



**Islamic Republic of Afghanistan
Da Afghanistan Bank**

**Regulation on Licensing and Oversight of Payment and
Securities Transfer Systems
(Payment Service Operator)**

FEBRUARY 2016



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PART I

GENERAL PROVISIONS

1. Authority

This Regulation on Licensing and Oversight of Payment and Securities Transfers Systems is adopted pursuant to the authority granted to Da Afghanistan Bank by Articles 70, 87, 91 and 96 of Da Afghanistan Bank Law.

2. Scope

This Regulation shall define:

- a) the conditions, requirements and procedures under which System Operators are licensed;
- b) the terms and standards under which Systems can be operated; and
- c) the means and procedures under which the Da Afghanistan Bank shall exercise its oversight powers.

3. Definitions

- a) Unless otherwise provided in a specific provision, for the purposes of this Regulation and any other measure implementing it, terms as listed below shall have the following meaning attributed to them:

1. "Central Securities Depository" (CSD) means an entity in whose register securities are immobilized, and enabling securities transactions to be finally processed by book-entry. Securities can be held at the CSD either in dematerialized (that is, as electronic records) or physical form. A CSD may also provide custodial and asset services, as well as clearing and/or settlement services;
2. "Clearing" means the process of transmitting, reconciling and/or confirming funds or securities transfer instructions prior to Settlement and include the Netting of instructions and the establishment of final positions for Settlement.
3. "Clearing System" means a set of procedures whereby Participants present and exchange information relating to the transfer of funds or securities to other Participants through a centralized System or at a single location and includes mechanisms for the calculation of Participants' positions on a bilateral or multilateral basis with a view to facilitating the Settlement of their obligations.
4. "Collateral" means an asset that is delivered by the collateral provider to secure an obligation to the collateral taker. Collateral arrangements may take different legal forms; collateral may be obtained using the method of title transfer or pledge.



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5. "Electronic Funds Transfer" means any transfer of funds which is initiated by a person by way of instruction, authorization or order through electronic means and includes point of sale transfers, automated teller machine transactions, direct deposits or withdrawal of funds, transfers initiated by telephone, mobiles, internet, card or other devices.
6. "Issuer" means the payment service provider issuing a payment instrument. Whatever the scheme under which the payment instrument works, this is the entity being finally obliged to pay or redeem the customer's transactions and unused funds which are presented to it.
7. "Multilateral Netting" means an arrangement among three or more parties to net their obligations.
8. "Netting" means the determination of the net payment obligations or the determination of the net termination value of settlement obligations between two or more System Participants within a System.
9. "Operator" means Da Afghanistan Bank or any other entity licensed by Da Afghanistan Bank to operate a System.
10. "Participant" means a party who is recognized in the rules of a System as eligible to exchange, clear and settle through the System with other participants either directly or indirectly. A direct participant is a participant in a System who is responsible for the settlement of its own payments, those of its customers and those of the indirect participants on whose behalf it is settling.
11. "Payment System" means any procedures, including communication networks, agreed between three or more money service providers for the processing of payments, the clearing or settlement of payment transactions, and for the exchange of payments against other payments, financial obligations or securities, in any currency.
12. "Real-Time Gross Settlement" (RTGS) means a Settlement that effects final settlement of funds, payment obligations and book entry of securities and instruments on a real-time transaction-by-transaction basis as these occur during operating hours in a processing day.
13. "Securities transfer system" means any procedures, including communication networks, agreed between three or more securities service providers for the transfer of securities, for the clearing or settlement of transactions in securities, against payments in other securities or in cash. This shall also include a CSD.
14. "Settlement Rules" means the rules, however established, that provide the basis upon which payment obligations are calculated, netted or settled and includes rules for the taking of action in the event that a Participant is unable or likely to become unable to meet its obligations to a System or other Participants. This also covers settlement of obligations from securities.
15. "Settlement System" means a System for the discharge of payment obligations as well as of settlement of obligations in relation to securities.
16. "Settlement" means the act of discharging obligations by transferring funds or securities between two or more parties.
17. "Systemic Risk" means the risk that relates to the inability of a Participant to meet its obligations in a System as they become due or a disruption to the System that could, for whatever reason, cause other Participants in the System to be unable to meet their obligations as they become due.

