

# **AFGHANISTAN**

**Amendments to the Anti-Money Laundering**

**and**

**Proceeds of Crime**



Contents

CHAPTER I..... 6

    General Provisions ..... 6

        Article 1 – Basis ..... 6

        Article 2 Purpose..... 6

        Article 3 – Terms ..... 6

        Article 4 – Money laundering offence ..... 10

        Article 5 – Institutions and professions subject to this law ..... 11

CHAPTER II ..... 13

    TRANSPARENCY IN FINANCIAL TRANSACTIONS..... 13

        Article 6 –Wire transfers of funds via financial institutions and the information on electronic funds transfers ..... 13

        Article 7 – Currency reporting at the border ..... 14

        Article 8– overriding of secrecy ..... 14

        Article 9: Prohibition of shell banks ..... 14

        Article 10– Prohibition of anonymous accounts or similar products ..... 14

        Article 11 – Risk Assessment..... 15

        Article 12 – Identification of customers and verification ..... 15

        Article 13 - Consequences of failure to identify customers or beneficial owners..... 17

        Article 14 – Special monitoring of transactions and measures for high-risk countries ..... 17

        Article 15 – Due diligence measures for politically exposed persons..... 18

        Article 16 – Record-keeping..... 18

        Article 17 – Reporting of certain transactions ..... 19

        Article 18 – Reporting of suspicious transactions..... 19

        Article 19 – Internal anti-money laundering programs at reporting entities and foreign branches and subsidiaries ..... 20

        Article 20: Inapplicability of Confidentiality Provisions to Professionals..... 20

        Article 21: Correspondent Banking..... 21

        Article 22- Power of Appropriate Supervisory Authority..... 21

        Article 24- Powers to enforce compliance..... 22

CHAPTER III .....	24
DETECTION OF MONEY LAUNDERING, ESTABLISHMENT OF THE .....	24
FINANCIAL INTELLIGENCE UNIT ANDCOLLABORATION WITH ANTI–MONEY LAUNDERING AUTHORITIES .....	24
Article 25– Establishment .....	24
Article 27– Confidentiality .....	<b>Error! Bookmark not defined.</b>
Article 28– Limitation of duties of employees .....	25
Article 29– Collection, keeping and exchange of data.....	25
Article 30– Annual reporting.....	25
Article 31– Feedback.....	26
Article 32– Relationships with foreign counterparts .....	26
Article33– Duties of the Financial Intelligence Unit .....	26
Article 34: Composition of the Commission .....	27
Article 35: Establishment of the Committee.....	28
CHAPTER IV .....	28
RECEIPT OF REPORTS AND FREEZING OF TRANSACTIONS.....	28
Article 36 – Receipt of reports by the Financial Intelligence Unit .....	28
Article 37 – Dissemination of reports .....	29
Article 38 – Freezing of accounts and transactions .....	29
Article 39 - Seizure of funds or property.....	30
CHAPTER V .....	31
CONFISCATION .....	31
Article 40 – Confiscation .....	31
Article 41 – Confiscation orders.....	31
Article 42 – Confiscation of funds or property of criminal organizations.....	31
Article 43 – Avoidance of certain legal instruments .....	32
Article 44 – Disposal of confiscated funds or property.....	32
Article 45 – Rights of bona fide third parties on confiscated funds or property .....	32
CHAPTER VI .....	32
EXEMPTION FROM LIABILITY .....	32
Article 46 – Exemption from liability for bona fide reporting of suspicions.....	32
Article 47 – Exemption from liability for Financial Intelligence Unit .....	33

CHAPTER VII .....	33
INVESTIGATION TECHNIQUES .....	33
Article 48 – Special investigation techniques .....	33
Article 49 – Undercover operations and controlled delivery .....	33
Article 50: Witness protection .....	34
CHAPTER VII .....	34
PUNISHMENT OF THE NATURAL PERSONS AND CORPORATE ENTITIES .....	34
Article 51 – Penalties applicable to corporate entities .....	34
Article 53: Money laundering offenses .....	36
Article 54: Punishment to criminal organizations .....	37
Article 55: Aggravating and mitigating circumstances .....	37
CHAPTER IX .....	37
Request for INTERNATIONAL COOPERATION and Extradition .....	37
Article 56 – Requests for mutual assistance and extradition .....	37
CHAPTER X .....	43
Miscellaneous Provisions .....	43
Article 59– Issuance of regulations .....	43
Article 60- Entry into force .....	43

# CHAPTER I

## General Provisions

### Article 1 – Basis

This law is enacted in light of the Article 7 of the Constitution.

### Article 2 Purpose

The purpose of the law is to:

1. Protect and promote the financial integrity of Afghanistan.
2. Fight against use of financial institutions and designated non-financial businesses and professions (DNFBPS), as stipulated in Article 5 of this law, for money laundering, proceeds of crime, the proliferation of weapons of mass destruction and the financing of terrorism;

### Article 3 – Terms

- 1) For the purposes of the present law, the terms below shall have the following meanings:
  - a) "Proceeds of crime" means any funds or property derived from or obtained directly or indirectly through the commission of a predicate offence. This also includes income or benefits derived from such proceeds, proceeds obtained from the investment of such funds or the funds or property that have been transferred into other types of assets, whether partially or in whole.
  - b) "funds or property" means assets of every kind, whether material or immaterial, corporeal or incorporeal, movable or immovable, tangible or intangible, however, acquired, and legal documents or instruments, including electronic or digital, evidencing title to, or interest in, such assets including but not limited to money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets;
  - c) "customer" in relation to a transaction or an account includes:
    1. the person in whose name a transaction, business relationship, or account is arranged, opened or undertaken;
    2. a signatory to a transaction, business relationship, or account;
    3. any person to whom an account, or rights or obligations under a transaction has been assigned or transferred;
    4. any person who is authorized to conduct a transaction, or to control a business relationship or an account; or

5. Such other persons as having ties to the account.

- d) "Appropriate supervisory authority" refers to the authority with responsibility to ensure compliance with the provisions of this Law, including Da Afghanistan Bank, a Government ministry or agency and any other person designated by the relevant Regulation .
- e) "authorized officer" means:
  - a. a Police Officer; or
  - b. a Customs Officer.
- f) "Beneficial owner" refers to the natural person(s) who ultimately owns or controls a customer and/or the natural person on whose behalf a transaction is being conducted. It also includes those persons who exercise ultimate effective control over a legal person or arrangement.
- g) "confiscation" means the permanent deprivation of funds or property by final order of a competent court whereby the ownership of such funds or property and the title, if any, evidencing such ownership, is transferred to the state;
- h) "criminal organization" means any structured group of two or more persons who acts or agree to act in concert with the aim of committing one or more criminal offences, in order to obtain, directly or indirectly, funds or property or any kind of financial or other material benefit;
- i) "Transaction" includes any act or agreement made in order to carry out any economic or business activities and the term also means the purchase, sale, distribution, transfer or investment and possession of any assets and includes but is not limited to:
  - i. the opening of an account;
  - ii. any deposit, withdrawal, exchange or transfer of funds in Afghani or any other currency whether in cash or by cheque, payment order or other instrument or by electronic or other non-physical means;
  - iii. the use of a safety deposit box or any other form of safe deposit;
  - iv. entering into any fiduciary relationship;
  - v. any payment made or received in satisfaction, in whole or in part, of any contractual or other legal obligation;
  - vi. any payment made in respect of a lottery or other game of chance;
  - vii. establishing or creating a legal person or legal arrangement; and
  - viii. such other transaction as may be may be designated by the Da Afghanistan Bank.
- j) "Freeze" means provisionally

- i) deferring the execution of a transaction or
- ii) prohibiting or restraining the transfer, alteration, conversion, disposition or movement of funds or property, on the basis of, and for the duration of the validity of, an action initiated by an order or directive from a competent authority under a freezing mechanism or until a confiscation order is made by a competent authority or court.
- k) "Money laundering" shall mean the offence set forth in Article 4 of this Law.
- l) "money transmission services" includes the following business activities:
  - a) Exchanging cash or the value of money;
  - b) collecting, holding, exchanging or remitting money or its equivalent or otherwise arranging transfers of money or of its equivalent, on behalf of other persons;
  - c) delivering funds; or
  - d) Issuing, selling or redeeming traveler's checks, money orders or similar instruments.
- m) "Predicate offence" means any criminal acts resulted in funds or properties whether directly or indirectly.
- n) "reporting entity" means the natural and legal persons referred to in Article 5 of this Law;
- o) "Seizure" means prohibiting or restraining the transfer, alteration, conversion, disposition or movement of funds or property, on the basis of, and for the duration of the validity of action initiated by an order or directive from a competent authority or until a confiscation order is made by a competent authority or court and involves assuming custody or control of funds or property .
- p) "politically exposed person" means any natural person who is or was entrusted with a prominent public function in the Islamic Republic of Afghanistan or a foreign country; or a person who is or has been entrusted with a prominent function in an international organization, , or a key figure of political parties including family members and close associates.
- q) "Suspicious transaction" means a transaction described in Article 16 of this Law.
- r) Account: includes any facility or arrangement by which a financial institution accepts deposits of funds or monetary or negotiable instruments or permits withdrawals or transfers; pays the value of checks or payment orders drawn on a financial institution or another person; or collects checks and payment orders, bankers drafts, travelers checks, or electronic money on behalf of a person; or provides facilities or arrangements for the lease of safe deposit boxes or any other form of safe deposit.



