upon the bank.

3. Within one week after conclusion of the hearing, Da Afghanistan Bank shall decide whether or not an order shall be given and shall notify the bank of its decision in writing. If it is decided that an order shall be given, the order shall be promptly issued and served upon the bank together with the text of the decision.

**Article 50. Temporary orders**

1. Whenever Da Afghanistan Bank plans to give an order to a bank on the ground that:

- 1) the bank suffers from or is imminently threatened by a decrease of its capital to less than 75 percent of the capital required by law or by regulation of Da Afghanistan Bank; or
- 2) 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; the order may be given before or during the hearing required by Article 49 in the form of a temporary order.

2. Each temporary order takes immediate effect when it is served upon the bank and shall be fully complied with during the hearing; a temporary order terminates when it is rescinded by Da Afghanistan Bank by notice to the bank or replaced with an order given pursuant to Article 46, Article 47 or Article 48.

3. Each temporary order shall be served upon the bank together with a notice of charges including a statement of the facts constituting the alleged violation or threat of violation and scheduling a hearing in accordance with Article 49 to determine whether or not the temporary order shall be rescinded or replaced.

**Article 51. Issue, effect and termination of orders and temporary orders to bank**

1. Each order or temporary order given to a bank pursuant to this Law shall be in writing and shall include a statement describing 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. Each such order or temporary order given to a bank shall be served upon the head office of the bank; except that orders and temporary orders concerning a domestic branch office or representative office of a non-resident bank may be served upon that office. Each such order or temporary order shall be accompanied by a copy of the text of the decision of Da Afghanistan Bank to give the order or temporary order, stating the factual grounds for the order

or temporary order, one or more reasons why the order or temporary order is given, and the provision of the law authorizing Da Afghanistan Bank to give the order or temporary order.

3. Any order issued to a bank by Da Afghanistan Bank, that is not an order that the bank has consented to, may be submitted to the Financial Services Tribunal for review within thirty days from the date of service of the order upon the bank.

4. Each such order or temporary order enters into force at the time of its service upon the bank, unless it specifies a later date for its effectiveness. The order or temporary order remains in effect and shall be fully complied with until it terminates 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 Financial Services Tribunal, or it is rescinded by Da Afghanistan Bank by notice in writing to the bank. Da Afghanistan Bank shall rescind an order or temporary order whenever it is no longer necessary or appropriate.

5. A bank being given an order or temporary order by Da Afghanistan Bank is hereby granted the power to comply with it. Such order or temporary order 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; except that an order not to pay or transfer any amount to any person referred to in paragraph 2 of Article 48 does not apply to the payment or transfer of money pursuant to an order of a court or a process of execution.

**Article 52. Authority of Da Afghanistan Bank**

The authority granted to Da Afghanistan Bank by this Law shall not be affected by any prior order, temporary order or plan of preventive or corrective action, and subsequent orders, temporary orders or plans issued under that authority shall be deemed to override prior ones as required to settle conflicts between them.

**CHAPTER VII CONSERVATORSHIP**

**Article 53. Grounds for appointment of a conservator**

1. Da Afghanistan Bank must appoint a conservator for a bank when Da Afghanistan Bank determines that:
  - 1) the bank is not paying its financial obligations as they fall due;
  - 2) the capital of the bank is less than 75 percent of the capital required by law or by regulation of Da Afghanistan Bank;
  - 3) the value of the assets of the bank is less than the value of the liabilities of the bank.
  - 4) a petition is submitted for opening bankruptcy proceedings against the bank;
  - 5) the voluntary liquidation of a bank must be completed by a conservator pursuant to paragraph 3 of Article 62;
  - 6) there is evidence that the bank has engaged in criminal activities or there is reasonable cause to believe that the bank is engaging in criminal activities; or
  - 7) the banking license of the bank is to be revoked.

2. Da Afghanistan Bank may appoint a conservator for a bank when Da Afghanistan Bank determines that the bank fails to carry out an order given to the bank by Da Afghanistan Bank.

3. For the purposes of this Article:

- 1) the capital of a bank shall be determined in accordance with standards and procedures prescribed by regulation of Da Afghanistan Bank or otherwise acceptable to Da Afghanistan Bank; and
- 2) the value of the assets and liabilities of a bank shall be determined in accordance with valuation standards and procedures prescribed by regulation of Da Afghanistan Bank or otherwise acceptable to Da Afghanistan Bank.

4. The provisions of this Chapter shall apply to the domestic branch offices and domestic representative offices of a non-resident bank as if all these offices together form a single domestic bank, and the non-resident bank shall be treated as both the Management Board and the General Meeting of Shareholders of the single domestic bank. All assets, liabilities, acts and omissions of the non-resident bank resulting from or otherwise relating to the business of any such office shall be attributed to that single domestic bank in applying the provisions of this Chapter.

**Article 54. Appointment of a conservator**

1. Conservators shall be appointed by Da Afghanistan Bank.
2. Persons who would be ineligible to serve as an administrator of a bank pursuant to Article 27 shall not be eligible to serve as conservator for that bank. As soon as a

conservator becomes ineligible to serve, he shall be replaced by Da Afghanistan Bank.

3. Conservators shall be appointed for a term, not exceeding 18 months, specified in the decision of their appointment. The term of appointment may be extended by Da Afghanistan Bank once for another period not exceeding 18 months. The conservator shall be employed by Da Afghanistan Bank and receive his remuneration from Da Afghanistan Bank. The costs incurred by Da Afghanistan Bank on account of the conservatorship shall be borne by and charged to the bank for which the conservator is appointed.

4. The decision appointing a conservator or extending the term of appointment of a conservator shall be in writing, shall specify the grounds on which it is given and shall list the principal duties of the conservator. Da Afghanistan Bank shall ensure that promptly after it is given each such decision is served on the bank for which the conservator is appointed, is recorded in the register of banks and is published in the Official Gazette.