18. "Outsourcing" means the entrusting by way of agreement to a third party to provide one or more parts of a services yet keeping responsibility for such services towards any third parties. Outsourcing does not represent any agency-type relationship where the agent acts in the name and on behalf of its principal.

- b) Unless otherwise provided, in this Regulation the term "System" shall interchangeably refer to a Payment System or a Securities Transfer System.

PART II

LICENSING

4. Licensing

a) In pursuance of Articles 87 and 96 of the Da Afghanistan Bank Law, no person may operate a System unless such person is duly licensed by the Da Afghanistan Bank.

b) Any person desirous of operating a System shall apply to the Da Afghanistan Bank by submitting documents and information as prescribed by Article 5 of this Regulation.

c) In addition to proof of compliance with any further requirements that Da Afghanistan Bank may decide to apply for the operation of the System, the following minimum conditions shall be satisfied by the System itself:

1. The Operator to be established as a limited liability company.
2. The Operator to dispose of an Initial Capital Requirement and an On-Going requirement of Minimum Paid-Up Capital of AFS 50 million, or any other amount as may be prescribed by Da Afghanistan Bank from time to time.
3. Initial capital of an operator shall consist of the following elements:
 - 1) core capital;
 - 2) reserves;
 - 3) retained earnings;
 - 4) purchased own shares, as a deductible;
 - 5) unrealised losses on securities and other components of other comprehensive income, as a deductible;
 - 6) loss, as a deductible.
4. To have a robust governance arrangements, clearly defining individual competences of relevant organs and consequent responsibilities for action, in line with requirements as established in Section 9 of this Regulation;



5. To have policies, practices and procedures for evaluating financial soundness of the Operator and Participants and for identifying, monitoring and controlling any risks associated to the working of the System;
6. To ensure finality of payment and settlement, to have clear netting, loss allocation and apportionment procedures, and dispose of adequate collateral in all its forms, nature, effectiveness and means of realization in conformity with relevant legal and statutory provisions of the Islamic Republic of Afghanistan;
7. To have a safe and reliable IT system and adequate interfaces to ensure interoperability and access, as well as robust business continuity and disaster control procedures;
8. To have membership rules adequate to the operation of the System and clear, fair and non discriminatory access procedures.

5. Documents required

a) The applicant is required to provide the following documents and information along with a written application. A standard application form will be provided by Da Afghanistan Bank.

1. As for shareholder of the Operator, in case of a natural person:
 - a) Shareholder's bio data and valid passport or identity card;
 - b) Personal net worth certified by a recognized external audit;
 - c) Certificate of no financial and non-financial criminal records from relevant authorities.
2. In case the shareholder is a legal person, the following documents should be submitted in addition to the above documents:
 - a) A copy of business license and its charter;
 - b) No objection letter from the authority that issued the license for the legal person for operating a System;
 - c) Copies of identity cards, biography of shareholders, and their shareholding structure;
 - d) Comprehensive information on activities, and business plan and financial forecasting for the following three years, if available;
 - e) Audited financial statements of the previous three years;
 - f) Biography of senior management.



