

In the Name of Allah, the Beneficent, the Merciful
LAW OF BANKING

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LAW OF BANKING

CHAPTER I GENERAL PROVISIONS

Article 1 [Definitions of] Expressions

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

- 1.1 "administrator" means any person who is a member of the Board of Supervisors, the Management Board or the Audit Committee of a bank, or any person who works at the post of an administrator in a bank;
- 1.2 "bank" means a person engaging in the business of receiving money deposits or other repayable funds from the public for the purpose of making credits or investments for his own account;
- 1.3 "bank holding company" means a company that is regulated by the bank regulator of the country where it maintains its head office and that has one or more subsidiaries with banking licenses;
- 1.4 "banking license" means an authorization issued by Da Afghanistan Bank granting the right to a company to engage in the business of receiving money deposits or other repayable funds from the public and extending credits or investments for its own account;
- 1.5 "banking activities" means the activities that are listed in Article 33 of this law;
- 1.6 "branch office" means a place of business forming a legally dependent part of a bank where all or some banking activities are conducted; for the purposes of this Law, all domestic branch offices of a non-resident bank shall be treated as a single branch office; all communications from Da Afghanistan Bank to any such branch office may be made to the branch office notified by the non-resident bank to Da Afghanistan Bank or failing such notification to a branch office selected by Da Afghanistan Bank;
- 1.7 "credit" means any disbursement or commitment to make a disbursement of a sum of money in exchange for a promise to repay of the amount disbursed and to pay interest; other secured or unsecured charges on such amount; any extension [of the due date] of a debt; any guarantee issued; and any purchase of a debt security or other promise to pay sum of money and to pay interest either directly or by a discounted purchase price;

- 1.8 "debt security" means any negotiable instrument of indebtedness and any other instrument equivalent to such instrument of indebtedness, and any negotiable instrument giving the right to acquire another negotiable debt security by subscription or exchange; debt securities may be a certificate in a book-entry form;
- 1.9 "deposit" means a sum of money credited to a current account or to a savings deposit account maintained with a bank. Such deposit will be repaid or transferred to another account, with or without interest or a premium, either on demand or at a time agreed by or on behalf of the depositor and that bank;
- 1.10 "domestic" means a legal person whose head office is located in Afghanistan, or whose principal place of business is located in Afghanistan;
- 1.11 "dormant account" has the meaning given in Article 36.5 of this law;
- 1.12 "fit and proper person" means a person who is honest and trustworthy and whose professional qualifications, background and experience, financial position, or business interests do not disqualify that person in the judgment of Da Afghanistan Bank to be an owner, administrator or conservator of a bank; no person shall be regarded as a fit and proper person if he has been convicted by an authorized court of an offense for which he was or could have been sentenced to imprisonment unless such sentence was motivated by his religious or political views or activities, or if he has been declared bankrupt by an authorized court of law, or if he, on grounds of personal misconduct, has been disqualified or suspended by a competent authority from practicing a profession;
- 1.13 "Da Afghanistan Bank" has the meaning provided in Article 1 of Da Afghanistan Bank Law;
- 1.14 "Commission on Settlement of Financial Disputes: means the commission provided in Article 68 of this law;
- 1.15 "non-resident" a legal person other than the provision of Section 10 of this Article;
- 1.16 "person" means a natural person or a legal person, [or both];
- 1.17 "qualifying holding" means a direct or indirect holding in an undertaking which represents 10 percent or more of the capital or the voting rights or which makes it possible to exercise significant influence over the management of the undertaking in which the holding subsists;

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

1.19 "subsidiary" means any legal person in which another person or group of persons acting in concert holds the equivalent of fifty percent or more of the voting shares or a qualifying holding, that that exercise effective control over and influence the management or policies of the legal person.

Article 2 Prohibited activities and sanctions

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

- 1) persons licensed pursuant to legislation [of Afghanistan] enacted prior to this Law to receive deposits or other repayable funds from the public for the purpose of making credits or investments for their own account in Afghanistan;
- 2) persons who fund the credits they make from non-repayable capital subscriptions and the proceeds of credits received from financial institutions or debt securities issued in the capital markets; [and]
- 3) persons who, by virtue of the nature or size of their business or the origin of their resources, are exempt by Da Afghanistan Bank from the requirements of this Law; exemptions so granted by Da Afghanistan Bank may be conditional or limited in time, or they may be partial and specify and list certain provisions of this Law that shall apply to the person receiving the exemption.

2.2 No person shall use the word "bank" or derivatives of the word "bank" in respect of a business, product or service without a banking license, unless such usage is established or recognized by law or international agreement, or unless where the word "bank" is used it does not concern banking activities. Representative offices shall not use the word “bank” in their name, except in cases where the word “bank” forms an integral part of the name of the bank to which they belong. Banks whose banking license has been revoked shall carry in their name the words “bank in liquidation.”

2.3 Da Afghanistan Bank shall be empowered to examine the books, documents and other records of the relevant persons. In case of delay or refusal [to cooperate], upon the request of Da Afghanistan Bank, law enforcement officials shall, if necessary by use of force, assist Da Afghanistan Bank to that end.

- 2.4 If a person engages in activities that are incompatible with this Article, Da Afghanistan Bank may:
- 1) 1) Serve an order upon that person promptly to cease activities. If within one [calendar] week the activities have not ceased, Da Afghanistan Bank shall apply to the Commission and the Commission shall decide whether the assets, books and records of that person should be seized and secured by Da Afghanistan Bank. Within one week* the Commission shall commence hearings concerning the matter in which shall participate the relevant person and such other interested parties as the Commission may invite. Upon conclusion of the hearings, the Commission shall either decide upon the seizure of the assets of that person in accordance with Article 63 or lift the seizure. **[*Translator's Note: In this case, the Pashto version of the law provides one month in lieu of one week. Laws of Afghanistan are published in both Dari and Pashto; however, this translation is based on the Dari version of the law only as originally this law was drafted in Dari and subsequently translated to Pashto. I found a few instances, and there might be many more, where one version is different from the other.]**
 - 2) Upon issuance of a decision to lift the seizure, the Commission may issue an order to Da Afghanistan Bank concerning payment of damages.
 - 3) In case of a liquidation, the proceeds of liquidation shall be used to pay judicial expenses and other costs of Da Afghanistan Bank, depositors and other personal creditors or creditors of the relevant institution, in [that] order of preference, while any remaining assets shall be transferred, as the case may be, to their owner or be forfeited to the State.

Article 3 Enactment of banking regulations

- 3.1 Da Afghanistan Bank may issue a regulation pursuant to this Law. It shall publish a draft of the proposed text of the regulation to bring the proposed regulation to the attention of the domestic banking industry. The draft shall be accompanied by a notice to relevant persons in order to gather comments about the proposed regulation. The comments are made to Da Afghanistan Bank within a specified time of not less than one month after the date of publication of the draft.
- 3.2 In preparing the final text of the regulation, Da Afghanistan Bank shall have regard to any comment made to it in accordance with paragraph 1. If the regulation is issued, Da Afghanistan Bank shall publish its response to the comments. If the final text of the regulation differs from the draft published under paragraph 1 significantly, Da Afghanistan Bank shall also publish a general review of the difference.

- 3.3 The provisions of paragraphs 1 and 2 shall not apply to a proposed regulation if Da Afghanistan Bank decides that the delay involved in complying with these provisions would be a serious threat to the interests of the banking system; such decision shall be explained in the preamble to the regulation.

Article 4 Treatment of foreign interest in domestic banking activities

- 4.1 Non-resident banks and non-resident bank holding companies may be permitted by Da Afghanistan Bank to have qualifying holdings in banks licensed by Da Afghanistan Bank, and to maintain domestic subsidiaries under banking licenses and domestic branch offices and domestic representative offices under permits issued by Da Afghanistan Bank, provided that such holdings or the activities of them are neither contrary nor regarded a threat to the orderly development and proper functioning of the national banking system of Afghanistan.

- 4.2 In regulating and supervising domestic subsidiaries of non-resident banks and bank holding companies, domestic branch and representative offices of non-resident banks, and non-resident branch and representative offices of domestic banks, Da Afghanistan Bank shall effectively cooperate with the foreign bank regulators concerned, on a basis of reciprocity. To that end, Da Afghanistan Bank shall enter into cooperative agreements with foreign bank regulators.

Article 5 Immunity from prosecution

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

CHAPTER II LICENSES AND PERMITS

Article 6 Banking licenses and permits

- 6.1 Da Afghanistan Bank has the exclusive right to issue and to revoke banking licenses, and to issue and to revoke permits for banks to operate branch offices and representative offices.
- 6.2 Banking licenses and permits issued pursuant to this Law shall be granted for an indefinite period of time and shall not be transferable. They take effect on the date of their issue, unless the law specifies otherwise.

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

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

Article 7 Applications for banking licenses and permits; fees

7.1 Banking licenses and permits shall be applied for in writing to Da Afghanistan Bank. Conditions for submission and review of applications shall be prescribed by regulation of Da Afghanistan Bank and printed.

7.2 Before it approves an application for a banking license or a permit, Da Afghanistan Bank shall be authorized to carry out full-scale financial, criminal, personal and professional background checks of owners of qualifying holdings in the bank and administrators of the bank for which the application is pending. To that end, financial institutions and tax collection and law enforcement authorities shall cooperate with Da Afghanistan Bank.

7.3 In order to cover part of its expenses associated with licensing, permits and supervision, Da Afghanistan Bank may require a fee. Also, to ensure coverage of administrative expenses, a maintenance fee for each year that a banking license or permit is in effect may be required and received by Da Afghanistan Bank.

7.4 Applications [for a banking license or permit] shall be rejected if the conditions for review of an application referred to in paragraph 1 of this Article are not fulfilled.

Article 8 Licensing procedure for companies that are newly established

8.1 For newly established companies, the procedure for a banking license consists of two stages:

- 1) The submission of a preliminary application for a banking license by the founders of the company.
- 2) The submission of a final application [for a banking license by the company] after it has been established and registered which shall ensure the fulfillment of conditions specified by Article 12 and regulations mentioned in Article 7.1 of this law. During the application process, Da

Afghanistan Bank may require that additional documentary evidence be submitted.

8.2 After having received a preliminary application and having met with the applicants and the proposed administrators of the bank, and when Da Afghanistan Bank determines that the preliminary application is complete, Da Afghanistan Bank shall notify the applicants about the matter.

8.3 Within three months from the date of issuing the notification mentioned in paragraph 2 of this Article, Da Afghanistan Bank shall approve or reject the application, and shall send the applicants a copy of its decision; for preliminary applications submitted by non-resident applicants this period shall be six months and decisions concerning such matter shall contain:

- 1) The minimum amount of capital of the bank to be subscribed and paid in before a banking license may be issued; (in determining the minimum amount of capital of the bank, Da Afghanistan Bank will take account of, in particular, the business plan and banking activities proposed for the bank in the documents supporting the application ;)
- 2) Listing of any conditions or restrictions that would be attached to the banking license when issued; [and]
- 3) Explaining in detail what must be done to meet the special conditions required to be met before a [banking] license may be issued.
- 4) in the event of rejecting a preliminary application, or specifying conditions or restrictions to be attached to the banking license Da Afghanistan Bank must give the reasons therefore to the inspectors.

8.4 If the preliminary application for a banking license is approved, Da Afghanistan Bank shall open an account on its books in the name of the prospective bank to receive capital subscription payments. Within six months from the date of approval, the company for which the application was made shall be established and registered in the respective registry in Afghanistan as a company, the minimum amount of capital prescribed by Da Afghanistan Bank shall be subscribed and paid in, and then a final application for a banking license shall be submitted to Da Afghanistan Bank by the company, failing which the decision approving the preliminary application shall terminate. A final application, presented as required by regulation of Da Afghanistan Bank, shall be accompanied by the following supporting documents:

- 1) documentary evidence that the company has been established and registered and that any special conditions imposed by Da Afghanistan Bank have been met; [and]

2) a written representation issued on behalf of the company that there has been no material change in the information accompanying the earlier application or detailing any material change in such information.

8.5 If Da Afghanistan Bank determines that the final application and the provisions of paragraph 3 of this Article are complied with, Da Afghanistan Bank shall issue the banking license and send a written notice thereof to the applicants. Da Afghanistan Bank shall specify the conditions concerning the funds held in the account of the company with Da Afghanistan Bank, and provide for their release to the extent applicable.

Article 9 Licensing procedure for existing companies

9.1 Companies may apply for a banking license by submitting to [Da Afghanistan Bank] an application supported by documents showing that the company has been established and registered and that the provisions of Article 12 of this law and the regulations issued by Da Afghanistan Bank are complied with. During the application process, Da Afghanistan Bank may require that additional documentary evidence be submitted in support of the application.