#### **Article 55. Effects of the appointment of a conservator**

1. The decision of Da Afghanistan Bank appointing a conservator for a bank takes effect immediately, unless the decision provides otherwise.

2. The decision of Da Afghanistan Bank appointing a conservator for a bank suspends the powers of the General Meeting of Shareholders of the bank. Thereafter, Da Afghanistan Bank has all the powers of the General Meeting of Shareholders of the bank, except that the powers specified in sub-paragraphs 6) and 14) of paragraph 1 of Article 23 may be exercised only in circumstances and on terms and conditions that have been approved by the Financial Services Tribunal at the request of Da Afghanistan Bank.

3. The decision of Da Afghanistan Bank appointing a conservator for a bank suspends the powers of the administrators of the bank and has the effect of transferring all the powers of the administrators of the bank to the conservator. The conservator may delegate to other persons, including administrators and employees of the bank, such of his powers as he deems necessary or appropriate, unless Da Afghanistan Bank decides otherwise. In the absence or inability of the conservator to act, Da Afghanistan Bank may exercise the powers of the conservator.

4. Actions taken by or on behalf of a bank after the decision appointing a conservator for that bank takes effect shall be null and void, unless they are taken by or by the authority of Da Afghanistan Bank or the conservator, or they are money or securities transfer orders covered by Article 77.

5. A conservator shall be accountable only to Da Afghanistan Bank for the performance of his duties and for the exercise of his powers as conservator. He shall only be subject to the duties, rules and instructions given to him by Da Afghanistan Bank and to orders issued by the Financial Services Tribunal.

**Article 56. Taking control of the bank**

1. Forthwith upon his appointment, the conservator shall take control of the bank for which he has been appointed and secure the assets, books and records of the bank in order to prevent their dissipation by theft or other improper action.

2. The conservator shall have unrestricted access to and control over the assets, the offices, and the books of account and other records, of the bank for which he has been appointed. Immediately upon the request of a conservator, law enforcement officials shall, if

necessary by use of force, assist the conservator to gain access to the premises of the bank for which he has been appointed and to gain control over and to secure the assets, books and records of the bank; the decision of Da Afghanistan Bank appointing the conservator shall have the legal force and effect of an enforceable court order to provide such assistance.

**Article 57. Notice, review and appeal**

1. Within ten days from the date of service of the decision appointing the conservator for a bank, the Chairman of the Board of Supervisors of the bank may make written representations on behalf of the bank to Da Afghanistan Bank concerning the appointment of the conservator. Failing such representations, the bank shall be deemed to have consented to the decision appointing the conservator.

2. Upon the timely receipt of such representations, Da Afghanistan Bank shall review the appointment of the conservator in light of the representations and decide either to affirm the appointment or to terminate the appointment, giving the grounds for its decision. The decision shall be served promptly upon the Chairman of the Board of Supervisors of the bank.

3. If the appointment of the conservator is terminated, the conservator shall immediately return control of the bank and its assets, books and records to the Management Board of the bank.

4. Any decision of Da Afghanistan Bank appointing a conservator that is not a decision to which the bank has consented, and any decision of Da Afghanistan Bank affirming the appointment of a conservator under paragraph 2, may be submitted to the Financial



Services Tribunal for review within thirty days from the date of service of the decision. The appointment of the conservator shall stay in full force and effect until a final decision is taken by the Tribunal.

**Article 58. Report of the conservator and plan of action**

1. As soon as possible, the conservator shall prepare and present to Da Afghanistan Bank a report on the financial condition and future prospects of the bank for which he has been appointed. The conservator shall include in his report an assessment of the amount of assets likely to be realized in a liquidation of the bank. The report may be prepared with the assistance of an external auditor.

2. The report shall be accompanied by a proposed plan of action that shall discuss the relative costs and benefits associated with:

- a. returning the bank to compliance with the law by carrying out a plan of corrective action;
- b. rehabilitation of the bank under the procedure set forth in Article 61;
- c. completion of a voluntary liquidation under Article 62, or revocation of the banking license and liquidation of the bank in accordance with the provisions of Article 63; and
- d. opening of bankruptcy proceedings against the bank.

**Article 59. Moratorium**

If required to protect the financial condition of a bank for which a conservator has been appointed, Da Afghanistan Bank may at any time declare deposits and investments by the public in the bank, other than deposits and investments in segregated fiduciary accounts, to be totally or partially blocked for a maximum period of three months, provided that measures are taken which, in the opinion of Da Afghanistan Bank, will preserve the approximate value of these deposits and investments together with interest accrued before and during the moratorium.

**Article 60. Termination of conservatorship**

1. The appointment of a conservator shall terminate upon:
  - 1) completion of his term specified in the decision appointing the conservator or in the decision last extending the term of the conservator;
  - 2) a decision of Da Afghanistan Bank to that effect; or
  - 3) appointment of a receiver by the Financial Services Tribunal pursuant to Article 72.
2. Upon termination of the appointment of a conservator as described in subparagraph 1) or 2) of paragraph 1, the conservator shall immediately return control of the bank and its assets, books and records to the Management Board of the bank.
3. Upon termination of his appointment, the conservator shall prepare and submit to Da Afghanistan Bank a final report and accounting of his conservatorship.

## CHAPTER VIII      REHABILITATION OF BANKS

### **Article 61.      Rehabilitation procedures**

1.      A bank shall be rehabilitated by the conservator appointed for the bank under supervision of Da Afghanistan Bank if the President of Afghanistan has decided, upon the recommendation of Da Afghanistan Bank and with the concurrence of the Minister of Finance of Afghanistan, that the stability of the banking system of Afghanistan requires the rehabilitation of the bank.

