

# **LAW OF DA AFGHANISTAN BANK**

Provisional translation of DAB law from Dari version/Dec2003  
Translated by Banking Reform Team  
Regulations/USAID/BearingPoint/DAB

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## Chapter I ESTABLISHMENT, OBJECTIVES AND TASKS

### Article 1. Definitions

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

“*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;

"*check cashing*" means receiving compensation for taking payment instruments or stored value, other than traveler's checks, in exchange for money, payment instruments, or stored value delivered to the person delivering the payment instrument or stored value;

“*commodity*” means a currency, metal, agricultural product, basket of commodities, and any other asset declared to be a commodity by regulation of the Minister of Finance of Afghanistan;

"*currency exchange*" means receipt of revenues from the exchange of money of one country for money of another country;

“*Decree Banking Law*” means the law of Afghanistan approved by Decree Nr. \_\_\_\_ of the President of Afghanistan dated 24/ 6/1382;

"*debt security*" means any negotiable instrument of indebtedness and any other instrument equivalent to such instrument of indebtedness, whether certificated or in book-entry form;

“*derivative*” means any negotiable forward contract, futures contract, option contract and other contractual instrument that entitles its holder:

- a. to acquire a security or a commodity, or a basket of securities or commodities; or
- b. to receive a cash amount determined by reference to a future price or value of a security or a commodity, or by reference to a future price or value of a basket of securities or commodities; or
- c. to receive a cash amount determined by reference to an interest rate or yield or a foreign exchange rate or an index of prices or values of interest rates or yields, foreign exchange rates, securities or commodities;

“*financial market*” means any financial market or exchange where securities are traded and the activities connected with such market or exchange;

“*foreign currency*” and “*foreign exchange*” mean:

- a. the money of a country other than Afghanistan,
- b. a monetary unit of account which is established by an intergovernmental organization or by agreement between two or more countries,
- c. gold if sold as bullion or specie, not including a significant increment of workmanship, or
- d. a combination of any of the things mentioned in a to c;

“*Financial Services Tribunal*” and “*Tribunal*” mean the Financial Services Tribunal established by Article 108;



“*foreign exchange dealer*” means any person who engages in the business of buying and selling foreign currencies, forward exchange contracts, options, swaps or other derivative contracts involving a foreign currency, or arranging for payments in foreign currency;

“*forward contract*” means a contract of sale for future delivery of a security or a commodity;

“*futures contract*” means a forward contract with standardized terms and conditions that is traded in a financial market;

“*investment fund*” means a company receiving funds from the public for investment in securities;

“*International Accounting Standards*” means the most recent international accounting standards issued by the International Accounting Standards Committee;

“*monetary value*” means a medium of exchange, whether or not redeemable in money;

“*money*” means a medium of exchange that is authorized or adopted by Afghanistan or a foreign country; the term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries;

“*money service*” means any service relating to money including safekeeping, money transmission, check cashing, or currency exchange;

“*money service provider*” means any person who engages in the business of providing a money service;

*"money transmission"* means selling or issuing payment instruments, stored value, or receiving money or monetary value for transmission; the term does not include the provision solely of delivery, online or telecommunications services, or network access;

*"negotiable"* with respect to a financial instrument means that the title to that instrument may be effectively transferred by delivery of the instrument or by signed endorsement written on the instrument or by entry in a register of owners of such instrument;

*"option contract"* means a contract that grants the holder of the contract the right but not the obligation to buy (call) or to sell (put) a stated quantity of a security or commodity against payment of an agreed price on or before a specified expiration date;

*"payment instrument"* means a check, draft, money order, traveler's check, or other instrument for the transmission or payment of money or monetary value, whether or not negotiable; the term does not include a credit card voucher, letter of credit, or instrument that is redeemable by the issuer in goods or services;

*"payment system"* means any system or other arrangement (including communication networks) between three or more money service providers for the processing of payments or for the clearing or settlement of payment transactions, and for the exchange of payments against other payments, financial obligations or securities, in any currency;

*"payment system operator"* means any person who operates a payment system;

*"person"* means any natural person, any legal person, any state and any political subdivision, agency or instrumentality of a state;

"*record*" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

"*security*" means a negotiable financial instrument (whether in the form of a certificate or in book-entry form) of one of the following categories:

- a. shares, or certificates or receipts in respect of shares;
- b. debt securities, whether or not convertible into shares;
- c. derivatives;
- d. shares or participation units in investment funds;
- e. any other negotiable financial instrument declared to be a security by regulation of Da Afghanistan Bank;

"*securities service*" means any of the services listed in Article 94 or declared to be a securities service pursuant to Article 94;

"*securities service provider*" means any person who provides a securities service;

"*securities transfer system*" means any system or other arrangement (including communication networks) between three or more securities service providers for the transfer of securities, for the clearing or settlement of transactions in securities, and for the exchange of securities against payments and other securities, in any currency;

"*securities transfer system operator*" means any person who operates a securities transfer system;

"*share*" means any share of capital stock or other equity security issued by a corporation;

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

"*State agency*" means any administrative or political subdivision and any agency of Afghanistan, and any enterprise owned or effectively controlled by Afghanistan or by any State agency; and

"*stored value*" means monetary value that is evidenced by an electronic record.

**Article 2. Da Afghanistan Bank**

1. Da Afghanistan Bank is the central bank of Afghanistan.
2. Da Afghanistan Bank is a juridical person with full capacity under the law of Afghanistan, and, in particular, the capacity to contract, to acquire and to dispose of movable and immovable property, to issue its own securities and otherwise to borrow, and to be a party to legal proceedings.
3. Da Afghanistan Bank shall have its head office in Kabul. Da Afghanistan Bank may establish and maintain branch offices, representative offices and liaison offices, and may appoint agents and correspondents, at such locations in Afghanistan or abroad and with such functions and duties as it shall determine.

**Article 3. Objectives and basic tasks of Da Afghanistan Bank**

1. The primary objective of Da Afghanistan Bank shall be to achieve and to maintain domestic price stability.
2. The other objectives of Da Afghanistan Bank, which shall be subordinated to the primary objective of Da Afghanistan Bank, shall be to foster the liquidity, solvency and proper functioning of a stable market based financial system, and to promote a safe, sound and efficient national payment system.

3. Without prejudice to its primary objective of domestic price stability, Da Afghanistan Bank shall support the general economic policies of the Government of Afghanistan, and to contribute to sustainable economic growth.

4. The basic tasks of Da Afghanistan Bank for which Da Afghanistan Bank shall be exclusively responsible are:

- a. to formulate, adopt and execute the monetary policy of Afghanistan;
- b. to formulate, adopt and execute the foreign exchange policy and exchange arrangements of Afghanistan;
- c. to hold and manage the official foreign exchange reserves of Afghanistan;
- d. to print and issue afghani banknotes and coins;
- e. to act as banker and adviser to, and as fiscal agent of, the State;
- f. to license or register and to regulate and supervise banks, foreign exchange dealers, money service providers, payment system operators, securities service providers, securities transfer system operators and such others as shall be submitted to its oversight by or pursuant to the law;
- g. to establish, maintain and promote sound and efficient systems for payments, for transfers of securities issued by the State or Da Afghanistan Bank, and for the clearing and settlement of payment transactions and transactions in such securities.

**Article 4. Autonomous powers of Da Afghanistan Bank**

1. In carrying out its tasks, Da Afghanistan Bank shall enjoy autonomous regulatory powers and authority, including those to pass regulations to facilitate orderly electronic transactions between Da Afghanistan Bank and banks and their respective customers. All

regulations, guidelines and instructions 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, guideline or instruction shall specify. Da Afghanistan Bank shall maintain a public register of such regulations, guidelines and instructions.

2. Da Afghanistan Bank shall be empowered to enter the offices and to examine the accounts, books, documents and other records of any bank, foreign exchange dealer, payment system operator, money service provider, securities service provider, securities transfer system operator or other person who is licensed by, or registered with, Da Afghanistan Bank, and to obtain such information from such person as Da Afghanistan Bank shall deem necessary or advisable for the proper discharge of its supervisory responsibilities.

3. When exercising the powers and carrying out the duties and tasks conferred upon it by law, Da Afghanistan Bank shall be entirely independent from any other authority in the pursuit of its objectives and the performance of its tasks. The autonomy of Da Afghanistan Bank shall be respected by all and no person shall seek to exercise improper influence on members of the decision-making bodies of Da Afghanistan Bank in the performance of their tasks or interfere in any other way in the activities of Da Afghanistan Bank.

4. Each member of the Supreme Council and the Executive Board and each other employee of Da Afghanistan Bank shall have the duty to promote the reputation of Da Afghanistan Bank as a politically autonomous central bank serving all of Afghanistan with impartiality, and shall refrain from any activity that is incompatible with that duty.

5. While serving in the supreme council, members of the supreme council of Da Afghanistan Bank shall not engage in political activities.

**Article 5. International cooperation**

1. Da Afghanistan Bank shall represent Afghanistan in all inter-governmental meetings, councils and organizations concerning monetary policy, licensing and supervision of banks and other persons submitted by law to its oversight, and the other matters that are within its competence.

2. Da Afghanistan Bank may provide banking services for the benefit of foreign governments, foreign central banks and monetary authorities, and for the benefit of international organizations in which it or Afghanistan participates.

3. Da Afghanistan Bank may participate in international organizations that pursue financial and economic stability through international monetary cooperation.

4. As agent of Afghanistan, Da Afghanistan Bank may undertake responsibilities and perform transactions concerning the participation of Afghanistan in international organizations.

**Chapter II ORGANIZATION AND ADMINISTRATION**

**Article 6. Organization of Da Afghanistan Bank**

Da Afghanistan Bank shall have a Supreme Council as its highest policy and decision making body, a Governor charged with the management of Da Afghanistan Bank, a Comptroller General responsible for the internal control and audit of the operations of Da Afghanistan Bank, as well as officers and staff.

**Article 7. Functions of the Supreme Council**

1. The Supreme Council shall be charged with the adoption of the principal policies of Da Afghanistan Bank and the supervision of the administration and operations of Da Afghanistan Bank.

2. In carrying out its functions, the Supreme Council must periodically assess the monetary and economic situation. To that end, the Executive Board shall report, not less than once every calendar quarter, to the Supreme Council on the administration and operations of Da Afghanistan Bank, on the conduct of its monetary and regulatory policies (including domestic price stability), on the soundness of the financial system including in particular the banking and payment systems of Afghanistan, and on the state of the money, capital and foreign exchange markets, including the events and conditions that have or must be expected to have a significant effect on the administration or operations of Da Afghanistan Bank, the conduct of its policies, the financial system or the before mentioned markets.

3. The Comptroller General shall present to the Supreme Council such reports and studies as the Supreme Council shall request for the supervision of the administration or operations of Da Afghanistan Bank.

4. The Governor shall ensure that each member of the Supreme Council shall promptly upon his request receive all such information as he or the Supreme Council shall require for the supervision of the administration or operations of Da Afghanistan Bank.

**Article 8. Powers of the Supreme Council**

The Supreme Council shall have the following powers:

- a. to formulate and adopt the monetary policy of Afghanistan, including the limits of open market operations by Da Afghanistan Bank, the interest rates for discounts and loans by Da Afghanistan Bank, and the types and



- levels of reserves that banks are required to maintain with Da Afghanistan Bank;
- b. to formulate and adopt the foreign exchange policy and the exchange arrangements of Afghanistan ;
  - c. to adopt all regulations, guidelines and instructions of general application that are to be issued by Da Afghanistan Bank pursuant to this Law or other legislation in force;
  - d. to approve all reports and recommendations that Da Afghanistan Bank is to make to the government or the parliament of Afghanistan;
  - e. to decide on the participation by Da Afghanistan Bank in international organizations;
  - f. to determine the face value and design of banknotes and coins, and the conditions of any currency recall;
  - g. to decide on the issue of debt securities by Da Afghanistan Bank and the terms and conditions of such securities;
  - h. to determine the categories of assets that shall be suitable for investment of the foreign exchange reserves and other financial resources of Da Afghanistan Bank;
  - i. to approve the discounting by Da Afghanistan Bank of instruments having a maturity of more than three months from the date of their acquisition by Da Afghanistan Bank;
  - j. to approve, with the consent of at least three-fifths of the members of the Supreme Council present, each loan and each guarantee or other contingent commitment of Da Afghanistan Bank to or for the benefit of a bank pursuant to Article 88;

- k. to adopt the By-Laws of Da Afghanistan Bank and the regulations applicable to the administration and operations of Da Afghanistan Bank;
- l. to determine the organization of Da Afghanistan Bank;
- m. to approve the appointment of the Deputy Governors (other than the First Deputy Governor) and the Comptroller General of Da Afghanistan Bank, and to approve subsequent service at another financial institution by the Governor and the First Deputy Governor;
- n. to establish and close subsidiaries, branch offices and agencies of Da Afghanistan Bank;
- o. to decide on the purchase, construction, utilization and sale of buildings and other real estate by Da Afghanistan Bank;
- p. to determine the budget of Da Afghanistan Bank and in general the terms and conditions of employment, including pensions, of the employees, agents and correspondents of Da Afghanistan Bank other than the members of the Supreme Council;
- q. to propose increases in the authorized capital of Da Afghanistan Bank set forth in article 27;
- r. to determine the accounting policies and the financial risk management policies of Da Afghanistan Bank;
- s. to adopt the annual reports and financial statements of Da Afghanistan Bank;
- t. to decide on the depreciation of assets and the rate of depreciation of assets of Da Afghanistan Bank, to establish special reserves on the books of Da Afghanistan Bank, to determine the net income of Da Afghanistan Bank, and to decide what amount of such net income shall be transferred to any reserve; and

- u. such other powers as shall be granted to the Supreme Council by law.

**Article 9. Composition of the Supreme Council**

1. The Supreme Council of Da Afghanistan Bank shall be composed of seven members, as follows:

- a) Governor Chairman of the Supreme Council
- b) First Deputy Governor Vice Chairman of the Supreme Council
- c) Five other members.