- s) "bearer negotiable instrument" means includes monetary instruments in bearer form, a writing representing a promise to pay money, (including bills of exchange, promissory notes, travelers' checks or certificates of deposit) which may be payable to the bearer that are in bearer form, endorsed without restriction, made without restriction, made to a fictitious payee or otherwise in such form that title passes upon delivery; incomplete instruments signed but with payee's name omitted
- t) "Instrumentality" means any funds or property used or intended to be used in any manner, wholly or in part, to commit a criminal offence.
- u) Business relationship: any business, professional or commercial relationship connected with the professional activities of reporting entity.
- v) Shell Bank: a bank that is incorporated or licensed in a country or jurisdiction in which it has no physical presence and that is not affiliated with a financial group subject to effective consolidated supervision.
- w) Correspondent banking: means the provision of banking services by one bank to another bank
- x) Competent authority: All public authorities in the Islamic Republic of Afghanistan with designated responsibilities for combating money laundering, terrorism financing, predicate offences or the proliferation of weapons of mass destruction, including the Unit, appropriate supervisory authorities and law enforcement agencies.
- y) Enhanced due diligence measures: shall include taking additional CDD measures such as increasing the degree and nature of monitoring of the business relationship, in order to determine whether transactions or activities appear unusual or suspicious; obtaining additional information on the customer; obtaining additional information on the intended nature of the business relationship; obtaining information on the source of funds or properties of the customer; or any other measures specified by the supervisory authorities.
- z) Wire transfer: means a financial transaction carried out on behalf of an originator through a financial institution by electronic means with the view to making an amount of funds available to a beneficiary at another financial institution, irrespective of whether the originator and the beneficiary are the same person.
- aa) Judicial Authority: means the persons referred to in the Criminal Procedure Code.
- bb) Designated non-financial businesses and professions: means any persons or businesses specified in subparagraphs 3- 7 of Article 7 of this law.
- cc) Financial intelligence Unit means the Financial Transactions and Reports Analysis Center of Afghanistan (FinTRACA) established pursuant to Article 25 of this Law.

dd) FATF refers to the Financial Action Task Force, an intergovernmental body that establishes the international Anti Money Laundering/Combating the Financing of Terrorism and proliferation standards.

ee) Suspicion: means the condition of uncertainty of a natural or legal person about whether the funds or properties come from legitimate source.

2) Terrorist, Terrorist Organization, Terrorist Acts and the Financing of Terrorism shall have the same meanings as those set out in the Islamic Republic Of Afghanistan Law On Combating The Financing Of Terrorism Law.

#### **Article 4 – Money laundering offence**

1) A person commits the offence of money laundering if the person:

(a) Converts or transfers property, and knows or suspects that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of such property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions;

b) Conceals, disguises the true nature, source, location, disposition, movement or ownership of or rights with respect to property and knows or suspects that such property is the proceeds of crime;

c) Acquires, possesses or uses funds or property and knows or suspects at the time of receipt that such property is the proceeds of crime.

d) Enters into or participates in an arrangement or transaction knowing or having reason to believe that it facilitates, by whatever means, the acquisition, retention, use or control of funds or property derived directly or indirectly from those acts or omissions by or on behalf of another person.

2) Knowledge or belief as an element of the offences in subsection 1 may be inferred from objective factual circumstances.

(3) In order to prove the illicit origin of the proceeds it shall not be required to obtain the conviction of the predicate offence.

(4) Any person who participates in, attempts or conspires to commit, aids, facilitates, abets, supports, organizes, manages or counsels, associates in the commission of an offence under subsection (1) commits an ancillary money laundering offence.

## **Article 5 – Institutions and professions subject to this law**

- 1) This law shall apply to financial institutions and designated non financial businesses and professions as is set forth in this article and together are referred to as “reporting entities”:
- 2) “financial institutions” means any natural or legal person or entity who conducts as a business one or more of the following activities or operations for or on behalf of a customer:
  - i) Acceptance of deposits and other repayable funds from the public; including private banking;
  - ii) Lending, including consumer credit; mortgage credit; factoring, with or without recourse; and finance of commercial transactions (including forfeiting);
  - iii) Financial leasing not extended to financial leasing arrangements in relation to consumer products;
  - iv) The transfer of money or its equivalent, including financial activity in both the formal or informal sector,
  - v) Issuing and managing means of payment (e.g. credit and debit cards, cheques, traveler’s cheques, money orders and bankers’ drafts, electronic money transfers);
  - vi) Financial guarantees and commitments;
  - vii) Trading in:
    - i) Money market instruments (cheques, bills, notes, derivatives etc.);
    - ii) foreign exchange;
    - iii) instruments whose value is 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;
    - iv) transferable securities;
    - v) Commodity futures.
  - viii) Participation in securities issues and the provision of financial services related to such issues;
  - ix) Individual and collective portfolio management;
  - x) Safekeeping and administration of cash or liquid securities on behalf of other persons;
  - xi) Otherwise investing, administering or managing funds or money on behalf of other persons;
  - xii) Underwriting and placement of life insurance and other investment related insurance, including insurance undertakings and insurance intermediaries (agents and brokers); and

xiii) Money and currency changing, money transmission services.

3) Designated Non Financial Businesses and Professions (DNFBP) means any natural or legal person or entity who conducts as a business one or more of the following activities or operations for or on behalf of a customer :

a) Dealing in bullion, precious metals and precious stones, to the extent that they are engaging in a cash transaction above a threshold as shall be established by regulation;

b) A lawyer, rahnamai mamelaat (transaction guide), other independent legal professional, or accountant, when they arrange or carry out transactions for their client concerning the following activities:

- i) buying and selling immovable assets;
- ii) managing client money, securities or other assets;
- iii) opening or managing a bank or savings account or a securities account;
- iv) securing capital necessary for the creation, operation or management of companies; and

v) Creating, operating or managing a legal person or business organization and buying and selling of business entities.

c) a real estate agent to the extent that such agent is engaging in transactions concerning the buying and selling of real estate;

d) a Trust and Company Service Provider means any natural or legal persons that provides any of the following services to a third party:

- acting as a formation agent of legal persons;
- acting as (or arranging for another person to act as) a director or secretary of a company,
- being a partner of a partnership, or holding a similar position in relation to other legal persons;
- providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as (or arranging for another person to act as) a trustee of an express trust or performing the equivalent function for another form of legal arrangement;
- acting as (or arranging for another person to act as) a nominee shareholder for another person.

e) Any other entities and activities prescribed by procedures of Da Afghanistan Bank.

## CHAPTER II

### TRANSPARENCY IN FINANCIAL TRANSACTIONS

#### **Article 6 –Wire transfers of funds via financial institutions and the information on electronic funds transfers**

- 1) Any domestic transfer or a transfer to or from foreign countries of monies above the threshold specified in the respective regulations shall be effected by or through an authorized financial institution or an authorized money transmission service
- 2) An authorized financial institution or an authorized money transmission service shall undertake such measures set out in this Article when undertaking a transfer above the threshold specified in regulations.
- 3) An authorized financial institution or an authorized money transmission service that undertakes a transfer below the threshold specified in paragraph (2) shall ensure that the name of the originator, the name of the beneficiary and an account number or unique transaction reference number are included in such transfers.
- 4) Financial institutions and money transmission services whose activities include wire transfers shall obtain and verify the full name, account number, and address, or in the absence of address the national identity number or date and place of birth, including, when necessary, the name of the financial institution, of the originator of such transfers. The information shall be included in the message or payment form accompanying the transfer. If there is no account number, a unique reference number shall accompany the transfer.
- 5) The institutions referred to in paragraph (3) and (4) shall maintain all such information and also transmit it with transfer when they act as intermediaries in a chain of payments.
- 6) If the institutions referred to in paragraph (4) receive wire transfers that do not contain the complete originator information they shall take measures to obtain and verify the missing information from the ordering institution or the beneficiary. Should they not obtain the missing information they shall refuse acceptance of the transfer and report it to the financial intelligence unit.
- 7) Paragraph 4 shall not apply to:
  1. an electronic funds transfer effected from the use of a credit or debit card as means of payments that results from a transaction carried out using a credit or debit card, provided that the credit or debit card number is included in the information accompanying such a transfer.
  2. electronic funds transfers and settlements between financial institutions where the originator and beneficiary of the funds transfer are acting on their own behalf.
- 8) electronic funds transfers and settlements between financial institutions shall be regulated by procedures issued by DAB.

9)The methods for implementing this article shall be established by regulation and procedures.