9.2 When, after having received an application for a banking license and having met with the owners and the proposed administrators of the bank, Da Afghanistan Bank determines that the application and supporting documents provided are complete, Da Afghanistan Bank shall notify the applicant about the matter. Thereafter, the procedure specified in paragraphs 3, 4 and 5 of Article 8 of this law shall be followed. The capital required to be paid in shall not exceed the minimum level of capital required by Da Afghanistan Bank.

Article 10 Procedure to obtain permits for offices

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

10.2 The permit for a branch office or a representative office shall be issued by Da Afghanistan Bank upon submission of an application supported by documents showing that the conditions specified by Article 12 of this law have been met. Da Afghanistan Bank may require that additional documentary evidence be submitted in support of the application.

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

complete, Da Afghanistan Bank shall notify the applicant that the application is complete.

10.4 After its notification date mentioned in paragraph 3 of this Article Da Afghanistan Bank shall make a decision to approve or reject the application and shall send the applicant a copy of its decision. When the application is approved the permit is promptly issued and the nature and scope of the activities and any conditions or restrictions attached to the permit shall be described together with explanation of grounds therefor. Where an application is rejected, the grounds therefore shall also be provided by Da Afghanistan Bank.

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

Article 11 Cooperation with foreign bank regulator

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

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

12.1 Taking into account the need to ensure the sound and prudent management of banks in accordance with the law, a banking license may be issued only if Da Afghanistan Bank is satisfied:

- 1) that in its administration and operations the bank will comply with the requirements of the law of Afghanistan;
- 2) that the initial capital of the bank will be at least equivalent to the minimum specified by regulation of Da Afghanistan Bank, sufficient to support the banking activities that the bank plans to engage in;
- 3) that no evidentiary documents are available that the influence that would be exercised on the bank by one or more of its owners with a qualifying

holding in the bank would threaten the sound and prudent management of the bank;

- 4) that the relationship between the bank and a non-resident enterprise with a qualifying holding in the bank will not hinder Da Afghanistan Bank in the discharge of its supervisory responsibilities;
- 5) that the owners having a qualifying holding in the bank, when natural persons, will be fit and proper persons and, when legal persons, have administrators who will be fit and proper persons;
- 6) that the internal control and risk management procedures of the bank will be adequate;
- 7) that the business plan and financial projections for the bank are adequate;
- 8) that, if the application concerns a subsidiary of a non-resident bank, the bank or bank holding company has a relevant license from the country where its head office is located and is committed to ensure, on terms and conditions satisfactory to Da Afghanistan Bank, the due [and punctual] payment of the future liabilities of the bank;
- 9) that, if the application concerns the subsidiary of a non-resident bank or a non-resident bank holding company, the bank regulator of the country where the head office of the non-resident bank or bank holding company is located has issued [such application?]; following consultations between Da Afghanistan Bank and that bank regulator, it is ensured that the non-resident bank or bank holding company is adequately supervised on a consolidated basis by that regulator;
- 10) that, if the application concerns the subsidiary of a bank or bank holding company that has one or more non-resident banking subsidiaries, and following consultations between Da Afghanistan Bank and the foreign authorities supervising the activities of the other banking subsidiaries, that the other banking subsidiaries or bank holding company are adequately supervised on a consolidated basis by such foreign authorities;
- 11) that membership of the proposed bank in a other companies will not hinder Da Afghanistan Bank in the discharge of its supervisory responsibilities; [and]
- 12) that such other conditions as Da Afghanistan Bank may specify by regulation will be met.

12.2 To ensure the sound and prudent management by nonresident banks of their branch offices and representative offices, a permit for such office may be issued pursuant to this Law by Da Afghanistan Bank under the conditions:

- 1) that the office will comply with the requirements of the law of Afghanistan;
- 2) that the administrators of the office will be fit and proper persons;
- 3) that the internal control and risk management procedures of the office will be adequate;
- 4) that the business plan and financial projections for the office are adequate;
- 5) that, if the application concerns a domestic branch office of a non-resident bank, the bank is licensed to receive deposits or other repayable funds from the public in the country where its head office is located;
- 6) that, if the application concerns a domestic branch office or a domestic representative office of a non-resident bank, that applicant bank is committed to ensure, on terms and conditions satisfactory and acceptable to Da Afghanistan Bank, the due and punctual payment of the future liabilities of the bank on account of the branch office or representative office;
- 7) that, if the application concerns a domestic branch office or a domestic representative office of a non-resident bank, the bank regulator of the country where the head office of the bank is located has authorized the establishment of the office and will soundly supervise the bank;
- 8) that, if the application concerns a non-resident branch office or a non-resident representative office of a domestic bank, the bank regulator of the country where the office is to be located will supervise the office in close cooperation with Da Afghanistan Bank; [and]
- 9) that such other conditions as Da Afghanistan Bank may specify by regulation [will be met].

Article 13 Register of banks

13.1 A central register shall be established by Da Afghanistan Bank to record the name, address and registration number; the date on which the license or permit was issued or revoked by Da Afghanistan Bank; the charter and other statutory documents of the bank concerned; and the addresses of offices abroad, if any; for branch offices and representative offices the name and address to which the bank belong; and information concerning the administrators of the bank or the office including the scope of their authority and their specimen signatures.

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

- 13.3 Banks shall notify Da Afghanistan Bank in writing within three days of changes made by their authorities in the information recorded in the register.

Article 14 Revocation of banking license

14.1 The banking license of a bank may be revoked [only] by decision of Da Afghanistan Bank on [one or more of] the following grounds:

- 1) When false or fraudulent statements or other irregularities occurred in connection with the application;
- 2) the bank has not made use of the banking license within six months after the date of its issuance, or the bank has ceased to engage in the business of receiving money deposits or other repayable funds from the public or making credits or investments;
- 3) the bank no longer possesses the minimum amount of capital and reserves required by regulation of Da Afghanistan [Bank] , cannot fulfill its obligations, and no longer can provide security for the assets entrusted to it;
- 4) the bank conducts its administration or banking operations in an unsound or imprudent manner or otherwise violates a law, or a regulation or order of Da Afghanistan Bank, or any condition or restriction attached to a license or permit issued by Da Afghanistan Bank;
- 5) the bank, or bank holding company or another bank of which the bank is a subsidiary, or a subsidiary of the bank, has engaged in criminal activities;
- 6) any of the conditions listed in sub-paragraphs 3, 4, 5, 6 and 7 of paragraph 1 of Article 12 is not being fulfilled;
- 7) the bank fails to comply with an order given to it by Da Afghanistan Bank or any other requirement imposed on it by law or by regulation;
- 8) the bank has become a subsidiary of another enterprise without the prior authorization of Da Afghanistan Bank or the provisions set out in Article 21 have not been observed;
- 9) the bank or bank holding company of which the bank is a subsidiary has lost its operating license;
- 10) the owner or owners of the bank have decided to dissolve the bank;
- 11) a reorganization, amalgamation, merger or division of the bank has occurred without the written authorization of Da Afghanistan Bank, or the

bank has otherwise ceased to exist as a legally or operationally independent entity;

- 12) Da Afghanistan Bank is hindered in supervising the bank because the bank has moved all or part of its administration, operations, books or records outside Afghanistan without the prior written consent of Da Afghanistan Bank;
 - 13) Da Afghanistan Bank is hindered in supervising the bank because the bank has become member of a group of companies or because the bank has become a subsidiary of a non-resident bank or a non-resident bank holding company; [or]
 - 14) bankruptcy proceedings have been opened against the bank.
- 14.2 The permit for a branch office or representative office may be revoked by Da Afghanistan Bank on [one or more of] the following grounds:
- 1) the permit has been issued based on submission of false or fraudulent statements or other irregularities that occurred in connection with the application;
 - 2) the bank holding the permit has lost its banking license, or bankruptcy proceedings have been opened against the bank, or its owners have decided to dissolve the bank;
 - 3) the bank [holding the permit] has not made use of the permit within twelve months after the date of its issuance;
 - 4) the office [holding the permit] conducts its activities in an unsound or imprudent manner extending solvency or liquidity, or otherwise violates a law, or a regulation or order of Da Afghanistan Bank, or any condition or restriction attached to a permit or authorization [issued] by Da Afghanistan Bank;
 - 5) the office holding the permit has engaged in criminal activities;
 - 6) any of the conditions listed in sub-paragraphs 2 and 3 of paragraph 2 of Article 12 is not being fulfilled;
 - 7) the bank or the office holding the permit refuses to comply with a regulation issued by Da Afghanistan Bank or any other requirement imposed on it by Law of Da Afghanistan Bank;
 - 8) the bank holding the permit for office has decided to close the office;
 - 9) Da Afghanistan Bank is hindered in supervising the office because all or a considerable part of the administration, operations, books and records of

the office have been moved outside Afghanistan without the prior written consent of Da Afghanistan Bank; [or]

- 10) Da Afghanistan Bank is hindered in supervising the bank to which the office is related.
- 14.3 If Da Afghanistan Bank decides to revoke a banking license or permit, it shall provide the grounds on which they are taken, and shall notify the bank concerned and register the issue in the central register of banks. Notification of the decision to revoke a non-resident bank shall be made through [its] office.
- 14.4 Decisions to revoke a banking license of a domestic bank or a permit for a branch office of a non-resident bank shall be made in accordance with Article 54 of this law and shall include the appointment of a conservator to take control of the assets, books and records of the bank or branch office.
- 14.5 Decisions taken pursuant to paragraph 3 of this Article shall take effect at the time that they are served on the authority concerned.

Article 15 Revocation of banking license or permit upon request

- 15.1 A bank may apply to Da Afghanistan Bank in writing to revoke its banking license or its permit for a branch office or a representative office. The application shall be accompanied by a liquidation plan and by the financial statements, together with a report of an independent external auditor acceptable to Da Afghanistan Bank. Within three months Da Afghanistan Bank shall decide on the request.
- 15.2 The request provided in paragraph 1 of this Article may be approved by Da Afghanistan Bank upon approval of the liquidation plan, and satisfaction that the bank is solvent and will have adequate liquid funds to pay its liabilities to depositors and other creditors of the bank upon revocation of the banking license or permit, taking Article 62 of this law into consideration.
- 15.3 Upon request, the decision of Da Afghanistan Bank shall be communicated in writing to the bank, giving the grounds therefor.
- 15.4 Decisions to revoke a banking license or permit upon request shall be registered in the central register of banks by Da Afghanistan Bank and have immediate effect.

Article 16 Publication of decisions to revoke banking license or permit

- 16.1 Within five days from the date of its decision to revoke a banking license of a bank or a permit for a domestic branch office or representative office,

Da Afghanistan Bank shall publish the decision in an official newspaper of general circulation of the country.

- 16.2 From the time that a banking license or permit is revoked, the bank or office concerned shall carry in its name the words “in liquidation” and shall be prohibited from engaging in any of the activities authorized by the banking license or permit, unless deemed to be required for accelerating the dissolution process on the bank. The bank or office shall, in accordance with Article 62 & 63 of this law, during the liquidation and dissolution affairs [continue to] be subject to the provisions of this Law.

CHAPTER III ORGANIZATION, OWNERSHIP AND ADMINISTRATION OF BANK

Article 17 Creation of banks

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

Article 18 Legal structure of banks

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

Article 19 Bank Charter

- 19.1 Each bank shall have a charter that upon approval by Da Afghanistan is deposited and registered with the central register of banks.
- 19.2 Each amendment of the charter of a bank shall require the prior written authorization of Da Afghanistan Bank.

Article 20 Capital structure of banks

- 20.1 Every bank shall be obliged to have its assets exceed its liabilities to third parties by an amount [at least] equal to the minimum amount of its initial paid-in capital prescribed by Da Afghanistan Bank at the time that its banking license is issued or such higher amount as Da Afghanistan Bank shall determine.
- 20.2 No bank shall decrease its capital and reserves by repurchasing shares or distributing capital or reserve assets to its owners without the prior authorization from Da Afghanistan Bank.