2.      The recommendation of Da Afghanistan Bank to rehabilitate a bank shall be accompanied by a rehabilitation plan prepared by Da Afghanistan Bank in consultation with the conservator. The plan shall identify the existing weaknesses in the administration or operations of the bank, determine in detail the corrective measures required to remedy such weaknesses, offer a realistic time table for taking such measures, and provide a financing plan for the proposed rehabilitation. The plan shall review and evaluate strategies for transferring the core business of the bank to another bank through one or more of the transactions authorized by Article 78 and shall prescribe measures that preclude the enrichment of bank owners at the expense of the state. The rehabilitation plan shall require the consent of the Minister of Finance before it is submitted to the President of Afghanistan. At any time during the execution of the plan, the President of Afghanistan, after having consulted Da Afghanistan Bank and the Minister of Finance, may abort the rehabilitation plan and may order Da Afghanistan Bank to apply to the Financial Services Tribunal for the institution of bankruptcy proceedings.

3.      For the purpose of conserving the assets and managing the business of a bank under rehabilitation on a going concern basis, the Financial Services Tribunal, upon the request of Da Afghanistan Bank, may order that all or part of the assets and liabilities of the bank be transferred to a bridge bank established and capitalized by the state and holding a banking

license issued by Da Afghanistan Bank. If some obligations of the bank to creditors would be excluded from such a transfer, the Financial Services Tribunal shall take the interests of such creditors into account. Such a transfer shall not require the consent of the bank or any of its corporate organs. The transfer of liabilities shall be published by notice in the Official Gazette of Afghanistan and in one or more newspapers of general circulation designated by the Financial Services Tribunal. The transfer of liabilities becomes effective for all interested parties at the beginning of the day following the date of publication of the issue of the Official Gazette carrying the notice.

4. Upon the request of Da Afghanistan Bank made in accordance with the rehabilitation plan, the Financial Services Tribunal may:
  - 1) authorize the conservator for the bank to carry out one or more of the transactions authorized by Article 78; or
  - 2) order an increase in the authorized capital of the bank and the issue of shares of capital stock of the bank on such terms and conditions proposed by Da Afghanistan Bank as the Tribunal may determine; or
  - 3) authorize the conservator to terminate all or some current contracts of the bank for the delivery of goods or services by analogous application of the provisions of Article 83.
5. The costs incurred on account of rehabilitation of a bank shall be charged to the bank.

## **CHAPTER IX LIQUIDATION OF BANKS**

### **Article 62. Voluntary liquidation**

1. A bank may be liquidated at the decision of its owners after its banking license

has been revoked, at their request, pursuant to Article 15. The liquidation shall be carried out by the bank, in compliance with the rules specified or referred to in paragraphs 3 and 4 of Article 63 and under supervision of Da Afghanistan Bank.

2. The bank shall provide Da Afghanistan Bank with such documents and information as Da Afghanistan Bank shall request and shall grant the staff of Da Afghanistan Bank access to the buildings, books and records of the bank whenever Da Afghanistan Bank decides that such access is required to discharge its supervisory responsibilities.

3. If Da Afghanistan Bank determines that the bank does not ensure an orderly liquidation or if the bank fails to comply with the provisions of paragraph 2, Da Afghanistan Bank shall appoint a conservator who shall carry out or complete the liquidation of the bank under the supervision of Da Afghanistan Bank.

### **Article 63. Forced liquidation**

1. The decision of Da Afghanistan Bank taken pursuant to Article 14 to revoke the banking license of a bank against which no bankruptcy proceedings have been opened must provide for the liquidation of the bank in accordance with the procedures prescribed by this Article by a conservator appointed for the bank by Da Afghanistan Bank. Da Afghanistan Bank shall arrange for the prompt publication of the decision by notice in the Official Gazette of Afghanistan and in at least one newspaper of general circulation.

2. From the time of the decision of Da Afghanistan Bank to revoke the banking license of a bank and until the liquidation of a bank:

- 1) acts performed by or on behalf of the bank are legally void and unenforceable, except for acts performed by or by authority of the conservator for the bank, acts

deemed beneficial to the estate of the bank by the conservator and ratified by the conservator, and money and securities transfer orders covered by Article 77;

- 2) all existing conservatory attachments and attachments in aide of execution resting on assets of the bank are lifted;
- 3) the assets of the bank shall be immune from attachment and execution, except for assets encumbered by a mortgage or lien to the extent of the debt secured by such encumbrance; and
- 4) no bankruptcy proceeding may be opened against the bank.

3. The liquidation shall be carried out by the conservator as receiver under supervision of Da Afghanistan Bank and the Financial Services Tribunal, in accordance with procedures that are consistent with those set forth in Article 79 up to and including Article 92 of this Law.

4. The claims on account of deposits with the bank shall be satisfied from the assets of the bank before all other claims up to a maximum amount of [[20,000]] afghanis per depositor.

5. Upon the request of Da Afghanistan Bank, the Financial Services Tribunal may authorize the conservator for a bank whose banking license had been revoked to carry out one or more of the transactions authorized by Article 78.

6. The provisions of this Article 63 shall apply to the domestic branch offices and domestic representative offices of a non-resident bank as if all these offices together form a single domestic bank, and the non-resident bank shall be treated as both the Management Board and the General Meeting of Shareholders of the single domestic bank. All assets, liabilities, acts and negligence of the non-resident bank resulting from or otherwise relating to the business of any such office shall be attributed to that single domestic bank in applying the provisions of this Article 63.

## CHAPTER X RECEIVERSHIP OF BANKS

### **Article 64. General bankruptcy law does not apply to banks**

Neither the Law of Bankruptcy, dated 15 Qaus 1321, nor any other law amending or replacing the Law of Bankruptcy in whole or part shall apply to banks.