#### **Article 7 – Currency reporting at the border**

- 1) Any person who leaves or enters the Islamic Republic of Afghanistan in possession of currency, bearer negotiable instruments which are of a value exceeding a threshold to be prescribed in relevant Regulations or arranges for the transportation of such items into or out of the Islamic Republic of Afghanistan through a person cargo, postal service or through any other means shall declare the fact to the relevant authority under related regulations. The ministry of Finance shall submit such declarations to the Financial Intelligence Unit within a time to be prescribed in relevant regulations.
- 2) The Customs Department or other authority designated pursuant to Article 7(1) may request information from any person in possession of, transporting or who arranges such transportation about the origin of such currency, bearer negotiable instrument and the intended use thereof
- 3) The Customs Department or other authority designated pursuant to Article 7(1) shall seize, restrain some or all of the amount of currency, bearer negotiable instruments or gold where
  - a) there is suspicion of money laundering or terrorist financing
  - b) there is suspicion that such currency is the proceeds of crime
  - c) where there is a false declaration, the lack of provision or providing false information upon request.
- 4) Where the currency, negotiable bearer instruments has not been claimed by any person within two years of it being seized or detained, the Customs Department or other authority designated pursuant to Article 7(1) may make an application to the Court that such currency, bearer negotiable instrument be forfeited to the Islamic Republic of Afghanistan
- 5) This Article shall also apply to any person who leaves or enters the Islamic Republic of Afghanistan in possession of gold or other precious metals or precious stones or arranges for the transportation of such items into or out of the Islamic Republic of Afghanistan through a person, cargo, postal service or through any other means in an amount above the relevant threshold as set in out in regulation.

#### **Article 8– overriding of secrecy**

Each reporting entity, supervisory authority and auditor, both internal and external, shall comply with the requirements of this Law notwithstanding any obligation as to banking or professional secrecy or other restriction on the disclosure of information imposed by any law or otherwise and such provisions are overridden for purposes of compliance with this law.

#### **Article 9: Prohibition of shell banks**

1. Shell banks shall not be established or maintained in the Islamic Republic of Afghanistan.
2. Financial institutions shall not enter into or continue business relations with respondent financial institutions in a foreign country that permit their accounts to be used by shell banks.

#### **Article 10– Prohibition of anonymous accounts or similar products**

1. Reporting entities shall not keep anonymous accounts, or accounts in obviously fictitious names.

2. Reporting entities shall close any accounts referred to in paragraph 1 of this article and report on it to the authorized authority.

#### **Article 11 – Risk Assessment**

- 1) Reporting entities shall assess their money laundering and terrorism financing risks, including of new products or technologies. The risk assessment and any underlying information shall be documented in writing, be kept up-to-date and readily available for the supervisory authority to review at their request.
- 2) Reporting entities shall conduct enhanced due diligence measures where the risk of money laundering or terrorism financing is identified as being higher or where there is a suspicion of money laundering or terrorism financing.
- 3) Reporting entities may conduct simplified due diligence measures where the risk of money laundering or terrorism financing is identified as being lower.

#### **Article 12 – Identification of customers and verification**

- 1) 1) Reporting entities shall identify and verify the identity of their customers under all conditions specifically when:
  - a) before opening an account or establishing business relations;
  - b) carrying out occasional transactions(1) above a threshold or 2) that are wire transfers above a threshold and such threshold shall be established by relevant regulation(s)
  - c) there is a suspicion of money laundering or financing of terrorism; or
  - d) the reporting entity has doubts about the veracity or adequacy of previously obtained customer identification data.
- 2) A natural person's identity shall be verified by the presentation of an original national identity card or passport that is current or such other documentation as may be prescribed in relevant procedures. A copy or record of which identification data shall be retained by the reporting entity.
- 3) A legal person's identity shall be verified by the production of its current certificate of registration, license, or articles of association, or such other documentation as may be prescribed in regulations, which shall include documentation establishing that it has been lawfully registered and that it is actually in existence at the time of the identification. In addition, a legal person shall provide documentation regarding its owners and the ownership structure, and the reporting entity shall take reasonable measures to verify the identity of the actual owners of such legal person. A copy or record of all such verification documents shall be retained by the reporting entity.
- 4) A legal arrangement's identity shall be verified by obtaining and verifying the name of the trustees, the settlor, and the beneficiaries as well as the powers that regulate and bind the legal arrangement

and the relevant persons having a senior management position in the legal arrangement and such other documentation as may be prescribed in Regulations.

5) When performing measures specified in Article 1 above, reporting entities shall also be required to verify that any person purporting to act on behalf of the customer is so authorized, and should identify and verify the identity of that person.

6) Reporting entities shall be required to:

- a) a/ identify the beneficial owner and take reasonable measures to verify the identity of the beneficial owners so that each reporting entity is satisfied who the beneficial owner is.
- b) For legal persons and arrangements, take reasonable measures to understand the ownership and control structure of the customer;
- c) b/ understand and, as appropriate, obtain information on the purpose and intended nature of each business relationship;
- d) c/ conduct on-going due diligence on the business relationships and conduct scrutiny of transactions throughout the course of relationships to ensure that such transactions are consistent with the reporting entities' knowledge of the customer, business, risk profile and the source of funds.
- e) d/ Identify and verify the identity of customers, even if the amount of the occasional transaction does not exceed a regulatory threshold, if the transaction is one of a series of transactions that are or appear to be connected and would together surpass such amount.

7) The above customer due diligence requirements shall apply to all new customers and existing customers based on the risk and materiality. Reporting entities shall also conduct due diligence on existing customers at appropriate times.

8) Reporting entities shall apply the type and extent of measures under this Article on a risk-sensitive basis.

9) Reporting entities shall follow appropriate measures of enhanced customer due diligence measures in circumstances that have been identified as high risk. Such enhanced customer due diligence measures shall be specified by the appropriate supervisory authority.-

10) Reporting entities may rely on third parties for customer due diligence as provided for in relevant regulation(s) and this law.

11) The supervisory authority may prescribe in procedures the circumstances in which a reporting entity can delay the customer due diligence until after the establishment of the business relationship or the carrying out of the transaction.



12) Reporting entities shall implement specific and adequate measures in accordance with law to address the risks of money laundering and terrorism financing in the event that they open an account or establish a business relationship or execute a transaction with a customer that is not physically present for the purpose of identification.

13) Reporting entities shall apply enhanced due diligence measures to business relationships and transactions with persons or financial institutions from or in countries that were identified as high risk under Article 14 of this Law.

14) For life or other investment-related insurance business, offered by insurance institutions, reporting entities should conduct the following additional measures on the beneficiary(ies) of life insurance and other investment related insurance policies, as soon as the beneficiary(ies) are identified or designated:

- For beneficiary(ies) that are identified as named natural or legal persons or legal arrangements – taking the name of the person;
- For beneficiary(ies) that are designated by characteristics or by class (e.g. spouse or children at the time that the insured event occurs) or by other means (e.g. under a will) – obtaining sufficient information concerning the beneficiary.

15) Financial groups shall implement group wide programmes against money laundering and terrorist financing, including policies and procedures for sharing information within the group for AML/CFT purposes.

16) Financial institutions should be required to ensure that their foreign branches and majority owned subsidiaries apply AML/CFT measures consistent with the home country requirements implementing the FATF Recommendations through the financial groups' programmes against money laundering and terrorist financing.

### **Article 13 - Consequences of failure to identify customers or beneficial owners**

If a reporting entity is unable to meet its obligations with respect to the customer identification requirements under articles 12 or any doubt remains as to the true identity of the customer or beneficial owner, it shall not open the account, commence or continue business relations or perform the transaction. In addition, the reporting entity shall submit a suspicious activity report to the FIU.

### **Article 14 – Special monitoring of transactions and measures for high-risk countries**

1) Reporting entities shall apply enhanced due diligence to all complex, unusual or large transactions, and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose.

2) Reporting entities shall examine the background and purpose of transactions referred to in paragraph 1, as far as possible, , and develop the findings in writing, and make it available to competent authorities and auditors.

3) Reporting entities shall apply enhanced due diligence measures to business relationships and transactions with financial institutions, designated non financial businesses and professions and persons

from countries which do not or insufficiently apply anti-money laundering and combating the financing of terrorism measures as set out in international requirements or relevant guidelines from supervisory authorities.

4) Reporting entities shall be required to apply counter measures, as required by supervisory or competent authorities, to all business relationships and transactions from countries determined to be not or insufficiently applying the FATF recommendations and other international anti-money laundering and combating the financing of terrorism standards. Such counter measures applied shall be effective and proportionate to the risks.

5) In relation to paragraphs (1) ,(2)and (3), a reporting entity shall report the transactions to the Financial Intelligence Unit as a suspicious transaction under this law.

6) The reports generated pursuant to paragraphs 1, 2, and 4 above shall be maintained as specified in Article 16.

#### **Article 15 – Due diligence measures for politically exposed persons**

1) Reporting entities should, in relation to politically exposed persons (whether as customer or beneficial owner), in addition to performing normal due diligence measures:

- a) have appropriate risk management systems to determine whether the customer or the beneficial owner is a politically exposed person;
- b) obtain senior management approval for establishing or continuing business relationships with such customers;
- c) take reasonable measures to establish the source of funds or properties; and
- d) Conduct enhanced ongoing monitoring of the business relationship.

2) Paragraph 1 shall apply to politically exposed person who is or has been a person entrusted with a prominent function by international organization where a reporting entity determines that such person or business relationship is of a higher risk.