Article 21 Restrictions on qualifying holdings in banks

- 21.1 No person may, without the prior authorization of Da Afghanistan Bank, acquire a participation in a bank that alone or together with his existing participation in the bank constitutes a qualifying holding in that bank.
- 21.2 No person who has a qualifying holding in a bank may, without the prior written authorization of Da Afghanistan Bank, acquire a participation in another bank, which constitutes an increase of his qualifying holding or causes the proportion of the voting rights or the capital held by him to reach or to exceed 20 percent, 33 percent or 50 percent or causes the bank to become a subsidiary of that person.
- 21.3 No person who has a qualifying holding in a bank may, without the prior written authorization of Da Afghanistan Bank, acquire a participation in another enterprise that constitutes a qualifying holding in that enterprise or increase such qualifying holding in that enterprise to reach or to exceed 20 percent, 33 percent or 50 percent of the voting rights or the capital held by him.
- 21.4 If a person with a qualifying holding in a bank acquires a participation in another enterprise that constitutes a qualifying holding, that increases such qualifying holding in that enterprise to reach or to exceed 20 percent, 33 percent or 50 percent or more of the voting rights or the capital held by such person, such person must obtain the approval of Da Afghanistan Bank.
- 21.5 The authorization of Da Afghanistan Bank shall be required for any person referenced in paragraph 1, paragraph 2 or paragraph 4, and may be requested by submitting to Da Afghanistan Bank a written application accompanied by supporting documents showing that the applicable conditions specified by paragraph 6 for granting the authorization are met in accordance with regulations issued by Da Afghanistan Bank. Da Afghanistan Bank may require that additional documentary evidence be submitted in support of the request.
- 21.6 Da Afghanistan Bank may issue the authorization to a person applying for the authorization under the condition:
- 1) that the applicant is a natural person who is a fit and proper person;
 - 2) that the applicant is a legal person whose administrators are fit and proper persons;
 - 3) that the applicant has not engaged in criminal activities;

- 4) that no evidence is present that the influence that would be exercised on the bank as a result of the acquisition would threaten the sound and prudent management of the bank;
- 5) that, as a result of the acquisition, the bank would not become a subsidiary of an enterprise that [afterwards] will neither be a bank nor a bank holding company;
- 6) that, if as a result of the acquisition the bank would become a subsidiary of a non-resident bank or a non-resident bank holding company, the bank regulator of the country where the head office of the non-resident bank or bank holding company is located has given its authorization to the acquisition;
- 7) that the acquisition would hinder Da Afghanistan Bank in the discharge of its supervisory responsibilities because a non-resident enterprise which would be linked to the bank as a result of the acquisition would not be effectively supervised in the country where its head office is located or because the supervisory authorities of that country could not be expected to cooperate with Da Afghanistan Bank; [and]
- 8) that such other conditions as Da Afghanistan Bank may specify by regulation would be met.

21.7 Within three months from the date that the application is submitted to Da Afghanistan Bank, the application shall be approved or rejected, and the applicant shall be sent a copy of the decision by Da Afghanistan Bank; for applications submitted by a non-resident applicant this period shall be six months. If Da Afghanistan Bank issues the authorization, it may fix a maximum period for completing the acquisition. Decisions rejecting an application must explain the grounds on which the application is rejected.

21.8 If any person does not comply with the provision of paragraph 1 of this Article or fails to observe the maximum period allowed for completing the acquisition of such participation, that person shall be ordered by Da Afghanistan Bank in writing that, before a date stated in the order, that person must sell or otherwise dispose of his holding or such part of his holding in the bank as shall be specified in the order.

21.9 No person may sell or otherwise dispose of a qualifying holding in a bank before written notification of Da Afghanistan Bank.

21.10 No person may reduce his qualifying holding in a bank so that the proportion of the voting rights or of the capital held by him would fall below 20 percent, 33 percent or 50 percent or so that the bank would cease to be subsidiary, before written notification of Da Afghanistan Bank of the size of his holding in the bank that he would retain.

- 21.11 Banks must inform Da Afghanistan Bank of any acquisition or disposal of holdings in their capital, including stock redemptions by shareholders, that cause the thresholds referred to in paragraph 2 or paragraph 10 of this Article to increase or decrease, after they acquire knowledge thereof within three business days.
- 21.12 [Every] bank shall, within one month before the close of its financial year, inform Da Afghanistan Bank in writing of the shareholders having qualifying holdings and the sizes of such holdings.
- 21.13 If, at any time, Da Afghanistan Bank ensures that one or more of the conditions specified or referred to in paragraph 6 do not apply with respect to a person having a qualifying holding in a bank, Da Afghanistan Bank may order that person before a date stated in the order to sell or otherwise dispose of his holding in the bank or such part of his holding in the bank as shall be specified in the order.
- 21.14 From the date of an order given pursuant to paragraph 6 or paragraph 13 until the person named in the order has sold or otherwise disposed of his holding in the bank or such part of his holding in the bank as is specified in the order, the exercise of the voting rights and the membership in the Board of Supervisors of the bank of any member appointed by that person shall be suspended. Voting rights [so] suspended shall not be taken into account for the purpose of determining the quorum for any session, including any extraordinary session, of the General Meeting of Shareholders.
- 21.15 Upon the request of Da Afghanistan Bank, the Commission may appoint a special and autonomous administrator who shall be authorized to exercise the voting rights and to replace any member suspended pursuant to paragraph 14 of this Article.

Article 22 Administrative structure of banks

- 22.1 Each bank shall have the following administrative structure:
- 1) A General Meeting of Shareholders as the supreme decision making organ of the bank,
 - 2) a Board of Supervisors as the organ responsible for supervision of the administration and operation of the bank,
 - 3) a Management Board as the responsible executive body carrying out day-to-day administration of the bank,
 - 4) an Audit Committee responsible for accounting procedures and controls as well as for internal audits.

- 5) Other boards and committees may be established by the bank's charter, when needed.

22.2 Before a bank appoints a person to serve on the Board of Supervisors, on the Management Board or on the Audit Committee of a bank, the bank must propose the issue to Da Afghanistan Bank as well as submit documents pursuant to Article 9 of this law, during an application for a banking license, and shall obtain Da Afghanistan Bank's authorization.

Article 23 General Meeting of Shareholders

23.1 The General Meeting of Shareholders of a bank shall have the following duties and powers:

- 1) to adopt amendments to the Charter of the bank;
- 2) to adopt the By-Laws of the bank and amendments thereto;
- 3) to determine the general interest rate policies of the bank, the categories of assets that shall be suitable for investment of the available [liquid?] resources of the bank, and the other general financial, accounting, administrative and personnel policies of the bank;
- 4) to determine the organizational structure of the bank;
- 5) to establish and dissolve subsidiaries, branch offices and representative offices of the bank;
- 6) to decide on the participation of the bank in the capital stock of other financial institutions;
- 7) to appoint and to dismiss the members of the Board of Supervisors, the Management Board and the Audit Committee of the bank and to determine their remuneration; (such remuneration shall not be tied to the financial condition or to the financial results of the bank);
- 8) to determine the powers of the administrators of the bank to enter into contracts and commitments on behalf of the bank and the extent to which such powers may be delegated. The powers of members of the Board of Supervisors shall be fixed and not be subject to delegation;
- 9) to adopt and amend guidelines and to provide information concerning commercial interests of the administrators of the bank under Article 28of this law;
- 10) to determine and approve the budget of the bank, and to approve the procedures for employment of the administrators of the bank, and of bank employees, staff, and agents;

- 11) to adopt increases in the authorized capital of the bank and to determine the terms and conditions on which shares of the bank may be issued;
 - 12) to approve the annual reports and financial statements of the bank, upon the recommendation of the Audit Committee of the bank; to determine the net income of the bank; and to decide what amount of such net income shall be transferred to any reserve or paid out as dividend to shareholders;
 - 13) to establish special reserves on the books of the bank; [and]
 - 14) to decide on the sale, merger, amalgamation, dissolution and closure of the bank.
- 23.2 Shareholders shall have voting rights corresponding to their holding of shares of capital stock of the bank. Each shareholder may exercise his voting rights at the General Meeting of Shareholders personally or through an agent.
- 23.3 When required, sessions of the General Meeting of Shareholders may be held. Notices of the date, place and time of each session of the General Meeting of Shareholders, together with the agenda for that session, are sent to the shareholders one month in advance. In urgent issues such notice may be given seven days in advance. However, no decisions shall be made on issues that are not on the agenda. At least one regular session shall be held each year two months after completion of the external audit of the balance sheet and financial statements of the bank for the preceding financial year. Extraordinary sessions may be convened at the request of the Board of Supervisors, the Management Board, and the Audit Committee, [and] shareholders together holding 20 percent or more of total voting rights.

Article 24 Board of Supervisors

- 24.1 The Board of Supervisors of a bank shall have the following duties and powers:
- 1) to supervise the administration and operation of the bank;
 - 2) to advise the Management Board and the General Meeting of Shareholders;
 - 3) to convene each session of the General Meeting of Shareholders and to adopt the agenda for each session; the agendas for sessions convened at the request of shareholders, the Management Board or the Audit Committee shall be adopted by them;
 - 4) to authorize transactions of the bank requiring a decision of the General Meeting of Shareholders if needed;

- 5) to warn the Management Board in case of an infraction by the bank of an applicable law or regulation, and to bring the infraction to the attention of Da Afghanistan Bank and the General Meeting of Shareholders. The Board of Supervisors may refrain from bringing the infraction to the attention of Da Afghanistan Bank if the infraction was committed for the first time, its adverse effects have been corrected, and appropriate measures have been taken to prevent its recurrence, The Board of Supervisors shall record the infraction and its consequences in the book for minutes of its meetings;
- 6) to give instructions to the Management Board if needed to ensure sound and prudent management of the bank;
- 7) to suspend those members of the Board of Managers and members of the Audit Committee who become disqualified to serve pursuant to a provision of this Law or in circumstances where their continued presence on the Management Board or the Audit Committee would be incompatible with sound and prudent management of the bank, and to replace them temporarily with other persons, until the suspended members have been reinstated or permanently replaced by the General Meeting of Shareholders;
- 8) to represent the bank to the exclusion of the Management Board in all cases where the Board of Supervisors determines that there is a conflict of interest between the bank and two or more members of the Management Board.
- 9) Decisions taken by the Board of Supervisors pursuant to sub-paragraphs 4 to 8 of this Article shall be placed on the agenda of the next following session of the General Meeting of Shareholders.

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

24.3 The Board of Supervisors may take valid decisions by a simple majority of the votes of its members. Members may not abstain from voting.

Article 25 Management Board

- 25.1 The Management Board of a bank shall be responsible for the management and execution of the bank's activities.
- 25.2 The Management Board shall have an uneven number of not less than three members. The members of the Management Board shall be appointed by the bank's General Meeting of Shareholders for a period of four years; they may be reappointed for subsequent terms of equal length. The General Meeting of Shareholders shall designate a member of the Management Board to be Chairman of the Management Board.
- 25.3 A person shall by the General Meeting of Shareholders of the bank be relieved of his membership of the Management Board in the event that he is [or becomes] ineligible.
- 25.4 Decisions of the Management Board shall be taken by a simple majority of the votes of its members participating in the meeting. Members may not abstain from voting.

Article 26 Audit Committee

- 26.1 The Audit Committee of a bank shall have the following duties and powers:
- 1) to establish appropriate and effective accounting and administrative procedures, establish risk management controls for the bank, supervise compliance with them, and take measures to audit the bank's accounts and records;
 - 2) to monitor compliance with the laws applicable to the bank and report to the Board of Supervisors thereon;
 - 3) to deliver opinions on any matters submitted to it by the Board of Supervisors; [and]
 - 4) to review operations and transactions of the bank on the basis of plans adopted by the Audit Committee, at the request of the Board of Supervisors, at the request of shareholders together holding more than 10 percent of total voting rights, or as specified by the charter of the bank.
- 26.2 The Audit Committee shall have an uneven number of not less than three members appointed by the General Meeting of Shareholders of the bank for a period of four years; they may be reappointed for subsequent terms of equal length. The General Meeting of Shareholders shall designate a member of the Audit Committee to be Chairman of the Audit Committee.

- 26.3 Decisions of the Audit Committee shall be taken by a simple majority of the votes of its members participating in the meeting. Members may not abstain from voting.

Article 27 Eligibility of administrators

A person shall be eligible to serve as a member of the Board of Supervisors, the Management Board or the Audit Committee of a bank if:

- 27.1 he is a fit and proper person;
- 27.2 he currently does not serve as a member of a Board or Committee of the bank;
- 27.3 he has not been deprived of the right to sit on the Board or Committee of which he is or is to be a member;
- 27.4 he is not an employee of a state authority other than in a teaching capacity;
or
- 27.5 he is not related to an administrator of the bank by marriage, relation [of blood or kinship] up to the second degree, and he not is the foster brother [of an administrator of the bank].