### **Article 65. Grounds for opening bankruptcy proceedings**

1. Bankruptcy proceedings may be opened against a bank on one or more of the following grounds:

- 1) the bank is not paying its financial obligations as they fall due;
  - 2) Da Afghanistan Bank determines that the capital of the bank is less than 75 percent of the capital required pursuant to paragraph 3 of Article 35;
  - 3) Da Afghanistan Bank determines that the value of the assets of the bank is less than the value of the liabilities of the bank.
2. For the purposes of this Article:
- 1) the capital of a bank shall be determined in accordance with standards and procedures prescribed by regulation of Da Afghanistan Bank or otherwise acceptable to Da Afghanistan Bank; and
  - 2) the value of the assets and liabilities of a bank shall be determined in accordance with valuation standards and procedures prescribed by regulation of Da Afghanistan Bank or otherwise acceptable to Da Afghanistan Bank.

**Article 66. Petition for opening bankruptcy proceedings**

1. Petitions for opening bankruptcy proceedings against a bank shall be submitted in writing to the Financial Services Tribunal.

2. No petition for opening bankruptcy proceedings against a bank may be granted by the Tribunal unless:

- 1) the petition is presented by Da Afghanistan Bank, together with financial statements of the bank certified by Da Afghanistan Bank, showing the basis on which one or more applicable statutory grounds for opening bankruptcy proceedings applies; or
- 2) the petition has been filed with the Tribunal and served on Da Afghanistan Bank by three or more creditors of the bank together with documentary evidence showing that the bank is not paying its financial obligations as they fall due.

**Article 67. Appointment of conservator**

As soon as a petition for opening bankruptcy proceedings against a bank has been served on Da Afghanistan Bank by creditors of the bank under Article 66, paragraph 2, a conservator shall be appointed by Da Afghanistan Bank pursuant to Article 53 on the ground that the bank is not paying its financial obligations as they fall due. The conservator shall forthwith take control of the bank in accordance with Article 56. The provisions of Article 57 shall not apply and decisions of Da Afghanistan Bank appointing a conservator pursuant to this Article 67 shall not be subject to review by the Financial Services Tribunal.



**Article 68. Tribunal hearing**

1. Upon filing of a petition for opening bankruptcy proceedings against a bank, the Financial Services Tribunal shall summon Da Afghanistan Bank and any other petitioner, the conservator appointed for the bank, and the bank to attend a public hearing to consider the petition. In exceptional situations the Financial Services Tribunal may decide to conduct a non-public hearing. The hearing shall begin within two business days from the time of filing of the petition.

2. If the petition is filed by Da Afghanistan Bank, the hearing shall be concluded within one week. If the petition is filed by creditors of the bank, the hearing shall be concluded within two weeks. At the conclusion of the hearing, the Tribunal shall either reject the petition or grant the petition.

**Article 69. Grounds for rejecting the petition**

1. A petition for opening bankruptcy proceedings against a bank must be rejected by the Tribunal if:

- 1) the petition does not meet the requirements of the law; or
- 2) Da Afghanistan Bank opposes the petition under paragraph 2.

2. If the petition is made by creditors of the bank, Da Afghanistan Bank may oppose the petition only if:

1) Da Afghanistan Bank has determined that no statutory ground for opening bankruptcy proceedings against the bank applies; the Tribunal may require Da Afghanistan Bank to produce evidence supporting its determination, including financial statements of the bank certified by Da Afghanistan Bank;

- 2) Da Afghanistan Bank shows to the Tribunal that, before the application for

opening bankruptcy proceedings against the bank was served upon Da Afghanistan Bank, the banking license of the bank had been revoked and a conservator had been appointed to liquidate the bank; or

3) Da Afghanistan Bank submits to the Tribunal a decision of the President of Afghanistan in accordance with Article 61 that the stability of the banking system of Afghanistan requires the rehabilitation of the bank.

At its request, Da Afghanistan Bank shall be granted two weeks in which to submit such evidence or decision, before the Tribunal rules on the petition.

3. Otherwise, the Tribunal may reject a petition for opening bankruptcy proceedings against a bank only if:

- 1) the petition is not accompanied by the documents required by Article 66, paragraph 2;
- 2) any document or other evidence submitted to the Tribunal in support of the petition is manifestly false or inaccurate and without such document or other evidence the petition does not meet the requirements of the law; or
- 3) the bank shows to the satisfaction of both the Tribunal and Da Afghanistan Bank that payments of supplemental subscriptions to the capital of the bank have been received by the bank in immediately available funds sufficient to eliminate the grounds for opening bankruptcy proceedings against the bank under Article 65.

**Article 70. Rejection of frivolous petitions filed by bank creditors**

1. At any time after the filing of a petition for opening bankruptcy proceedings against a bank by creditors of the bank, the Tribunal may reject the petition in writing, with or

without a hearing, on the ground that the petition is frivolous, in which case the Tribunal may order the petitioner to pay costs and damages to the bank and to Da Afghanistan Bank resulting from the filing of the petition.

2. Anyone who is found guilty of filing a frivolous petition for opening bankruptcy proceedings against a bank shall be punished by imprisonment for a period not exceeding 1 year or by the payment of a fine determined by the Tribunal to be appropriate in the circumstances not exceeding 25,000 afghanis or both.

**Article 71. Forced liquidation if bankruptcy petition is rejected**

If a petition presented by Da Afghanistan Bank for opening bankruptcy proceedings against a bank is rejected by the Tribunal on grounds other than those specified in Article 69, Da Afghanistan Bank shall revoke the banking license of the bank and liquidate the bank in accordance with the procedures prescribed by Article 63.