#### **Article 16 – Record-keeping**

1) Reporting entities should maintain all necessary records on transactions, both domestic and international attempted or executed for at least five years following the attempt or execution of the transaction.

2) Reporting entities should keep records on the identification and verification data obtained through the customer due diligence measures, account files and business correspondence as required by Chapter II for at least five years or longer if required in specific cases by competent authority after the

business relationship has ended or the occasional transaction has been carried out. The identification data and transaction records should be available to domestic officials who are legally authorized.

3) a supervisory authority may require reporting entities to establish and maintain according to relevant procedures a centralized database consisting of information from main offices, branches and majority owned subsidiaries on a national basis on the identity of customers, principals, beneficiaries, agents and beneficial owners, and on suspicious transactions.

1) Reporting entities should maintain records of the information in subsection (1), (2) and (3) and ensure that the records and underlying information are readily available to the financial intelligence unit and other competent authorities and be sufficient to enable reconstruction of transactions.

#### **Article 17 – Reporting of certain transactions**

A reporting entity shall report to the Financial Intelligence Unit any transaction over a threshold and in such form and manner and within such period as may be prescribed in regulations to be issued by Da Afghanistan Bank, in consultation with FIU,

#### **Article 18 – Reporting of suspicious transactions**

a) Where a reporting entity

(1) suspects or has reasonable grounds to suspect that any transaction or attempted transaction involves or may be related the proceeds of crime or be used for money laundering or terrorism financing or predicate offences;

(2) suspects or has reasonable grounds to suspect that funds are linked or related to a terrorist(s) or are to be used for terrorism, terrorist acts or by terrorist organizations the reporting entity, as soon as practicable, but no later than three days after forming the suspicion, shall report the transaction or attempted transaction to the Financial Intelligence Unit.

2) The reports required of reporting entities under this Law shall be sent to the Financial Intelligence Unit in a form and methods as may be determined in relevant regulations on forms of communications.

3) Reporting entities shall be required to report a suspicious transaction carried out even if it became clear only after completion of a transaction that there were grounds for suspicion.

4) After having submitted a suspicious transaction report under this Law, reporting entities shall also be required to submit without delay any additional information that might confirm or invalidate the suspicion.

5) Reporting entities, their directors and employees are prohibited from disclosing to a customer or any other person the fact that a report under this Article has been made or any information has been

submitted to FIU or competent authority in relation to any money laundering or terrorism financing investigation. This shall not preclude disclosures or communications between and among directors and employees of the financial institution or designated non-financial business and profession, in addition to lawyers, competent authorities, and the law enforcement agencies.

#### **Article 19 – Internal anti-money laundering programs at reporting entities and foreign branches and subsidiaries**

1) Reporting entities shall develop programs for the prevention of money laundering and terrorist financing. Such programs shall include the following:

- a) development of internal policies, procedures and controls, including in relation to customer due diligence requirements, ongoing due diligence and monitoring of transactions, reporting obligation, record keeping obligations and appropriate compliance management arrangements,
- b) designation of a compliance officer, at management level, responsible for enforcing the policies, procedures and controls, including those relating to customer due diligence requirements, ongoing due diligence and monitoring of transactions, reporting obligation, record keeping obligations and appropriate compliance management arrangements,
- c) create adequate screening procedures to ensure high standards when hiring employees;
- d) ongoing training for officials and employees; and
- e) internal audit arrangements to check compliance with and effectiveness of the measures taken to apply the present law

2) The type and extent of internal control programme should be appropriate having regard to the risk of money laundering and terrorist financing and the size of the business.

3) The (AML/CFT) compliance officer and other appropriate staff should have timely access to customer identification data and other, transaction records, and other relevant information.

4) A reporting entity shall ensure that the policies and controls set out under this Article are applied on a group-wide basis including its foreign branch (es) and majority-owned subsidiary (ies) apply AML/CFT measures consistent with requirements in this law as shall be provided in regulations. Such policies and procedures shall include policies and procedures for sharing information with the group.

#### **Article 20: Inapplicability of Confidentiality Provisions to Professionals**

Attorneys, notaries and other independent legal professionals shall have no obligation to report information they obtain on clients, in the course of determining the legal position for their

clients or performing their tasks of defending or representing those clients in, or concerning judicial proceedings, including advice on instituting or avoiding proceedings.

#### **Article 21: Correspondent Banking**

- 1) A bank may serve as a correspondent institution to foreign respondent banks only pursuant to this law, law on combating the financing of terrorism, and relevant procedures.
- 2) Before entering into a correspondent banking relationship or other similar relationship with a foreign bank, in addition to performing normal customer due diligence measures as prescribed under Article 12 of the Law, bank shall:
  - a) Gather sufficient information about the respondent bank.
  - b) Understand the nature of the respondent's business.
  - c) Evaluate the reputation of the respondent bank and the quality of supervision to which it is subject,
  - d) Check that whether the respondent bank has been subject to a money laundering or terrorist financing investigation or regulatory action.
  - e) Evaluate the anti-money laundering and combating the financing of terrorism controls implemented by the respondent bank.
  - f) Obtain approval from senior management before establishing new correspondent relationships.
  - g) Document the respective anti-money laundering and combating the financing of terrorism responsibilities of each institution.
- 3) These requirements should also be applied to correspondent banking and similar relationships established prior to the enactment of the Law and issuance any Regulation.

#### **Article 22- Power of Appropriate Supervisory Authority**

The appropriate supervisory authority shall regulate, supervise and monitor compliance by reporting entities with the requirements set forth in Chapter II of this Law and the Counter Terrorist Financing Law, Regulation or any relevant instructions or guidelines issued thereunder and shall have the following powers and duties:

- 1) to undertake risk assessment to identify, evaluate, monitor risk in the reporting entity, its sector, periodically or as per necessity and adopt adequate measures to effectively manage risks,
- 2) to require reporting entities to undertake risk assessment to identify, evaluate, monitor risk within the entity periodically or as per necessity and adopt adequate measures to effectively manage risks
- 3) to collect information and other data from reporting entities relevant to regulating and supervising reporting entities and monitoring compliance with this law by reporting entities
- 4) to conduct on-site examinations and offsite surveillance of reporting entities to ascertain the compliance of the provisions of this Act and the Counter Financing of Terrorism Law.;
- 5) to compel reporting entities to provide any necessary information documents, books, records and take copies of documents and files, even if they are stored outside their buildings.
- 6) to apply measures and impose sanctions against reporting entities for non-compliance to the provisions of this Law and to report them to the Unit .

- 7) to issue circulars, procedures, policies and guidance to assist reporting entities in complying with their obligations;
  - 8) to cooperate and share information with other competent authorities or any foreign competent authority concerned with combating money laundering or terrorism financing or predicate offences;
  - 9) to verify that foreign branches and majority owned subsidiaries of financial institutions and designated non-financial businesses and professions adopt and enforce measures consistent with this Law to the extent permitted by the laws of the host country;
  - 10) to promptly notify the Financial Intelligence Unit of transactions or facts that could be related to money laundering, terrorism financing or predicate offenses;
  - 11) to establish and apply governance, efficiency and adequacy processes, including standards relating to the experience and integrity of board members, executive or supervisory management members or directors of reporting entities;
  - 12) to develop and implement appropriate financial and other fit and proper test requirements while registering, licensing or issuing permissions to reporting entities and while approving those owning, controlling, or participating, directly or indirectly, in the establishment, management or operation or business of such reporting entity, including the beneficial owner or beneficiary of shares of the reporting entity or cause to do so,
  - 13) to maintain statistics concerning measures adopted and sanctions imposed as prescribed by supervisory authorities;
  - 14) to determine the type and extent of customer due diligence, enhanced customer due diligence and counter measures to be taken by reporting entities under Chapter II; s; and
- 5) The relevant supervisory authority may provide, any information from, or derived from, such examination under article 22 to the appropriate domestic or foreign law enforcement authorities and the financial intelligence unit, if it has reasonable grounds to suspect that the information is suspicious or is relevant to an investigation for non-compliance with this Law, a criminal offence, a money laundering offence or an offence of the financing of terrorism.

### **Article 23: Non- cooperation with supervisory authority**

All Persons subject to this law are required to cooperate with the Financial Intelligence Unit, or any other appropriate supervisory authority, and not to prevent or hinder them in the lawful exercise of their duties and powers, otherwise such person is guilty of an offence and shall be punishable on conviction under Article 52(3).

### **Article 24- Powers to enforce compliance**

1) Any appropriate supervisory authority and FINTRACA, shall, with respect to all reporting entities, have the following powers to enforce non compliance with this Law and regulations, instructions, circulars, guidelines, policies and procedures issued pursuant to this law;”

- a. written warnings, revocation or suspension of a business license
- b. impose on the reporting entity a fine of not less than 50,000Afghani and not more than 500,000, , for every infraction
- c. order the reporting entity to conduct an external audit of its affairs, at the expense of the reporting entity, by an auditor acceptable to the Da Afghanistan Bank or other appropriate supervisory authority as administrator of the reporting entity;
- d. order the reporting entity to do all or any of the following:
  - a) remove an administrator, officer or employee of the reporting entity from office;
  - b) ensure that an administrator, officer or employee of the reporting entity does not take part in the management or conduct of the business of the reporting entity, or any other reporting entity, except as permitted by Da Afghanistan Bank or other appropriate supervisory authority;
  - c) appoint a person or persons acceptable to Da Afghanistan Bank or other appropriate supervisory authority as administrator of the reporting entity for such term as the order specifies;
  - d) take corrective action to remedy any deficiencies under this law or relevant procedures issued under this law; or
  - e) cease engaging in certain actions or practices.