Article 28 Disclosure of commercial interests

- 28.1 Each member of the Board of Supervisors, the Management Board and the Audit Committee shall disclose in full to the authorized Board or Committee the significant commercial interests that s/he or members of his household have, directly or indirectly. Such disclosures shall be made annually in accordance with guidelines adopted by the General Meeting of Shareholders.
- 28.2 Whenever any matter related to business interests of a member of the Board of Supervisors, the Management Board and the Audit Committee, with decision making authority, comes up for discussion, the member concerned shall provide complete information at the beginning of the discussion, shall not participate in the discussion and his presence shall not be counted as necessary for the purpose of constituting a quorum.

Article 29 Secrecy obligations

Present and past administrators and employees of a bank shall be required to keep secret, not to use for personal gain and not to permit to be examined by others unless required by law, any information that they obtained in the course of their services to the bank. Such information may be disclosed to the officers, staff and agents of Da Afghanistan Bank, including the inspectors, auditors, conservators and experts appointed by

Da Afghanistan Bank, other state authorities, and to judicial and justice departments assigned in accordance with the law or by a court of competent jurisdiction.

Article 30 Reorganization of banks

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

Article 31 Restrictions on qualifying holdings of banks

31.1 No bank may, without the authorization of Da Afghanistan Bank, acquire a participation in a legal entity that constitutes or increases a qualifying holding [of the bank in that legal entity] if:

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

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

31.2 Shares held temporarily during a financial transaction or rescue operation, or during the normal course of underwriting, or as a result of the realization of security given in the course of its operations, or in a bank's own name on behalf of others in trust shall not be counted as qualifying holdings for the purpose of calculating the limits specified in paragraph 1 of this Article. Shares acquired by the bank as described in this paragraph shall be sold or otherwise disposed of by the bank without delay, except for shares held by the bank in trust.

31.3 The authorization referenced in paragraph 1, may be acquired by submitting to Da Afghanistan Bank an application accompanied by documents showing:

- 1) a certified copy of the decision of the bank authorizing the planned acquisition;
- 2) the sizes of the qualifying holdings of the bank in other enterprises, including the qualifying holding that would result from the planned acquisition;

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

31.4 Within three months from the date of receiving an application, Da Afghanistan Bank shall issue the authorization in accordance with paragraph 3 of this Article. Exceptions are:

- 1) that the requirements of paragraph 3 of this Article have not been met;
- 2) that, if as a result of the planned participation a legal entity would become a subsidiary of the bank, one or more administrators of that entity are not fit and proper persons;
- 3) that the sound and prudent management of the planned participation will not be ensured or that the legal entity has engaged in criminal activities; [or]
- 4) that Da Afghanistan Bank cannot discharge its supervisory responsibilities because a non-resident enterprise which would be linked to the bank as a result of the planned acquisition is not effectively supervised in the country where its head office is located or because the supervisory authorities of that country do not cooperate with Da Afghanistan Bank.

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

31.6 If a bank acquires a participation without the prior written authorization of Da Afghanistan Bank and without adherence to this Article or fails to observe the period allowed by Da Afghanistan Bank, that bank shall be ordered by Da Afghanistan Bank in writing that, before a date stated in the

order, it must dispose of its qualifying holding or a part of its qualifying holding.

- 31.7 If, Da Afghanistan Bank determines that an enterprise in which a bank has a qualifying holding engages in criminal activities, threatens the sound and prudent management of the bank, is a bank that has lost its banking license, or is a non-resident bank that is not effectively supervised in the country where it has its head office or whose supervisory authorities do not cooperate with Da Afghanistan Bank, Da Afghanistan Bank may order the bank before a date stated in the order to sell or otherwise dispose of its qualifying holding or a part of its qualifying holding.

CHAPTER IV OPERATIONAL REQUIREMENTS

Article 32 General banking principles

- 32.1 Banks shall conduct their administration and operations in a sound and prudent manner and in accordance with the requirements of the law, any conditions and restrictions attached to their banking license or permits [issued by Da Afghanistan Bank], and the regulations, guidelines and orders issued by Da Afghanistan Bank.
- 32.2 Banks shall: maintain adequate capital and liquid resources; make adequate provision for depreciation of assets, for discharge of liabilities, and for covering risk of losses; maintain adequate accounting and other records of business; observe effective risk controls; and ensure that their assets are diversified to avoid loss.
- 32.3 Da Afghanistan Bank may by regulation prescribe standards and procedures of prudential supervision over banks.
- 32.4 Whenever the required capital of the bank is less than the capital required by law or by regulation of Da Afghanistan Bank, the director of the management board or an administrator of the bank shall promptly notify Da Afghanistan Bank thereof.
- 32.5 Da Afghanistan Bank may enact separate regulations to apply the provisions of this Chapter to branch offices of non-resident banks.

Article 33 Banking activities

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

- 33.1 receiving money deposits in the form of demand deposits, or other types of deposit or other repayable funds, bearing interest or not;

- 33.2 extending credits whether secured or not by collateral or liens, including: extending consumer and mortgage credit, without limitation; financing of commercial transactions, including purchasing negotiable instruments at discount without recourse; factoring, with or without recourse; and financial leasing services;
- 33.3 buying and selling for its own account or for account of customers including underwriting and brokerage services:
- money market instruments (including checks, bills of exchange, promissory notes and certificates of deposit);
 - foreign currencies,
 - precious metals and precious stones;
 - exchange and interest rate instruments;
 - stocks and other securities;
 - forward contracts, swap agreements, futures, options, and other derivatives relating to currencies
 - swap agreements
 - bonds.
- 33.4 entering into contingent commitments, including guarantees and letters of credit, for its own account and for the account of customers;
- 33.5 providing clearing, settlement and transfer services for money, securities, and payment instruments (including checks; credit, debit and other payment cards; travelers' checks; and bank drafts, wire transfers, and pre-authorized debits and credits);
- 33.6 money brokering;
- 33.7 safekeeping and administration of valuables, including securities;
- 33.8 providing services as portfolio manager of securities or as financial adviser or as financial agent;
- 33.9 providing financial information and credit reference services, including general market economy information; [and]
- 33.10 anything that shall be incidental to the foregoing (1-9).

Article 34 Prohibited activities

No bank shall engage in, as an agent, partner or co-owner, in wholesale or retail trade, manufacturing, transportation, agriculture or fisheries, mining, building, insurance or other business activities except for activities that are authorized by Article 33. With the prior written authorization of Da Afghanistan Bank, a bank may temporarily carry on or participate in the carrying on of such activities to the extent necessary to obtain satisfaction of claims; Da Afghanistan Bank may require the bank to cease such activities by a date specified.

Article 35 Prudential requirements

35.1 In accordance with regulations of Da Afghanistan Bank, each bank shall observe the maximum and minimum ratios, exposures, risk management and other prudential requirements to be maintained by it concerning its assets, off-balance sheet items and various categories of capital reserves. Such banks shall prescribe the common procedures and methods to be followed in calculation of these ratios. The regulations shall become effective after termination of the period of time necessary to afford the banks opportunity to adjust their assets or liabilities to comply with the regulations.

35.2 Banks shall observe the following requirements of Da Afghanistan Bank:

- 1) take necessary decisions concerning their available [liquid] resources in relation to the value or change in value of their assets (including guarantees and collateral received), or in relation to their liabilities; banks shall be permitted to meet such requirements by maintaining with Da Afghanistan Bank money deposits of an equivalent value;
- 2) take necessary decisions concerning the maximum aggregate amount of all or certain categories of their credits and investments;
- 3) Take necessary decisions, in response to exceptional circumstances, concerning the rate of interest, maturity and other conditions applicable to any type or form of financing extended or received (including deposits) or applicable to contingent liabilities;
- 4) take necessary decisions concerning the classification and evaluation of assets and other provisions [and]
- 5) compliance with prohibitions, restrictions or conditions concerning:
 - the types or forms of credits and investments made, and liabilities assumed (contingent or otherwise);

- matching; as to maturity and interest in respect of assets and liabilities; [and]
- unhedged positions, foreign currencies, precious metals or precious stones; exchange and interest rate instruments; stocks and other securities; and forward contracts, swap agreements, futures, options, and other derivatives relating to currencies, stocks, bonds, precious metals or interest rates, exceeding a specific ratio. **[Note – Original text numbers this paragraph "C"]**

35.3 Each bank shall ensure that the value of its regulatory capital, including its unimpaired capital and reserves, are equivalent to not less than 12 percent of the total value of its assets determined on a risk-adjusted basis, or such higher percentage as specified by regulations issued by Da Afghanistan Bank, whereby not less than one-half of regulatory capital shall consist of core capital.

35.4 No bank shall grant credit to a person if:

- 1) the aggregate outstanding principal amount of all its credits to that person would exceed the equivalent of fifteen percent, or such higher percentage as specified by regulations issued by Da Afghanistan Bank, of the bank's unimpaired capital and reserves; or
- 2) the aggregate outstanding amount of principal of loans, large credit risks, as defined in a regulation of Da Afghanistan Bank, would exceed the equivalent of two hundred percent, or such higher percentage as specified by regulations issued by Da Afghanistan Bank, of the bank's unimpaired capital and reserves.

35.5 The limitations specified in paragraph 4.2 shall not apply to any principal amount of credit that is fully secured by collateral and readily sellable in the market as defined by regulation of Da Afghanistan Bank; however, no bank shall grant such secured credit if as a result thereof the aggregate outstanding principal amount of all its secured credits to such person would exceed 15 percent of the bank's unimpaired capital and reserves, or such higher percentage as specified by regulations issued by Da Afghanistan Bank.

35.6 For the purposes of applying this Article a person shall be deemed to include any other person with whom such person is connected directly or indirectly in such a way that the financial soundness of any of them may affect the financial soundness of the other or others or the same factors may affect the financial soundness of some or all of them, or if as a result of the structure of their relationship the person is responsible for the credit outstanding.

Article 36 Relations between banks and their customers

- 36.1 The relations between banks and their customers shall be governed by agreements between them whose terms and conditions may not be abrogated unilaterally by one of the parties, unless provided otherwise by the agreements.
- 36.2 Each bank shall be free to determine by written agreements with its customers the terms and conditions on which it does business with its customers, including: rates of interest, fees and charges payable by the bank on bank account balances, or payable by its customers on credits and other financial services provided by the bank.
- The repayment terms of credits provided by banks, interest and other charges payable on any amount of debt to banks shall be payable only for the days on which such amount has been outstanding.
- 36.3 Bank shall provide to their customers adequate information concerning the terms and conditions associated with deposits, savings and bank credit in such form and substance as the regulations of Da Afghanistan Bank shall specify.
- 36.4 All disputes between domestic banks and their domestic customers, and all claims of domestic customers on non-resident banks on account of activities of domestic representative offices of the banks, shall be adjudicated by the relevant courts of Afghanistan, except for matters specifically within the jurisdiction of the Commission.
- 36.5 If Amounts on deposit in an account at a bank, including Da Afghanistan Bank, are subject to special rules, the accounts are considered dormant accounts. If an account holder has not evidenced any interest in the amounts on deposit by recorded transaction or written correspondence with the bank for ten years, on the first business day of the following calendar year the bank shall dispatch by registered post a notice to the account holder at his last known address containing particulars of the dormant account and publish in at least one local newspaper the name of the account holder and the particulars of the dormant account. Not less than thirty days after such notice and publication, if the account holder cannot be located, the bank shall make a detailed report to Da Afghanistan Bank and shall turn over the amount on deposit in dormant account to Da Afghanistan Bank, to be held in a special account at Da Afghanistan Bank. Da Afghanistan Bank may use the funds in such special account for such purposes as it may determine. In this case for a period of ten years any owner who, furnished to Da Afghanistan Bank satisfactory proof of ownership, is entitled to the immediate repayment of the amounts by Da Afghanistan Bank. After expiration of such period, any remaining

unclaimed amounts shall be transferred to the Ministry of Finance for inclusion in the revenues of the Government of Afghanistan.

Article 37 Payment of debt in advance of maturity

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

Article 38 Secured debt

- 38.1 Banks shall be free to require their clients to secure their respective obligations by collateral, guarantees or other commitments. No bank shall accept shares in its own capital stock as security for a debt to the bank without the prior written authorization from Da Afghanistan Bank.
- 38.2 In the event of a payment default on debt to a bank secured by a pledge of or a lien on movable goods, or by a mortgage on immovable or other registered goods, the movable and immovable goods may be sold by public auction or through a broker on a public exchange in accordance with law. The bank may participate in the bidding for the goods.
- 38.3 For the event that the goods cannot be sold by public auction or on a public exchange for a price that is at least equal to the amount of the debt together with sales costs, the interested parties may agree by a separate agreement to sell the goods in a different way, or failing such agreement the relevant court may decide at the request of any of the parties, that the goods shall be sold.
- 38.4 The bank may purchase the goods, in cases referred to in paragraph 3 of this Article.
- 38.5 After deduction of the amount of the outstanding debt and costs, and payment of debts owed to any other person to whom the goods are

pledged by the debtor, the balance [of the purchase price] shall be paid by the bank promptly to the owner [of the goods].