**Article 72. Bankruptcy decision**

By the decision of the Tribunal to grant a petition for opening bankruptcy proceedings against a bank, the bank is declared bankrupt, bankruptcy proceedings are opened against the bank and a receiver is appointed.

**Article 73. Service and publication of bankruptcy decision**

Immediately after the Tribunal has issued a decision opening, or rejecting a petition for opening, bankruptcy proceedings against a bank, the decision shall be served by the Tribunal on Da Afghanistan Bank and on the bank and the Tribunal shall arrange for publication of the

decision in the Official Gazette of Afghanistan and in at least one newspaper of general circulation.

**Article 74. Receiver**

1. The receiver appointed by a decision of the Tribunal opening bankruptcy proceedings against a bank shall be the person acting as conservator for the bank pursuant to an appointment under Article 54 to the extent practicable, provided that the Tribunal may appoint another person to act as receiver as long as that person has the necessary qualifications as required for a conservator pursuant to paragraph 2 of Article 54. The bankruptcy decision shall specify the remuneration and the other terms and conditions of employment of the receiver. The remuneration and other costs incurred on account of the receiver shall be paid from the assets of the bank for which the receiver is appointed.

2. Da Afghanistan Bank shall indemnify the receiver of a bank for all liabilities and all reasonable costs and expenses incurred by the receiver on account of the receivership to the extent that they exceed the assets of the bank available to meet such liabilities, costs or expenses.

3. Receivers shall carry out their activities under the direction and supervision of the Financial Services Tribunal in close consultation with Da Afghanistan Bank in accordance with Article 95. The Tribunal, on the appointment of the receiver, shall provide the receiver with written directions including a list of activities which the receiver may undertake without the need for involvement of the Tribunal. Although the receiver may at any time apply to the Tribunal for directions, the receiver shall be obligated to apply to the Tribunal for directions only where specifically required to do so by a provision of this Law.

4. A receiver may employ at the expense of the bank for which the receiver has been appointed such independent attorneys, accountants and other specialists, on such terms and conditions, as the Tribunal shall approve.

5. Upon the resignation, death or incapacity to act of the receiver, Da Afghanistan Bank shall temporarily replace the receiver until a new receiver has been appointed by the Tribunal.

6. The receiver shall be replaced by the Tribunal if the receiver does not diligently perform the receiver's tasks or when the receiver would no longer be eligible to serve as a conservator pursuant to Article 54, paragraph 2.

7. Persons appointed by the Tribunal to replace a receiver shall be selected from a list of candidates submitted to the Tribunal by Da Afghanistan Bank.

8. Whenever a receiver is replaced, the person replacing the receiver shall succeed to the powers of the receiver, and the books, records and remaining assets of the bank in the custody of the receiver as well as the books and records of the receivership shall be promptly transferred into the custody of that person.

#### **Article 75. Powers of the receiver**

Upon appointment for a bank, the receiver becomes the sole legal representative of the bank, 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.

#### **Article 76. Effect of bankruptcy decision**

1. The decision of the Tribunal opening bankruptcy proceedings against a bank

shall take effect at the time that the decision is taken.

2. Acts performed by or on behalf of the bank after the bankruptcy decision takes effect 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.

3. As a result of the bankruptcy decision, all current court proceedings against the bank are stayed; and no court proceeding against the bank shall commence after the bankruptcy decision takes effect, except with the leave of the Tribunal and subject to such terms as the Tribunal imposes.

4. As a result of the bankruptcy decision, 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 bankruptcy decision takes effect shall be void, except for execution in accordance with the provisions of Article 85 of assets encumbered by a mortgage or lien to the extent of the debt secured by such encumbrance.

5. Neither interest nor any other charge shall accrue on liabilities of a bankrupt bank after the bankruptcy decision takes effect.

6. Transfers of shares of a bankrupt bank made after the bankruptcy decision takes effect, except for transfers made with the prior consent of the Tribunal, shall be void.

7. All legal acts of the bank that are done within ninety days before the time of the decision whereby bankruptcy proceedings are opened against the bank shall upon application of the receiver be declared null and void by the Tribunal if the bank and its counterparty in the act

knew or could have known at the time of the act that the act would damage the interests of creditors of the bank. Such knowledge shall be presumed whenever the act consists of:

- 1) a gift;
- 2) a payment or transfer to an owner, administrator or member of the staff of the bank, unless such owner, administrator or staff member shows to the satisfaction of the Tribunal that the payment or transfer concerned his employment by the bank or concerned an account maintained with the bank and was not unusual in size, or that he did not know that the payment or transfer would damage interests of creditors of the bank;
- 3) a payment or transfer before its due date or the transfer of collateral for a debt before the due date of the debt;
- 4) the conclusion or performance of a contract imposing obligations on the bank that is significantly more onerous than the obligations imposed on the other party or parties to the contract; and
- 5) an arrangement between the bank and one or more others, other than an eligible financial contract defined in Article 82, permitting an offset between rights and obligations of the bank that without such arrangement would not have been permissible before the time of the bankruptcy decision.

**Article 77. Finality in payment and securities settlement systems**

1. Notwithstanding the provisions of Article 55, paragraph 4, Article 63, paragraph 2, sub-paragraph 1, Article 76, paragraph 2 and paragraph 7, sub-paragraphs 2 and 3:

- 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 a decision of the Financial Services Tribunal opening bankruptcy proceedings against the bank, but only if the transfer orders become irrevocable before the bankruptcy decision takes effect; or

- 2) where a bank enters irrevocable money or securities transfer orders into a payment or securities settlement system after a Tribunal decision opening bankruptcy proceedings against the bank takes effect and the transfer orders are carried out on the day of the Tribunal decision, the transfer orders shall be legally enforceable and binding on third parties, unless the receiver proves that the system operator was aware of the bankruptcy decision before the transfer orders became irrevocable.