2) Each order or temporary order given to a reporting entity pursuant to this Law shall be in writing and shall include a statement describing the actions that the reporting entity is ordered to take. Each such order or temporary order may specify the time by which, or period of time during which, it is to be complied with.

3) Each such order or temporary order given to a reporting entity shall be served upon the head office of the reporting entity; except that orders and temporary orders concerning a domestic branch office or representative office of a non-resident reporting entity may be served upon that office.

4) Each such order or temporary order shall state the grounds for the order or temporary order, one or more reasons why the order or temporary order is given, and the provision of the Law authorizing Da Afghanistan Bank or other appropriate supervisory authority to give the order or temporary order.

5) Any order issued to a reporting entity by Da Afghanistan Bank or other appropriate supervisory authority that is not an order that the reporting entity has consented to, may be submitted to the Financial Dispute Resolution Commission (FDRC) for review within thirty days from the date of service of the order upon the reporting entity.

6) Each such order or temporary order enters into force at the time of its service upon the reporting entity, unless it specifies a later date for its effectiveness.

7) The order or temporary order remains in effect and shall be fully complied with until:

1. it terminates in accordance with its terms, or
2. it is replaced by another order or temporary order of Da Afghanistan Bank or other appropriate supervisory authority, or
3. it is annulled upon review by a decision of the Financial Services Tribunal, or it is rescinded by Da Afghanistan Bank or other appropriate supervisory authority.

8)The appropriate supervisory authority or Da Afghanistan Bank shall rescind an order or temporary order whenever it is no longer necessary or appropriate.

### **CHAPTER III**

#### **DETECTION OF MONEY LAUNDERING, ESTABLISHMENT OF THE FINANCIAL INTELLIGENCE UNIT ANDCOLLABORATION WITH ANTI-MONEY LAUNDERING AUTHORITIES**

##### **Article 25– Establishment**

- 1) A Financial Intelligence Unit shall be established within Da Afghanistan Bank.
- 2) The Financial Intelligence Unit should serve as the national center responsible for the receipt and analysis of suspicious transaction reports and other information relevant to money laundering, associated predicate offences and terrorist financing, and for the dissemination of the results of that analysis, as provided for by this law.
- 3) The Financial Intelligence Unit shall be independent in its operations for the purpose of enforcing its powers, duties and functions as set out in this law, including full autonomy in decisions to receive, request, analyze or disseminate information in the manner prescribed in this law.
- 4) An adequate budget for Financial Intelligence Unit shall be provided by Da Afghanistan Bank. The budget of the FIU shall be represented as a separate line item or line items in the budget of DAB. A
- 5). DA Afghanistan Bank shall determine the Financial Intelligence Unit’s composition, organization, operation, and resources, consistent with international best practice, as reflected in the FATF Recommendations.

##### **Article 26– Confidentiality**

- (1) Every person who has duties for or within FIU is required to keep confidential any information obtained within the scope of his duties, even after the cessation of those duties, except as otherwise provided in the Law.
- (2) Any current or past employee of FIU or other person who has duties for or within FIU who intentionally reveals information the confidentiality of which is required to be protected by subsection



(1) commits an offence under this Act and shall be punishable in accordance with Afghanistan Penal Code.

#### **Article 27– Limitation of duties of employees**

1) The employees or such other persons appointed to posts in FINTRACA may not concurrently perform duties in any reporting entity or hold or pursue any elective office, assignment or other activity which might affect the independence of their position.

2) No member of the staff of the FIU shall simultaneously have other employment, whether gainful or not, without the prior written approval of the Supreme Council.

#### **Article 28– Collection, keeping and exchange of data**

- 1) In relation to any information it has received in accordance with its functions, FIU is authorised and shall have the power to obtain from any reporting entity any additional information, documents or records that FIU deems necessary to carry out its functions. The information requested shall be provided within the time limits set and the form specified by FIU.
- 2) FIU may, in relation to any report or information it has received, obtain, where not otherwise prohibited by law, any information it deems necessary to carry out its functions from:
  - (a) a law enforcement authority;
  - (b) any supervisory authority
  - (c) any competent authority or other government agency.
- 3) To exercise its duties under this law, the financial intelligence unit shall have, where possible, direct access to the databases of government agencies and competent authorities and where direct access is not possible. The responsible persons shall provide the information on expedited basis. The information obtained by financial intelligence unit shall be used in accordance with this law.
- 4) The Financial Intelligence Unit shall, in conformity with any applicable laws and regulations, including, without limitation, laws and regulations on the protection of privacy and on computerized databases, operate a database containing all relevant information concerning reports as provided under this law.
- 5) The financial intelligence unit, and other competent authorities may exchange information for purposes of compliance with this law and the CFT law.

#### **Article 29– Annual reporting**

1) An annual report shall be submitted to the Supreme Council of Da Afghanistan Bank. The report shall provide money laundering and financing of terrorism trends, financing of terrorism, statistics, trends, and typologies,

2) The annual report listed in paragraph one of this article should not include information about any suspicious transaction or person connected to a suspicious transaction.

### **Article 30– Feedback**

The Financial Intelligence Unit may provide feedback as appropriate to reporting entities regarding matters including, but not limited to, the quality of suspicious transaction reports, trends and typologies, relating to money laundering and the financing of terrorism.

### **Article 31– Relationships with foreign counterparts**

1) The Financial Intelligence Unit may, spontaneously or on request, share information with any counterpart agency that performs similar functions and is subject to similar secrecy obligations with respect to the information it receives based upon reciprocity or mutual agreement..

2) Upon receipt of a request for information or transmission from a foreign financial intelligence unit or other foreign competent authorities regarding a report of a suspicious transaction, the Financial Intelligence Unit shall respond to that request in an expeditious manner.

3) Prior to forwarding information to foreign competent authorities the Financial Intelligence Unit shall obtain assurances that such information will be protected by the same confidentiality provisions as apply to similar information from domestic sources obtained by the foreign financial intelligence unit or other foreign competent authorities and that the foreign authority shall use the data solely for the purposes stipulated by this Law.

### **Article 32– Duties of the Financial Intelligence Unit**

1) In addition to the functions determined under this chapter, the Financial Intelligence Unit shall perform the following duties:

a) Propose to the National Coordination Commission adoption, changes and amendments to legislations concerning the prevention and detection of money laundering, financing of terrorism.

b) issue instructions, circulars, guidelines, policies and procedures to reporting entities on the manner of reporting, including specification of reporting forms, content of the reports and the procedures that should be followed when reporting suspicious transactions and other information, including drawing up the list of indicators for recognizing suspicious transactions;

c) gather, compile, maintain and disseminate information and statistics on money laundering and terrorism financing trends, monitor assessment results, and study the forms, trends and risks pertaining to money laundering and terrorism financing;

d) May provide professional training for the staff of reporting entities, state bodies, and organizations with public authorizations; and

e) Other tasks prescribed in this law or in the relevant regulations.

### **Article 33: Composition of the National Coordination Commission**

1. In order to coordinate the efforts of the Government and other organs of the State to fight all types of serious economic crime, including money laundering and the financing of terrorism, a Commission, , shall be constituted by the following members:
  - 1) Minister of Finance (Chairman)
  - 2) Governor of DA Afghanistan Bank (Vice-Chairman)
  - 3) Chief Secretary of the Supreme Court
  - 4) Deputy Justice Minister
  - 5) Deputy Minister of Foreign Affairs
  - 6) Deputy Minister of Interior Affairs
  - 7) Deputy Minister of Counter Narcotics
  - 8) Deputy Minister of Trade and Industries
  - 9) Deputy Minister of Economy
  - 10) Deputy Attorney General
  - 11) Deputy of the National Directorate of Security
  - 12) Deputy Minister of Economy.
  
2. The Commission shall have the following responsibilities:
  - 1) Establish, develop and monitor on the implementation of a national strategy action plans to combat serious economic crimes, including money laundering and the financing of terrorism and proliferation of weapons of mass destruction,
  - 2) Conduct regular review of the effectiveness of , and propose policies to enhance the plans referred to in paragraph 1.
  - 3) Facilitate efficient mechanisms for domestic cooperation and coordination among competent authorities on the establishment, development and implementation of policies and activities for combating serious economic crime, including money laundering, financing of terrorism, predicate offences and proliferation of weapons of mass destruction;
  - 4) Follow international and regional developments and implement international and regional standards and requirements including FATF standards and relevant international conventions and treaties in the field of economic crime, including money laundering and the financing of terrorism and proliferation of weapons of mass destruction;
  - 5) Provide recommendations to amend this law, the Counter Financing of Terrorism law and regulations issued thereunder;
  - 6) Coordinate with competent authorities for the development of a qualification and training program for personnel working in the field of combating the offences of money laundering, and the financing of terrorism and proliferation of weapons of mass destruction;

- 7) Coordinate efforts in undertaking a national assessment of money laundering and financing of terrorism risks and proliferation of weapons of mass destruction at the national level in Afghanistan and implementing measures to manage and mitigate identified risks;
  - 8) Develop general policies and compile statistics in the field of combating serious economic crime, including money laundering, predicate offenses, and the financing of terrorism and proliferation of weapons of mass destruction.
3. The Financial Intelligence Unit shall act as the Secretariat to the Commission.
  4. The duties of the Commission shall be specified in the regulation it adopts for this purpose.