- 38.6 If the sales price of the goods net of costs is insufficient to cover the amount of the outstanding debt, the unpaid amount remains an obligation of the debtor to the bank.

Article 39 Records of transactions and commitments

39.1 Banks shall keep on file for at least ten years the pertinent documents for each one of their transactions, as follows:

- 1) the application and all contract documents pertaining to the transaction (including credit, guarantee and collateral agreements);
- 2) the financial records of the bank's counter parties (including borrowers and guarantors), and any other documentary evidence on which the bank relied in approving the transaction;
- 3) a signed written record of the decision of the bank approving the transaction;
- 4) the account agreements with its customers; [and]
- 5) such other documents as Da Afghanistan Bank may specify by regulation.

39.2 Records mentioned in paragraph 1 of this Article shall also be kept in electronic form.

Article 40 Bank credit to related persons

40.1 No bank may extend credit to a related person:

- 1) if the credit and its financial terms and conditions have not been approved by its Management Board or its Board of Supervisors; [or]
- 2) if the credit is granted to an administrator or employee of the bank and the credit would cause the aggregate amount of credit disbursed by the bank to that person and outstanding to exceed the equivalent of 35 percent of the annual remuneration of that person, or if the credit would cause the aggregate amount of credits disbursed to all related persons and outstanding to exceed 100% of the unimpaired capital and reserves of the bank.
- 3) the conditions of paragraph 2 of this Article shall not apply to any amount of loan or credit that is secured in compliance with standards prescribed by regulation of Da Afghanistan Bank or by a mortgage on immovable

property whose appraised value exceeds the principal amount of the credit by not less than one-third [of that principal amount]; [or]

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

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

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

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

Article 41 Prohibition on banking services in support of crime

41.1 No bank shall maintain accounts [on its books] or provide services to undisclosed persons.

41.2 Each bank shall register the identity of each one of its clients who opens an account in the bank or otherwise uses the bank for activities including transfers of funds or securities, securities transactions, or the negotiation of payment instruments, or such other activities as Da Afghanistan Bank shall specify by regulation. Each bank shall require each such client to provide adequate information to the bank about the identity of any other person who is a beneficiary of such account or for whose account such activities are conducted. Banks shall register the identity of each such other person and shall maintain proof of the identity of the persons so registered.

41.3 No bank shall maintain an account [on its books] or provide services to or for the benefit of a person, and each bank shall report to Da Afghanistan Bank any request or instruction to maintain such account or to provide such services.

CHAPTER V ACCOUNTS, REPORTS AND INSPECTION

Article 42 financial statements, and statistical reports

- 42.1 Banks shall maintain accounts and records, and prepare quarterly and annual financial statements, adequate to reflect in accordance with consistently maintained sound accounting practices their respective operations and financial condition, in accordance with regulation prescribed by Da Afghanistan Bank.
- 42.2 The financial statements of a bank shall reflect the operations and financial condition of its subsidiaries both on an individual and on a consolidated basis.
- 42.3 Each non-resident bank with one or more domestic branch offices or representative offices shall observe the requirements of this Article concerning development of separate accounts and records and pro forma financial statements for each such office.
- 42.4 All banks operating within the territory of Afghanistan must prepare and provide to Da Afghanistan Bank annual, quarterly, or more frequent reports covering monetary statistics, income and expense reports, nonperforming loans and loan losses and provisioning, foreign-currency positions, interest rates, and such other reports, in accordance with regulations of Da Afghanistan Bank and in accordance with internationally accepted statistical standards and practices. All nonbank financial institutions and agents operating in Afghanistan are also subject to this rule.
- 42.5 Da Afghanistan Bank shall compile and aggregate statistical information received from banks and other financial institutions as required to meet its policy needs for the public, and fulfill obligations to international organizations. Banks and other financial institutions and agents shall be obligated to prepare and provide to Da Afghanistan Bank information on specific transactions, individuals, or firms that are needed, [and] compilation of statistics concerning its supervisory, policy, and statistical functions.
- 42.6 Da Afghanistan Bank is prohibited from disseminating to the public statistical information and data that reveals the identity of individual persons or firms, unless already in the public domain. Otherwise, the perpetrator shall be punished in accordance with law.
- 42.7 Da Afghanistan Bank may provide information mentioned in paragraph 6 to supervisors or other authorities for the execution of supervisory duties if such supervisors and authorities are authorized in accordance with the laws or regulations on confidentiality of banking and financial records to receive such information.

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

Article 43 Independent external Audit

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

- 1) assist in maintaining proper accounting systems and procedures
- 2) assist in maintaining proper financial control and risk management systems and procedures;
- 3) prepare and present to the Board of Supervisors of the bank an annual report together with an audit opinion as to whether the financial statements present a full and fair view of the financial condition of the bank in accordance with the provisions of this Law;
- 4) inform Da Afghanistan Bank about any act by an administrator, employee or agent of the bank that constitutes a violation of a provision of this Law or any regulation issued by Da Afghanistan Bank; and
- 5) inform Da Afghanistan Bank about any irregularity or deficiency in [its] administration which results in a material loss for the bank.

43.2 Each domestic branch office or representative office of non-resident banks shall also observe the requirements of paragraph 1 of this Article.

Article 44 Publication of financial statements and auditor's report

44.1 Each bank shall, not later than three months after the end of each of its financial years, submit to Da Afghanistan Bank, and make available to its shareholders, and to the public when needed, its audited consolidated financial statements, together with the report of its external auditors.

44.2 Each non-resident bank with domestic branch office or representative office shall, not later than three months after the end of each of its financial years, submit to Da Afghanistan Bank, and make available to the public when needed, its audited financial statements prepared on a consolidated basis as well as pro forma financial statements, together with external reports prepared on a consolidated basis.

Article 45 Reports of inspection

- 45.1 Each bank shall prepare and submit to Da Afghanistan Bank reports concerning its administration and operations, availability of funds [liquidity], solvency, and profitability, and those of its subsidiaries. Such reports shall be prepared in such form and detail and shall be submitted at such intervals as shall be prescribed by regulation of Da Afghanistan Bank.
- 45.2 Each domestic bank and each of its subsidiaries shall be subject to inspections by inspectors of Da Afghanistan Bank or by auditors appointed by Da Afghanistan Bank. Such auditors may include employees of the authority of another country that is charged with the monetary or prudential supervision of banking activities in that country and undertakes the inspection of a domestic subsidiary, branch office or representative office of a non-resident bank whose head office is located in that country, or the inspection of a domestic bank that has a qualifying holding in such non-resident bank, or the inspection of a domestic bank in which such non-resident bank has a qualifying holding.
- 45.3 In their inspections pursuant to paragraph 2 of this Article, Da Afghanistan Bank and its auditors shall be authorized:
- 1) to enter any office of the bank or its subsidiary and to examine there the accounts, books, documents and other records of the bank or the subsidiary; [and]
 - 2) to obtain from administrators, employees and agents of the bank or its subsidiary information on any matter relating to the administration and operations of the bank or the subsidiary.
 - 3) Da Afghanistan Bank may, if necessary, require law enforcement officials to use force, to gain access to the accounts, books and other records of such bank or subsidiary to examine them.
- 45.4 Each domestic branch office and representative office of a non-resident bank shall prepare and submit to Da Afghanistan Bank reports concerning its administration and operations. The reports shall be prepared in such form and detail and shall be submitted at such intervals as shall be prescribed by regulation of Da Afghanistan Bank. Each domestic branch office and representative office of a non-resident bank shall be subject to onsite inspections by inspectors of Da Afghanistan Bank or by auditors appointed by Da Afghanistan Bank in accordance with the provisions of paragraphs 2 and 3 of this Article.
- 45.5 Each domestic bank and each of its subsidiaries, and its each domestic branch office and representative office, shall permit the inspectors of Da Afghanistan Bank and the auditors appointed by Da Afghanistan Bank to

enter [their premises] and shall cooperate fully with them in carrying out their duties.

- 45.6 Da Afghanistan Bank shall not be authorized to carry out inspections or to prepare reports or provide information at the request of persons or agencies except when requested by foreign bank regulators, and except as provided in this Law or ordered by an authorized court.
- 45.7 Da Afghanistan Bank may prepare a report of the inspection and within one month following completion of each inspection of a bank or its subsidiary, or of a branch office or representative office, send a copy of the report to the bank or the office.

CHAPTER VI ENFORCEMENT MEASURES

Article 46 Preventive action

- 46.1 Whenever Da Afghanistan Bank has reasonable cause to believe that the solvency or the liquidity of a bank [is threatened] because the bank has conducted its administration or operations in an unsound or imprudent manner or otherwise violated a law, or a regulation or order of Da Afghanistan Bank, or any condition or restriction attached to a license, permit or authorization issued to the bank by Da Afghanistan Bank, or faces the risk, Da Afghanistan Bank must notify the bank in writing of its finding and issue a written warning to the bank.
- 46.2 If Da Afghanistan Bank determines that the bank fails to heed the warning provided in paragraph 1 of this Article, Da Afghanistan Bank must order the bank in writing to present to Da Afghanistan Bank, within two weeks of the date of the order, a plan of action to prevent such violation.
- 46.3 If the bank fails to present the plan referred to in Paragraph 2 of this Article in time or if Da Afghanistan Bank determines that the plan presented by the bank is inadequate or if, subsequently, the bank fails to execute the plan, Da Afghanistan Bank may order the bank to take prompt preventive action.

Article 47 Plan to take corrective action

- 47.1 Whenever Da Afghanistan Bank finds that the solvency or the liquidity of a bank is threatened because the bank conducts its administration or operations in an unsound or imprudent manner or is in violation of a law, or a regulation or order of Da Afghanistan Bank, concerning any condition or restriction attached to a license, permit or authorization issued to the bank by Da Afghanistan Bank, Da Afghanistan Bank must notify the bank in writing of its finding and give the bank an order to submit to Da

Afghanistan Bank, within such period of time as may be specified, a written plan of corrective action that identifies the existing weaknesses in the administration or operations of the bank, determines in detail the corrective measures required to remedy such weaknesses, offers a realistic time table for taking such measures, and estimates the effects of the measures on the administration, operations and financial condition of the bank during the execution of the plan.

- 47.2 Upon receipt of the plan referenced in paragraph 1 of this Article, Da Afghanistan Bank shall invite the members of the Management Board and the members of the Board of Supervisors of the bank, if it concerns a domestic branch office of a non-resident bank, the managers of that branch office, to a hearing where the plan and its execution are discussed; Da Afghanistan Bank may invite some or all owners of the bank to participate in the hearing. The hearing shall be concluded when a plan acceptable to Da Afghanistan Bank is adopted. Thereafter, the bank shall carry out the plan, in close consultation with Da Afghanistan Bank, which may be modified, if necessary, with the prior written authorization of Da Afghanistan Bank.

Article 48 Procedures to take prompt corrective action

- 48.1 Da Afghanistan Bank must notify the bank in writing [of its finding] and must order the bank to take prompt corrective action to ensure compliance with the provisions of this law within a period of time specified in the order whenever Da Afghanistan Bank finds,:
- 1) that a bank fails to carry out a plan of corrective action adopted pursuant to Article 47; [or]
 - 2) that upon availability of liquid funds and payment of debts, the bank is threatened because the bank conducts its administration or operations in an unsound or imprudent manner
 - 3) that the bank is in violation of a law, or a regulation or order of Da Afghanistan Bank, or any condition or restriction attached to a license, permit or authorization issued by Da Afghanistan Bank, and that corrective action is urgently required,
- 48.2 Together with an order issued to a bank pursuant to paragraph 1, Da Afghanistan Bank may:
- 1) impose on the bank a fine up to the equivalent of one percent of the official and paid-in capital of the bank;
 - 2) order the bank to engage an external auditor to audit its affairs, at the expense of the bank, who shall be acceptable to Da Afghanistan Bank;

- 3) order the bank to do all or any of the following:
 - remove an administrator, officer or employee of the bank from office;
 - ensure that an administrator, officer or employee of the bank does not take part in the management or conduct of the business of the bank except as permitted by Da Afghanistan Bank;
 - appoint a person or persons acceptable to Da Afghanistan Bank as administrator of the bank for such term as the order specifies;
 - 4) order the bank not to give any financial benefit to any person;
 - 5) order the bank not to accept the deposit of any amount;
 - 6) order the bank not to provide any loan;
 - 7) order the bank not to accept any payment on account of share and capital;
 - 8) order the bank not to repay any amount from shares;
 - 9) order the bank not to pay any dividend on shares;
 - 10) order the bank not to provide credit or repay any money;
 - 11) order the bank not to pay or transfer [any amount] to any person,
 - 12) order the bank not to create an obligation (contingent or otherwise) to pay or transfer the amount mentioned in 2.11 of this Article;
 - 13) order the bank not to undertake any financial obligation (contingent or otherwise) on behalf of any other person;
 - 14) order the bank not to increase the unencumbered equity capital of the bank; [or]
 - 15) order the bank not to make any change to the administrative procedures of the bank.
- 48.3 Without limiting its generality, an order referred to in paragraph 2 may:
- 1) deal with some or all of the matters referred to in that paragraph;
 - 2) deal with a particular class or particular classes of those matters;
- 48.4 Da Afghanistan Bank shall regulate and issue specific guidelines regarding the use of the extraordinary measures set out in sub-paragraphs 10 and 11 of paragraph 2 of this Article.