3. Description of the organization of the System and its business rationale;
4. Business Plan for the following three years;
5. Description of policies and/or procedures of the System, including:
 - a. the criteria established for direct and indirect Participation in the System,
 - b. the principle of operation of the System (real time, net, etc.),
 - c. the draft rules or rules of the System and service levels to be provided to the Participants;
 - d. an analysis of the risk and measures to limit risks in the System arising from illiquidity or insolvency of Participants in such Systems including capacity to manage risk;
 - e. rules on management of liquidity, credit and settlement risk, including rules determining the time when a payment instruction and a Settlement is final,
 - f. the measures employed to safeguard technical operations, including a contingency plan in the event of any operational disruption should the ordinary system fail to function;
 - g. the measures taken to secure the protection of electronic processing and the storage of data relating to the System of payments against disclosure, misuse, damage, destruction, loss or theft;
6. Details of the internal audit function including structure, scope, reporting lines and the frequency of reporting;
7. Overview of the information technology functions, including scope, structure and reporting lines with an attached organizational chart;
8. Human resources plan to ensure adequate resources to the operation of the System;
9. A signed document of the relevant portion(s) of the security policies and procedures containing at a minimum:
 - g) a description of the institution's security organization;
 - h) definition of responsibilities for designing, implementing, monitoring and updating information security measures; and



- i) established procedures for evaluating policy compliance, enforcing disciplinary measures and reporting security violations;
- j) A signed document describing the business continuity and disaster recovery plans for payment facilities and event scenario/problem management plan/program to resolve or address problems, such as complaints, errors and intrusions and the availability of back-up facilities.

10. Other information and documents if deemed necessary by Da Afghanistan Bank.

11. Payment of a non-refund Da Afghanistan Bank application fee of AFN 500,000.

6. Licensing procedure and issuance of a license

(1) After receipt of an application, the Da Afghanistan Bank may make a preliminary investigation on the genuineness of the particulars furnished by the applicant and completion of the information provided.

(2) Within Seven [7] working days from the original submission, the Da Afghanistan Bank shall either open a full procedure under sub-section (3) of this Section or request the applicant to provide additional information. The Da Afghanistan Bank shall indicate to the applicant any deadlines to provide such information.

(3) The Da Afghanistan Bank, if satisfied after the investigation under sub-section (1) of this Section that the application is complete in all respects, shall open a main procedure to evaluate whether it conforms to the provisions of this Regulation or related measures issued by the Da Afghanistan Bank.

(4) The Da Afghanistan Bank shall respond within Ninety [90] days of submission of a complete application. Where the Da Afghanistan Bank considers that the application should be refused since it does not conform to one of the conditions of sub-section 4(3) of this Regulation or related conditions further established by the Da Afghanistan Bank under this Regulation against systemic risk, it shall give the applicant a written notice to that effect stating the reasons for the refusal.

(5) The concession of an individual license can be made subject to specific conditions imposed by the Da Afghanistan Bank following exchange of opinions with the applicant on the most appropriate ways to correct shortcoming identified by the Da Afghanistan Bank and made conditional upon the fulfilment of said conditions within a specific term.

(6) A person obtaining a licence as a System Operator shall provide services and execute activities as individually indicated in the license, and do so from any location listed in its license.

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7/19

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7. Grounds for denial of approval

(a) Da Afghanistan Bank may deny approval to an applicant after application under Article 5 of this Regulation for any of the following reasons, but not limited to:

- a. If the Da Afghanistan Bank is not satisfied that all of the conditions in the Da Afghanistan Bank Law, Fit and Proper Regulation and this Regulation are met in full;
- b. The applicant is in an unsatisfactory financial condition evidenced by any of the following factors:
 1. The applicant has been declared bankrupt.
 2. The obligations of the applicant exceed its assets, even if the applicant has not been officially recognized as bankrupt;
 3. The applicant has a history of problems paying interest or principal on any financial obligations;
 4. The applicant's financial statements indicate that the applicant would not be a source of financial strength, in the sense that the applicant would have difficulty contributing additional capital to the System should it become necessary; or
 5. Other reasons that evidence to Da Afghanistan Bank a potential serious weakness in the overall financial condition of the applicant.
- c. Based on the materials submitted, there is reasonable expectation that the proposed System will not achieve and maintain profitability within the time period set out in the business plan
- d. In the event that the applicant desires to control the System by the Board of Supervisor's of the parent company, the member of Board of Supervisors lack the necessary professional qualifications or work experience to exercise significant influence over the management of the System.
- e. The applicant submitted information that does not comply with the requirements established by this Regulation, or failed or refused to submit information requested by the Da Afghanistan Bank.
- f. Da Afghanistan Bank determines that the applicant submitted false or misleading information in connection with the current application or any other application or request.
- g. Da Afghanistan Bank may consider other issues in evaluating an application depending on circumstances unique to the particular application submitted and the financial industry's environment at the time of application.