2. No law, regulation, rule or practice on the setting aside of contracts and transactions concluded before the Tribunal decision opening bankruptcy proceedings against a bank takes effect shall lead to the unwinding of a netting by a payment or securities settlement system recognized as such by Da Afghanistan Bank because of that decision.

3. For the purpose of this Article:
  - 1) a transfer order entered into a money or securities settlement system becomes irrevocable at the time defined by the rules of that system; and
  - 2) “*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 with the result that only a net claim or a net obligation remains.

**Article 78. Transfers of bank shares and bank liabilities**

1. At the request of Da Afghanistan Bank, and in the interest of the banking system



or to maximize the value of a bank for its creditors, the Tribunal may direct the receiver for the bank on terms and conditions proposed by Da Afghanistan Bank and approved by the Tribunal to do a transaction or a series of transactions providing for:

- 1) the transfer of all or part of the shares in capital stock of the bank; or
- 2) the transfer of all or part of the assets of the bank or all or part of the liabilities of the bank, or both.

2. A transaction pursuant to paragraph 1 may be requested and authorized at any time after the filing of a petition for opening bankruptcy proceedings against the bank until the bank has been liquidated.

3. A transaction authorized pursuant to paragraph 1 shall not require the consent of the bank or any of its corporate organs. In reviewing a request to direct the receiver of a bank to transfer part of the obligations of the bank whereby some creditors would be excluded from the transfer, the Tribunal shall take the interests of such creditors into account. A transfer of liabilities shall become effective for all interested parties at the beginning of the day following the day of publication of a notice of the transfer in the Official Gazette of Afghanistan.

#### **Article 79. Property report**

1. Within two weeks from the date of the Tribunal decision opening bankruptcy proceedings against a bank, the receiver shall submit to the Tribunal a 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 other parties, including rental, lease and collateral agreements;
- 3) the contracts pursuant to which the bank receives services; and
- 4) the significant transactions entered into by the bank during the period of thirty days immediately preceding the date of the bankruptcy decision.

2. The report shall be updated quarterly and shall be made available for inspection by the creditors of the bank whose claims are included on the list of approved claims prepared pursuant to Article 81.

**Article 80. Registration of claims**

1. Except as provided in Article 81, paragraphs 1 and 2, claims on a bankrupt bank must be registered with the receiver in writing within sixty days from the date that the Tribunal decision opening bankruptcy proceedings against the bank is published in the Official Gazette of Afghanistan; the Tribunal may once extend this term for all creditors by thirty days on grounds of equity. Creditors shall be given a registration receipt upon request.

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 decision of the Tribunal opening bankruptcy proceedings against 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.

**Article 81. Admission of claims**

1. Only claims that are registered in accordance with Article 80 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) recorded in the books or records of the bank shall be admitted for the amounts so recorded without requiring registration.

2. Registered claims recorded in the books or records of the bank shall be admitted by the receiver as recorded without further proof, except that 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 public auction. Any claim so registered shall not be admitted until the auction has taken place or title to the asset has been otherwise transferred pursuant to Article 85.

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 list of

contested claims specifying the reasons for his opposition. Registered claims contested in part shall be recorded on both lists for the admitted part and the contested part respectively. Both 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. Both lists shall be completed and submitted to the Tribunal for approval within thirty days from the deadline for registration of claims. Thereafter, the receiver shall submit quarterly updated lists to the Tribunal for approval. Before approving the lists, the Tribunal may move claims from one list to the other in consultation with the receiver. The Tribunal may specify the evidence required for the approval of contested claims.

7. The Tribunal shall set dates for hearings where creditors whose claims are contested may submit evidence to prove their claims to the receiver and the Tribunal, 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 Tribunal. Creditors shall be notified of the date of each hearing by mail and by notice placed by the receiver in the Official Gazette of Afghanistan. No creditor need be notified of a hearing by mail more than once for the same claim. Following the hearing, the Tribunal shall decide whether the contested claims shall be approved or rejected. Claims for which the creditor fails to appear at the hearing of which he has been notified by mail shall be regarded as rejected. Creditors whose claims have been rejected shall be notified by the receiver in writing.

8. The approval by the Tribunal of claims shall be final. Claims approved by the Tribunal shall be removed from the list of admitted claims or the list of contested claims and be

recorded on a list of approved claims kept by the Tribunal and the receiver. Creditors whose claims have been approved by the Tribunal shall be notified by the receiver in writing.

9. No payment shall be made by the receiver on account of claims that are rejected by the Tribunal. The creditor whose claim has been rejected by the Tribunal may appeal the decision of the Tribunal within [two weeks] after the date of receipt of notice of the decision.

#### **Article 82. Set off and netting**

1. Nothing in this Law and no decision made under this Law shall prevent or prohibit the set off by operation of law of obligations between a bankrupt bank and its counter parties.

2. In determining the rights and obligations between a bankrupt bank 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. In this paragraph 2:

*“net termination value”* means the net amount obtained after setting off the mutual obligations between the parties to an eligible financial contract in accordance with its provisions.

*“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;
- 11) any master agreement in respect to an agreement referred to in sub-paragraphs 1 to 10;
- 12) any master agreement in respect of a master agreement referred to in sub-paragraph 11;
- 13) a guarantee of the liabilities under an agreement referred to in sub-paragraphs 1 to 12; and
- 14) any agreement of a kind prescribed by regulation of Da Afghanistan Bank; and

3. Except as provided by Article 77, no set off shall be allowed with respect to claims acquired and debts assumed with respect to a bank after the Tribunal decision opening bankruptcy proceedings against the bank takes effect or with respect to claims acquired and debt assumed in bad faith before that decision takes effect.