Article 49 Hearings

- 49.1 When Da Afghanistan Bank decides that an order shall be given to a bank pursuant to Article 46, Article 47 or Article 48, Da Afghanistan Bank shall serve the bank with a notice of charges concerning a violation or a threat of violation of this law, regulations or order of Da Afghanistan Bank, and scheduling a hearing that will be held to determine whether or not the proposed order should be given to the bank. The first session of the hearing shall be scheduled for a date not earlier than two weeks or later than four weeks after the date of service of the notice. Subsequent sessions may be scheduled by Da Afghanistan Bank by notice to the bank; the date and place of each session shall be notified to the bank in writing not less than two weeks before that date, unless the bank otherwise agrees. The hearing shall conclude when after a session Da Afghanistan Bank advises the bank that no further sessions are needed.
- 49.2 Unless the bank appears at the hearing by a duly authorized representative, it shall be deemed to have consented to the proposed order, in which case the proposed order may be given and served upon the bank.
- 49.3 Within one week after conclusion of the hearing, Da Afghanistan Bank shall decide whether or not an order shall be given and shall notify the bank [of its decision] in writing. If it is decided that an order shall be given, the order shall be promptly issued and served upon the bank together with the text of the decision.

Article 50 Temporary order

- 50.1 Da Afghanistan Bank shall give a temporary order before or during the hearing in accordance with Article 49, based on the grounds that:
- 1) the bank suffers from or is threatened by a decrease of its capital to less than 75 percent of the capital required by law or by regulation of Da Afghanistan Bank; [or]
 - 2) the books or records of the bank are so incomplete or inaccurate that Da Afghanistan Bank is unable, through the normal supervisory process, to determine the financial condition of the bank or the details of any transaction that may have a material effect on the financial condition of the bank;
- 50.2 Each temporary order takes [immediate] effect when it is served and shall be fully complied with during the hearing; a temporary order terminates when it is officially declared to be rescinded by Da Afghanistan Bank or When Da Afghanistan Bank gives another order pursuant to Article 46, Article 47 or Article 48.

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

Article 51 Issue, effect and termination of orders

- 51.1 Each order or temporary order given to a bank pursuant to this Law shall be in writing and shall include the actions that the bank is ordered to take. Each such order or temporary order may specify the time by which, or period of time during which, it is to be complied with.
- 51.2 Each such order or temporary order given to a bank shall be served upon the head office of the bank; if the orders and temporary orders are concerning a domestic branch office or representative office of a non-resident bank, they may be served upon that office. Each such order or temporary order shall be accompanied by a copy of the text of the decision of Da Afghanistan Bank to give the order or temporary order, stating the grounds for the order or temporary order, reasons why the order or temporary order is given, and the provision of the law authorizing Da Afghanistan Bank to give the order or temporary order.
- 51.3 Any order issued to a bank by Da Afghanistan Bank, that is not an order that the bank has consented to, may be submitted to the Commission for review within thirty days from the date of service of the order upon the bank.
- 51.4 Each such order or temporary order enters into force at the time of its service upon the bank, unless it specifies a later date for its effectiveness. The order or temporary order remains in effect and shall be fully complied with until it terminates in accordance with its terms, or it is replaced by another order or temporary order of Da Afghanistan Bank, or it is annulled upon review by a decision of the Commission, or it is rescinded by Da Afghanistan Bank by notice in writing to the bank. Da Afghanistan Bank shall rescind an order or temporary order whenever it is no longer necessary.
- 51.5 An order or temporary order by Da Afghanistan Bank overrides any provision of the charter of the bank, any license, permit or authorization issued to the bank by Da Afghanistan Bank, and any contract or arrangement to which the bank is a party, whether taking effect before or after the order or temporary order, if such provision presents an impediment to compliance with the order or temporary order; however, an order not to pay or transfer any amount to any person referred to in paragraph 2 of Article 48 , or the payment or transfer of money pursuant

to an order of a court or a process of execution shall be an exception to this rule.

Article 52 Authority of Da Afghanistan Bank concerning temporary and permanent orders

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

CHAPTER VII CONSERVATORSHIP

Article 53 Grounds for appointment of a conservator

53.1 Da Afghanistan Bank must appoint a conservator for a bank when Da Afghanistan Bank determines that:

- 1) the bank is not paying its debts as they fall due;
- 2) the required capital of the bank is less than 75 percent of the capital required by regulation of Da Afghanistan Bank;
- 3) the value of the assets of the bank is less than the value of the liabilities of the bank.
- 4) a petition is submitted for opening bankruptcy proceedings against the bank;
- 5) the voluntary liquidation of a bank is completed by a conservator pursuant to paragraph 3 of Article 62;
- 6) there is evidence that the bank has engaged in criminal activities or there is reasonable cause to believe that the bank is engaging in criminal activities; or
- 7) it is likely that the banking license of the bank is to be revoked.
- 8) Da Afghanistan Bank determines that the bank fails to carry out an order given [to the bank by Da Afghanistan Bank].

53.2 **[Note – Original text includes no paragraph "53.2"]**

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

53.4 The provisions of this Chapter shall apply to the domestic branch offices and domestic representative offices of a non-resident bank.

All assets, liabilities, acts and omissions of the non-resident bank resulting from or otherwise relating to the information of any such office shall be attributed to that single domestic bank in applying the provisions of this chapter.

Article 54 Appointment of a conservator

54.1 Conservators shall be appointed by Da Afghanistan Bank.

54.2 Persons who would be ineligible to serve as an administrator of a bank pursuant to Article 27 shall not be eligible to serve as conservator for that bank. If conservator becomes ineligible to serve, he shall be replaced by Da Afghanistan Bank.

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

54.4 The [decision] appointing a conservator or extending the term of appointment of a conservator shall be in writing, which shall specify the reasons for appointment and the principal duties. Such decision is served on the bank and is recorded in the register of the bank.

Article 55 Effects of the appointment of a conservator

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

55.2 Da Afghanistan Bank shall have all the powers of the General Meeting of Shareholders, except that the powers specified in sub-paragraphs 6) and 14) of paragraph 1 of Article 23 may be exercised only in circumstances and on terms and conditions that have been approved by the Commission at the request of Da Afghanistan Bank.

55.3 Appointing a conservator for a bank suspends the powers of the administrators of the bank. The conservator may delegate to other persons, including administrators and employees of the bank, some of his powers, unless Da Afghanistan Bank decides otherwise. In the absence or inability of the conservator to act, Da Afghanistan Bank may exercise the powers of the conservator.

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

55.5 A conservator shall be accountable only to Da Afghanistan Bank for the performance of his duties and for the exercise of his powers as conservator. He shall be subject to the duties, rules and instructions given [to him] by Da Afghanistan Bank and the Commission.

Article 56 Taking control of the bank

56.1 Upon his appointment, the conservator shall take control of the bank and secure the assets, books and records of the bank.

56.2 The conservator shall be authorized to have control over the assets, the offices, and the books of account and other records of the bank. Immediately upon the request of a conservator, law enforcement officials shall, if necessary by use of force, assist the conservator to gain access to the premises of the bank and to gain control over and to secure the assets, books and records of the bank.

Article 57 Notice of review and appeal

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

57.2 Upon the timely receipt of such representations, Da Afghanistan Bank shall review the appointment of the conservator in light of the written representations and shall present the grounds for its decision to the Chairman of the Board of Supervisors of the bank.

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

57.4 The parties (Da Afghanistan Bank and the head of Management Board of the bank) may present their objections against decisions of one another, within 30 days of the date the decision is served, to the Commission for review. The decision by Da Afghanistan Bank to appoint the conservator shall stay in full force and effect until a decision is taken by the Commission.

Article 58 Report of the conservator and plan of action

- 58.1 The conservator shall prepare and present to Da Afghanistan Bank a report on the present financial condition and future prospects of the bank, which shall include an assessment of the amount of assets to be realized in a likely liquidation of the bank. The conservator may prepare the report with the assistance of an external auditor.
- 58.2 The report of the conservator shall be accompanied by a proposed plan of action that shall discuss the relative costs and benefits associated with:
- 1) returning the bank to compliance with the law by carrying out a plan of corrective action;
 - 2) rehabilitation of the bank under the procedure set forth in Article 61;
 - 3) completion of a voluntary liquidation under Article 62, or revocation of the banking license and forced liquidation of the bank in accordance with the provisions of Article 63; [and]
 - 4) opening of bankruptcy proceedings against the bank.

Article 59 Moratorium

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

Article 60 Termination of conservator ship

- 60.1 The appointment of a conservator shall terminate upon:
- 1) completion of his term specified in the decision appointing the conservator or in the decision last extending the term of the conservator;
 - 2) a decision of Da Afghanistan Bank to that effect; [or]
 - 3) appointment of a receiver by the Commission pursuant to Article 72.
- 60.2 Upon termination of the appointment of a conservator as described in subparagraph 1) or 2) of paragraph 1 of this Article, the conservator shall immediately return control of the bank and its assets, books and records to the Management Board of the bank.

CHAPTER VIII REHABILITATION OF BANKS

Article 61 Rehabilitation procedures

- 61.1 Da Afghanistan Bank may, prepare a proposal with the concurrence of the Ministry of Finance, to be submitted the President of the State that the stability of the banking system of Afghanistan requires the rehabilitation of the bank for which the conservator has been appointed.
- 61.2 The proposal of Da Afghanistan Bank to rehabilitate a bank shall be accompanied by a rehabilitation plan prepared by Da Afghanistan Bank in consultation with the conservator. The plan shall identify the existing weaknesses in the administration or operations of the bank, offer realistic measures, and provide a financing plan for the rehabilitation of the bank. The plan shall review and evaluate strategies for transferring the core business of the bank to another bank authorized by Article 78 and shall prescribe measures that preclude the abuse by bank owners.

CHAPTER IX LIQUIDATION OF BANKS

Article 62 Voluntary liquidation

- 62.1 A bank may be liquidated at the decision of its owners, upon presentation of an application pursuant to Article 15 of this law. The liquidation shall be carried out by the bank, in compliance with the rules of paragraphs 3 and 4 of Article 64 of this law and under supervision of Da Afghanistan Bank.
- 62.2 The bank shall provide Da Afghanistan Bank with such documents and information as Da Afghanistan Bank shall request and shall grant the staff of Da Afghanistan Bank access to the buildings, books and records of the bank whenever Da Afghanistan Bank decides that such access is required to discharge its supervisory responsibilities.
- 62.3 If the bank fails to comply with the provisions of paragraph 1 and 2 of this Article, Da Afghanistan Bank shall appoint a conservator who shall complete the liquidation of the bank under the supervision of Da Afghanistan Bank.

Article 63 Forced liquidation

- 63.1 Da Afghanistan Bank shall decide concerning revocation of the banking license of a bank, pursuant to Article 14 of this law, against which no bankruptcy proceedings have been opened, in accordance with the procedures prescribed by this Article after a conservator is appointed. Da Afghanistan Bank shall arrange for the publication of the decision by

notice in at least one formal newspaper of general circulation in the country.

63.2 From the time of the decision referenced in paragraph 1 of this Article, the following shall apply:

- 1) all acts performed by the bank are void and unenforceable, except for acts performed by or by authority of the conservator for the bank, acts deemed beneficial to the estate of the bank by the conservator and ratified by the conservator, and money and securities transfer orders covered by Article 77 of this law;
- 2) all existing conservatory attachments and attachments in aide of execution resting on assets of the bank are lifted;
- 3) the assets of the bank shall be immune from attachment and execution, except for assets encumbered by a mortgage or lien to the extent of the debt secured by such encumbrance; and
- 4) no bankruptcy proceeding may be opened against the bank.