PART III

TERMS AND CONDITIONS TO OPERATE A SYSTEM

8. General requirements

- (1) System Operators shall ensure that their activities always comply with relevant regulations and other either general or individual measures adopted by Da Afghanistan Bank to ensure a secure and efficient payment system in the country.
- (2) No System Operator shall cause any change in the System which would affect the structure, operation, risk management, or administration of the System without:
 - a. the approval of Da Afghanistan Bank; and
 - b. giving notice of not less than Thirty [30] days to the Participants of the System after the approval of Da Afghanistan Bank.

9. Corporate Governance

- a. Operators are obliged to form their governance structure (Board of Shareholders, Board of Supervisors, Board of Management and Committees) as per Chapters 8, 9 and 10 of the Corporations and Limited Liability Companies Law of Afghanistan.
- b. An Operator shall have documented objectives which place a high priority on the safety and efficiency of the System and have documented governance arrangements that provide clear and direct lines of responsibility and accountability.
- c. The Board of Supervisors' roles and responsibilities shall be clearly defined which shall include the following but are not limited to:
 1. establishing clear strategic aims for the System;
 2. establishing documented procedures for the System's functioning, including procedures to identify, address and manage conflicts of interest of its members;
 3. ensuring the effective selection, monitoring, and, where appropriate, removal of members of Management;
 4. establishing appropriate compensation policies, consistent with best practices and based on long-term achievements.
- d. The Board shall review both its overall performance and the performance of its individual Board members at least annually.
- e. The Board's composition shall ensure integrity and an appropriate mix of technical skills, knowledge and experience both of the System and of the financial market in general, allowing the Board to fulfil its respective roles and responsibilities.



9/19

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- f. Board of Management's role, responsibilities and reporting lines shall be clearly defined. The composition shall ensure integrity and an appropriate mix of technical skills, knowledge and experience both of the System and of the financial market in general, allowing Board of Management to fulfil its responsibilities for the operation and risk management of the Operator. Board of Management's responsibilities shall include, under Board of Supervisor's direction, ensuring all of the following:
 1. that the Operator's activities are consistent with its objectives, strategy and risk tolerance;
 2. that internal controls and related procedures are appropriately designed, executed and overseen in order to promote the Operator's objectives;
 3. that internal controls and related procedures are subject to regular review and testing by well-trained and sufficiently staffed risk-management and internal-audit functions;
 4. active involvement in the risk-control process;
 5. that sufficient resources are allocated to the System's risk-management framework.
- g. The Board of Supervisors shall establish and oversee a documented risk-management framework, which shall:
 1. include the Operator's risk-tolerance policy;
 2. assign responsibilities and accountability for risk decisions;
 3. address decision making in crises and emergencies;
 4. address internal control functions.
- h. The Board shall ensure that the risk management and internal control functions have sufficient authority, independence, resources and access to the Board of Supervisors.
- i. The Board of Supervisors shall ensure that major decisions affecting the System's technical and functional setup, rules and overall strategy, in particular, with regard to choice of a clearing and settlement arrangement, operating structure, scope of products cleared or settled, and use of technology and procedures, appropriately reflect the legitimate interests of the System's relevant stakeholders. The relevant stakeholders shall be consulted reasonably in advance on such decisions.

10. Access Regime

(1) The Da Afghanistan Bank may impose an access regime in respect of a System on the person who determines access to the System, regardless of whether he is a Participant or an Operator, on such terms and conditions as the Da Afghanistan Bank may consider appropriate.