**Article 83. Termination of current contracts**

All current contracts or portions of contracts of a bankrupt bank 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 the petition for opening bankruptcy proceedings has been granted except that the counterparty of the bank may register a claim for compensation for breach of contract.

**Article 84. Negotiated settlements**

With the prior approval of the Financial Services Tribunal, the receiver for a bank may enter into and carry out negotiated settlements of claims with any creditor and debtor of the bank. No such settlement shall be subject to opposition or appeal.

**Article 85. Secured claims**

1. All assets securing approved claims of creditors against the bank or securing claims of the bank against others shall be sold at public auction by the receiver, except that:

- 1) securities, foreign currencies and other assets that can be readily sold at market may be sold in the markets where they are traded;
- 2) securities, foreign currencies and other assets of the bank that secure debts of the bank and that can readily be sold at market may be sold by the creditors holding the assets; and
- 3) if the receiver determines that no reasonable price can be obtained for assets in a public auction, the Tribunal may authorize the receiver to sell the assets privately at a price approved by the Tribunal.

2. The assets of a bankrupt bank other than the assets referred to in paragraph 1, sub-paragraph 2, must be placed at the disposal of the receiver promptly upon his request.

3. Any dispute between the receiver and a secured creditor as to the value of an asset securing a claim shall be resolved by the Tribunal unless the asset is sold at market or at public auction, in which event the sales price at market or at public auction shall be conclusive as to the value of the asset.

#### **Article 86. Priority of payments**

The assets of a bankrupt bank shall be distributed among its creditors in the following order of priority:

- 1) the claims on account of deposits that are not in the form of debt securities up to a maximum amount of 20,000 afghanis per depositor;
- 2) all costs and expenses on account of the administration of the bankruptcy;
- 3) liabilities of the bank on account of conservatorship and rehabilitation;
- 4) state and local taxes and state social security premiums due over a period of not more than two years preceding the date of the bankruptcy decision; and
- 5) claims of unsecured creditors, including claims of employees.

Remaining assets shall be transferred to the owners of the bank *pro rata* to their respective ownership shares.

#### **Article 87. Liquidation plan**

1. Within ninety days from the date of the decision of the Tribunal opening bankruptcy proceedings against a bank, the receiver shall prepare and submit to the Tribunal for its approval a detailed liquidation plan for the bank. The plan shall include:

- 1) a current *pro forma* balance sheet showing the assets and liabilities of the bank



valued at their estimated liquidation value and a *pro forma* balance sheet of the expected assets and liabilities of the bank at a date about three months later; the balance sheets shall show liabilities as admitted claims of creditors as well as approved claims and contested claims of creditors;

- 2) quarterly statements of past and projected income and expenses of the bank;
- 3) a progress report on the sale and on plans for the sale of major assets or groups of assets of the bank;
- 4) a report on the judicial or extrajudicial pursuit of claims of the bank, including court action to obtain annulment of fraudulent agreements and the transfers made and rights created by them;
- 5) a report on illegal activities of administrators of the bank and actions to obtain compensation for the bank;
- 6) a report on the continuation or termination of ongoing contracts, such as insurance, employment and service contracts of the bank, including a detailed analysis of financial provisions for bank employees;
- 7) a report on the liabilities of the bank and a schedule of expected payments to creditors of the bank during the next quarter; and
- 8) a report on past and future costs and expenses of the receivership.

2. The liquidation plan shall be updated quarterly. After its approval by the Tribunal, the liquidation plan shall be available for inspection by the creditors of the bank whose claims are included on the list of approved claims prepared pursuant to Article 81.

**Article 88. Rehabilitation of bankrupt banks**

No bankrupt bank shall be rehabilitated in whole or in part except as provided by Article 61.

**Article 89. No compromise with creditors**

Subject to the provisions of Article 84, there shall be no compromise or other arrangement with groups of creditors concerning a bankrupt bank.

**Article 90. General meeting and committee of creditors**

1. There shall be no general meeting of creditors concerning the liquidation of a bankrupt bank unless, at the request of the receiver supported by Da Afghanistan Bank, the Tribunal decides that such meeting is desirable to achieve an efficient liquidation of the bank.

2. There shall be no committee of creditors concerning the liquidation of a bankrupt bank unless, at the request of the receiver supported by Da Afghanistan Bank, the Tribunal decides that such committee is desirable to represent and protect significant interests of one or more classes or groups of creditors.

3. Tribunal decisions authorizing a general meeting of creditors or a committee of creditors shall specify the tasks of the meeting or the committee and the scope of its activities.

**Article 91. Immediate advances to depositors**

To the extent that the depositors can be identified and contacted, claims on account of demand deposits with a bankrupt bank that are not in the form of debt securities shall as soon as possible be paid in advance of any other distribution up to a maximum amount of

20,000 afghanis per depositor; such advance payments shall not be affected by rights of the bank to set off.

**Article 92. Distribution**

1. Subject to Article 86, approved claims shall be ranked and combined according to their priority of payment and recorded in a distribution schedule. Except for the provisions of Article 91, 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. At any time, and consistent with Article 86, the receiver may propose and the Tribunal may approve a distribution schedule of payments to be made to creditors of the bank with approved claims.

3. Immediately after the approval of a distribution schedule by the Tribunal, the receiver shall make the payments listed in that distribution schedule. 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. The receiver shall publish a notice in the Official Gazette of Afghanistan and one newspaper of general circulation inviting these creditors by name to come forward. The amounts so deposited shall remain available for payment to the creditors or their successors until the statute of limitations for the claims has run out, in which case the unpaid amounts shall be transferred to the state.

**Article 93. Bankruptcy proceedings against a domestic branch office or a domestic representative office of a non-resident bank**

1. Bankruptcy proceedings may be opened against a domestic branch office or a

domestic representative office of a non-resident bank:

- 1) if any of the grounds listed in Article 65 applies to such office as if it were a bank; or
- 2) at the petition of Da Afghanistan Bank, if bankruptcy proceedings have been opened against the non-resident bank in the country where its head office is located or where it principally carries on business.