**Article 34: Establishment of the Committee**

1. In order to effectively implement this law, its mandate, and the decisions of the Commission referred to in Article 33 of this law a technical Committee shall be established under the chairmanship of the Director of the Financial Intelligence Unit with the following members:
  - a. Representative of the Supreme Court
  - b. Representative of the Ministry of Justice
  - c. Representative of the Ministry of Finance
  - d. Representative of the Ministry of Foreign Affairs
  - e. Representative of the Ministry of Interior Affairs
  - f. Representative of Counter Narcotics
  - g. Representative of Trade and Industries
  - h. Representative of the Ministry of Economy
  - i. Representative of the Attorney General’s Office
  - j. Representative of the National Directorate of Security
  - k. Director of Customs of the Ministry of Finance
  - l. Representative of the Border Police
- 2) The Working Committee will present its report and recommendations to the Commission on a quarterly or more regularly as needed and shall carry out its functions based on the guidance of the Commission.

**CHAPTER IV**

**RECEIPT OF REPORTS AND FREEZING OF TRANSACTIONS**

**Article 35 – Receipt of reports by the Financial Intelligence Unit**

- 1) The Financial Intelligence Unit shall receive the reports from reporting entities and acknowledge the receipt of the reports.
- 2) The Financial Intelligence Unit shall analyze the reports referred to in paragraph 1 of this article based on information available.

### **Article 36 – Dissemination of reports**

1) Whenever reasonable grounds to suspect money laundering, predicate offences, or terrorist financing, the Financial Intelligence Unit shall forward a report on the facts, together with the results of its analysis, to the Office of Attorney General or any other relevant law enforcement authority or other concerned authorities, which shall decide upon further action under the law. That report shall be accompanied by any relevant documents, other than the actual suspicious transaction report. The dissemination should take place spontaneously or upon request. When FIU receives a request of information from competent authorities, the decision on conducting analysis or dissemination of information to the requesting authority should remain with the FIU.

2) The identity of the reporting party shall not appear in the report unless:

- a) there are reasons to suspect that the organization or its employee committed the offence of money laundering or financing of terrorism, or predicate offences, or
- b) if the information is necessary in order to establish facts during criminal proceedings, and or
- c) if the submission of the name of the reporting entity is requested in writing by the prosecutor or the competent court.

3) In the case of situation referred to in subparagraph (1-3) of paragraph 2, the name of the employee or of the compliance officer shall not appear in the dissemination.

### **Article 37 – Freezing of accounts and transactions**

1) In the case of the seriousness or urgency of the case, the Financial Intelligence Unit, shall issue an order to freeze funds or property or a transaction for a period not exceeding ten days, which shall be communicated immediately to the funds or property owner or reporting entity. If the Financial Intelligence Unit finds within the time provided above that the reasons for suspicion of money laundering or financing of terrorism no longer exist, it shall inform the funds or property owner or reporting entity that the freeze order has been lifted.

2) If there are reasonable grounds to suspect the commission of money laundering, terrorist financing, or of a predicate offence, the Financial Intelligence Unit shall, during the period specified in paragraph 1 of this article, refer the matter along with documentary reports, results of its analysis and other supporting documents to the prosecutor. During the determination by the prosecutor, the order to freeze the funds or property or execution of the transaction may be extended by the prosecutor up to an additional ten days, and the funds or property owner or reporting entity notified thereof.

3) If the investigation is not completed within the specified time, the prosecutor may submit an application to a competent court for extension of the freezing period of the funds or property or transaction. Taking into account the situation, the court may extend the period for a further 60 days. After elapse of this period, the Financial Intelligence Unit prosecutor may apply to the competent court in writing for an extension of the freezing period for a further 90 days or as such time as determined by the court.

- 4) If the prosecutor finds within the time provided above that the reasons for suspicion of money laundering, proliferation of weapons of mass destruction or financing of terrorism no longer exist, it shall inform the funds or property owner or reporting entity that the freeze order has been lifted.
- 5) If the prosecutor does not act within the time provided above, the freeze order be considered lifted.
- 6) The term 'funds or property' referred to in this article shall include the categories set forth in subparagraphs (a) through (d) of Article 39.

### **Article 38 - Provisional Measures**

- 1) A competent court, by its own discretion or on application of the prosecutor, may without delay, issue an order authorizing the prosecutor to:
  - a) freeze, seize funds or property suspected to be associated with or is the subject of an investigation of money laundering, financing of terrorism, predicate offence as well as the proceeds of crime or funds or property subject to confiscation and any evidence facilitating the identification of such funds or property or proceeds.
  - b) identify, trace, evaluate funds or property subject to confiscation
  - c) take or direct such investigative measures as are appropriate.
- 2) Funds or property subject to the measures under paragraph (1) should include:
  - a) laundered property, funds or property used or intended or allocated to be used to commit the offenses referred to in Article 4 of the CFT law,
  - b) funds or property that are the proceeds of crime,
  - c) Funds or property directly or indirectly derived from the proceeds, including income or other benefits derived from such proceeds,
  - d) Instrumentalities used in, or intended for use in the commission of the offense of money laundering or financing of terrorism,
  - e) Property of corresponding value.
- 3) Provisions for the asset management of frozen or seized funds or property shall be set out in the relevant regulations.
- 4) This provision shall apply without prejudice to the rights of bona fide third parties acting in good faith
- 5) The measures set out in these Articles can be lifted upon application to a competent court by the public prosecutor's office or with the consent of the public prosecutor, at the request of other owner of the frozen funds or property or a bona fide third party acting in good faith.

## CHAPTER V

### CONFISCATION

#### **Article 39 – Confiscation**

1) In the event of a conviction for the offence of actual or attempted money-laundering, a predicate offence, a financing of terrorism offence, an order shall be issued by a competent court for the confiscation of the following funds or property:

- a) property laundered; proceeds of crime, including funds or property intermingled with such proceeds or derived from or exchanged from such proceeds,
- b) Instrumentalities used or intended to be used in the commission of money laundering, offense, a financing of terrorism offense or predicate offense;
- c) funds or property that are the proceeds of crime, property used or intended or allocated to be used to commit the terrorist financing offense under the CFT law
- d) Described in paragraphs (a) to (c) above that have been transferred to any party unless the owner of such funds or property can establish that he paid for the funds or property. The court finds that the owner of such funds or property acquired it by paying a fair price or in return for the provision of services corresponding to their value or on any other legitimate grounds, and that he was unaware of its illicit origin.

2) Where funds or property derived directly or indirectly from the offence has been intermingled with funds or property acquired from legitimate sources, the confiscation of the latter funds or property shall be ordered solely up to the value, as assessed by the court, of the proceeds and funds or property referred to above.

3) When the funds or property to be confiscated cannot be produced, confiscation may be ordered for funds or property of equivalent value.

4) The confiscation order shall specify the funds or property concerned and contains the necessary details to identify and locate it.

#### **Article 40 – Confiscation orders**

When the offence which generated the proceeds, cannot be prosecuted, either because the perpetrator or perpetrators are unknown or has absconded or because there is a legal impediment to prosecution for that offence, the court may, upon request of public prosecutor's office, and based on evidences available issue an order allowing the confiscation of funds or properties seized.

#### **Article 41 – Confiscation of funds or property of criminal organizations**

1) Property of which a criminal organization has power of disposal shall be confiscated unless the lawful origin of the property is established.

2) In additions to paragraph (1) of this article, the member of criminal organization shall be subject to punishment in accordance with the provisions of Article 53 of this law.

**Article 42 – Avoidance of certain legal instruments**

Any legal instrument, executed free of charge or for a valuable consideration inter vivos or mortis causa, or any other action the purpose of which is to safeguard or prevent funds or property from confiscation, seizure or freeze as provided for in articles 38 to 40, shall be void based on a court order. In the case of avoidance of a contract involving payment, the buyer shall be reimbursed only for the amount actually paid.

**Article 43 – Disposal of confiscated funds or property**

1) Confiscated funds or property and proceeds shall accrue to the State, which may allocate them to a fund for combating organized crime. The confiscated funds or property shall remain encumbered, up to their value, by any rights in rem lawfully established in favor of third parties.

2) In cases where confiscation is ordered under a judgment by default, the confiscated funds or property shall accrue to the State under relevant regulations.

3) However, if the court, ruling on an application to set aside such judgment, acquits the person prosecuted, it shall order restitution to the value of the confiscated funds or property by the State, unless the fund and properties are subject to confiscation under this law.