(2) In considering whether to impose an access regime under sub-section (1), the Da Afghanistan Bank shall take into consideration the following:

- a. whether the imposition of the access regime in respect of the System would be in the public interest;



- b. the interests of the current Participants and the Operator;
 - c. the interests of persons who, in the future, may require or desire access to the System; and
 - d. such other matters as the Da Afghanistan Bank may consider to be relevant.
- (3) The Da Afghanistan Bank, in imposing an access regime under sub-section (1), shall ensure that the access regime is fair and not discriminatory.
- (4) The Da Afghanistan Bank will have the authority to make variations to the access regime based on assessment of the aforementioned items as stated in sub-section (2)
- (5) The Da Afghanistan Bank will have the authority to revoke an access regime based on assessment of the aforementioned items as stated in sub-section (2).

11. Outsourcing of activities

- (1) Where an Operator intends to outsource operational functions, it shall inform the Da Afghanistan Bank accordingly.
- (2) Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of the Operator's internal control and the ability of the Da Afghanistan Bank to monitor their compliance with all obligations laid down in this Regulation.
- (3) For the purposes of paragraph 2 of this article, an operational function shall be regarded as important if a defect or failure in its performance would materially impair the continuing compliance of an Operator with the requirements of its license, or its financial performance, or the soundness or the continuity of its services.
- (4) The Da Afghanistan Bank shall ensure that when an Operator outsources important operational functions, it complies with the following conditions:
- (a) the outsourcing shall not result in the delegation by senior management of its responsibility;
 - (b) the relationship and obligations of the Issuer towards the users of any relevant Payment Instrument shall not be altered;
 - (c) the conditions with which the Operator is to comply in order to be licensed and remain so in accordance with this Regulation shall not be undermined; and
 - (d) none of the other conditions subject to which the license was granted shall be removed or modified.



12. Liability

- (1) When Operators rely on third parties for the performance of operational functions, they shall take reasonable steps to ensure that the requirements of this Regulation are complied with.
- (2) Operators shall remain fully liable for any acts of their employees, or any third-party to which activities are outsourced.

13. Public Disclosure for Payments System Operators

- (1) A Payment System Operator licensed by the Da Afghanistan Bank shall be required to publish annual reports with its audited financial statements, information on its operations, its risk management and IT practices including opinion of external audit on effectiveness of the risk management practices; the annual report to be publicly available (e.g., by uploading to its website) within three months from the close of its accounting year. In addition to annual reports, a Payment System Operator may be directed to disclose such other information or data as deemed necessary in the public interest.

14. Revocation

- (1) The Da Afghanistan Bank may revoke a System Operator's license if it:
 - a. contravenes any provisions of this Regulation;
 - b. does not comply with other general measures issued as per this Regulation;
 - c. fails to comply with individual decisions issued by the Da Afghanistan Bank;
 - d. provides the services contrary to the conditions subject to which its license was issued;
 - e. becomes insolvent or dissolved or wound up;
 - f. was licensed on the basis of false or wrong information submitted by the applicant; or
 - g. has failed to commence operations within Twelve [12] months following the issuance of license
- (2) No revocation shall be made under sub-section (1) of this Section except after giving the applicant a reasonable opportunity of being heard.
- (3) Nothing contained under sub-section (2) of this Section shall apply to a case where the Da Afghanistan Bank considers it necessary to revoke the license in



the interest of the monetary policy or financial stability of the country or for any other reasons connected to public interest.

(4) The Da Afghanistan Bank may, in considering whether to prohibit any person from operating a System under sub-section (1) of this Section, inspect the premises, equipment, machinery, apparatus, books or other documents, or accounts and transactions of the person, upon giving written notice to it.

(5) The order of revocation issued under sub-section (1) of this Section shall include necessary provisions to protect and safeguard the interests of persons affected by such order of revocation.

(6) The decision to revoke the license shall be published by the Da Afghanistan Bank in a newspaper of wide circulation.

