

**DA AFGHANISTAN BANK**  
**(CENTRAL BANK OF AFGHANISTAN)**  
**Guidelines on Shariah Resolutions for Islamic Finance**

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***Guidelines on Shariah Resolutions for Islamic Finance***

Accountable Executive & Custodian	Islamic Banking Department
Policy Owner	Head of Islamic Banking Department

Approved by DAB Management:	.....	Date: .....
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**ISLAMIC REPUBLIC OF AFGHANISTAN**

**DA AFGHANISTAN BANK, GUIDELINES ON SHARIAH RESOLUTIONS  
FOR ISLAMIC FINANCE**

**PART A: PREAMBLE**

**1. Background**

1.1 This Guidelines on Shariah Resolutions For Islamic Finance (hereinafter referred to as “the Guideline”) is issued by the Da Afghanistan Bank (hereinafter referred to as “DAB”) which shall be adopted and become the guiding principles for Islamic Financial Institutions, Financial Institutions operating with an Islamic Window and Financial Institutions operating with an Islamic Unit (collectively referred to as “the Bank”) in the Islamic Republic of Afghanistan offering Islamic financial products.

1.2 The Guideline aims to:-

1.2.1 communicate a disciplined approach and process of the Shariah board of the banks (hereinafter referred to as the “Shariah Board”) in arriving at Shariah decisions;

1.2.2 ensure quality and consistency of the Shariah decisions; and

1.2.3 ensure the credibility of decision-making process and protect the Shariah Board from undue influences.

1.3 This Guideline shall constitute an integral part of the general operational procedures of the Bank and shall be read and interpreted in the light of the Shariah Governance Framework (“SGF”) and the Terms of Reference for the Shariah Board.

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- 1.4 The responsibility of monitoring this Manual shall be vested with the Shariah Department (for full-fledged Islamic Financial Institutions) and the Islamic Banking Department/Unit (for Islamic Window or Islamic Unit) of the Bank.

## 2. Definition of Issuing Shariah Resolutions

- 2.1 The definition of Shariah resolution in this Guideline is of the same meaning as the term 'fatwa' as used in Shariah literatures i.e. a Shariah opinion presented to a person(s)/institution who/which seeks it with regard to an event that has already occurred or is expected to occur. It does not refer to answering queries pertaining to hypothetical incidences.
- 2.2 The requirement for the Guideline is in line with the Shariah Governance Framework and the Approval Procedure Manual for Islamic Financial Products whereby it is defined and explained under clause 7 under the product development process specifically under the pre-product approval section.

Accordingly, the section explains on the processes involved in the pre-product approval stages which include; product structuring, **Shariah decisions**, review exercise, etc. **which all shall be duly vetted and approved by the Shariah Board** before the offering of such product to the customers.

## 3. Purpose and Application

- 3.1 This Manual shall be applicable to the Islamic financial products of the Bank comprising of debt-based, fee-based and equity-based Islamic financial products as well as all activities of the Banks.

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3.2 The principles as provided in this Manual shall constitute a general guideline for the guidance to Banks and all Banks are expected to have their own internal guideline on issuing Shariah resolutions pursuant to their internal set-up and governance structure. Such specific principles as provided in the Banks' internal guideline on issuing Shariah resolutions shall be deemed acceptable so long that it does not explicitly contravene any of the provisions set out in this Manual hereto.

**4. Legal Provision**

4.1 This Guideline is issued pursuant to Article 2.2 of the Afghanistan Bank Law gazetted on 12/17/2003 (corresponding to 30/10/1382) in relation to the powers of DAB to regulate and supervise Banks in the Islamic Republic of Afghanistan and any amendments thereto.

4.2 This Manual shall be read together with the following manuals/guidelines:

- a) National Shariah Governance Framework;
- b) Terms of Reference for the Shariah Board;
- c) Shariah Compliance Manual;
- d) Shariah Review Manual;
- e) Approval Procedure Manual for Islamic Financial Products; and
- f) Verification Process Manual for Islamic Banking Products.

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**PART B: GOVERNANCE**

**5. Duties and Responsibilities of the Bank in Seeking Decision**

- 5.1 Duties and responsibilities of the Bank towards the Shariah Board are among others the following:-
- 5.1.1 To refer all Shariah issues in its business operation to the Shariah Board for their decision;
  - 5.1.2 To adopt and take necessary measure for implementation of the Shariah Board's decision;
  - 5.1.3 To provide access to relevant documents and provide necessary assistance to the Shariah Board in discharging their responsibilities including given access to relevant records, transactions, manuals and other relevant information;
  - 5.1.4 To ensure that the Shariah Board is familiar with the operations and business of the Bank.

**6. Authority of the Shariah Board**

- 6.1 The authorities of the Shariah Board are among others, the following:-
- 6.1.1 The Shariah Board is given access to all relevant records, transactions, manuals or relevant information, as required by them in performing their duties.
  - 6.1.2 In cases where Shariah non-compliant activities are not effectively or adequately addressed or rectification measures are made by the Bank despite the direction given by the Shariah Board, the Shariah Board may inform the DAB of the fact. In this case, the Shariah Board will not be regarded as breaching the confidentiality and secrecy code if the sensitive information was disclosed to DAB

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in good faith when reporting serious breaches of Shariah by the Bank, if any.