**Article 44 – Rights of bona fide third parties on confiscated funds or property**

Any bona fide third party who claims to have a right over the assets or funds that are the subject of a confiscation, freezing or seizing order, may appeal to the competent court within three (3) years of the date of the final order of the court.

**CHAPTER VI**

**EXEMPTION FROM LIABILITY**

**Article 45 – Exemption from liability for bona fide reporting of suspicions**

1) No criminal, civil, disciplinary or administrative proceedings for breach of banking or professional secrecy or contract or restriction on disclosure of information shall be instituted and be brought or any professional sanction taken against reporting entities or their directors, officers or employees who in good faith transmits information or submits reports in accordance with the provisions of this Law.

2) No civil, administrative or criminal action may be brought against any reporting entity or its directors or employees by reason of any material loss resulting from the freezing of a transaction as provided for in Article 36, unless their act has been motivated by bad faith.



**Article 46 – Exemption from liability for Financial Intelligence Unit**

No criminal, civil, disciplinary or administrative proceedings shall be instituted and no civil, administrative or criminal action may be brought or any professional sanction taken against the Financial Intelligence Unit Director General, and employees of the Financial Intelligence Unit who carry out their duties in accordance with the provisions of this Law, unless they have acted in bad faith.

**CHAPTER VII**

**INVESTIGATION TECHNIQUES**

**Article 47 – Special investigation techniques**

1) For the purpose of obtaining evidence of a predicate offence, money laundering or terrorist financing, judicial authorities may order the following for a period not exceeding one month:

a) the monitoring of bank accounts and the like;

b) access to computer systems, networks and servers;

c) the placing under surveillance or tapping of telephone lines, facsimile machines, or electronic transmission or communication facilities;

d) the audio or video recording of acts and behavior or conversations.

2) The judicial authorities may also order the seizure of, or obtaining of information about, notaries and private deeds, or of bank, financial and commercial records.

3) Actions stipulated in subparagraphs 1 and 2 require reasonable precautionary measures and these operations shall be possible only when there is a reasonable basis for believing that such accounts, telephone lines, computer systems and networks or documents are or may be used by persons suspected of participating in offences referred to in this law.

4) The authorization of the competent judicial authority shall be obtained prior to any operation as described in this Article. A detailed report shall be transmitted to that authority upon completion of the operation.

**Article 48 – Undercover operations and controlled delivery**

1) No punishment may be imposed on the judicial or other competent authorities who, for the purpose of obtaining evidence relating to these offences listed in Article 4 or the tracing of proceeds of crime, perform acts which might be construed as elements of money laundering and financing of terrorism in connection with carrying out an undercover operation or a controlled delivery. The judicial or other competent authorities shall not induce the suspect to commit any offences.

2) The judicial or competent authority may, upon obtaining order of the court on freezing or seizure of funds or properties and their proceeds, take decision and, if necessary, issue an order for specific measures for the safe keeping of the funds and properties.

**Article 49: Witness protection**

1) Either at its own initiative or at the request of a witness, defendant or aggrieved private party or their agent while considering other laws in relation to witness protection, protecting the identity of the witness or keeping confidential the special information, the Attorney general's Office or a competent court may determine that:

a) certain identifying information shall not be included in the hearing transcript if there is a reasonable presumption that the witness could suffer serious injury following the disclosure of certain information;

b) a witness's identity is kept secret if the competent authority concludes that the witness, a member of his family or one of his associates could reasonably be endangered by reason of the testimony

2) The witness whose identity is kept secret shall not be summoned to testify at a hearing without his consent.

3) Anonymous testimony shall not serve as the sole basis for or a determining factor in any conviction.

**CHAPTER VII**

**PUNISHMENT OF THE NATURAL PERSONS AND CORPORATE ENTITIES**

**Article 50 – Penalties applicable to corporate entities**

1) When the offence of money laundering is committed by an employee, agent or representative acting under their behalf, the corporate entity shall be punished as following:

1. If the amount of fund, profit earned and value of asset which laundered or intended to be laundered cannot be determined, the corporate shall be liable to a fine equal to the amount of fund, profit earned or value of the asset.

2. If the amount of fund, profit earned and value of asset which laundered or intended to be laundered cannot be determined, the corporate shall be liable to a fine not less than 500,000 Afghani and not more than 1,500,000 Afghani, without prejudice to the conviction of those individuals as perpetrators of the offence or accessories to it. This provision does not impede the implementation of paragraph 4 of this Article on natural persons.

2) Corporate entities may additionally be:

a) banned for a period not to exceed five years from directly or indirectly carrying on certain business activities;

b) dissolved if such corporation had been established for the purpose of committing the offence **in question or it allowed its premises to be used for such purposes; and**

c) required to publicize the judgment in the press or in any other audiovisual media.

3) Apart from subparagraph 1 of this Article, if due to lack of supervision or control on the employee, the employee paves the ground for the natural person to commit the offense of money laundering and as a result, the natural person benefits from it, the natural person will also be punished in accordance with subparagraphs 1 and 2 of this Article.

4) The application of penalties under this Article shall not preclude any other parallel criminal, civil or administrative proceedings with respect to a corporate entity for the offence of money laundering.

#### **Article 51 – Penalties for offences**

1) A natural or legal person who commits the following offences shall be punished under subparagraph 2 of this Article.

A person commits an offence who:-

a) intentionally fails to report a suspicion, as provided for in Article 18

b) intentionally discloses any information regarding a report required to be filed under this Law to the person or persons to whom the report relates or to any other person not entitled to such information contrary to Article 18(5);

c) fails to comply with Article, 27 of this law

d) Intentionally destroys or removes registers or records which, in accordance with this Law, must be maintained;

e) having learned, by reason of his trade or occupation, of any action by the Financial Intelligence Unit, or any money laundering or financing of terrorism inquiry or investigation by law enforcement authorities prior to the public disclosure of that action, inquiry or investigation by the appropriate authorities knowingly discloses that fact, by any means, to the person or persons to whom the investigation relates or to any other person not entitled to such information;

f) communicates deeds or records specified in Article 47 (2) to the judicial authorities or to the officials competent to investigate criminal offences, knowing such deeds or records to contain errors or omissions, without informing them of that fact;

g) otherwise communicates or discloses information or records required to be kept confidential under this Law to any person offence not authorized to receive such information or records by this Law; or

(i) does not comply with other obligation under Part II, and relevant regulations, instructions, circulars, guidelines, policies and procedures of competent authorities.

2) The penalty for the commission of the offences referred to in paragraph 1 of this article shall be as follows:

a) in the case of a natural person, imprisonment for not less than six months and not more than one year or a fine of not less than 5,000 Afghani and not more than 50,000 Afghani, or both,

b) with respect to corporate entities, a fine of not less than 25,000 Afghani and not more than 125,000 Afghani.

3) Perpetrators of Article 23 of this law shall be punished as follows:

1. in the case of an individual by a fine of 5,000 Afghanis or imprisonment for not more than three months, or both; or

2. in the case of a corporate body by a fine of not less than 50,000 and not more than 250,000 Afghanis.

4) Perpetrators of article 7(1) of this law, in case of transportation of currency, Bearer negotiable instruments or gold related to terrorist financing, money laundering or the predicate offences and are subject to confiscation and other provisional measures, In additions to confiscation of the cash and negotiable bearer instruments, shall be subject to imprisonment of 1 year or a fine equivalent to the amount seized or both.

5) Natural or legal persons convicted based on subparagraph 1 shall have their licenses revoked indefinitely or for at least 5 years.

#### **Article 52: Punishment to Natural Person**

1) A person who commits the offense of money laundering shall be imprisoned for a minimum of 2 years and a maximum of 10 years or a cash fine of 500,000 to 5,000,000 or both.

2) A person who commits the offenses set forth in Article 4 of this law or participates in, attempts or conspires to commit, aids, facilitates, abets, supports, organizes, manages or counsels, associates in the commission of the offence, shall be punished equal to the perpetrator.

3) any persons who transports currency, Bearer negotiable instruments or gold related to terrorist financing, money laundering or the predicate offences and are subject to confiscation and other provisional measures, and or make no or false declaration, shall be subject to the confiscation of all amount or just the difference between the real amount or the amount declared, as the case may be

**Article 53: Punishment to criminal organizations**

When the offence is perpetrated by a member of a criminal organization or by a corporate entity owned or controlled by such organization the penalty applicable in such cases shall be;

- a) in the case of a natural persons shall not be less than five years and not more than 14 years and a fine of not less than 500,000 Afghani and not more than two million Afghani,
- b) b) in case of a corporate entity, a fine of not less than two million Afghani and not more than 10 million Afghani.

**Article 54: Aggravating and mitigating circumstances**

The penal law on the aggravating and mitigating circumstances shall be applicable on this Law.

**CHAPTER IX****Request for INTERNATIONAL COOPERATION and Extradition****Article 55: Legal Assistance**

1) The competent authorities shall provide the widest possible range of cooperation, including but not limited to measures that are set out in this law, to the competent authorities of other States for purposes mutual legal assistance in connection with criminal investigations and proceedings related to money laundering, financing of terrorism and predicate offences.