2. The provisions of this Chapter X shall apply to the domestic branch offices and domestic representative offices of a non-resident bank as if all these offices together form a single domestic bank, and the non-resident bank shall be treated as both the Management Board and the General Meeting of Shareholders of the single domestic bank. All assets, liabilities, acts and omissions of the non-resident bank resulting from or otherwise relating to the business of any such office shall be attributed to that single domestic bank in applying the provisions of this Article 93.

3. At the time that the decision of the Tribunal opening bankruptcy proceedings against a domestic branch office or a domestic representative office of a non-resident bank is served on that office, the non-resident bank shall cease all banking activities in Afghanistan, except for banking activities carried out by or with the prior written authorization of the receiver appointed for that office.

4. In its application in bankruptcy proceedings opened against an office of a non-resident bank, Article 82 only applies to the set off and netting of obligations resulting from or otherwise relating to the business of the non-resident bank in Afghanistan.

5. Bankruptcy proceedings in Afghanistan opened against an office of a non-resident bank shall not limit the rights of creditors of the non-resident bank to pursue foreign assets of that bank in satisfaction of their claims.

**Article 94. Banks cross border bankruptcy**

In order to promote equal access of domestic and foreign creditors to a universal pool of assets of a bankrupt bank with cross border activities:

- 1) if a bankrupt domestic bank 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 bankrupt domestic bank 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 Financial Services Tribunal decides to what extent foreign bankruptcy decisions, conservatory measures and bank rehabilitation measures concerning non-resident banks should be recognized with respect to their domestic branch offices and representative offices; and
- 4) if a non-resident bank is in liquidation in the country where its head office is located or where it principally carries on business, the Tribunal may at the request of Da Afghanistan Bank authorize the transfer to the liquidator in that country of such assets of the non-resident bank as Da Afghanistan Bank shall deem advisable and in the interest of the creditors of that bank.

**Article 95. Consultations between the Financial Services Tribunal and Da Afghanistan Bank**

Before taking any decision affecting a bank declared bankrupt, the Tribunal shall inform Da Afghanistan Bank of its proposed decision and afford Da Afghanistan Bank a reasonable opportunity to give its advice to the Tribunal concerning the proposed decision. In making its decision, the Tribunal shall take account of the advice of Da Afghanistan Bank. In

the event that the Tribunal rejects all or part of the advice of Da Afghanistan Bank, the decision shall describe the advice so rejected and give the grounds for the rejection.

**Article 96. Termination of bankruptcy proceedings**

1. Upon termination of his tasks, the receiver shall be discharged by decision of the Tribunal, but not before the receiver has prepared and submitted to the Tribunal a report of the receivership. The decision of discharge by the Tribunal shall direct where the books and records of the bank and the receivership shall be deposited.

2. The bankruptcy proceedings against a bank shall be terminated by decision of the Tribunal when all assets of the bank have been liquidated and the proceeds have 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 Article 92, paragraph 3.

3. The decision of the Tribunal terminating bankruptcy proceedings against a bank shall be published by the Tribunal in the Official Gazette of Afghanistan.

**CHAPTER XI FINAL PROVISIONS**

**Article 97. Regulatory autonomy of Da Afghanistan Bank**

In carrying out its tasks, Da Afghanistan Bank shall enjoy autonomous regulatory powers. All regulations, orders and guidelines issued by Da Afghanistan Bank that apply to more than one institution shall be published in the [Official Gazette] and shall take effect on the date of such publication or on such later date as such regulation, order or guideline shall

specify. Da Afghanistan Bank shall maintain a public register of such regulations, orders and guidelines.

**Article 98. Standards of good administration**

1. Da Afghanistan Bank shall use the powers given it under the law of Afghanistan equitably and uniformly and in accordance with sound administrative practices. It shall refrain from using any such power to serve an objective for which the power was not given or in a manner that is disproportional to what in the circumstances of the case is required to achieve the objective for which the power was given.

2. The decisions of the Central Bank taken pursuant to this Law shall be impartial and shall be motivated only by objective and rational considerations; they shall be executed with fairness and restraint.

3. In carrying out its tasks pursuant to this Law, Da Afghanistan Bank shall be guided by the principle that a burden or restriction which is imposed on a person, or on carrying out an activity or on providing a service, should be proportionate to the benefits, considered in general terms, which are expected to result from the imposition of that burden or restriction.

**Article 99. Transitional provisions**

1. Every bank that on the date that this Law enters into effect carries a license issued by Da Afghanistan Bank shall apply to Da Afghanistan Bank for a new license within six months after that date, and that license shall be deemed to terminate on the date that the license is replaced by a new license or the application for a new license is rejected by Da Afghanistan Bank.

2. Banks whose application for a new license is rejected shall be liquidated in accordance with the procedures prescribed by Article 63 by a conservator appointed by Da Afghanistan Bank, unless Da Afghanistan Bank in consultation with the Minister of Finance decides that the bank shall continue to exist as a financial institution that does not engage in the business of receiving money deposits or other repayable funds from the public for the purpose of making credits or investments for its own account, provided that any reference to the word “bank” in its name is removed.

**Article 100. Repeal of existing laws and regulations**

1. The following laws, and all regulations issued pursuant to such laws, are hereby repealed:

- a. The Presidential Edict No.99 dated 1373/5/17 establishing the Law on Money and Banking;
- b) The Law on Money and Banking, dated 30 Saraton 1354;

2. In case of inconsistency with a provision of any other law of Afghanistan, this Law shall prevail.

**Article 101. Entry into force**

This Law shall enter into force when signed.