(7) The revocation of the license shall become effective on the date of its publication or on any further date as the Da Afghanistan Bank may specify.

(8) The System Operator shall be prohibited from engaging in the operation of the System starting from the effective date of the revocation.

PART IV

OVERSIGHT

15. General Oversight Authority

(1) The Systems operated pursuant to this Regulation, including the Operators of Systems and Participants therein, as well as any third parties to which part of services have been outsourced, shall be subject to oversight by the Da Afghanistan Bank.

(2) Persons undertaking monitoring on behalf of the Da Afghanistan Bank shall not be liable toward third persons for the consequences of the performance of their functions.

(3) Persons subject to payment oversight shall provide the Da Afghanistan Bank, for the purposes of payment oversight and for statistical purposes, with information and reports on their activities, according to a procedure and with content and frequency established by the Da Afghanistan Bank.

(4) The Operator of a System, Participants and other persons who are subject to oversight shall be obligated to permit it, to refrain from acts that could inhibit its conduct and to provide all information and co-operation stipulated by this Regulation or required for the conduct of the oversight by the Da Afghanistan Bank or persons authorized by this to oversee Payment Systems.



(5) Da Afghanistan Bank may cooperate with other public authorities engaged in the regulation and supervision of financial institutions and other entities directly or indirectly involved in their operation in the country. The Da Afghanistan Bank shall have the right to exchange information in accordance to laws of Afghanistan with such bodies and persons and to notify them regarding deficiencies found during their oversight activities.

(6) The Da Afghanistan Bank may co-operate with bodies in other countries for oversight of Systems. The Da Afghanistan Bank shall have the right to exchange information in accordance to the laws of Afghanistan with such bodies and persons and to notify them regarding deficiencies found during their oversight activities.

(7) If the Da Afghanistan Bank discovers facts during its monitoring indicating that criminal acts have been committed it shall notify the relevant body regarding criminal proceedings of this fact without unreasonable delay.

16. Access to Information

(1) The Da Afghanistan Bank may request that any Participant, Operator or other person acting on behalf of the Operator or Settlement institution to provide the Da Afghanistan Bank within the period specified in a notice, all such information as may be required by the Da Afghanistan Bank.

(2) The Da Afghanistan Bank may prepare and publish consolidated statements aggregating any information provided under this Regulation for statistical purposes, statements that relate to or are derived from any information provided under this Regulation.

17. Authority to Perform Inspection

(1) The Da Afghanistan Bank shall have the authority to supervise the premises of a System Operator as part of the licensing process and on a periodic basis as part of supervisory regime. This may be performed with or without a written request.

(2) At such time, the Da Afghanistan Bank has the authority to supervise and retain any books, premises, equipment, (or interview staff) or other items as deemed necessary for the purpose of ensuring its compliance with Da Afghanistan Bank measures.

(3) The Da Afghanistan Bank can appoint external independent experts and can attend, through authorized officers, the meetings of the governing and supervisory bodies of the persons subject to payment oversight. Such authorized officers may give opinions and recommendations which shall be recorded in the minutes of the meetings.

(4) When applied to Banks and other Financial Institutions, performance of such authority shall be in compliance with banking supervision laws and procedures



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and Da Afghanistan Bank shall undertake memorandum of understanding with relevant authorities to coordinate their reciprocal activities.

18. Enforcement Measures to Payment Systems

- (1) In case the Da Afghanistan Bank establishes breach(es) in the activity of a Payment System, depending on the nature and gravity of the breach, it may:
- a. issue a written warning and/or issue mandatory instructions to the Operator and/or Participant in the Payment System;
 - b. oblige the Operator and/or Participant in the Payment System to discontinue and rectify the breaches within a given time-limit;
 - c. order the Payment System Operator to exclude a certain Participant from the Payment System, if the Participant fails to observe the requirements or rules of the System stipulated herein;
 - d. order the Participants and the Operator of the Payment System to change its rules;
 - e. oblige the System Operator to carry out, at its own expense, internal or external audit of the System or its Participants;
 - f. impose on the Payment System Operator temporary or permanent prohibition to engage in the activity of the payment system;
 - g. revoke the license of the Operator of a Payment System subject to licensing.