63.3 The liquidation shall be carried out by the conservator as receiver under supervision of Da Afghanistan Bank and the Commission, in accordance with Article 79 and Article 92 of this Law.

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

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

63.6 The provisions of this Article shall apply to the domestic branch offices and representative offices of a non-resident bank as if all these offices together form a single domestic bank.

63.7 The non-resident bank shall be treated as both the Management Board and the General Meeting of Shareholders of the single bank. Regarding all assets, liabilities, acts and negligence of the non-resident bank resulting from or otherwise relating to the business of any such office, the provisions of this Article shall apply.

CHAPTER X RECEIVERSHIP OF BANKS

Article 64 General bankruptcy law does not apply to banks

Neither the Law of Bankruptcy nor shall any other related legislative documents apply to banks.

Article 65 Opening bankruptcy proceedings

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

- 1) the bank is not paying its financial obligations as they fall due;
- 2) The capital of the bank is less than 75 percent of the capital required pursuant to paragraph 3 of Article 35 of this law;
- 3) The value of the assets of the bank is less than the value of the liabilities of the bank.

Article 66 Petition for opening bankruptcy proceedings

66.1 Petitions for opening bankruptcy proceedings against a bank shall be submitted in writing to the Commission.

66.2 No petition for opening bankruptcy proceedings against a bank may be granted by the Commission unless:

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

Article 67 Appointment of conservator

67.1 As soon as the situation referenced in Article 66, paragraph 2 is realized, a conservator shall be appointed by Da Afghanistan Bank pursuant to Article 56 on the ground that the bank is not paying its financial obligations as they fall due.

67.2 The conservator appointed in accordance with Article 56 of this law shall action in accordance with Article 56 of this law. The provisions of Article 57 of this law shall not apply to the conservator.

67.3 The decisions of Da Afghanistan Bank appointing a conservator shall not be subject to review by the Commission.

Article 68 Grounds for rejection of petition

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

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

Article 69 Grounds for rejection of petition

69.1 A petition for opening bankruptcy proceedings against a bank must be rejected by the Commission if:

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

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

- 1) Da Afghanistan Bank has determined that no statutory ground for opening bankruptcy proceedings against the bank applies; the Commission may require Da Afghanistan Bank to produce evidence supporting its determination, including financial statements of the bank certified by Da Afghanistan Bank;
- 2) Da Afghanistan Bank shows to the Commission that, before the application for opening bankruptcy proceedings against the bank was served upon Da Afghanistan Bank, the banking license of the bank had been revoked and a conservator had been appointed to liquidate the bank; [or]
- 3) Da Afghanistan Bank submits to the Commission a decision of the President of Afghanistan in accordance with Article 61 that the stability of the banking system of Afghanistan requires the rehabilitation of the bank.

69.3 At its request, Da Afghanistan Bank shall be granted two weeks by the Commission in which to submit such evidence or decision, before the Commission rules on the petition. Otherwise, the Commission may reject a petition for opening bankruptcy proceedings against a bank only if:

- 1) the petition does not fulfill the conditions required by Article 66, paragraph 2 of this law;
- 2) any document or other evidence submitted to the Commission in support of the petition is false or inaccurate; [or]
- 3) the bank demonstrates to both the Commission and Da Afghanistan Bank that payments of supplemental subscriptions to the capital of the bank have been received by the bank in immediately available funds sufficient to eliminate the grounds for opening bankruptcy proceedings against the bank under Article 65 of this law.

Article 70 Rejection of frivolous petitions

70.1 After the filing of a petition for opening bankruptcy proceedings against a bank by creditors of the bank, the Commission may reject the petition in writing, before or after a hearing, on the ground that the petition is frivolous, in which case the Commission may order the petitioner to pay costs to Da Afghanistan Bank resulting from the filing of the petition.

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

Article 71 Forced liquidation if bankruptcy petition is rejected

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

Article 72 Bankruptcy decision

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

Article 73 Service and publication of bankruptcy decision

The decision for accepting or rejecting a petition for opening, bankruptcy proceedings against a bank, shall be served by the Commission on Da Afghanistan Bank and the Commission shall arrange for publication of the decision in at least one official newspaper of general circulation in the country.

Article 74 Receiver

- 74.1 The receiver appointed by a decision of the Commission opening bankruptcy proceedings against a bank may be the person acting as conservator pursuant to Article 54 of this law. The Commission may appoint another person to act as receiver pursuant to paragraph 2 of Article 54. The Commission shall specify the remuneration and the other terms and conditions of employment of the receiver. The other costs incurred on account of the receiver shall be paid from the assets of the bank for which the receiver is appointed.
- 74.2 Da Afghanistan Bank shall pay all remaining expenses incurred by the receiver on account of the receivership to the extent that the authorized expenses exceed the assets of the bank available to meet such expenses.
- 74.3 Receivers shall carry out their activities under the direction and supervision of the Commission in consultation with Da Afghanistan Bank in accordance with Article 95 of this law. The Commission, on the appointment of the receiver, shall specify and provide written order and list of activities which the receiver shall undertake. The receiver may apply to the Commission for directions as needed, in accordance with this Law.
- 74.4 A receiver may employ at the expense of the bank for which the receiver has been appointed such independent attorneys, accountants and other specialists, on such terms and conditions, as the Commission shall approve.
- 74.5 Upon the resignation, death or incapacity to act of the receiver, Da Afghanistan Bank may temporarily replace the receiver with another person until a new receiver has been appointed by the Commission.
- 74.6 The Commission may replace the receiver if the receiver is no longer eligible to serve as a conservator pursuant to Article 54, paragraph 2.
- 74.7 Persons appointed by the Commission to replace a receiver shall be selected from a list of candidates submitted to the Commission by Da Afghanistan Bank.

74.8 Whenever a new receiver is appointed, the person replacing the receiver shall succeed to the powers of the receiver, and the books, records and assets of the bank in the custody of the receiver shall be transferred into the custody of that person.

Article 75 Powers of the receiver

Upon appointment, the receiver becomes the sole legal representative of the bank, and succeeds to all rights and powers of the shareholders of the bank relating to their shares of capital stock of the bank, the Board of Supervisors of the bank, and the Board of Management of the bank including the power to operate and to liquidate the bank. Claims against the bank are served on the receiver for the bank.

Article 76 Effect of bankruptcy decision

76.1 The decision of the Commission opening bankruptcy proceedings against a bank shall take effect at the time that the decision is taken.

76.2 Acts performed by or on behalf of the bank after the bankruptcy decision takes effect are legally void and unenforceable, except for acts performed by or by authority of the receiver for the bank and acts deemed beneficial to the estate of the bank by the receiver and ratified by the receiver.

76.3 As a result of the bankruptcy decision, all current judicial proceedings against the bank are stayed; and no new judicial proceeding against the bank shall commence, except with the leave of the Commission and subject to such terms as the Commission imposes.

76.4 As a result of the bankruptcy decision, all conservatory attachments and attachments in aid of execution resting on assets of the bank are lifted. Attachments placed and acts of execution performed after the bankruptcy decision takes effect shall be void, except for execution in accordance with the provisions of Article 85 of assets encumbered by a mortgage or lien to the extent of the debt secured by such encumbrance.

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

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

76.7 All legal acts of the bank that would damage the interests of creditors of the bank, are done within three months before the time of the decision whereby bankruptcy proceedings, and the bank and its counterparty in the act knew about the act are opened against the bank shall upon application of the receiver be declared null and void by the Commission when:

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

Article 77 Finality in payment and securities settlement systems xxx

77.1 Notwithstanding the provisions of Article 55. 4, Article 63.2.1, Article 76.2 and 76.7.2 and 76.7.3 of this law:

- 1) irrevocable money and securities transfer orders entered by a bank into a payment or securities settlement system recognized as such by Da Afghanistan Bank shall be legally enforceable and binding on third parties, even in the event of a decision of the Commission opening bankruptcy proceedings against the bank; [or]
- 2) where a bank enters irrevocable money or securities transfer orders into a payment or securities settlement system on the day that a decision opening bankruptcy proceedings against the bank takes effect, the transfer orders shall be legally enforceable and binding on third parties, unless the receiver proves that the system operator was aware of the bankruptcy decision before he agreed to the irrevocable transfer orders.

77.2 The transfer orders entered in the money payment or securities settlement system shall be irrevocable at that time in accordance with the rules of that system.

77.3 contracts and transactions concluded before the Commission decision opening bankruptcy proceedings against a bank takes effect shall be enforceable and no case shall cause the unwinding of a netting by a

payment or securities settlement system recognized as such by Da Afghanistan Bank.

For the purposes of this Article, "netting" means the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants in a settlement system either issue to, or receive from, one or more other participants in that system.

Article 78 Transfers of bank shares and bank liabilities

78.1 At the request of Da Afghanistan Bank, in the interest of the banking system and to maximize the value of a bank for its creditors, the Commission may direct the receiver for the bank on terms and conditions proposed by Da Afghanistan Bank and approved by the Commission to do transactions providing for:

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

78.2 A transaction pursuant to paragraph 1 may be requested by the bank and authorized at any time after the filing of a petition for opening bankruptcy proceedings against the bank and its liquidation.

78.3 A transaction authorized pursuant to paragraph 2 of this Article shall require the consent of the bank or of its corporate organs. During review, the Commission shall take into account the request of the receiver to get instruction concerning transferring a part of the obligations of the bank whereby the interests of some creditors would be excluded. A transfer of liabilities shall become effective for all interested parties on the day following the day of publication of a notice of the transfer.

Article 79 Asset and Property report

79.1 Within two weeks from the date of the Commission decision opening bankruptcy proceedings against a bank, the receiver shall submit to the Commission an asset and property report listing:

- 1) the assets of the bank, including claims of the bank on account of unpaid subscriptions of capital stock of the bank, loan and guarantee agreements, and agreements of purchase or sale, as well as the book values and estimated liquidation values of the assets;
- 2) the contracts pursuant to which property of the bank is held by the counter parties, including rental, lease and collateral agreements;

- 3) the contracts pursuant to which the bank receives services; [and]
- 4) the significant transactions entered into by the bank during the period of thirty days immediately preceding the date of the bankruptcy decision.

79.2 The report provided in paragraph 1 of this Article shall be updated quarterly and shall be made available to the creditors of the bank whose claims are included on the list of approved claims prepared pursuant to Article 81 of this law.

Article 80 Registration of claims

80.1 Except as provided in Article 81, paragraphs 1 and 2, claims on a bankrupt bank must be registered with the receiver in writing within two months from the date that the Commission decision opening bankruptcy proceedings against the bank is published; the Commission may once extend this term for [all] creditors by one month. Creditors shall be given a registration receipt upon request.

80.2 Claims shall be registered together with documentary evidence of the claim and the following information:

- 1) the name and address of the creditor;
- 2) the amounts of interest and other charges, penalties and taxes included in the principal amount of the claim; [and]
- 3) details concerning any mortgage, lien or guarantee securing the claim, including the name and address of any guarantor.

80.3 The decision of the Commission opening bankruptcy proceedings against a bank suspends the prescription of claims on account of deposits recorded in the books or records of the bank. The claims must be registered with the conservator for validity. The prescription of all other claims is suspended by their registration with the conservator.

Article 81 Admission of claims

81.1 Only claims that are registered in accordance with Article 80 may be admitted, except that claims on account of deposits recorded in the books or records of the bank and claims for the bank's employees' unpaid salaries (exclusive of bonuses, amounts due upon severance, or any other payment due the bank's employees in excess of their base salaries) shall be admitted for the amounts so recorded without registration.

81.2 Claims recorded in the books or records of the bank by the receiver shall be admitted without further proof. Claims registered for an amount that is

less than the amount recorded by the bank shall be admitted only for the lesser amount.