All members of the Supreme Council shall be appointed by the President of Afghanistan with the advice and consent of the parliament of Afghanistan.

2. The term of each member of the Supreme Council shall be five years, except that, , the completion dates of the initial terms of members appointed under this law shall be spread evenly over a five year period. Supreme Council members shall be eligible for reappointment, unless a ground for removal under Article 12 would apply to them.

**Article 10. Ineligibility to serve on the Supreme Council**

No person shall be appointed or serve as a member of the Supreme Council:

- a. if he is not a citizen of Afghanistan;
- b. if he is not a person of recognized integrity;
- c. if he does not have a degree of higher education or extensive work experience preferably in economics, banking or law;
- d. if he would be disqualified from serving pursuant to Article 12;

- e. while he is an employee of Da Afghanistan Bank other than the Governor or the First Deputy Governor;
- f. while he is a member of the Board of Supervisors or a full time or part time employee, with or without remuneration, of a bank or other financial institution, or while he is another person who is submitted by law to oversight by Da Afghanistan Bank; or
- g. while he is a Minister, Deputy Minister, member of parliament, or other high ranking official of Afghanistan.

**Article 11. Compensation of members of the Supreme Council**

The terms and conditions of employment of the Governor, the First Deputy Governor and the other members of the Supreme Council shall be established by decree of the President of Afghanistan; once such members have been appointed or reappointed to a term, their compensation and other emoluments may not be reduced during the term of appointment.

**Article 12. Disqualification and removal of Supreme Council members**

1. The Governor, the First Deputy Governor, and any other member of the Supreme Council, of Da Afghanistan Bank shall be suspended or removed from office by the President of Afghanistan, if he:

- a. becomes ineligible to serve on the Supreme Council pursuant to Article 10;
- b. has been convicted of an offense for which he was or could have been sentenced to imprisonment without the option of a fine, unless such conviction was motivated by his religious or political views or activities;

- c. has been declared bankrupt or unable to pay his debts as they fall due by a court decision;
- d. has served during the immediately preceding five years as officer of a company that has been subject to conservatorship or receivership;
- e. has, on grounds of personal misconduct, been disqualified or suspended by a competent authority from practicing a profession;
- f. has been unable to perform the functions of his office because of an infirmity of body or mind that has lasted for more than six months;
- g. has been absent without good cause from two or more successive meetings of the Supreme Council of Da Afghanistan Bank held during the most recent period of twelve months; or
- h. has engaged in significant violations of the law or any duty imposed by the law, or has engaged in political activities, or has engaged in serious misconduct in the office, substantially prejudicing the interests of Da Afghanistan Bank.

2. No member of the Supreme Council shall be suspended or removed from office on any other ground.

3. No member of the Supreme Council shall be suspended or removed from office before a hearing has been held by the President of Afghanistan where such member or his legal representative has been afforded a reasonable opportunity to present his views.

**Article 13. Resignation of Supreme Council members**

The Governor and the First Deputy Governor may resign from office on giving not less than three months' notice in writing to the President of Afghanistan, or such shorter period of

time as the President may agree. Any other member of the Supreme Council may resign on giving not less than one month's notice in writing to the President of Afghanistan, or such shorter period of time as the President may agree.

**Article 14. Vacancy on the Supreme Council**

Any vacancy on the Supreme Council shall be filled by the appointment of a new member of the Supreme Council in accordance with Article 9 to serve the remaining period of the term of the Supreme Council member replaced.

**Article 15. Meetings of the Supreme Council**

1. The Governor, or, in his absence or inability to vote, the First Deputy Governor, must chair the meetings of the Supreme Council.
2. The Supreme Council shall meet as often as the business of Da Afghanistan Bank may require but not less frequently than once each calendar quarter.
3. Normally, meetings of the Supreme Council are convened by the Governor. Meetings of the Supreme Council may also be convened at the written request of any three members of the Supreme Council .
4. The meetings of the Supreme Council shall be convened by effectively communicating the time, venue and agenda of the meeting to all members of the Supreme Council at least ten working days before the date set for the meeting, except that, in the event of an emergency, meetings of the Supreme Council may be so convened at shorter notice.
5. Each member of the Supreme Council shall have one vote. A quorum at any meeting of the Supreme Council shall consist of the presence of two thirds or more of the

membership of the Supreme Council, including the presence of the Governor or the First Deputy Governor.

6. Except as otherwise provided by this Law, decisions of the Supreme Council shall be adopted by a simple majority of the votes cast by the members of the Supreme Council who are present at the meeting. Only members of the Supreme Council who are present in person shall have the right to vote; provided, however, that the By-Laws of Da Afghanistan Bank may permit meetings of the Supreme Council and voting by teleconferencing or in exceptional circumstances by tested telex or other tested electronic means of communication. In the event of a tie, the Chairman of the meeting shall have the casting vote.

7. Subject to the quorum requirement of paragraph 5, no act or proceeding of the Supreme Council shall be invalidated merely by reason of the existence of a vacancy or vacancies on the Supreme Council.

8. All acts done by a person acting in good faith as Chairman or other member of the Supreme Council shall be valid notwithstanding that some defect in his appointment, eligibility, or qualification be afterwards discovered.

**Article 16. Proceedings, minutes and decisions of the Supreme Council**

1. The proceedings of the meetings of the Supreme Council shall be confidential. The Supreme Council may decide to make the outcome of all or part of its deliberations public.

2. There shall be minutes of each Supreme Council meeting signed by the person chairing the meeting, and by the Secretary of the Supreme Council.

3. The Secretary of the Supreme Council shall be selected and appointed by the Governor from among the senior staff of Da Afghanistan Bank; he shall not be a member of the Supreme Council.

4. Decisions of the Supreme Council shall be recorded and issued over the signature of the Chairman presiding at the Supreme Council meeting that adopted the decision.

**Article 17. Disclosure of interests**

1. Each member of the Supreme Council and the Executive Board , Deputy Governor and officer of Da Afghanistan Bank shall, upon his appointment and annually thereafter, declare to the Supreme Council of Da Afghanistan Bank in full the direct and indirect business interests that he or members of his household may have. Such disclosures shall comply with regulations adopted by the Supreme Council of Da Afghanistan Bank.

2. No act or proceeding of the Supreme Council or of Da Afghanistan Bank shall be questioned as to its validity on the ground of noncompliance with Article 24 or with Section 1 of this Article.

**Article 18. Executive Board**

1. The Governor, with the advice and assistance of the other members of the Executive Board, shall be responsible for all matters concerning the administration and operations of Da Afghanistan Bank that are not specifically assigned by this Law to the Supreme Council or to the Comptroller General. They shall each perform the duties of their office with due diligence and efficiency.

2. Upon taking office, each member of the Executive Board shall take an oath that he shall protect the confidentiality of the administration and operations of Da Afghanistan Bank and perform the duties of his office with due diligence and efficiency.

3. If the Governor is absent or otherwise unable to act, the First Deputy Governor shall carry out the functions of the Governor and exercise all the powers of the Governor.



4. The Governor shall be responsible to the Supreme Council for the execution of the decisions of the Supreme Council and for the direction and control of the administration and operations of Da Afghanistan Bank.

**Article 19. Powers of the Governor**

1. All powers that are not specifically reserved for the Supreme Council or the Comptroller General shall be vested in the Governor. Within the limitation of his powers, the Governor shall have the authority to take all actions required or deemed advisable by him for the administration or operations of Da Afghanistan Bank, including without limitation: entering into contractual commitments on behalf of Da Afghanistan Bank and representing Da Afghanistan Bank in legal proceedings.

2. The Governor, with the approval of the Supreme Council, may delegate some or all of his powers to one or more other members of the Executive Board or to one or more employees or agents of Da Afghanistan Bank. Da Afghanistan Bank shall maintain an up-to-date list of its authorized signatories together with a description of their authority and make the list available to the public upon request.

**Article 20. Membership of the Executive Board**

1. The Executive Board of Da Afghanistan Bank shall consist of the Governor, the First Deputy Governor, the Comptroller General, and such Deputy Governors as the Supreme Council shall appoint from candidates proposed for appointment by the Governor. Deputy Governors, other than the First Deputy Governor shall be appointed for a definite or an indefinite period of time, as determined by the Supreme Council.

2. No person shall serve as Governor, Deputy Governor or Comptroller General of Da Afghanistan Bank:

- a. if he is not a citizen of Afghanistan;
- b. if he is not a person of recognized integrity;
- c. if he does not have a degree of higher education or extensive work experience preferably in economics, banking or law;
- d. if he would be disqualified from serving pursuant to paragraph 3;
- e. while he is an officer or a full time or part time employee, with or without remuneration, of a bank or other financial institution submitted by law to oversight by Da Afghanistan Bank; or
- f. while he is a Minister, Deputy Minister, member of parliament or other high ranking official of Afghanistan.

3. A Deputy Governor other than the First Deputy Governor or a Comptroller General of Da Afghanistan Bank shall be suspended or removed from office by the Supreme Council if he:

- a. becomes ineligible to serve pursuant to paragraph 2;
- b. has been convicted of an offense for which he was or could have been sentenced to imprisonment without the option of a fine, unless such conviction was motivated by his religious or political views or activities;
- c. has been declared bankrupt or unable to pay his debts as they fall due by a court decision;
- d. has served during the immediately preceding five years as officer of a company that has been subject to conservatorship or receivership;
- e. has, on grounds of personal misconduct, been disqualified or suspended by a competent authority from practicing a profession;

- f. has been unable to perform the functions of his office because of an infirmity of body or mind that has lasted for more than six months;
- g. has engaged in significant violations of the law or any duty imposed by the law, or has engaged in serious misconduct in the office, substantially prejudicing the interests of Da Afghanistan Bank.

4. No such Deputy Governor or Comptroller General of Da Afghanistan Bank shall be suspended or removed from office on another ground.

5. No Deputy Governor or Comptroller General of Da Afghanistan Bank shall be suspended or removed from office before a hearing has been held by the President of Afghanistan where such Deputy Governor or Comptroller General or his legal representative has been afforded a reasonable opportunity to present his views.

6. Each Deputy Governor and the Comptroller General of Da Afghanistan Bank may resign from office on giving notice in writing to the Governor of not less than three months or such shorter period of time as the Governor may agree.

**Article 21. Comptroller General of Da Afghanistan Bank**

1. A Comptroller General of Da Afghanistan Bank shall be appointed for a term of five years by the Supreme Council, from candidates who are professionally qualified accountants and who are not ineligible to serve as Comptroller General pursuant to Article 20, paragraph 2. He shall be eligible for reappointment.

2. The Comptroller General may resign from office on giving notice to the Supreme Council of not less than three months or such shorter period of time as the Supreme Council may agree.

3. The Comptroller General shall head the Audit Department of Da Afghanistan Bank.

4. The staff of the Audit Department shall be appointed and dismissed by the Governor with the consent of the Comptroller General. The Comptroller General and the Audit Department shall have the duty:

- a. to establish and maintain appropriate risk management procedures and instruments for Da Afghanistan Bank and to supervise their use;
- b. to perform periodic audits of the administration and operations of Da Afghanistan Bank, in order to ensure observance of the laws and regulations that apply to Da Afghanistan Bank;
- c. to audit, and to submit to the Supreme Council reports and recommendations on, the accounts and records as well as the budgetary and accounting procedures and controls of Da Afghanistan Bank;
- d. to audit periodically the financial statements and related documents of Da Afghanistan Bank and, if these have been properly prepared, to issue certifications to that effect;
- e. to monitor the proper implementation of the decisions of the Supreme Council and the Governor; and
- f. to carry out any other assignments given to the Comptroller General by the Supreme Council or the Governor.

**Article 22. Staff of Da Afghanistan Bank**

1. During their employment by Da Afghanistan Bank, the Governors, officers and staff of Da Afghanistan Bank shall not be employed by, or receive credit from, any bank or other financial institution submitted to the oversight by Da Afghanistan Bank, unless Da Afghanistan Bank shall otherwise decide.

2. The Supreme Council shall adopt a staff regulation covering the conditions of employment at Da Afghanistan Bank.

**Article 23. Central Bank employees, agents**

1. The Executive Board shall appoint and terminate the appointment of the employees, agents and correspondents of Da Afghanistan Bank, within the limits and in accordance with the general terms and conditions of employment prescribed by the Supreme Council.

2. No salary, fee, wage, or other remuneration or allowance paid by Da Afghanistan Bank shall be computed by reference to net profit or other revenues of Da Afghanistan Bank.

**Article 24. Disclosure of commercial interests**

Whenever any matter related to an interest of a member requiring disclosure under Article 17 comes up for discussion in the Supreme Council or the Executive Board, the member concerned shall disclose his interest promptly at the beginning of the discussion when the relevant facts come to his attention and shall not participate in the discussion and decision on such matter, and his presence shall not be counted for the purpose of constituting a quorum.

**Article 25. Conflicts of interest**

1. While holding office, the Governor, the Deputy Governors and the Comptroller General of Da Afghanistan Bank shall devote the whole of their professional services to Da Afghanistan Bank, and none of them shall occupy any other office or employment, whether remunerated or not, except as nominee of Da Afghanistan Bank.

2. No former Governor, Deputy Governor or Comptroller General of Da Afghanistan Bank shall serve another financial institution during a period of one year immediately following their departure from Da Afghanistan Bank, without the prior written approval of the Supreme Council.

3. No member of the staff of Da Afghanistan Bank shall simultaneously have other employment, whether gainful or not, without the prior written approval of Da Afghanistan Bank.

4. No Governor, Deputy Governor, officer or member of the staff of Da Afghanistan Bank shall accept any gift or credit for himself, or on behalf of any person with whom he has family, business or financial connections, if the acceptance thereof would result, or give the appearance of resulting, in diminishing his impartial devotion to his duties to Da Afghanistan Bank.