19. Registration's office

- (1) The Da Afghanistan Bank shall keep a public register of licensed System Operators.
- (2) The register shall contain the following information, as relevant:
- a. the index number of the license issued by the Da Afghanistan Bank and date of issuance;
 - b. the taxpayer identification number;
 - c. the name, registered office and head office;
 - d. the persons managing and representing the Operator;
 - e. the services/activities for which the Operator was licensed;
 - f. the location(s) of the Operator, their addresses and the identity of the persons who manage and represent them;
 - h. the revocation of the license issued or cessation of business activities.
- (3) The Register referred to in sub-section 1 shall be made publicly accessible on the Internet and shall be updated regularly.



20. Obligation of confidentiality of information

- (1) Persons authorized to oversee Payment Systems shall be obligated to respect professional confidentiality regarding facts acquired during such functions. On the basis of information acquired by oversight activities, the Da Afghanistan Bank may provide information summaries to a third person, in which the specific System and the specific person may not be identified.
- (2) Information acquired during oversight may only be used by authorized persons in the fulfillment of their job responsibilities and in legal proceedings regarding an action against a decision issued by the Da Afghanistan Bank as regards Payment Systems oversight or in a similar proceeding before a court.
- (3) The Da Afghanistan Bank may provide to an oversight body of another country information acquired during the oversight process according to a mutual cooperation agreement, or the like. Other bodies and persons may only be provided with information under the condition that such bodies and persons have an obligation to protect the information and to respect confidentiality. Information provided shall only be used for the specific purpose or for the proceeding for which this information was made available. Information supplied to another country should only be in summary or aggregate form. No transaction details should be disclosed unless the affected Participants and Operator have been notified.
- (4) The Da Afghanistan Bank shall be equally authorized to request all relevant information it might need for its oversight activities from oversight bodies of other countries, according to any cooperation agreement or the like.

21. Reporting Requirement

- a) Operators are required to maintain audited financial statements and are required to submit annually, within ninety (90) days after completion of the financial year to Da Afghanistan Bank or as required by Da Afghanistan Bank from time to time.
- b) Operators are bound to provide Da Afghanistan Bank information regarding.
 - a. commencement of any significant legal proceedings by or against the institution;
 - b. details of any development which impacts or potentially impacts on the Operator to a significant extent; and
 - c. details of fines/penalties imposed on the Operator by any other government department;
 - d. any information, records, documents etc, as prescribed by Da Afghanistan Bank.
- c) Operators are required to provide statistics to Da Afghanistan Bank details of which will be specified through circulars.

22. Fees and charges

- (1) Fees and charges can be imposed by the Da Afghanistan Bank for direct and/or indirect costs incurred in providing its oversight and regulatory services, to Operators and Participants of Systems.
- (2) Amount of fees, annual assessment fees, other charges, their types and calculation will be determined and issued through circulars of Da Afghanistan Bank from time to time.

PART FIVE

SETTLEMENT, NETTING AND FINALITY OF PAYMENT

23. Settlement Accounts

- (1) Every Participant to a System shall:
 - (a) open and maintain settlement accounts on the books of the Da Afghanistan Bank, including the maintenance of minimum balances, on such terms and conditions as the Da Afghanistan Bank may specify; or
 - (b) Appoint another Participant which has opened a settlement account with the Da Afghanistan Bank to settle all obligations due from the first-mentioned Participant to any other Participant arising out of each day's clearing.
- (2) In the case where a Participant appoints another Participant under sub-section 1.b of this section the Participant shall, before any obligation is settled by that other Participant on its behalf, give the Operator notice in writing of the appointment, accompanied by a written confirmation from the appointed Participant of such appointment.
- (3) Any Participant who intends to terminate the appointment under sub-section 1.b, shall notify the Operator, and the Operator is obliged to report Da Afghanistan Bank in writing not less than Seven [7] days before the date of termination of such an appointment. The appointment contract can be terminated only if both parties have cleared and settled their mutual and respective dues and obligations.