- 81.3 Creditors of the bank with claims secured by a mortgage or lien resting on assets of the bank may register their claims for the amount by which the amount of the claim exceeds the expected sales value of the asset in a similar auction. Any claim so registered shall not be admitted unless title to the asset has been otherwise transferred pursuant to Article 85 of this law.
- 81.4 Claims whose value is uncertain may be admitted for a value estimated by the receiver.
- 81.5 After examining the registered claims, the receiver shall record the claims admitted by him on a list of admitted claims and the claims contested by him on a separate list specifying the reasons for his opposition. The mentioned lists shall for each claimant specify name and address, the amounts of his claims, and whether the claims are secured by collateral; claims of equal ranking shall be listed together, in the order of their priority of payment.
- 81.6 The lists mentioned in paragraph 5 of this Article shall be completed and submitted to the Commission for approval within thirty days from the deadline for claims. The receiver shall submit quarterly updated lists to the Commission for approval. Before approving the lists, the Commission may move claims from one list to the other in consultation with the receiver. The Commission may specify the evidence required for the approval of contested claims.
- 81.7 The Commission shall set dates for hearings where creditors whose claims are contested may submit evidence to prove their claims to the receiver and the Commission, provided that such hearings shall be held not later than sixty days after the date on which the list of contested claims is submitted to the Commission. Creditors shall be notified only once of the date of each hearing by mail (which may include electronic mail) and by notice published by the receiver. Claims for which the creditor fails to appear at the hearing of which he has been notified by mail shall be regarded as rejected. Creditors whose claims have been rejected shall be notified by the receiver in writing.
- 81.8 The approval by the Commission of claims shall be final. Claims approved by the Commission shall be recorded on a list kept by the receiver. Creditors whose claims have been approved by the Commission shall be notified by the receiver in writing.
- 81.9 No payment shall be made by the receiver on account of claims that are rejected by the Commission. The creditor whose claim has been rejected

by the Commission may appeal the decision of the Commission within two weeks after the date of receipt of notice of the decision.

Article 82 Set off and netting

82.1 No decision made under this Law shall prevent the set off by operation of law of obligations between a bankrupt bank and its counterparty.

82.2 In determining the rights and obligations between a bankrupt bank and its contractual counterparty, effect shall be given to the termination and set off provisions of eligible financial contracts between them. The net termination value determined in accordance with an eligible financial contract between them shall be a claim of the bank on the counterparty or shall be admitted after its registration as a claim of the counterparty on the bank.

“net termination value” means the net amount obtained after setting off the mutual obligations between the parties to an eligible financial contract.

“eligible financial contract” means any of the following agreements:

- 1) a currency or interest rate swap agreement;
- 2) a basis swap agreement;
- 3) a spot, future, forward or other foreign exchange agreement;
- 4) an agreement providing for a cap, collar or floor transaction;
- 5) a commodity swap agreement;
- 6) a forward rate agreement;
- 7) a repurchase or reverse repurchase agreement;
- 8) a spot, future, forward or other commodity agreement;
- 9) an agreement to buy, sell, borrow or lend, securities, to clear or settle securities transactions or to act as a depository for securities;
- 10) any derivative, combination or option in respect of, or agreement similar to, an agreement referred to in sub-paragraphs 1 to 9 of this paragraph;
- 11) any master agreement in respect to an agreement referred to in sub-paragraphs 1 to 10 of this paragraph;
- 12) a guarantee of the liabilities under an agreement referred to in sub-paragraphs 1 to 11 of this paragraph; [and]

13) any agreement prescribed by regulation of Da Afghanistan Bank.

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

Article 83 Termination of current contracts

All current contracts or portions of contracts of a bankrupt bank for the delivery of goods or services, including contracts of sale, rental and lease contracts, hire purchase contracts and employment contracts, may be terminated unilaterally by the receiver within a reasonable time after the petition for opening bankruptcy proceedings has been granted, provided that the counterparty of the bank shall have registered a claim for compensation for breach of contract.

Article 84 Negotiated settlements

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

Article 85 Secured claims

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

- 1) securities, foreign currencies and other assets that can be readily sold at market may be sold in the markets where they are traded;
- 2) securities, foreign currencies and other assets of the bank that secure debts of the bank and that can readily be sold at market may be sold by the creditors holding the assets;

85.2 if the receiver determines that no reasonable price can be obtained for assets in a public auction, the Commission shall authorize the receiver to sell the assets privately at a price approved by the Commission.

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

85.4 Any dispute between the receiver and a secured creditor as to the value of an asset securing a claim shall be resolved by the Commission. In the

event that the asset is sold at market or at public auction, the sales price at market or at public auction shall be conclusive as to the value of the asset.

Article 86 Priority of payments

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

- 86.1 the claims on account of deposits that are not in the form of debt securities up to a maximum amount of 20,000 afghanis per depositor;
- 86.2 all costs and expenses on account of the administration of the bankruptcy;
- 86.3 liabilities of the bank on account of conservatorship and rehabilitation;
- 86.4 taxes due over a period of not more than two years preceding the date of the bankruptcy decision; and
- 86.5 unsecured claims of creditors, including claims of employees concerning their main salaries that are outstanding.
- 86.6 Remaining assets shall be transferred to the owners of the bank pro rata to their respective ownership shares.

Article 87 Liquidation plan

- 87.1 Within three months from the date of the decision of the Commission opening bankruptcy proceedings against a bank, the receiver shall prepare and submit to the Commission for its approval a detailed liquidation plan for the bank. The plan shall include:
 - 1) a current pro forma balance sheet showing the assets and liabilities of the bank valued at their estimated liquidation value and a pro forma balance sheet of the expected assets and liabilities of the bank at a date about three months later; the balance sheets shall show liabilities as admitted claims of creditors as well as approved claims and contested claims of creditors;
 - 2) quarterly statements of past and projected income and expenses of the bank;
 - 3) a progress report on the sale and on plans for the sale of major assets or groups of assets of the bank;
 - 4) a report on the judicial or extrajudicial pursuit of claims of the bank, including court action to obtain annulment of fraudulent agreements and the transfers made and rights created by them;

- 5) a report on illegal activities and actions of administrators of the bank to inflict losses on the bank;
 - 6) a report on the continuation or termination of ongoing contracts, such as insurance, employment and service contracts of the bank, including a detailed analysis of financial provisions for bank employees;
 - 7) a report on the liabilities of the bank and a schedule of expected payments to creditors of the bank during the next quarter; [and]
 - 8) a report on past and future costs and expenses of the receivership.
- 87.2 The liquidation plan shall be updated quarterly. After its approval by the Commission, the liquidation plan shall be available for inspection by the creditors of the bank whose claims are included on the list of approved claims pursuant to Article 81.

Article 88 Rehabilitation of bankrupt banks

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

Article 89 No compromise with creditors

Except for Article 84, there shall be no compromise or other arrangement with groups of creditors concerning a bankrupt bank.

Article 90 General meeting and committee of creditors

- 90.1 There shall be no meeting of creditors concerning the liquidation of a bankrupt bank unless, at the request of the receiver supported by Da Afghanistan Bank, the Commission decides that such meeting is needed.
- 90.2 There shall be no committee of creditors concerning the liquidation of a bankrupt bank unless, at the request of the receiver supported by Da Afghanistan Bank, the Commission decides that such committee is desirable to represent and protect interests of one or more creditors.
- 90.3 The Commission, after making decisions authorizing a meeting of creditors or a committee of creditors shall specify the tasks and scope of their activities.

Article 91 Immediate advances to depositors

After that the depositors are identified and contacted, claims on account of demand deposits with a bankrupt bank that are not in the form of debt securities shall be paid to the extent possible up to a maximum amount of

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

Article 92 Distribution

- 92.1 Approved claims with the same rank shall be entered in the same class and listed according to their priority of payment and recorded in a distribution schedule in accordance with Article 86 of this law. Except for the provisions of Article 91, the amounts to be paid on claims of the same class shall be determined on the basis of the same percentage applied to the amount of available funds.
- 92.2 Consistent with Article 86 of this law, the receiver may propose to the Commission for approval a distribution schedule of payments to be made to creditors of the bank with approved claims.
- 92.3 Immediately after the approval of a distribution schedule by the Commission, the receiver shall make the payments listed in that distribution schedule. Amounts included in a distribution schedule that cannot be paid because the creditors cannot be identified or contacted shall be deposited in an account with Da Afghanistan Bank. The receiver shall publish a notice in one newspaper of general circulation in the country inviting these creditors to come forward. The amounts so deposited shall remain available for payment to the creditors or their heirs until the statute of limitations for the claims has run out. The unpaid amounts shall be transferred to the state.

Article 93 Bankruptcy proceedings against a domestic branch office or a domestic representative office

- 93.1 Bankruptcy proceedings may be opened against a domestic branch office or a domestic representative office of a non-resident bank:
- 1) if any of the grounds listed in Article 65 of this law applies to such office as if it were a bank; [or]
 - 2) at the petition of Da Afghanistan Bank, if bankruptcy proceedings have been opened against the non-resident bank in the country where its head office is located or where it principally carries on business.
- 93.2 The provisions of Chapter X of this law shall apply to the domestic branch offices and domestic representative offices of a non-resident bank as if all these offices together form a single domestic bank, and the non-resident bank shall be treated as both the Management Board and the General Meeting of Shareholders of the single domestic bank. All assets, liabilities, acts and omissions of the non-resident bank resulting from or otherwise relating to the business of any such office shall be attributed to that single domestic bank.

- 93.3 At the time that the decision of the Commission opening bankruptcy proceedings against a domestic branch office or a domestic representative office of a non-resident bank is served on that office, the non-resident bank shall cease all banking activities in Afghanistan, except for banking activities carried out by or with the prior written authorization of the receiver appointed for that office.
- 93.4 In its application in bankruptcy proceedings opened against an office of a non-resident bank, Article 82 applies to the set off and netting of obligations resulting from or otherwise relating to the business of the non-resident bank in Afghanistan.
- 93.5 Bankruptcy proceedings in Afghanistan opened against an office of a non-resident bank shall not limit the rights of creditors of the non-resident bank to pursue foreign assets of that bank in satisfaction of their claims.

Article 94 Banks cross border bankruptcy

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

- 94.1 1) if a bankrupt domestic bank has branch offices or representative offices in a foreign country, Da Afghanistan Bank shall cooperate as much as possible with the authorities of that country;
- 94.2 2) if a creditor of a bankrupt domestic bank has received partial payment on his claims in a foreign country, the balance of his claims may be presented for payment together with costs incurred in the Afghan proceeding;
- 94.3 3) the Commission decides to what extent foreign bankruptcy decisions, conservatory measures and bank rehabilitation measures concerning non-resident banks should be recognized with respect to their domestic branch offices and representative offices; [and]
- 94.4 4) if a non-resident bank is in liquidation in the country where its head office is located or where it principally carries on business, the Commission may at the request of Da Afghanistan Bank or when the Commission deems advisable in the interest of the creditors of that bank, authorize the transfer to the liquidator in that country of such assets of the non-resident bank.

Article 95 Consultations between the Commission and Da Afghanistan Bank

Before taking any decision affecting a bank declared bankrupt, the Commission shall inform Da Afghanistan Bank of its proposed decision. In making its decision, the Commission shall take account of the advice of Da Afghanistan Bank. In the event that the Commission rejects all or part

of the advice of Da Afghanistan Bank, the decision shall describe the grounds for the rejection.

Article 96 Termination of bankruptcy proceedings

- 96.1 Upon termination of his tasks, the receiver shall be discharged by decision of the Commission, but not before the receiver has prepared and submitted to the Commission a report of the receivership. The decision shall direct where the books and records of the bank and the receivership shall be deposited.
- 96.2 The bankruptcy proceedings against a bank shall be terminated by decision of the Commission when all assets of the bank have been liquidated and the proceeds have been paid to the creditors of the bank or deposited with Da Afghanistan Bank to remain available for payment to creditors of the bank pursuant to Article 90, paragraph 3.
- 96.3 The decision of the Commission terminating bankruptcy proceedings against a bank shall be published by the Commission.

CHAPTER XI FINAL PROVISIONS

Article 97 Regulatory autonomy of Da Afghanistan Bank

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

Article 98 Standards of good administration

- 98.1 Da Afghanistan Bank shall use its legal powers equitably and uniformly and in accordance with sound administrative practices and to achieve the objective for which the power was given.
- 98.2 The decisions of the Central Bank taken pursuant to this Law shall be impartial and shall be motivated only by objective and rational considerations; they shall implement the provisions of this law with fairness.
- 98.3 In carrying out its tasks, Da Afghanistan Bank shall comply with the provisions of this law.

A burden or restriction which is imposed on a person, or on carrying out an activity or on providing a service, should be proportionate to the benefits, which are expected to result from the imposition of that burden or restriction.

Article 99 Transitional provisions

99.1 Every bank that previously has obtained a license issued by Da Afghanistan Bank shall apply to Da Afghanistan Bank for a new license within three months after that date, and that license shall be deemed to terminate on the date that the license is replaced by a new license or the application for a new license is rejected by Da Afghanistan Bank.

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

Article 100 Entry into force

This Law shall enter into force when signed and shall be published in the official gazette.

Article 101 Repeal of existing laws and regulations

101.1 Upon the enactment of this law, the Banking law published in official gazette # 770, dated, 16, 08, 1377, and other related legislative documents and any provisions inconsistent with this law are hereby repealed.