**Article 26. Secrecy**

No person who serves or has served as a member of the Supreme Council, or as a Governor, officer or other member of the staff, or as an agent or correspondent, of Da Afghanistan Bank shall:

- a. permit access to, disclose or publicize nonpublic material information which he has obtained in the performance of his official duties except when lawfully required to do so by any court of law or pursuant to any law or pursuant to any cooperative arrangement with a foreign regulator; or
- b. use such information, or allow such information to be used, for personal gain.

### **Chapter III FINANCIAL PROVISIONS**

#### **Article 27. Capital of Da Afghanistan Bank**

1. The authorized capital of Da Afghanistan Bank shall be Eight Billion Afghanis, or such an amount as shall be recommended by an independent inquiry into the assets and the liabilities of Da Afghanistan Bank pursuant to Article( 130 ), or such higher amount as shall result from allocations from net profits pursuant to Article 29.

2. The capital of Da Afghanistan Bank shall be held solely by the State, and shall not be transferable or subject to encumbrance.

#### **Article 28. Calculation of net profit or net loss of Da Afghanistan Bank**

For each financial year, the net profit or the net loss of Da Afghanistan Bank shall be calculated in accordance with International Accounting Standards as the sum of net operating revenues or losses (including realized gains and losses) and net unrealized valuation gains or losses, and after making provision:

- a. for bad and doubtful debts, depreciation of assets, and contributions to the staff retirement fund; and
- b. subject to the approval of the Minister of Finance, for such other purposes as Da Afghanistan Bank may deem necessary.

#### **Article 29. Allocation of net profit of Da Afghanistan Bank**

1. If Da Afghanistan Bank has a net profit for any financial year, the net profit shall be allocated and used in the following order of priority:

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Translated by Banking Reform Team  
Regulations/USAID/BearingPoint/DAB

- a. an allocation from net profit shall be made to the capital account of Da Afghanistan Bank in such amount as shall be required to increase the capital of Da Afghanistan Bank to a level equivalent to five percent of the aggregate amount of monetary liabilities shown on the balance sheet of Da Afghanistan Bank for the end of that financial year;
- b. an allocation from net profit shall be made to redeem the securities issued by the State to Da Afghanistan Bank pursuant to Article 31 and held by Da Afghanistan Bank;
- c. an allocation from net profit shall be made to the General Reserve maintained by Da Afghanistan Bank in such amount as shall be required to increase the amount of the General Reserve to a level equivalent to the amount of the capital of Da Afghanistan Bank; the General Reserve may only be used to offset losses of Da Afghanistan Bank;
- d. an allocation from net profit shall be made to any special reserve for specific purposes established by Da Afghanistan Bank subject to the approval of the Minister of Finance; and
- e. any residual net profit remaining after the preceding allocations shall be allocated in accordance with the following: the preceding allocations from net profit shall be calculated as if made entirely from net operating revenues, except that, if no operating revenues are included in net profit or after the preceding allocations have exhausted net operating revenues included in net profit, such allocations shall be calculated as if made from net unrealized valuation gains; residual net operating revenues if any shall



be distributed to the State within four months after the end of the financial year, and residual net unrealized valuation gains if any shall be allocated to a Valuation Reserve Account maintained on the balance sheet of Da Afghanistan Bank.

2. For the purposes of this Law, the aggregate amount of the monetary liabilities of Da Afghanistan Bank shall be at any time the sum of:

- (A) all outstanding banknotes, coins and debt securities issued by Da Afghanistan Bank; and
- (B) the credit balances of all accounts maintained on the books of Da Afghanistan Bank by account holders.

**Article 30. Allocation of net loss of Da Afghanistan Bank**

If Da Afghanistan Bank incurs a net loss for any financial year, the net loss shall be allocated as follows:

- a. if the net loss is composed of net operating losses and net unrealized valuation losses, the amount of net operating losses shall be charged to the general reserve or to capital in that order, and the amount of net unrealized valuation losses shall be allocated to the Valuation Reserve Account or, to the extent that the balance of the Valuation Reserve Account would be negative as a result of such allocation, to the general reserve or to capital in that order;
- b. if the net loss is the sum of net operating revenues and greater net unrealized valuation losses, the net loss shall be allocated to the Valuation Reserve Account or, to the extent that the balance of the Valuation Reserve Account would be

negative as a result of such allocation, to the general reserve or to capital in that order; or

- c if the net loss is the sum of a net operating loss and smaller net unrealized valuation gains, the net loss shall be charged to the general reserve or to capital in that order.

**Article 31. Coverage of shortfalls in capital of Da Afghanistan Bank**

- 1. This article applies whenever for Da Afghanistan Bank:
  - a. on one of its monthly pro forma balance sheets prepared pursuant to Article 74 the value of its assets falls below the sum of its liabilities and unimpaired authorized capital, or
  - b. its net profit for any financial year is insufficient to increase its authorized capital to the level of 5% of the total amount of liability as prescribed in article 29 and to be shown in their account in the of the fiscal year.
- 2. If the circumstances outlined in paragraph 1 occur, and:
  - a. if the last official measure of the annual inflation rate is within the band of 3% to 20% , the Minister of Finance shall, notwithstanding public expenditure legislation to the contrary, within one month after submission of that balance sheet to him, deliver to Da Afghanistan Bank marketable debt securities, denominated and payable in afghanis, issued by the State and bearing interest at market rates, in such amount or amounts as shall be necessary to remedy this deficit. This inflation band shall be re-evaluated every three years.
  - b. if the last official measure of the annual inflation rate is not within the band of 3% to 20% , the Minister of Finance shall first seek an appropriation under the government's budget and appropriation process. If the appropriation is not approved, then the Minister of Finance shall, notwithstanding public expenditure legislation to the contrary, within one month after submission of that balance sheet to him, deliver to Da Afghanistan Bank marketable debt securities, denominated and payable in afghanis, issued by the State and bearing interest at

market rates, in such amount or amounts as shall be necessary to remedy this deficit.

3. If the circumstances outlined in paragraph 1 occur, the Parliament may convene an inquiry commission with national and international experts to investigate the causes for the condition, and if appropriate, make recommendations. The inquiry commission shall receive the full cooperation of Da Afghanistan Bank. Failure to provide full cooperation, including provision of all requested documentation and information shall constitute a significant violation of the law, and the provisions of Article 12 paragraph 1 subparagraph (h) shall apply.

**Article 32. Restrictions on allocation of net profit**

No transfer, redemption or payment pursuant to Article 29 shall be made if, as a result thereof, in Da Afghanistan Bank's opinion, the assets of Da Afghanistan Bank would be less than the sum of its liabilities and unimpaired capital and reserves.

Chapter IV CURRENCY

**Part I MONETARY UNIT AND LEGAL TENDER**

**Article 33. Currency and monetary unit**

The currency of Afghanistan and its monetary unit is the afghani, the symbol of which shall be “\_Af\_.”

**Article 34. Issue of banknotes and coins**

1. Da Afghanistan Bank shall have the exclusive right to issue banknotes and coins intended for circulation in Afghanistan.
2. Banknotes issued under this Article shall be a first charge on the assets of Da Afghanistan Bank.

3. Da Afghanistan Bank shall make adequate arrangements for the issue of its banknotes and coins at its head office and at its branch offices and agencies in Afghanistan, and supply those banknotes and coins as required for circulation in Afghanistan.

4. Banknotes and coins issued by Da Afghanistan Bank and intended for circulation in Afghanistan are not promissory notes, bills of exchange, or any other type of commercial documents under the Law of Commerce, and Da Afghanistan Bank is obligated on and with respect to them only as provided by this Chapter.

**Article 35. Legal tender**

1. A tender of payment of money is a legal tender if made in banknotes or coins. Subject to any provisions in this Chapter, banknotes and coins shall be accepted, for the amount of their denomination in the currency of Afghanistan, in payment of all public and private debts in Afghanistan.

2. Da Afghanistan Bank may limit the amount that may be paid by banknotes and coins and restrict the denomination of banknotes and coins in which a payment can be made in specified amounts or any range of such amounts.

3. In this Article, any reference to banknotes or coins is to banknotes or coins intended for circulation in Afghanistan, issued pursuant to this Chapter by Da Afghanistan Bank, that have not been demonetized.

## **Part II BANKNOTES AND COINS**

### **Article 36. Currency features**

1. In this part, any reference to banknotes or coins, is to banknotes or coins intended for circulation in Afghanistan, issued or to be issued pursuant to this Chapter by Da Afghanistan Bank.

2. Da Afghanistan Bank shall determine by regulation the denomination, measures, form, material, content, weights, designs, and other features of banknotes and coins. Banknotes shall bear the signature of the Governor of Da Afghanistan Bank and the Minister of Finance.

### **Article 37. Currency production and safekeeping**

Da Afghanistan Bank shall arrange for the printing of bank notes and the minting of coins, for the security and safekeeping of unissued banknotes and coins, and for the custody and destruction, as necessary, of plates, dies, and retired banknotes and coins.

### **Article 38. Currency exchange**

Upon request, Da Afghanistan Bank shall exchange without charge or commission banknotes or coins with other banknotes or coins in equivalent amounts.

### **Article 39. Unfit currency**

1. An unfit banknote or coin is demonetized by operation of law. Subject to paragraph 2, Da Afghanistan Bank shall withdraw, destroy, and replace with banknotes or coins of an equivalent amount any unfit banknotes or coins presented to it.

2. Da Afghanistan Bank may decline to replace an unfit banknote or coin if its designs are illegible, misshaped or perforated, or if more than forty percent of its surface has been lost. Such banknote or coin shall be withdrawn and destroyed without indemnity to the owner, except that, in special cases, Da Afghanistan Bank may grant compensation in whole or in part.

3. Da Afghanistan Bank shall not be required to provide any compensation for banknotes or coins that were lost, stolen or destroyed; it may confiscate without compensation any banknotes that have been altered in their external appearance, including in particular banknotes that have been written on, painted on, overprinted, stamped or perforated, or to which adhesive matter has been applied.

4. Every officer employed in the collection of revenue in Afghanistan shall forward to Da Afghanistan Bank every unfit or counterfeit banknote or coin that is paid to the officer in payment of an amount payable to the State.

5. In this Chapter, “*unfit banknotes or coins*” include any coin that is bent, mutilated or defaced, or that has been reduced in weight otherwise than by abrasion through ordinary use; and any banknote that is mutilated or defaced.

#### **Article 40. Currency inventory and issue plan**

Da Afghanistan Bank shall directly administer the currency reserve inventory, make issue plans, and ensure a regular supply of banknotes and coins as needed to meet the currency requirements of the economy of Afghanistan.

**Article 41. Accounting treatment of currency issued**

The aggregate amount of circulating banknotes and coins shall be noted in the accounts of Da Afghanistan Bank as a liability of Da Afghanistan Bank; such liability shall not include banknotes and coins in the currency reserve inventory.

**Article 42. Currency recall**

1. Da Afghanistan Bank may decide to call in and withdraw from circulation banknotes or coins, by issuing in exchange therefor other banknotes or coins in equivalent amounts. The decision shall be issued in the form of a regulation of Da Afghanistan Bank. It shall specify the period during which the banknotes or coins must be presented for exchange, identify the locations and times where they are to be so presented, provide for all matters relating to the exchange procedure. The regulation may set requirements and conditions as to proper identification of persons presenting banknotes or coins for exchange and for documentation of exchange transactions under this paragraph. The regulation may provide for the determination and treatment of any counterfeit money presented for exchange.

2. At the end of the exchange period referred to in paragraph 1, or at any other time specified by the decision referred to in the aforesaid paragraph, banknotes and coins so called in for exchange shall be demonetized and cease to be legal tender.

3. A decision under paragraph 1 may, be for the implementation of a Law providing for the re-naming or re-denomination of the currency in Afghanistan, or for any other purpose..

### **Sub-chapter III MONEY OF ACCOUNT AND PAYMENT**

#### **Article 43. Public accounts and compulsory payments**

1. All public budgets, financial records and accounts, required by any Law of Afghanistan, and established or maintained in Afghanistan, shall be or be assessed in the currency of Afghanistan. Any reference to money or monetary value in any indictment or other legal proceedings other than for the enforcement of a foreign currency obligation, shall be stated in the currency of Afghanistan.

2. Compulsory payments shall be assessed and required to be paid in the afghani. In this Article, “compulsory payment” means any payment made to or by a public authority other than under a contract or any other voluntary transaction. It includes the payment of taxes, custom dues, excise, levies, fees, charges and penalties, as well as any payment to public utilities, payment according to a court order, or payment under a duty prescribed by law.

#### **Article 44. Sums mentioned in laws, valuation, and conversion**

1. Any sum mentioned in afghanis and pulls in any law shall, unless it is otherwise expressed, be construed as being a sum in the currency of Afghanistan.

2. Where any law of Afghanistan or any treaty, convention, contract or agreement to which Afghanistan is a party makes reference to a foreign currency and does not provide for the manner of conversion to the currency of Afghanistan, Da Afghanistan Bank may make regulations specifying, or specifying the means or method of ascertaining, determining or calculating, the equivalent afghani value of that foreign currency.

3. For the purposes of the administration, application and operation of the laws relating to the customs, tax obligations, or any other payments, Da Afghanistan Bank may make



regulations specifying, or specifying the means or method of ascertaining, determining or calculating, the equivalent afghani value of currencies of countries other than Afghanistan for a day or any other period or generally.

4. In case of a law providing for currency re-denomination, all records, accounts, obligations, debts, price quotations, and references in any law or legal document, whether private or public, will read to be re-denominated according to the exchange rate of the re-denomination.

#### **Article 45. Contracts**

Unless Article 46 applies, every contract, sale, payment, bill, note, instrument and security for money and every transaction, dealing, matter and thing relating to money or involving the payment of or the liability to pay money shall be made, executed, entered into, done or carried out in the currency of Afghanistan.