## **7. Process of Issuing Shariah Resolutions**

### **7.1 Methodology and Means of Issuing Shariah Resolutions**

Among the methodology and means for the Shariah Board members in reaching the decision to issue Shariah resolution on a given issue are the following:-

- 7.1.1 Building detailed knowledge about the presented issue through questioning the Bank, consulting other Shariah scholars, resorting to expert and specialized parties and taking into consideration the prevailing norms and tradition.
- 7.1.2 Shariah resolutions should be founded on what has been explicitly stated in the *Qur'an* and the *Sunnah* along with what has been reported by *Ijma'* (unanimity) and proved by *qiyas* (analogy).
- 7.1.3 After resorting to the preceding sources, the decision with regards to the different viewpoints of the *fuqaha'* e.g. *istihsan* (approbation) and *maslahah mursalah* (public interest) may be considered as the basis for issuing the Shariah resolution.
- 7.1.4 Decision should not be based on personal viewpoint that does not cater for the sources referred to in item 7.1.1 above, or contradict to the general texts of the *Qur'an* and the *Sunnah* that have explicit indications. Moreover, the decision should not fall in disparity with any established *ijma'*.
- 7.1.5 In the absence of explicit directives in the *Qur'an* and the *Sunnah* on a given issue, or non-existence of the issue in the prevailing fiqh literatures; the decision may be derived through juristic deliberations and making reference to any established decision or view by other Shariah forums and boards of other jurisdiction. The Shariah Board may adopt other decisions or may construct their own decisions based on the deliberations of other decisions to

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reach at a decision which is more appealing to the Shariah board and the contexts in Afghanistan.

- 7.1.6 The rulings of the DAB Shariah Supervisory Board must be respected and observed in the decision making.
- 7.1.7 The collective fatwas e.g. resolutions of International Islamic Fiqh Academy (Jeddah – Organizations of Islamic Countries), Islamic Fiqh Academy (Makkah – Muslim World League), other International Research and Fatwa Forums, other Shariah committees as well as Shariah Standards issued by Accounting and Auditing Organization for Islamic Financial Institutions (“AAOIFI”) may be referred to in deciding matters.
- 7.1.8 If necessary, the Shariah Board may advise the Bank to consult the DAB SSB on any Shariah matters which have not been resolved or endorsed by the Shariah Board. In such case and in case of the Bank submitting applications to DAB for new product approval, the Shariah Board shall provide written opinions for deliberation at the DAB SSB level.
- 7.1.9 The Shariah Board should issue decision whenever the Bank approaches it for ruling or decision on a particular issue or for a new product/service. The process of issuing a decision shall follow the steps and guidelines adopted by the Bank.

## **8. Text in Shariah Resolution**

- 8.1 The Shariah resolution should be clearly stated, so that it may not be misunderstood by a layman, or taken to mean different things or misrepresenting certain matters.
- 8.2 When there are more than one *fiqh* opinions on the same issue, the Shariah Board should declare the specific opinion that it adopts. If the issue is controversial, the Shariah Board has to explain the specific bases of its choice.

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- 8.3 The Shariah resolution should be precise, concise and free from any confusing details. If however, the subject requires detailed statement for the sake of public interest or so as to convince the regulatory bodies, it would be better to add such expressions, in order to justify the decision, indicate the goal behind it and warn against falling into blights.
- 8.4 In addition, the Shariah Board may provide more information than what has been requested by the Bank in order to leave no room for confusion, or to distinguish the Shariah resolution from other Shariah resolutions, or to serve a future need of the Bank.

**9. Retreat from a Mistaken Shariah Resolution and Review of the Previous Shariah Resolution**

- 9.1 The Shariah Board has to retreat from its decision if it is proved to be wrong on reviewing or on examination by higher authorities such as the DAB SSB. In such case, the Shariah Board has to inform the Bank and the Bank should refrain from adopting it anymore.
- 9.2 The Shariah Board, on its own initiative or on request by the Bank, has the right to review a previous Shariah resolutions even if such revision would lead to issuing a new Shariah resolution that contravenes the former Shariah resolution. In such case, the Bank has to follow the new decision in the future.

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**10. Suggested Practical Steps for Escalation to Shariah Board**

Product	Remarks	Process
Endorsed Product	Without changes	N/A
	With changes	i. Submit structure and Term Sheet to Shariah Department/ Islamic Banking Department for initial review; ii. Revised structure and/or Term Sheet (if applicable) is submitted to the Shariah Board for ratification.
Product using same document template as Endorsed Product	Without changes	Submit direct for Shariah Board ratification
	With changes	i. Submit structure and Term Sheet to Shariah Department/ Islamic Banking Department for initial review; ii. Revised structure and/or Term Sheet (if applicable) is submitted to the Shariah Board for ratification.
New Product	Structure and initial Term Sheet	Shariah Department/ Islamic Banking Department to review and recommend any modifications to ensure Shariah compliance (where relevant).
	Revised Term Sheet	To forward to Shariah Board for purpose of preliminary approval.
	Legal documentation	Shariah Department/ Islamic Banking Department to review and recommend any modifications to ensure Shariah

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		compliance (where relevant).
	Final legal documentation	To forward to Shariah Board for purpose of final endorsement

**11. Custodian of the Document**

This Guideline shall be under the safe custody of the Islamic Banking Division (“IBD”) of DAB. Any changes to this Guideline shall be made by the IBD with prior consultation with the SSB, as reviewed by the DAB Executive Board and upon approval by DAB Supreme Council. A copy of the amended Guideline shall be made available to all stakeholders and SSB members for reference and implementation.

**12. Effective Date of the Document**

The Effective date of this Guideline is the \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_