2) Dual criminality shall be deemed fulfilled irrespective of whether the laws of the requesting State places the offence within the same category of offence or denominate the offence by the same terminology as in Afghanistan, provided the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of the States concerned.

3) Mutual legal assistance may be rendered in the absence of a bilateral treaty on the basis of reciprocity.

4) Money Laundering and the Financing of Terrorism are extraditable offences for purposes of the Law on Extradition and Legal Cooperation No. 1103 (2013).

**Article 56: Purpose of requests for mutual legal assistance**

1) Upon application by a foreign State, requests for mutual legal assistance in connection with money laundering, terrorist financing or predicate offences shall be executed in accordance with the principles set out in this title.

2) Mutual legal assistance may include in particular:

- a) taking evidence or statements from persons;
- b) assisting in making detained persons, voluntary witnesses or others available to the judicial authorities of the requesting State in order to give evidence or assist in investigations;
- c) effecting service of judicial documents;
- d) executing searches and seizures;
- e) examining objects and sites;
- f) providing information, evidentiary items and expert evaluations;
- g) providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- h) identifying or tracing the proceeds of crime, funds or property or instrumentalities or other things for evidentiary or confiscation purposes;
- i) confiscation of proceeds of crime and other funds or property, including confiscation based on non-conviction based confiscations;
- j) executing freezing, seizing and other provisional measures
- k) Executive investigative measures, including special investigative techniques, undercover operations, controlled deliveries;  
any other form of mutual legal assistance not contrary to the domestic laws of Afghanistan.

**Article 57: Refusal to execute requests**

1) A request for mutual legal assistance may be refused only if:

- a) it was not made by a competent authority according to the legislation of the requesting country, if it was not transmitted in accordance with applicable laws or its contents are in substantial non-conformity with Article 59;
- b) its execution is likely to prejudice the law and order, sovereignty, security, public order or other essential interests of Afghanistan;
- c) the offence to which it relates is the subject of criminal proceedings or has already been the subject of a final judgment in Afghanistan;
- d) there are substantial grounds for believing that the measure or order being sought is directed at the person in question solely on account of that person's race, religion, nationality, ethnic origin, political opinions, gender or status;
- e) If the offence referred to in the request is not provided for under the legislation of Afghanistan or does not have features in common with an offence provided for under the legislation of Afghanistan; however, assistance shall be granted if it does not entail coercive measures;
- f) If the measures requested cannot be ordered or executed by reason of the statute of limitations applicable to money laundering or financing of terrorism under the legislation of Afghanistan or the law of the requesting State;
- g) If the decision whose execution is being requested is not enforceable under the legislation of Afghanistan;

h) If the decision rendered abroad was issued under conditions that did not afford sufficient protections with respect to the rights of the defendant.

2) No request for mutual legal assistance shall be refused on the basis of, or made subject to, unduly restrictive conditions.

3) Secrecy or confidentiality provisions binding banks and other financial institutions or DNFBPs cannot be invoked as a ground for refusal to comply with the request.

4) Assistance shall not be refused on the sole ground that the offence is also considered to involve fiscal matters.

5) A decision of a court in relation to a request for mutual legal assistance may be subject to appeal.

6) The Attorney General's Office shall promptly inform the foreign competent authority of the grounds for refusal to execute the request.

#### **Article 58: Nature of offences**

For the purposes of this law, money laundering and financing of terrorism shall not be regarded as political offences, or offences connected with a political offence, or offences inspired by political motives or fiscal offences.

#### **Article 59: Transmission and processing of requests**

1) The Ministry of Foreign Affairs has the responsibility and power to receive mutual legal assistance requests sent by competent foreign authorities with respect to money laundering, financing of terrorism, and predicate offences and it shall either execute them or transmit them to the competent authorities for execution. It shall ensure speedy and proper execution or transmissions of the request received or, if forwarded for execution, encourage speedy execution by competent authorities. In urgent cases, such requests may be sent through the International Criminal Police Organization (ICPO/Interpol) or directly by the foreign authorities to the judicial authorities of Afghanistan. In such cases the authority receiving the request shall notify the Attorney General's office.

2) Requests and answers shall be transmitted either by post or by other more rapid means of transmission that provides a written or materially equivalent record under conditions allowing the Attorney General to establish authenticity.

#### **Article 60: Content of requests**

1) Requests shall specify;

a) the identity of the authority requesting the measure;

- b) the name and function of the authority conducting the investigation, prosecution or proceedings;
- c) the requested authority;



- d) the purpose of the request and any relevant contextual remarks;
- e) the facts in support of the request;
- f) any known details that may facilitate identification of the persons concerned, in particular name, marital status, nationality, address and location and occupation;
- g) any information necessary for identifying and tracing the persons, instrumentalities, funds or property in question;
- h) the text of the statutory provision establishing the offence or, where applicable, a statement of the law applicable to the offence and an indication of the penalty that can be imposed for the offence;
- i) a description of the assistance required and details of any specific procedures that the requesting State wishes to be applied.

2) In addition to requirements set forth in Paragraph 1, requests shall include the following particulars in certain specific cases:

- a) in the case of requests for provisional measures: a description of the measures sought;
- b) in the case of requests for the issuance of a confiscation order: a statement of the relevant facts and arguments to enable the judicial authorities to order the confiscation under domestic law;
- c) in the case of requests for the enforcement of orders relating to provisional measures or confiscations:
  - i) a certified copy of the order, and a statement of the grounds for issuing the order if they are not indicated in the order itself;
  - ii) a document certifying that the order is enforceable and not subject to ordinary means of appeal;
  - iii) an indication of the extent to which the order is to be enforced and, where applicable, the amount for which recovery is to be sought in the item or items of property;
  - iv) where necessary and if possible, any information concerning third-party rights of claim on the instrumentalities, proceeds, property or other things in question;

**Article 61: Additional information**

The Attorney General’s Office or the competent authority handling the matter shall, either on their own initiative or at the request of the Attorney General, may request additional information from the competent foreign authority if it appears necessary to execute or facilitate the execution of the request.

#### **Article 62: Requirement of confidentiality**

Where a request requires that its existence and substance be kept confidential, such requirement shall be observed. If that is not possible, the requesting authorities shall be promptly informed thereof.

#### **Article 63: Delay in complying with request**

The Attorney General may delay the referral of requests to the competent authorities responsible for the execution of the request if the measure or order sought is likely to substantially interfere with an ongoing investigation or proceeding, it shall immediately so advise the requesting authority.

#### **Article 64: Costs**

The requesting country is required to bear the expenses of for legal cooperation.

#### **Article 65 – International cooperation for confiscation**

- 1) The confiscation order issued pursuant to this law shall apply to funds and property listed in Article 40 under this Law, or to funds and property used or intended to be used to commit a terrorist financing or money laundering offense, notwithstanding if such funds or properties are located outside the Country.
- 2) If the confiscated funds and property cannot be presented, the court may provide for payment of a sum of money corresponding to the value of the funds and property.
- 3) If a request for the enforcement of a confiscation order of a foreign court is referred to an afghan court, the order of the afghan court shall be bound by the findings of fact on which the order of the foreign court is based.

#### **Article 66 - Establishment of Fund for Asset Recovery and for Asset Sharing**

- (1) There is hereby established in the accounts of Afghanistan an account to be known as the [Afghanistan Recovered Assets Fund].
- (2) All moneys derived from the fulfillment of confiscation, recovery and forfeiture orders and from settlements of confiscation, recovery and forfeiture claims and ancillary income shall be credited to the [Afghanistan Asset Recovery Fund].
- 3) Provisions for implementation of this Fund, including receipts and disbursements, authorized payments and recovered assets from confiscation of proceeds, from money laundering, predicate offences and terrorist financing, instrumentalities or property of corresponding value or proceeds from non-conviction based proceedings and related provisional measures shall be made by regulation.

#### **Article 67 – Asset Sharing**

Based on an agreement Afghanistan may share recovered assets with other States and Afghanistan can be one of the stakeholders in the monies and assets that are located in Afghanistan and confiscated through a verdict of a foreign court.

#### **Article 68- Other Forms of International Cooperation**

Competent authorities may, both spontaneously and upon request, rapidly, effectively and constructively cooperate with foreign competent authorities in relation to money laundering, terrorist financing, predicate offences. Competent authorities may use any powers that they have under this law in response to requests for assistance from any foreign competent authority.

### **CHAPTER X**

#### **Miscellaneous Provisions**

##### **Article 69– Issuance of regulations**

- 1) For better implementation of provisions of this Law, Da Afghanistan Bank may issue legislation as it deems necessary for institutions subject to its jurisdictions .
- 2) Competent authorities shall issue instructions, circulars, and procedures for financial institutions and designated non-financial businesses and professions that are not supervised by Da Afghanistan Bank.

##### **Article 70- Entry into force**

This law shall enter into force on the date of signature by the President of the Islamic Republic of Afghanistan and shall be published in the Official Gazette. Upon its promulgation the Anti-Money Laundering and the Proceeds of Crime Law, published in the official gazette 840 dated 10/8/1383, shall be considered null and void.