#### **Article 46. Freedom of currency**

1. Parties to a contract or any other voluntary transaction, including a party to a bill, note, instrument or security for money, may denominate a payment obligation in any currency agreed upon.

2. Payment in discharge of any debt or liability arising from a contract or any other voluntary undertaking or transaction, including on a bill, note, instrument or security for money, may be made in any currency agreed upon as the currency of payment.

3. An agreement under this Article may be express or implied from surrounding circumstances including course of dealing, usage of trade, or course of performance.

**Article 47. Enforcement of foreign currency obligations**

1. A foreign currency obligation may be enforced according to its terms. Subject to paragraph 3 and 4, where a person obtains an order to enforce an obligation in a foreign currency, the order shall require payment of an amount in the currency of Afghanistan sufficient to purchase the amount of the obligation in the foreign currency at a bank in Afghanistan at the close of business on the first day on which the bank quotes an afghani rate for purchase of the foreign currency prior to the day payment of the obligation is received by the creditor.

2. Where more than one payment is made under an order referred to in paragraph 1, the rate of conversion shall be the rate determined as provided in paragraph 1 for each payment.

3. Subject to paragraph 4, where, in a proceeding to enforce an obligation in a foreign currency, the court is satisfied that conversion of the amount of the obligation to the currency of Afghanistan as provided in paragraph 1 would be inequitable to any party, the order may require payment of an amount in the currency of Afghanistan sufficient to purchase the amount of the obligation in the foreign currency at a bank in Afghanistan on such other day as the court considers equitable in the circumstances. In particular, the court will order a conversion to be made at such rate as to make the creditor whole and avoid rewarding a debtor who has delayed in carrying out the obligation.

4. Where an obligation enforceable in Afghanistan provides for a manner of conversion to the currency of Afghanistan an amount in a foreign currency, the court shall give effect to the manner of conversion in the obligation.

## Part IV CRIMINAL OFFENCES

### Article 48. Interpretation

In this part:

“*banknote*” includes any instrument intended to be used as money or as the equivalent of money, immediately on issue or at some time subsequent thereto, issued under lawful authority in Afghanistan or elsewhere;

"*counterfeit money*" includes

- a. a false coin or false paper money that resembles or is apparently intended to resemble or pass for a current coin or current paper money,
- b. a forged banknote or forged blank banknote, whether complete or incomplete,
- c. a genuine coin or genuine paper money that is prepared or altered to resemble or pass for a current coin or current paper money of a higher denomination
- d. a current coin from which the milling is removed by filing or cutting the edges and on which new milling is made to restore its appearance,
- e. a coin cased with gold, silver or nickel, as the case may be, that is intended to resemble or pass for a current gold, silver or nickel coin, and
- f. a coin or a piece of metal or mixed metals that is washed or colored by any means with a wash or material capable of

producing the appearance of gold, silver or nickel and that is intended to resemble or pass for a current gold, silver or nickel coin;

"*counterfeit token of value*" means a counterfeit excise stamp, postage stamp or other evidence of value, by whatever technical, trivial or deceptive designation it may be described, and includes genuine coin or paper money that has no value as money;

"*current*" means lawfully current in Afghanistan or elsewhere by virtue of a law in force in Afghanistan or elsewhere as the case may be;

"*utter*" includes sell, pay, and tender .

#### **Article 49. Making**

Every one who makes or begins to make counterfeit money is guilty of an [indictable] offence and liable to imprisonment for a term not exceeding fourteen years.

#### **Article 50. Possession**

1. Every one who, without lawful justification or excuse, the proof of which lies on him,

- a. buys, receives or offers to buy or receive,
- b. has in his custody or possession, or
- c. introduces into Afghanistan,

counterfeit money is guilty of an [indictable] offence and liable to imprisonment for a term not exceeding fourteen years.

2. Every one who, without lawful justification or excuse, the proof of which lies on him, has in his custody or possession

- a. gold or silver filings or clippings,
- b. gold or silver bullion, or
- c. gold or silver in dust, solution or otherwise,

produced or obtained by impairing, diminishing or lightening a current gold or silver coin, knowing that it has been so produced or obtained, is guilty of an indictable offence and liable to imprisonment for a term not exceeding five years.

**Article 51. Melting coins**

1. No person shall, except in accordance with a license granted by Da Afghanistan Bank, melt down, break up or use otherwise than as currency any coin that is current and legal tender in Afghanistan.

2. Every person who contravenes paragraph 1 or any condition attached to a license referred to in that paragraph is liable on summary conviction to a fine not exceeding 25,000 afghanis or to imprisonment for a term not exceeding twelve months or to both, and, in addition to any fine or imprisonment imposed, the court may order that the articles by means of or in relation to which the offence was committed be forfeited to the State.

**Article 52. Uttering**

1. Every one who, without lawful justification or excuse, the proof of which lies on him,

- a. utters or offers to utter counterfeit money or uses counterfeit money as if it were genuine, or
- b. exports, sends or takes counterfeit money out of Afghanistan,

is guilty of an [indictable] offence and liable to imprisonment for a term not exceeding fourteen years.

2. Every one who, with intent to defraud, knowingly utters

- a. a coin that is not current, or
- b. a piece of metal or mixed metals that resembles in size, figure or color a current coin for which it is uttered,

is guilty of an indictable offence and liable to imprisonment for a term not exceeding [two years].

**Article 53. Slugs and tokens**

Every one who without lawful excuse, the proof of which lies on him,

- a. manufactures, produces or sells, or
- b. has in his possession

anything that is intended to be fraudulently used in substitution for a coin or token of value that any coin or token-operated device is designed to receive is guilty of an offence [punishable on summary conviction] and liable to a fine not exceeding 12,000 afghanis or to imprisonment for a term not exceeding [six months] or to both.

**Article 54. Defacing or impairing**

1. Every one who

- a. impairs, diminishes or lightens a current gold or silver coin with intent that it should pass for a current gold or silver coin, or
- b. utters a coin knowing that it has been impaired, diminished or lightened as described in sub-paragraph a,

is guilty of an [indictable] offence and liable to imprisonment for a term not exceeding [fourteen years].

2. Every one who

- a. defaces a current coin,
- b. utters a current coin that has been defaced,
- c. without the authority of Da Afghanistan Bank defaces any banknote by printing, stamping or by any like means impressing on it any words, letters or figures, or
- d. utters a current banknote that has been defaced as described in sub-paragraph c,

is guilty of an offence punishable on summary conviction and liable to a fine not exceeding 5000 afghanis or to imprisonment for a term not exceeding [six months] or to both.

**Article 55. Likeness of banknotes**

1. No person shall make, publish, print, execute, issue, distribute or circulate, including by electronic or computer-assisted means, anything in the likeness of

- a. a current banknote, or
- b. an obligation or a security of a government or bank.

2. Paragraph 1 does not apply to

- a. Da Afghanistan Bank or its employees when they are carrying out their duties;
- b. the Police or its members or employees when they are carrying out their duties; or
- c. any person acting under a contract or license from Da Afghanistan Bank or the Police.

3. A person who contravenes paragraph 1 is guilty of an offence [punishable on summary conviction] and liable to a fine not exceeding 5000 afghanis or to imprisonment for a term not exceeding [six months] or to both.

4. No person shall be convicted of an offence under paragraph 3 in relation to the printed likeness of a banknote issued by Da Afghanistan Bank if it is established that the length or width of the likeness is less than three-fourths or greater than one-and-one-half times the length or width, as the case may be, of the banknote and

- a. the likeness is in black-and-white only; or
- b. the likeness of the banknote appears on only one side of the likeness.

**Article 56. Instruments or materials**

Every one who, without lawful justification or excuse, the proof of which lies on him,

- a. makes or repairs,
- b. begins or proceeds to make or repair,
- c. buys or sells, or
- d. has in his custody or possession,



any machine, engine, tool, instrument, material or thing that he knows has been used or that he knows is adapted and intended for use in making counterfeit money or counterfeit tokens of value is guilty of an [indictable] offence and liable to imprisonment for a term not exceeding [fourteen years].

**Article 57. Conveying instruments for coining out of mint**

Every one who, without lawful justification or excuse, the proof of which lies on him, knowingly conveys out of any of mints licensed or authorized to mint coins in Afghanistan,

- a. any machine, engine, tool, instrument, material or thing used or employed in connection with the manufacture of coins,
- b. a useful part of anything mentioned in paragraph (a), or
- c. coin, bullion, metal or a mixture of metals,

is guilty of an [indictable] offence and liable to imprisonment for a term not exceeding [fourteen years].

**Article 58. Advertising and trafficking**

1. Everyone who
  - a. by an advertisement or any other writing, offers to sell, procure or dispose of counterfeit money or counterfeit tokens of value or to give information with respect to the manner in which or the means by which counterfeit money or counterfeit tokens of value may be sold, procured or disposed of, or

b. purchases, obtains, negotiates or otherwise deals with counterfeit tokens of value, or offers to negotiate with a view to purchasing or obtaining them, is guilty of an [indictable] offence and liable to imprisonment for a term not exceeding [five years].

2. No person shall be convicted of an offence under paragraph 1 in respect of genuine coin or genuine paper money that has no value as money unless, at the time when the offence is alleged to have been committed, he knew that the coin or paper money had no value as money and he had a fraudulent intent in his dealings with or with respect to the coin or paper money.

**Article 59. Special provisions as to proof**

1. Every offence relating to counterfeit money or counterfeit tokens of value shall be deemed to be complete notwithstanding that such money or tokens of value are not finished or perfected or do not copy exactly the money or tokens of value that they are apparently intended to resemble or for which they are apparently intended to pass.

2. In any proceedings under this part, a certificate signed by a person designated as an examiner of counterfeit by Da Afghanistan Bank, stating that any coin, paper money or banknote described therein is counterfeit money or that any coin, paper money or banknote described therein is genuine and is or is not, as the case may be, current in Afghanistan or elsewhere, is evidence of the statements contained in the certificate without proof of the signature or official character of the person appearing to have signed the certificate.

3. A party against whom a certificate described in paragraph 2 is produced may, with leave of the court, require the attendance of the examiner of counterfeit designated by Da Afghanistan Bank, for the purposes of cross-examination.

4. No certificate shall be received in evidence pursuant to paragraph 2 unless the party intending to produce it has, before the trial, given to the other party reasonable notice of his intention and a copy of the certificate.

**Article 60. Unauthorized issue of banknotes, coins, instruments, tokens**

Every one who issues:

- a. a banknote or coin in violation of Article 34(1), or
- b. any other instrument or token intended for circulation in Afghanistan as money other than as authorized by this Chapter,

is guilty of an [indictable] offence and liable to imprisonment for a term not exceeding [fourteen years].

**Article 61. Forfeiture**

1. Counterfeit money, counterfeit tokens of value and anything that is used or is intended to be used to make counterfeit money or counterfeit tokens of value belong to [the State of Afghanistan].

2. A police officer may seize and detain
  - a. counterfeit money,
  - b. counterfeit tokens of value, and

- c. machines, engines, tools, instruments, materials or things that have been used or that have been adapted and are intended for use in making counterfeit money or counterfeit tokens of value,

and anything seized shall be sent to Da Afghanistan Bank to be disposed of or dealt with as deemed necessary, but anything that is required as evidence in any proceedings shall not be sent to Da Afghanistan Bank until it is no longer required in those proceedings.

3. For the purpose of this Article, a banknote or coin issued in violation of Article 34(1), or any other instrument or token intended for circulation in Afghanistan as money other than as authorized by this Chapter, is to be treated as counterfeit money or token for value.

## **Part V MISCELLANEOUS**

### **Article 62. Transition**

Every contract, sale, payment, bill, note, instrument and security for money and every transaction, dealing, matter and thing relating to money or involving the liability to pay money that is governed by this Chapter and that was made, executed or entered into, done or carried out before this Law enters into force shall, in so far as anything remained or remains to be or may be executed, done or carried out thereunder on or after that date, be construed and operate without reference to this Chapter.

### **Article 63. Implementation**

Da Afghanistan Bank shall issue regulations for the implementation of this Chapter.

## **Chapter V MONETARY FUNCTIONS AND OPERATIONS**

### **Article 64. Monetary policy**

Da Afghanistan Bank shall be solely responsible for the formulation, adoption and execution of the monetary policy of Afghanistan.

### **Article 65. Open market operations**

In the conduct of its monetary policy, Da Afghanistan Bank may operate in the open market by purchasing and selling, outright (spot and forward) or under repurchase agreements, freely convertible foreign currencies, debt securities issued by the State and debt securities issued by Da Afghanistan Bank; no other currencies and securities shall be used for this purpose.

### **Article 66. Required reserves of banks**

1. In the conduct of its monetary policy, Da Afghanistan Bank may require by regulation that banks shall maintain deposits with Da Afghanistan Bank at prescribed minimum levels that relate to the size, type or maturity of their deposits, borrowed funds and such other liabilities as Da Afghanistan Bank may determine by regulation (required reserves). Required reserve levels shall be the same for all banks for each category of liabilities.

2. Required reserves shall be maintained by way of such cash holdings or by way of such money deposits with Da Afghanistan Bank, and shall be calculated as average daily reserves over such time periods, as Da Afghanistan Bank may from time to time prescribe by regulation. Required reserves maintained with Da Afghanistan Bank may be remunerated as decided by Da Afghanistan Bank.

3. Regulations by which required reserves or levels of required reserves are established or modified shall specify the date by which banks shall comply with the new reserves or reserve levels.

**Article 67. Failure to maintain required reserves**

Da Afghanistan Bank may impose on and collect from any bank that fails to maintain required reserves at the minimum levels prescribed in accordance with Article 66, a levy on the shortfall in such bank's required reserves, until the shortfall is corrected; such levy shall be set by regulation of Da Afghanistan Bank.