24. Finality of payment

- (1) A System shall specify the rules to achieve finality in its operations, in accordance with the provisions of this Regulation and as prescribed by any rules, regulations or directives issued by the Da Afghanistan Bank. This shall include rules establishing irrevocability of orders once these have entered into the System, unless special conditions apply.
- (2) The entry or payment that has been effected in terms of sub section 1 of this section shall not be revoked, reversed, or set aside, including, without limitation, by insolvency or bankruptcy proceedings or any other law similar in purpose and effect and is not subject

to any provision of law or order of an administrative or judicial authority that operates as a stay of that payment.

25. Collateral for payment and settlement obligation

- (1) The rights and remedies of an Operator, a Participant, a Clearing House, or any other third party into the System or the Da Afghanistan Bank with respect to collateral granted to it as security for a payment or the performance of an obligation incurred in a System shall not be affected by insolvency or bankruptcy proceedings or any other law similar in purpose and effect. In particular, such rights and remedies may not be the subject of any stay provision or order affecting the ability of creditors to exercise rights and remedies with respect to the collateral.

PART SIX

WINDING UP AND ADMINISTRATION OF A SYSTEM OPERATOR OR PARTICIPANT

26. Da Afghanistan Bank to be notified of winding up

- (1) Where an Operator or a Participant in a System is wound up or placed in scheme of administration, the Operator or Participant at whose instance the winding up or the administration order or the decision, as the case may be, was issued, shall with no delay lodge a copy of the order or decision with the Da Afghanistan Bank.

27. Prohibition

- (1) An Operator or a Participant against which a winding-up application or scheme of administration has been lodged or decision for voluntary dissolution is made is prohibited from operating or participating in any System until such application or scheme is disposed of or finally determined.

28. Winding up or administration of participant not to affect finality

- (1) Notwithstanding anything to the contrary in any enactment relating to insolvency or bankruptcy, the winding up or the opening of scheme of administration of a Participant in a System shall not affect the finality or irrevocability of any entry or payment which became final and irrevocable in terms of Section 23 of this Regulation before the copy of the relevant order or decision was lodged with the Da Afghanistan Bank.

29. Rules of the Da Afghanistan Bank and licensed systems to bind liquidators

- (1) If an institution participating in a System is wound up or placed in administration or otherwise declared insolvent by a court, any provision contained in a written netting arrangement to which the Participant is a party or any Netting rules and practices applicable to the system, are binding upon the liquidator or administrator, as the case may be, of the Participant concerned in respect of any payment or settlement obligation:

- (a) which has been determined through Netting prior to the issue of the winding-up or arrangement order, as the case may be; and
- (b) which is to be discharged on or after the date of the winding-up or arrangement order or discharge of which was overdue on the date of the winding-up or scheme of administration order, as the case may be.

PART SEVEN

INFRINGEMENTS, REMEDIAL MEASURES AND PENALTIES

30. Fines and late fees

- (1) Da Afghanistan Bank shall assess fines and late fees for non-compliance with the provisions set forth in this Regulation.
- (2) Da Afghanistan Bank has the right to charge penalties and fines. Da Afghanistan Bank will determine the details and amount of charges and penalties as per circulars and directives that is going to be issued from time to time.

31. Penalties for Operators to operating without a license

- (1) At any time, the Da Afghanistan Bank reserves the right to take legal action against individuals and entities operating a System in violation of Da Afghanistan Bank regulations.
- (2) Operating a System without a license will result in referral to the Attorney General's office for closure, confiscation of records and property, and prosecution.

32. Effective Date of Regulation

This regulation will be effective upon adoption by the Supreme Council of Da Afghanistan Bank.