**Article 68. Discount operations**

1. Da Afghanistan Bank may discount only the following instruments and only when they are presented by a bank that holds an account on the books of Da Afghanistan Bank:

- a. bills of exchange and promissory notes, denominated in afghanis and payable in Afghanistan, bearing the signature of at least three solvent parties of which at least one shall be a bank, and maturing within three months from the date of their acquisition by Da Afghanistan Bank; provided, however, that in exceptional circumstances Da Afghanistan Bank may discount such instruments if they bear the signature of only two solvent parties including one bank and if they mature more than three months but not more than six months from the date of their acquisition by Da Afghanistan Bank; and

- b. debt securities issued or guaranteed by the State or Da Afghanistan Bank, payable within the territory of Afghanistan, denominated in afghanis, forming part of a public issue, and maturing within three months from the date of their acquisition by Da Afghanistan Bank.

2. The discount operations of Da Afghanistan Bank shall be subject to such other terms and conditions, including the discount rate, as Da Afghanistan Bank may establish by regulation.

3. Da Afghanistan Bank may, without stating a reason, refuse to discount any of the before mentioned instruments.

#### **Article 69. Loans to banks**

1. Da Afghanistan Bank may, on such terms and conditions as it may determine, grant to banks that hold an account on the books of Da Afghanistan Bank, for periods not exceeding three months, loans that are secured by any of the following assets:

- a. international reserve assets as specified in Article 74;
- b. other debt securities issued or guaranteed by, and payable within the territory of, Afghanistan, denominated in afghanis, and forming part of a public issue;
- c. warehouse receipts and other documents of title issued in respect of staple commodities or other goods duly insured against risk of loss or damage; and
- d. deposits with Da Afghanistan Bank or with a depository acceptable to Da Afghanistan Bank of any assets which Da Afghanistan Bank is permitted

to buy or sell or deal in under this Law, including without limitation gold and other precious metals.

2. Loans granted by Da Afghanistan Bank to bank account holders shall be made only at their head offices in Afghanistan.

**Article 70. Rates for discounts and loans**

The rates for discounts and loans of Da Afghanistan Bank shall be established by regulation of Da Afghanistan Bank.

**Chapter VI EXCHANGE RATE POLICY, FOREIGN EXCHANGE CONTROLS**

**Article 71. General policy**

1. Da Afghanistan Bank shall be solely responsible for the formulation, adoption and execution of the exchange rate policy and the exchange arrangements of Afghanistan. Before adopting an exchange rate policy or an exchange arrangement, Da Afghanistan Bank shall consult thereon with the Minister of Finance.

2. Da Afghanistan Bank shall act as agent for Afghanistan in the administration of any law in force relating to exchange control. All returns, statements, accounts or information required by the provisions of any such law shall be transmitted through Da Afghanistan Bank.



**Article 72. Responsibilities of Da Afghanistan Bank**

In particular, Da Afghanistan Bank shall have exclusive responsibility for:

- a. the issuance of exchange regulations, guidelines and instructions required for the execution of exchange rate policy and for foreign exchange market operations within the territory of Afghanistan;
- b. the licensing or registration, and the regulation and supervision, of foreign exchange dealers including banks, and other financial institutions, pursuant to Article 77;
- c. setting limits on foreign exchange positions of foreign exchange dealers including banks;
- d. holding or organizing foreign exchange auctions; and
- e. maintaining and managing the international reserves of Afghanistan.

**Article 73. International clearing and payments agreements**

Da Afghanistan Bank may, either for its own account or for the account and by order of the State, enter into clearing and payments agreements or any other contracts for the same purpose with public and private central clearing institutions domiciled abroad.

**Article 74. International reserve assets**

1. Da Afghanistan Bank shall establish and maintain the international reserves of Afghanistan which shall consist of all or any of the following assets:

- a. any gold, other precious metals and precious stones held by or for the account of Da Afghanistan Bank;

- b. any banknotes and coins in freely convertible foreign currency held by or for the account of Da Afghanistan Bank;
- c. any credit balances that are payable in freely convertible foreign currency and are held in accounts of Da Afghanistan Bank on the books of foreign central banks or other financial institutions;
- d. the aggregate amount of special drawing rights of the International Monetary Fund held by the State or Da Afghanistan Bank;
- e. any bills of exchange, promissory notes, certificates of deposit, bonds and other debt securities that are payable in freely convertible foreign currency and are held by or for the account of Da Afghanistan Bank; and
- f. any forward purchase or repurchase agreements and any currency swap agreements of Da Afghanistan Bank concluded with or guaranteed by foreign central banks or international financial organizations, and any futures, option and other contracts held by Da Afghanistan Bank, that entitle Da Afghanistan Bank to receive payment in freely convertible foreign currency.

2. Da Afghanistan Bank shall use its best endeavors to maintain the international reserves at a level which, in the opinion of Da Afghanistan Bank, shall be adequate for the execution of the monetary and exchange rate policies of Afghanistan and for the prompt settlement of the country's international transactions.

3. If said international reserves have declined or, in the opinion of Da Afghanistan Bank, are in danger of declining to such an extent as to jeopardize the execution of the monetary or exchange rate policies of Afghanistan or the prompt settlement of the country's international

transactions, Da Afghanistan Bank shall initiate corrective action and submit to the Council of Ministers of Afghanistan a report on the international reserves position and the causes which have led or may lead to such a decline, together with such recommendations as it considers necessary to remedy the situation.

4. Until such time as, in its opinion, the situation has been rectified, Da Afghanistan Bank shall continue to take corrective action and make further such reports and recommendations as it shall deem advisable.

**Article 75. Foreign exchange transactions of Da Afghanistan Bank**

Subject to the provisions of Article 76, Da Afghanistan Bank shall have the authority to take all actions necessary to acquire, to hold, and to dispose of, the international reserve assets specified in Article 74, paragraph 1. Da Afghanistan Bank shall manage the international reserve assets entrusted to its management in accordance with internationally recognized best practices.

**Article 76. Limit on foreign exchange liabilities of Da Afghanistan Bank**

Da Afghanistan Bank shall not permit an increase in the total amount of its liabilities that are denominated or payable in foreign currency if as a result of such increase that total would exceed the equivalent of fifty percent of the aggregate amount of the unimpaired capital and reserves of Da Afghanistan Bank.

**Article 77. Foreign exchange dealers**

1. Every foreign exchange dealer must be licensed by, or registered with, Da Afghanistan Bank, as specified by regulation of Da Afghanistan Bank. The regulation shall also set out the conditions for requesting and granting such license or registration.

2. Licenses and registrations required pursuant to paragraph 1 shall be applied for, and granted or denied, in accordance with rules and procedures specified by regulation of Da Afghanistan Bank. Such regulation shall also set out the conditions and requirements for the revocation of such licenses or registrations.

3. Each such license or registration shall consist of an entry in a public register to be maintained by Da Afghanistan Bank and a license or registration certificate issued by Da Afghanistan Bank. Both the register entry and the certificate shall specify the service for which, and the name of the person to whom, the license or registration was issued.

4. The following persons shall be exempt from the requirement of a license or registration pursuant to paragraph 1:

- a. Da Afghanistan Bank;
- b. banks;
- c. persons who, by virtue of the nature, size or location of their business, or the type of their customers, are exempt by Da Afghanistan Bank from the license or registration requirement; exemptions so granted by Da Afghanistan Bank may be conditional or limited in time, or they may be partial and list services that may or may not be provided by the persons receiving the exemption.

5. Foreign exchange dealers shall comply with the applicable rules and procedures specified by law or by regulation of Da Afghanistan Bank. In particular, when required by regulation of Da Afghanistan Bank, they shall:

- a. report transactions in value exceeding a minimum amount set by the regulation to a Department or Agency of the State designated by the regulation for that purpose;
- b. collect and maintain on record information about their customers in such format and detail as shall be specified in the regulation; and
- c. provide Da Afghanistan Bank periodically with information concerning their customers, management, administration, business and financial condition in such detail and format as shall be specified in the regulation.

6. The license or registration of a foreign exchange dealer may be revoked by Da Afghanistan Bank if Da Afghanistan Bank determines that the foreign exchange dealer fails to comply with any provision of this Law or a regulation issued by Da Afghanistan Bank pursuant to this Law, or is insolvent, or engages in criminal activities, or that there are grounds to suspect that the foreign exchange dealer engages or will engage in criminal activities.

## **Chapter VII RELATIONS WITH THE STATE**

### **Article 78. Banker, adviser and fiscal agent**

1. Da Afghanistan Bank shall act as banker and adviser to, and as fiscal agent of, the State, and such State agencies as the Minister of Finance shall determine; provided, however,

that no transaction carried out by Da Afghanistan Bank may serve to extend financial assistance to or for the benefit of the State or any of its State agencies .

2. Da Afghanistan Bank shall be consulted, and it shall be the duty of Da Afghanistan Bank to render advice to the Minister of Finance, on any proposals concerning matters that relate to its objectives or that otherwise are within its fields of competence, before they are submitted to the parliament.

3. Each year, Da Afghanistan Bank shall be consulted by the Minister of Finance on the occasion of the preparation of the State budget for the next following budget year and, in response, shall submit a written report to the Minister of Finance on economic and financial matters pertinent thereto. In this context, Da Afghanistan Bank shall submit to the Minister of Finance and publish its budget for its next following budget year in order to provide an indication of the amount of net profit of Da Afghanistan Bank for that year that may be expected to be available for allocation and transfer to the State. .

**Article 79. Consultations and reporting on public sector borrowing**

Each year, the Minister of Finance shall consult with Da Afghanistan Bank on its plan for domestic and external public sector borrowing during the next following financial year, including the amounts to be contracted and disbursed under such borrowing and the expected terms and conditions of such borrowing. All borrowing transactions by the State and its State agencies shall be reported to Da Afghanistan Bank in such detail as Da Afghanistan Bank with the approval of the Minister of Finance shall specify by regulation.

**Article 80. Depository and cashier**

1. Da Afghanistan Bank may accept deposits from the State, and from such State agencies as the Minister of Finance shall determine. As depository, Da Afghanistan Bank shall receive and disburse monies and keep account thereof and provide other financial services related thereto. Da Afghanistan Bank shall pay to the limits of the deposited amounts against orders to pay from such accounts. Da Afghanistan Bank may agree to pay interest on such deposits.

2. Da Afghanistan Bank may authorize other financial institutions to receive such deposits in compliance with conditions prescribed by Da Afghanistan Bank.

**Article 81. Fiscal agency function**

Da Afghanistan Bank may, on such terms and conditions as it shall agree with the Minister of Finance, act as fiscal agent for the account of the State and its State agencies, in the following matters:

- a. marketing of debt securities issued by them, or acting as registrar and transfer agent therefor;
- b. payment of principal of, and interest and other charges on, such securities;
- c. execution of payment transactions concerning their accounts at Da Afghanistan Bank;
- d. such other matters as shall be consistent with the objectives and basic tasks of Da Afghanistan Bank.

**Article 82. Information to be provided to Da Afghanistan Bank**

Da Afghanistan Bank shall receive from the State all such financial and economic information and documents as Da Afghanistan Bank shall reasonably request for the carrying out of its functions.

**Article 83. Loans of Da Afghanistan Bank to the State**

Except as provided in Article 84, Da Afghanistan Bank shall not grant any financial assistance to the State or to any of its State agencies.

**Article 84. Purchases of Government securities by Da Afghanistan Bank**

Purchases by Da Afghanistan Bank for its own account of debt securities issued by the State shall be treated as loans of Da Afghanistan Bank to the State and therefore be prohibited, except if and to the extent that such purchases are consistent with the monetary policy objectives of Da Afghanistan Bank or are required for investing assets of Da Afghanistan Bank and then only if such purchases are made in the secondary market.

**Chapter VIII RELATIONS WITH BANKS**

**Article 85. Licensing, regulation and supervision of banks**

Da Afghanistan Bank shall be exclusively responsible for the licensing, regulation and supervision of banks.



**Article 86. Cooperation with foreign banking supervisors**

1. Da Afghanistan Bank shall closely cooperate with any foreign banking supervisory authority on the basis of reciprocity with respect to the supervision of banks that operate in both their respective jurisdictions. Such cooperation may be formalized in an agreement between Da Afghanistan Bank and the foreign banking supervisory authority.

2. As part of such cooperation, Da Afghanistan Bank may exchange with such foreign banking supervisory authority information concerning any bank that operates in both their respective jurisdictions, provided that such authority undertakes to respect the confidentiality of the information so received.

**Article 87. Bank accounts on the books of Da Afghanistan Bank**

Da Afghanistan Bank shall be authorized to maintain accounts on its books for, and to accept deposits from, banks, foreign exchange dealers, securities service providers, payment system operators and other persons submitted by law to its oversight, on such terms and conditions as are prescribed by account agreement or regulation.

**Article 88. Lender of Last Resort**

Da Afghanistan Bank may, on such terms and conditions as it may determine, act as lender of last resort for domestic or foreign financial institutions that are account holders, by granting to them or for their benefit, for periods not exceeding three months, financial assistance that may take the form of loan, swap, repurchase and contingent commitments; each such commitment must be secured by assets specified in Article 69 unless Da Afghanistan Bank decides that an unsecured commitment would be justified by exceptional circumstances;

provided, however, that no such commitment shall be made by Da Afghanistan Bank unless: (a) in the opinion of Da Afghanistan Bank, such commitment is dictated by the liquidity requirements of the account holder and by the public interest; and (b) the Minister of Finance has concurred with the commitment within 24 hours after a proposal therefor was submitted to him by Da Afghanistan Bank. The period for commitment may be extended by Da Afghanistan Bank on the basis of a program acceptable to Da Afghanistan Bank that specifies the measures to be taken by the account holder concerned to satisfy Da Afghanistan Bank's liquidity requirements.

## **Chapter IX PAYMENT, CLEARING AND SETTLEMENT**

### **Article 89. Payment systems and payment system operators**

1. Da Afghanistan Bank shall establish, maintain and promote sound and efficient payment systems.

2. Da Afghanistan Bank shall be exclusively responsible for the registration, licensing, regulation and supervision of payment systems and payment system operators.

3. Da Afghanistan Bank may supervise payment systems and payment system operators and may by regulation:

- a. require the registration or licensing of any payment system or payment system operator;
- b. submit any payment system or payment system operator to prudential requirements, including requirements designed to facilitate supervision by Da Afghanistan Bank of payment systems or payment system operators and to preserve the safety of the assets entrusted by the public to their care;

- c. set out conditions and requirements, including eligibility requirements, under which financial institutions, including money service providers, may participate in any payment system; and
- d. submit payment systems or payment system operators to provisions of other regulations issued pursuant to this Chapter.

4. Conditions and requirements under this Article, including for licensing or registration, may vary from one category of payment system or payment system operator to another such category.

5. Da Afghanistan Bank shall be authorized to do all such things as it shall deem necessary for carrying out the tasks described in paragraph 1, including:

- a. promoting, organizing, participating in and operating payment systems;
- b. maintaining on its books settlement accounts for financial institutions and payment system operators, on such terms and conditions as it may prescribe by regulation or agree with account holders;
- c. providing to its account holders facilities for overdrafts secured by adequate collateral in accordance with requirements issued by regulation of Da Afghanistan Bank; and
- d. establishing, operating or participating in information networks for the financial system of Afghanistan.

6. Da Afghanistan Bank may make arrangements for or facilitate:

- a. the interaction of its payment systems with other payment systems;
- b. the development of new methods and technologies for payments in domestic or foreign currencies; and
- c. the formulation and periodic adaptation of an ongoing plan for the evolution of the national payment system of Afghanistan.

**Article 90. Payment system policy**

1. Da Afghanistan Bank shall formulate, adopt, publicly disclose, pursue and oversee the execution of a payment system policy.. The policy shall be directed to the greatest advantage of the people of Afghanistan consistent with best international standards and facilitate the overall stability of the financial system. It shall primarily promote payment system safety and efficiency and control payment system risks. Subject to this primary objective, the policy shall enhance other aspects of the public interest and particularly contribute to the promotion of competition in the market for payment system services and the protection of payment systems users.

2. In promoting payment system safety and efficiency, Da Afghanistan Bank shall co-operate with payment system operators, with other central banks and with other relevant domestic or foreign authorities.

**Article 91. Systemic risks and settlement certainty**

1. Da Afghanistan Bank may promulgate regulations and issue directives designed to control systemic risks and to achieve settlement certainty in payment systems.

2. Regulations issued pursuant to this Article may provide for:

- a. the validity, enforceability, and binding effect between and among parties and against all third parties of bilateral and multilateral netting agreements, and settlement rules governing financial transactions, between financial institutions, and of any netted or close-out amount determined in accordance with such agreements or rules, and that such agreements or rules supersede any inconsistent law;

- b. the prevention or reduction of risks associated with the failure to complete the settlement of obligations resulting from a multilateral clearing;
- c. the applicability and enforceability among parties and against all third parties of the provisions of Article 77 of the Banking Law on settlement finality to transfer orders of persons other than banks, and the provisions of Article 82 of the Banking Law on set off and netting to financial contracts between persons other than banks, notwithstanding any other provision in any law; and
- d. penalties and sanctions for non compliance with any directive issued under paragraph 1.

**Article 92. Money services**

1. Da Afghanistan Bank shall be exclusively responsible for the registration, licensing, regulation and supervision of money service providers.

2. Da Afghanistan Bank may supervise money service providers and may by regulation:

- a. require the registration or licensing of any money service provider or any category of money services;
- b. submit money services and money service providers to provisions of other regulations issued pursuant to this Chapter and set out conditions and requirements under which money services or any category of such services may be provided, including conditions and requirements designed to facilitate supervision by Da Afghanistan Bank of money service providers

and to preserve the safety of the assets entrusted by the public to their care; and

- c. require money service providers to report transactions in value exceeding a minimum amount set by the regulation to a Department or Agency of the State designated by the regulation for that purpose.

3. Conditions and requirements under this Article, including for licensing or registration, may vary from one category of money services to another such category.

4. Da Afghanistan Bank may regulate and supervise services and facilities provided by financial institutions, including money service providers, for sending, processing and receiving payment orders for their customers in domestic or foreign currencies, and may assist such financial institutions in the establishment, operation and organization of such services and facilities.

**Article 93. Miscellaneous**

1. Licenses and registrations required pursuant to Article 89 or 92 shall be applied for, and granted or denied, in accordance with rules and procedures specified by regulation of Da Afghanistan Bank. Such regulation shall also set out the conditions and requirements for the revocation of such licenses or registrations.

2. Each such license or registration shall consist of an entry in a public register to be maintained by Da Afghanistan Bank and a license or registration certificate issued by Da Afghanistan Bank. Both the register entry and the certificate shall specify the system or service for which, and the person to whom, the license or registration was issued.

3. The following persons shall be exempt from the requirement of a license or registration pursuant to Article 89 or 92:

- a. Da Afghanistan Bank;
- b. banks;
- c. persons who, by virtue of the nature, size or location of their business, or the type of their customers, are exempt by Da Afghanistan Bank from the license or registration requirement; exemptions so granted by Da Afghanistan Bank may be conditional or limited in time, or they may be partial and list services that may or may not be provided by the persons receiving the exemption.

4. Payment system operators and money service providers shall comply with the applicable rules and procedures specified by law or by regulation of Da Afghanistan Bank. In particular, when required by regulation of Da Afghanistan Bank, they shall:

- a. collect and maintain on record information about their customers in such format and detail as shall be specified in the regulation; and
- b. provide Da Afghanistan Bank periodically with information concerning their customers, management, administration, business and financial condition in such detail and format as shall be specified in the regulation.

5. The license or registration of a payment system operator or a money service provider may be revoked by Da Afghanistan Bank if Da Afghanistan Bank determines that the payment system operator or the money service provider fails to comply with any provision of this Law or a regulation issued by Da Afghanistan Bank pursuant to this Law, or is insolvent,

or engages in criminal activities, or that there are grounds to suspect that the payment system operator or money service provider engages or will engage in criminal activities

## **Chapter X SECURITIES SERVICES AND SECURITIES TRANSFER SYSTEMS**

### **Article 94. Registration of securities services**

1. It shall be unlawful for any person, other than a person who is registered with Da Afghanistan Bank as a securities service provider or a person exempt pursuant to paragraph 2, to engage directly or indirectly in the business of providing in Afghanistan any of the following securities services:

- a. services for the purchase, sale, trading, administration, safekeeping or transport of securities;
- b. services for the destruction of securities or other financial instruments;
- c. services for the operation or administration of a financial market;
- d. services for investing in securities funds received from the public; and
- e. any other service declared to be a securities service by decree of the Council of Ministers of Afghanistan.

### **Article 95. Exemptions from registration requirement**

1. The following persons shall be exempt from registration required by Article 94:
  - a. Da Afghanistan Bank;
  - b. banks;



- c. persons who, by virtue of the nature, size or location of their business, or the type of their customers, are exempt by Da Afghanistan Bank from this registration requirement, but only if Da Afghanistan Bank deems such exemption to be compatible with its objectives listed in Article 101; exemptions so granted by Da Afghanistan Bank may be conditional or limited in time, or they may be partial and list securities services that may or may not be provided by the persons receiving the exemption.

**Article 96. Regulation, supervision and prudential standards**

1. Da Afghanistan Bank shall be exclusively responsible for the regulation and supervision of securities service providers in accordance with the objectives specified in Article 101.

2. Da Afghanistan Bank may supervise securities service providers and may by regulation:

- a. submit securities service providers to prudential conditions and requirements under which securities services or any category of such services may be provided, including conditions and requirements designed to facilitate supervision by Da Afghanistan Bank of securities service providers and to preserve the safety of the assets entrusted by the public to their care; and
- b. require securities service providers to report transactions in value exceeding a minimum amount set by the regulation to a Department or Agency of the State designated by the regulation for that purpose.

3. The funds and securities owed by a securities service provider (other than a bank) to its customers shall be legally segregated from the funds and securities credited to the accounts of other customers and from the assets and liabilities of that securities service provider, and no such funds or securities shall be used to discharge liabilities of other customers or liabilities of that securities service provider.

**Article 97. Public offer and sale of securities restricted**

1. It shall be unlawful for any person, directly or indirectly, to purchase or to sell a security or to provide a securities service concerning a security if that security is not registered by Da Afghanistan Bank in a public register maintained for the purpose by Da Afghanistan Bank as an approved security, except in circumstances and on terms and conditions specified by regulation of Da Afghanistan Bank.

2. Da Afghanistan Bank may by regulation exempt securities by type from the requirement of paragraph 1.

3. Da Afghanistan Bank may by regulation impose conditions for maintaining such registration, including public information requirements concerning the securities and their issuers.

4. The registration of a security as an approved security shall be revoked by Da Afghanistan Bank if Da Afghanistan Bank determines:

- a. that the issuer of the security has ceased to exist as an independent person or has been declared insolvent or bankrupt by a court of law; or

- b. that the market value of the security is less or under normal market conditions would be less than twenty afghanis.

5. Any transaction in a security that is not registered as an approved security at the time that the transaction is entered into, shall be null and void; and in the event that such securities transaction is settled, the buyer of the security shall return the security to the seller in exchange for the purchase price paid for the security net of commissions, fees and other costs.

#### **Article 98. Securities transfer systems**

1. Da Afghanistan Bank shall establish, maintain and promote sound and efficient securities transfer systems.

2. It shall be unlawful for any person, other than a person who is licensed by Da Afghanistan Bank, to operate directly or indirectly a securities transfer system.

3. Da Afghanistan Bank shall be exclusively responsible for the licensing, regulation and supervision of securities transfer systems and securities transfer system operators.

4. Da Afghanistan Bank shall by regulation:

- a. submit securities transfer systems and securities transfer system operators to prudential conditions and requirements, including conditions and requirements designed to facilitate supervision by Da Afghanistan Bank of securities transfer systems and securities transfer system operators and to preserve the safety of the assets entrusted by the public to their care;
- b. provide for the applicability and enforceability among parties and against all third parties of the provisions of Article 77 of the Banking Law on

settlement finality to securities transfer orders of persons other than banks;

and

- c. issue requirements as to eligibility for participation in any securities transfer system.

5. Conditions and requirements under this Article may vary from one category of securities transfer system or securities transfer system operator to another such category.

6. Da Afghanistan Bank shall be authorized to do all such things as it shall deem necessary for carrying out the tasks described in paragraph 1, including:

- a. promoting, organizing, participating in and operating securities transfer systems;
- b. maintaining on its books settlement accounts for securities transfer system operators and securities service providers, on such terms and conditions as it may prescribe by regulation or agree with account holders; and
- c. providing to its account holders facilities for overdrafts secured by adequate collateral in accordance with requirements issued by regulation of Da Afghanistan Bank.

7. Da Afghanistan Bank may make arrangements for or facilitate:

- a. the interaction of its securities clearing and settlement systems and related arrangements with other securities transfer systems;
- b. the development of new methods and technologies for transfers of securities, in domestic or foreign currencies; and

- c. the formulation and periodic adaptation of an ongoing plan for the evolution of the national securities transfer system of Afghanistan.

8. Da Afghanistan Bank shall issue regulations governing the safekeeping, bookkeeping and transfer of debt securities issued by the State or by Da Afghanistan Bank and for the clearing and settlement of transactions in such securities. These regulations shall also set rules for auctions of such securities and for the conduct of broker-dealers concerning such securities.

**Article 99. Pyramid schemes prohibited**

It shall be unlawful for any person, directly or indirectly, to initiate, offer, advertise, conduct, finance, manage, supervise or direct a scheme where profits earned by participants in the scheme largely depend on increases in the number of participants in the scheme or in the size of their contributions to the scheme.

**Article 100. Miscellaneous**

1. Licenses and registrations required pursuant to Article 94 and 98 shall be applied for, and be granted or denied, in accordance with rules and procedures specified by regulation of Da Afghanistan Bank. Such regulation shall also set out the conditions and requirements for the revocation of such licenses or registrations.

2. Each such license or registration shall consist of an entry in a public register to be maintained by Da Afghanistan Bank and a license or registration certificate issued by Da Afghanistan Bank. Both the register entry and the certificate shall specify the system or service for which, and the person to whom, the license or registration was issued.

3. Securities service providers and securities transfer system operators shall comply with the applicable rules and procedures specified by law or by regulation of Da Afghanistan Bank. In particular, when required by regulation of Da Afghanistan Bank, they shall:

- a. collect and maintain on record information about their customers in such format and detail as shall be specified in the regulation; and
- b. provide Da Afghanistan Bank periodically with information concerning their customers, management, administration, business and financial condition in such detail and format as shall be specified in the regulation.

4. The license or registration of a securities service provider or a securities transfer system operator may be revoked by Da Afghanistan Bank if Da Afghanistan Bank determines that the securities service provider or securities transfer system operator fails to comply with any provision of this Law or a regulation issued by Da Afghanistan Bank pursuant to this Law, or is insolvent, or engages in criminal activities, or that there are grounds to suspect that the securities service provider or securities transfer system operator engages or will engage in criminal activities.

5. It shall be unlawful for any person, directly or indirectly:

- a. to commit an act concerning a securities service or a securities transfer system that is declared to be unlawful by regulation of Da Afghanistan Bank on the ground that in the judgment of Da Afghanistan Bank such act is manifestly incompatible with one or more of the objectives of Da Afghanistan Bank listed in Article 101;
- b. to use or permit a third party to use funds or securities received from, or for the account or benefit of, one of the customers of that person;

- c. to engage in any activity in connection with a securities service or a securities transfer system, if such activity operates or would operate as a fraud or deceit upon any other person.

Whoever engages in any act that is unlawful under the provisions of this paragraph 5 shall be sentenced to imprisonment for not more than 10 years or to pay a fine of not more than 250,000 afghanis or both; the court ordering the sentence may also order that any property, including money, used in or derived from committing such act may be seized and forfeited to the State.

#### **Article 101. Objectives**

In carrying out its tasks assigned by this Chapter, Da Afghanistan Bank shall pursue the following objectives:

- a. promoting confidence in, and public understanding of, securities services, securities transfer systems and financial markets;
- b. offering investors an appropriate degree of protection of their investments in securities; and
- c. reducing the opportunity for using a securities service for a purpose involving fraud or dishonesty, misconduct or misuse of information relating to a securities transaction, or proceeds of crime.

## **Chapter XI ACCOUNTS, FINANCIAL STATEMENTS, AUDIT AND REPORTS**

### **Article 102. Financial year of Da Afghanistan Bank**

The financial year of Da Afghanistan Bank shall begin on the first day of Hamal and end on the last day of Hoot.

### **Article 103. Accounting practices**

Da Afghanistan Bank shall maintain at all times accounts and records adequate to reflect in accordance with consistently maintained international accounting standards its operations and financial condition.

### **Article 104. Financial statements of Da Afghanistan Bank**

Da Afghanistan Bank shall prepare financial statements for each of its financial years. They shall include a balance sheet, a profit and loss statement, and related statements.

### **Article 105. Audit of accounts of Da Afghanistan Bank**

The accounts and records of Da Afghanistan Bank shall be audited in accordance with international auditing standards by independent external auditors appointed by the Council of Ministers of Afghanistan.

### **Article 106. Transmittal and publication of statements and reports**

1. Da Afghanistan Bank shall, within three months after the close of each of its financial years, submit to the parliament of Afghanistan:

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Translated by Banking Reform Team  
Regulations/USAID/BearingPoint/DAB



- a. a copy of its financial statements certified by its auditors;
- b. a report of its operations and affairs during that year; and
- c. a report on the state of the economy.

2. Da Afghanistan Bank shall, as soon as possible after the last working day of each month, but in any event within 15 working days, prepare and submit to the Minister of Finance pro forma balance sheets as of the end of that month. The proforma reports will include the net change in the foreign reserve position over the course of the month.

3. Upon their submission, Da Afghanistan Bank shall publish the financial statements and reports referred to in paragraphs 1 and 2; it may publish such other reports and studies on financial and economic issues as it may deem appropriate.

#### **Article 107. Reporting on monetary policy by Da Afghanistan Bank**

1. Da Afghanistan Bank shall report in writing to the President and the Minister of Finance of Afghanistan if at any time, the net foreign reserve position across the Da Afghanistan Bank reserve accounts declines by more than 20% over a 7 day period.

2. Within six months after this Law shall enter into force, and semi-annually thereafter, Da Afghanistan Bank shall deliver to the parliament of Afghanistan and publish a policy statement that shall contain:

- a. a description of, and an explanation of the reasons for, the monetary policies to be followed by Da Afghanistan Bank during the next six months period;
- b. a description of the principles that Da Afghanistan Bank proposes to follow in the adoption and execution of monetary policy during the next two years, or such longer period of time as Da Afghanistan Bank may decide; and

- c. a review and assessment of the adoption and execution by Da Afghanistan Bank of monetary policy during the period to which the last preceding six monthly policy statement relates.

## **Chapter XII FINANCIAL SERVICES TRIBUNAL**

### **Article 108. Establishment of the Tribunal**

There is established by this law a tribunal known as the Financial Services Tribunal (referred to in this Law as “*the Tribunal*”).

### **Article 109. Jurisdiction of the Tribunal**

1. The Tribunal shall have jurisdiction to review the following decisions and orders of Da Afghanistan Bank:
  - a. decisions of Da Afghanistan Bank whereby the application of a license or a permit or a registration is rejected, decisions whereby a condition or restriction is attached to a license or a registration or a permit, and decisions whereby a license or a registration or a permit is revoked;
  - b. decisions of Da Afghanistan Bank imposing a fine;
  - c. orders issued by Da Afghanistan Bank to a person engaged in an activity without a valid license or permit from, or registration with, Da Afghanistan Bank even though such license, permit or registration is required by law;
  - d. decisions of Da Afghanistan Bank to appoint or to extend the term of appointment of a conservator; and

- e. such other decisions and acts of Da Afghanistan Bank as the law shall specify.

2. The Tribunal shall have jurisdiction in all such matters as are referred to the Tribunal by law, including applications for the opening of bankruptcy proceedings against a bank and supervision of the administration of bankruptcies of banks.

3. The Tribunal shall also have jurisdiction to adjudicate any dispute between financial institutions that is referred to the Tribunal by a financial institution pursuant to a written agreement between the parties to the dispute. Such agreement must be signed by the parties and must describe the dispute or disputes that may be referred to the Tribunal.

4. The jurisdiction of the Financial Services Tribunal shall be exclusive of the jurisdiction of any other tribunal or court of law.

**Article 110. Composition of the Tribunal and appointment of judges**

1. The Tribunal shall be composed of one or more panels of three judges.

2. Each panel shall have one judge appointed by the Minister of Justice who shall be a lawyer with professional experience as a judge, a practicing attorney or a professor of civil or commercial law, and who as chairman of the panel shall preside over the discharge of the functions of the panel. The other two judges of the panel shall be appointed by the Minister of Finance; one of these shall be an accountant by profession, while the other shall have professional experience in financial transactions.

3. No person shall serve as a judge on the Tribunal:

- a. If he is not a citizen of Afghanistan;
- b. If he is not a person of recognized integrity;
- c. If he would be disqualified from serving pursuant to Article 111;

- d. While he is an officer or a full time or part time employee, with or without remuneration, of a bank or other institution submitted by law to the oversight by Da Afghanistan Bank; or
- e. While he is a member of the Supreme Council or the Executive Board or a Comptroller or another employee of Da Afghanistan Bank, or while he is a Minister, Deputy Minister or other high ranking official of the State.

4. Judges of the Tribunal shall be appointed for life and shall serve until their sixty-fifth birthday. They may not be removed from the Tribunal except on one or more of the grounds listed in Article 111; they may at any time resign from the Tribunal upon giving written notice to the Minister of Justice. The remuneration and other emoluments that judges of the Tribunal shall receive for their service with the Tribunal shall be specified by regulation of the Council of Ministers.

**Article 111. Disqualification and removal of judges from the Tribunal**

- 1. A judge shall be disqualified to serve on the Tribunal and be removed from the Tribunal by decision of the Council of Ministers if he:
  - a. Becomes ineligible to serve on the Tribunal pursuant to Article 110, paragraph 3;
  - b. Is convicted of an offense for which he was or could have been sentenced to imprisonment without the option of fine, unless such conviction was motivated by his religious or political views or activities;
  - c. Is declared bankrupt or unable to pay his debts as they fall due by a court decision;

- d. Has been unable to perform the functions of his office because of an infirmity of body or mind that has lasted for more than six months; or
- e. Has engaged in significant violations of the law or in serious misconduct in the office, or has actively participated in political activities, diminishing or giving the appearance of diminishing the reputation of the Tribunal as an independent and impartial judicial institution.

2. No judge shall be removed from the Tribunal on any other ground.

3. No judge shall be removed from the Tribunal before a hearing has been held by the Council of Ministers where such judge or his legal representative has been afforded a reasonable opportunity to present his views.

**Article 112. Organization and administration of the Tribunal**

1. The Minister of Justice shall be responsible for the organization of the Tribunal and for the supervision of its administration.

2. The Minister of Justice shall appoint a judge chairman of a panel of the Tribunal to be also President of the Tribunal.

3. The President of the Tribunal shall be directly responsible for the administration of the Tribunal. He shall be assisted by a staff including a Clerk of the Tribunal, an Administrator of the Tribunal, and an Accountant of the Tribunal. The staff of the Tribunal shall be appointed by the Minister of Justice. The staff of the Tribunal shall have duties and shall serve on terms and conditions specified by decree of the Minister of Justice.

**Article 113. Immunity of judges**

No person shall be liable in damages for anything done as President or judge of the Tribunal.

**Article 114. Disclosure and conflicts of interests**

1. Each judge of the Tribunal shall disclose in full to the Minister of Justice the significant commercial interests which he or members of his household have, directly or indirectly. Such disclosures shall be made upon first becoming a judge and annually thereafter in accordance with guidelines issued by the Minister of Justice.

2. Whenever any case before a panel of the Tribunal is related to such interest of a judge serving on the panel, that judge shall disclose his interest to the panel and be replaced by another judge. Any failure by that judge to do so shall be deemed to be a significant violation of the law, and all decisions of the panel reached after deliberations in which that judge participated shall be null and void.

3. No judge of the Tribunal and no member of its staff shall accept any gift or credit for himself, or on behalf of any person with whom he has family, business or financial connections, if the acceptance thereof would diminish, or give the appearance of diminishing, the reputation of the Tribunal as an independent and impartial judicial institution.

**Article 115. Secrecy**

No person who serves or has served as a judge or as a member of the staff of the Tribunal shall:

- a. permit access to, disclose or publicize nonpublic material information which he has obtained in the performance of his official duties, except when required to do so by any law or by court order; or
- b. use such information, or allow such information to be used, for personal gain.

**Article 116. Venue and rules of procedure of the Tribunal**

1. The Minister of Justice shall make rules governing the place or places where the Tribunal must sit.

2. The Minister of Justice shall make rules governing the proceedings of the Tribunal, including but not limited to rules concerning:

- a. the manner in which proceedings of the Tribunal are to be instituted;
- b. the time periods to be observed by the Tribunal for notifications of hearings;
- c. the holding of hearings of the Tribunal in private in such circumstances as may be specified in the rules;
- d. the persons who may appear on behalf of the parties;
- e. evidence, and the calling and hearing of witnesses;
- f. the termination of proceedings; and
- g. the registration, publication and proof of decisions and orders of the Tribunal.

3. The President of the Tribunal may give directions to panels of the Tribunal concerning procedures to be followed in individual cases, provided that such directions are not inconsistent with provisions of law or rules issued by the Minister of Justice.

4. All hearings of the Tribunal shall be open to the public, except as decided by the President of the Tribunal in circumstances specified by regulation of the Minister of Justice.

**Article 117. Summons**

1. The Tribunal may by summons require any person to attend, at such time and place as is specified in the summons, to give evidence or to produce to the Tribunal any document in his custody or under his control which the Tribunal considers it necessary to examine.

2. A person is guilty of a criminal offence if he, without reasonable excuse:

- a. refuses or fails to attend a session of the Tribunal following the issue of a summons by the Tribunal, or to give evidence; or
- b. alters, suppresses, conceals or destroys, or refuses to produce, a document which he may be required to produce for the purposes of proceedings before the Tribunal.

3. A person guilty of an offence under paragraph 2 shall be imprisoned for not more than 5 years or fined to pay not more than 125,000 afghanis or both.

**Article 118. Decisions of the Tribunal**

1. Decisions of the Tribunal shall be taken by a majority.

2. Decisions of the Tribunal shall be recorded in a document which states the reasons for the decision and is signed by the chairman of the panel dealing with the case addressed by the decision.

3. The Tribunal shall, as soon as reasonably practicable, notify each party of the decision by sending to each party a copy of the document mentioned in paragraph 2.

4. Decisions of the Tribunal may award expenses, damages and interest. If the Tribunal determines that frivolous or unreasonable behavior of one of the parties to the Tribunal



proceeding was a significant factor leading to the Tribunal proceeding, the Tribunal may award punitive damages to the other party.

5. Decisions of the Tribunal shall take effect on the day specified in the decision; decisions in which no effective date is specified shall take effect one week from the date of their notification to the parties.

6. Decisions of the Tribunal shall be enforced as if they were enforceable court decisions.

**Article 119. Procedures for review of decisions and orders (xxx)**

1. Application for review of a decision or order of Da Afghanistan Bank must be made by a written request submitted to the Tribunal by one or more parties explicitly addressed by the decision or order. The request must be filed within six months following the date of the decision or order or within such shorter period of time as is specified by law. The request must apply to the Tribunal for the annulment or modification of the decision or order and must explain why the decision or order should be annulled or modified. Upon receipt of the request, the Clerk of the Tribunal shall send a copy of the request to Da Afghanistan Bank and shall notify both parties of the date of the first hearing of the request by the Tribunal. Thereafter, both parties shall be invited to attend every hearing of the panel dealing with the request.

2. Decisions and orders of Da Afghanistan Bank shall remain in full force and effect until a final decision on review by the Tribunal annuls the decision or order, or until the decision or order is modified by Da Afghanistan Bank, or until the decision or order terminates pursuant to its terms or a decision of Da Afghanistan Bank or a provision of law.

3. The Tribunal may annul or order a modification of a decision or order of Da Afghanistan Bank only on one or more of the following grounds:
  - a. in taking its decision or issuing its order, Da Afghanistan Bank exceeded or abused its legal authority;
  - b. the procedures followed by Da Afghanistan Bank in reaching its decision or order are materially inconsistent with the procedures prescribed by law;
  - c. the reasoning, notification, registration or publication of the decision or order fails to meet a material requirement of the law as to form or substance; and
  - d. the decision or order is manifestly incompatible with one or more of the standards of good administration specified in Article 125.
4. When ordering a modification of a decision or order of Da Afghanistan Bank, the decision of the Tribunal shall:
  - a. explain which of the grounds listed in paragraph 3 applies to the decision or order of Da Afghanistan Bank and give recommendations as to the nature and scope of the modification to be made to bring the decision or order of Da Afghanistan Bank in compliance with that ground; and
  - b. specify the final date whereby the modification must be made.
5. Decisions and orders of Da Afghanistan Bank that are not modified by the final date specified by the Tribunal for their modification shall terminate at the end of that date.
6. Decisions and orders of Da Afghanistan Bank that are modified following a decision of the Tribunal shall be subject to review by the Tribunal.

**Article 120. Appeal**

1. Decisions of the Tribunal shall not be subject to appeal or any other kind of judicial review, except for decisions rendered by the Tribunal in disputes between financial institutions pursuant to paragraph 3 of Article 109.

2. A party to a proceeding leading to a decision rendered by the Tribunal pursuant to paragraph 3 of Article 109 may appeal to the Highest Court of Afghanistan for annulment of the decision on one or more of the following grounds:

- a. the Tribunal lacks jurisdiction because it is based on an agreement that fails to meet one or more of the requirements of paragraph 3 of Article 109, or on an agreement that is otherwise invalid or subject to annulment, or on an agreement that had terminated before the proceeding leading to the decision of the Tribunal was instituted;
- b. Tribunal lacks jurisdiction because the proceeding leading to the decision of the Tribunal was instituted in breach of a deadline specified in the agreement on which the jurisdiction of the Tribunal is based;
- c. decision of the Tribunal does not address a dispute that is referred to the Tribunal by an agreement as required by paragraph 3 of Article 109, or addresses a dispute that is not so referred to the Tribunal;
- d. the decision of the Tribunal depends on false evidence, including false or incomplete testimony and documents that are false, falsified or materially tampered with;
- e. the decision of the Tribunal depends on fraud or deception committed during the proceeding;

- f. the decision of the Tribunal exceeds the scope of the agreement on which the jurisdiction of the Tribunal is based, or omits to address all or part of a dispute referred to the Tribunal;
- g. the amount awarded by the Tribunal exceeds the amount of the claim; and
- h. the decision of the Tribunal or the proceeding leading to the decision is in breach of a requirement specified by law or by a regulation issued by the Minister of Justice.

3. The appeal must be instituted within three months from the date of notification of the decision, except that for the grounds described in paragraph 1 sub d. and e. this period shall begin not earlier than the day of discovery of documents offering *prima facie* proof of false evidence, fraud or deception.

4. If, on appeal, the Court annuls the decision of the Tribunal, it shall remit the decision to the Tribunal for rehearing and final determination by the Tribunal in accordance with the decision of the Court.

### **Chapter XIII MISCELLANEOUS PROVISIONS**

#### **Article 121. Preferential right of Da Afghanistan Bank**

1. Da Afghanistan Bank shall have an unconditional preferential right to satisfy each of its claims from any cash balances and other assets that it holds for its own account or for the account of the debtor concerned, whether as collateral to secure its claims or otherwise, at the time that such claim becomes due and payable, except for bank assets held by Da Afghanistan Bank as required reserves.

2. Da Afghanistan Bank may exercise its preferential right only by keeping cash balances and by selling other assets of the debtor against a reasonable price and paying itself

from the proceeds of the sale after deducting therefrom the costs associated with the sale. No court action shall be required for, and no competing claim shall be permitted to delay, the exercise by Da Afghanistan Bank of its preferential right in accordance with the provisions of this Article, not even claims of ownership or other previously acquired rights, unless there shall be clear and convincing evidence that staff of Da Afghanistan Bank knew or should be considered to have known at the time that the assets came into the possession of Da Afghanistan Bank that the assets did not belong to the debtor concerned.

**Article 122. Prohibited activities of Da Afghanistan Bank**

1. Except as otherwise specifically authorized by this Law, Da Afghanistan Bank shall not:
  - a. grant any financial assistance, whether in the form of a direct loan or grant or a contingent commitment, or by purchasing a loan, a loan participation or another instrument of indebtedness, or through the assumption of a debt or a contingent liability, or in any other form, or engage in any other banking activity defined as such by the Banking Law;
  - b. engage in commerce, purchase the shares of any corporation or company, including the shares of any financial institution, or otherwise have an ownership interest in any financial, commercial, agricultural, industrial, or other undertaking;
  - c. acquire by purchase, lease, or otherwise any real rights in or to immovable property, except as it shall consider necessary or expedient for the provision of premises for the conduct of its administration and operations

or for the housing of its employees or similar requirements incidental to the performance of its functions under the provisions of this Law.

2. Notwithstanding the provisions of paragraph 1, Da Afghanistan Bank may:
  - a. make loans to, or have an ownership share or otherwise participate in, any organization that is engaged in activities that are required for the proper discharge of Da Afghanistan Bank's own functions or responsibilities;
  - b. acquire, in the course of satisfaction of debts due to it, any interests or rights; provided that all such interests or rights so acquired shall be disposed of at the earliest suitable opportunity;
  - c. establish staff retirement funds or similar arrangements for the benefit or protection of its employees and their dependents and nominees, and make contributions towards the costs associated with such arrangements subject to such terms and conditions as it shall determine; and
  - d. establish a credit program for its employees for the purpose of their housing or the health or education of them and members of their immediate family;

**Article 123. Collection of statistical information**

1. Da Afghanistan Bank shall collect the statistical information required for the achievement of its objectives and the carrying out of its tasks, from the competent authorities of Afghanistan or directly from economic agents. To that end, it shall cooperate with the competent authorities in other states and with international organizations.

2. Da Afghanistan Bank shall contribute to the harmonization of the rules and practices governing the collection, compilation and distribution of statistics within its fields of competence.

3. Da Afghanistan Bank shall define by regulation the statistical information so required and the form in which such information is to be provided to Da Afghanistan Bank, the persons that are to provide such information to Da Afghanistan Bank, and the confidentiality regime that shall apply to statistical information provided to Da Afghanistan Bank.

4. Da Afghanistan Bank may require all banks operating within the territory of Afghanistan to 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. Da Afghanistan Bank shall endeavor to compile statistics in accordance with international standards and practices.

5. Da Afghanistan Bank may require all nonbank financial institutions and agents operating in Afghanistan to provide to Da Afghanistan Bank annual, quarterly, or more frequent statistical reports, as may be requested.

6. 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. Da Afghanistan Bank may require that banks and other financial institutions and agents provide to Da Afghanistan Bank information on specific transactions, individuals, or firms as are needed to carry out its supervisory, policy, and statistical functions.

7. Da Afghanistan Bank shall not disseminate to the public statistical information revealing business relations of individuals or undertakings unless it has obtained the prior written permission by the individuals or the undertakings concerned to do so

8. 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 on confidentiality of banking and financial records to receive such information.

9. The DAB 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.

10. Each person from whom Da Afghanistan Bank may collect statistical information pursuant to this Article, shall promptly at the request of Da Afghanistan Bank provide to Da Afghanistan Bank such information in such form as shall be specified by Da Afghanistan Bank. The failure to do so shall be an offence punishable with imprisonment of not more than six months or payment of a fine of not more than 12,500 afghanis or both.

#### **Article 124. Immunities**

1. 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, Comptroller General, officer, member of the staff, or agent of Da Afghanistan Bank, or while a conservator or receiver appointed pursuant to this Law or the Banking Law, unless it is shown that the act or omission was in bad faith.



2. Da Afghanistan Bank shall be exempted from the following taxes and duties:
  - a. Taxes on income or profits of Da Afghanistan Bank.
  - b. Personal property taxes on assets of Da Afghanistan Bank.
  - c. Taxes on transfers of funds and other financial transactions.
  - d. Taxes in the form of stamp duties on issuance of Da Afghanistan Bank 's securities and banknotes.
  - e. Customs duties, import duties, sales taxes, value added taxes on imports of gold, banknotes, and coins to be delivered to Da Afghanistan Bank.
  - f. Sales tax on domestic supplies of gold, banknotes, and coins to Da Afghanistan Bank.
3. Da Afghanistan Bank shall be liable for property taxes on immovable property taxes only if, as a general rule, Government ministries are liable for such taxes on the immovable property in their ownership or use.
4. Da Afghanistan Bank shall be liable for any other taxes or duties, except as otherwise stipulated in the specific laws regulating such taxes or duties.

#### **Article 125. Standards of good administration**

1. Da Afghanistan Bank shall use the powers given to 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 Da Afghanistan 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 126. Trust accounts administered by Da Afghanistan Bank**

Da Afghanistan Bank may open trust accounts on its books for the administration by Da Afghanistan Bank of funds provided by foreign parties to the State or to a State Agency in accordance with the terms and conditions set out in trust account agreements. The assets recorded in such trust account may be used only for the discharge of liabilities recorded in the trust account or otherwise as provided in the trust account agreement, and no other assets of Da Afghanistan Bank may be used to meet liabilities recorded in the trust account. Da Afghanistan Bank shall charge a fee for such administration that shall be at least sufficient to cover the costs incurred by Da Afghanistan Bank on account of such administration.

**Article 127. Unlicensed and unregistered persons**

1. 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 an activity without a valid license or permit from, or a registration with, Da Afghanistan Bank even though such

license, permit or registration is required by law; 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.

2. If Da Afghanistan Bank determines that a person engages in an activity without a valid license or permit from, or a registration with, Da Afghanistan Bank even though such license, permit or registration is required by law, Da Afghanistan Bank shall serve an order upon that person promptly to cease such activity. If Da Afghanistan Bank determines that, within one calendar week from the date of service of its order, the activity has not ceased, Da Afghanistan Bank may apply to the Financial Services Tribunal for liquidation of the business of that person, 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 the rules and procedures specified in Article 63 of the Banking Law or lift the seizure and decide that 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 returned to their owner or be forfeited to the State.

## **Article 128 Violations**

A violation of this Law, the punishment for which is not otherwise specified, shall be punishable as an infraction in accordance with special regulations as provided in Section 520 of the Penal Code or, in the absence of such regulations, shall be punishable as a violation of Article 478 of the Penal Code.

## **Chapter XIV TRANSITIONAL PROVISIONS**

### **Article 129. Da Afghanistan Bank's commercial banking services**

In any region of Afghanistan where commercial banking services are not provided to the public by at least one bank licensed by Da Afghanistan Bank, Da Afghanistan Bank shall be authorized to provide such services for commercial holders of account on its books that maintain an active place of business located in that region, notwithstanding any other provision of this Law, for a period not more than two years from the effective date of this Law. Da Afghanistan Bank shall ensure that the agreements governing each such account permit Da Afghanistan Bank by written notice to discontinue providing commercial banking services to the account holder in circumstances including that one or more banks licensed by Da Afghanistan Bank provide such services in the region, and to close such account as soon as shall be practicable thereafter. No failure on the part of Da Afghanistan Bank to provide or not to provide commercial banking services in accordance with this Article shall affect the validity or enforceability of agreements concluded by Da Afghanistan Bank for the provision of such services. For the purposes of this Article, the term "*commercial banking services*" means any of the banking activities defined as such by the Banking Law.

**Article 130. Independent auditing commission**

Within one month of the effective date of this law, an independent commission will be established comprising national and international experts, including auditors, central banking experts and such other experts as may be necessary to determine and evaluate all assets and liabilities including contingencies of Da Afghanistan Bank, including shareholdings in state owned enterprises, and assets, including cash and gold held in foreign accounts, and to adopt a balance sheet audited in accordance with international auditing standards by independent external auditors. On the basis of this information, the commission shall recommend within five months of its establishment on:

- a. The level of authorized capital for Da Afghanistan Bank.
- b. The mechanism of allocating of funds to reserved accounts, and.
- c. The process of divesting Da Afghanistan Bank of its shares in state owned enterprises and other unrelated assets.
- d. The debts of the previous governments owed to Da Afghanistan Bank

**Article 131. Foreign accounts maintained for state enterprises**

Da Afghanistan Bank shall be authorized and required within six months after the effective date of this Law unilaterally to close and to liquidate all accounts that it maintains with foreign financial institutions on behalf of domestic state enterprises, and to terminate all agreements applicable to such accounts, and to return to the State the net aggregate amount of assets of such accounts. The net aggregate amount of assets shall be calculated by Da Afghanistan Bank by adding the amounts of assets of such accounts in terms of afghanis and deducting from that total all amounts owed to Da Afghanistan Bank in terms of afghanis in connection with such accounts. For each calculation of the net aggregate amount of assets of an

account, only exchange rates quoted on the same day shall be used. If the net aggregate amount of assets is negative, the State shall pay this amount to Da Afghanistan Bank within six months after written notification thereof by Da Afghanistan Bank.

**Article 132. Relicensing**

Every person who 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 the date on which the new legislation governing that license comes into effect, 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.

**Article 133. Nominee of Minister of Finance on Supreme Council**

During the first three years following the effective date of this Law, the Supreme Council of Da Afghanistan Bank shall have one member, other than the Governor and the First Vice Governor, who shall have been appointed after having been nominated by the Minister of Finance.

**Article 134. Eligibility requirement of citizenship suspended**

The requirement of citizenship of Afghanistan to be eligible for membership of the Supreme Council and the Executive Board shall be suspended during the first two years following the effective date of this Law.

**Article 135. Deferred enactment of articles relating to political activities**

The provision of Article (4) paragraph (5) and Article (12) paragraph (1) sub para (h) regarding political activities shall become effective on the first day of the successor administration of the Transitional Islamic State of Afghanistan.

**Article 136. Gradual introduction of prudential requirements**

Da Afghanistan Bank shall be authorized to introduce by regulation the prudential requirements of this Law and those of the Banking Law gradually to Afghanistan. These prudential requirements shall be introduced within one year of the effective date of this legislation.

To that end, Da Afghanistan Bank may exempt from the provisions of this Law or the provisions of the Banking Law banks, foreign exchange dealers, payment system operators, money service providers, securities service providers or other persons submitted to its oversight by or pursuant to either Law, on the ground that Da Afghanistan Bank is not yet able to carry out its prudential tasks with respect to such persons, due to deficiencies in its staff resources or due to serious impediments in access of its staff to the offices of such persons.

**Article 137. Transitional Provision regarding appointments to Supreme Council**

In the absence of a Parliament in Afghanistan, members of the Supreme Council of Da Afghanistan Bank shall be appointed by a decree of the President of Afghanistan.

**Article 138. Repeal of previous statutory provisions**

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 139. Entry into force**

This Law shall enter into force when signed and shall be published in the Official Gazette.