

**DA AFGHANISTAN BANK  
(CENTRAL BANK OF AFGHANISTAN)**  
**Shariah Compliance Manual**

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**Shariah Compliance Manual**

A diagram consisting of a 2x2 grid of boxes. The top-left box contains the text 'Accountable Executive & Custodian'. The top-right box contains 'Islamic Banking Department'. The bottom-left box contains 'Policy Owner'. The bottom-right box contains 'Head of Islamic Banking Department'. A large, light gray arrow points from the top-right box down to the bottom-right box. Another large, light gray arrow points from the top-right box to the right, then down, then left, and finally down to the bottom-right box.

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

A large, light gray arrow points downwards from the top of the table below.

Approved by DAB Governor:	Date .....	DAB Board Secretary .....
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**ISLAMIC REPUBLIC OF AFGHANISTAN**

**DA AFGHANISTAN BANK, SHARIAH COMPLIANCE MANUAL**

**PART A: PREAMBLE**

**1. Background**

- a) This Shariah Compliance Manual (hereinafter referred to as “the Manual”) 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.
- b) This Manual is intended to:
- i) Support the Bank's Shariah Governance Framework (hereinafter referred to as “the SGF”) in the adoption of sound Shariah compliance standards and practices to ensure prudent and sound Shariah compliance in its Shariah compliant business activities; and
  - ii) Enable the Bank to effectively and efficiently communicate and execute its Shariah compliance requirements across the Bank.
- c) A Shariah compliance process is an examination of a Bank's level of compliance, in all of its Shariah-compliant activities, with the requirements of the Shariah. This examination includes contracts, agreements, policies, products, transactions, memorandum and articles of association, financial statements and reports, circulars etc. All parties involved in conducting the Shariah compliance, culminating with the Bank's Shariah Board shall have access to all records, transactions and information to conduct the Shariah compliance processes.
- d) The need for Shariah compliance for Shariah-compliant activities is mainly to provide confidence to the Bank's Shariah Board and the Bank's stakeholders in ensuring that the Shariah related transactions of the Bank are in

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compliance with the guiding Shariah standards of the Bank and at the national level as issued by the DAB.

- e) The objective of this Manual are to:
  - i) Facilitate the establishment of appropriate functional structure to manage Shariah compliance risk; and
  - ii) Establish the processes of identifying, measuring, monitoring and managing non-compliance risk.
- f) The task of conducting the Shariah compliance shall be upon the Shariah Department (for full-fledged Islamic Financial Institutions) and the Islamic Banking Department/Unit (for Islamic Window or Islamic Unit) of the Bank.
- g) For the avoidance of doubt, whenever any provision refers to “Shariah Department”, reference is made to a full-fledged Islamic Financial Institution and whenever any provision refers to “Islamic Banking Department or Islamic Banking Unit”, reference is made to a financial institution with an Islamic window or Islamic Unit. For the purpose of this Manual, all will hereinafter be referred to as the “the Shariah Department”.
- h) Any particular exemption to any of the provisions as provided herein shall only be permitted via a formal application being submitted by the Bank after prior consultation with its Shariah Board (hereinafter referred to as “the Shariah Board”), to the Shariah Supervisory Board of DAB (hereinafter referred to as “the SSB”) outlining the reasons and justifications for such requests.
- i) If any new or additional guidelines on Shariah compliance are to be adopted, the Shariah Board of the Banks shall always be consulted first before the adoption of same.

## **2. Basis of Shariah Compliance from International Practises**

- a) Shariah Compliance under the Accounting and Auditing Organization for Islamic Financial Institutions (“AAOIFI”):

Shariah compliance under AAOIFI Governance Standard for Islamic Financial Institutions No. 2 (hereinafter referred to as “the Standard”) describes the principles of Shariah compliance (termed as Shari'a Review under AAOIFI)

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explaining the nature and objective of the compliance, its responsibilities, procedures, quality assurance and the reporting processes.

Item No. 1 of the Standard explains the purpose of Shariah compliance which is as follows:

*"... to establish standards and provide guidance to assist Shari'a Supervisory Board (SSB) of Islamic Financial Institutions (IFIs) in performing Shari'a reviews to ensure compliance with Islamic Shari'a Rules and Principles as reflected in the resolutions, rulings and guidelines issued by them (hereinafter the Shari'a).."*

b) Item No. 4 of the Standard meanwhile explains the objective of Shariah compliance which is as follows:

*"The objective of a Shari'a review is to ensure that the activities carried out by an IFI do not contravene the Shari'a. The achievement of this objective requires that the Shari'a as defined in para 1 above is mandatory".*

For the purpose of this Manual, para 1 as stated above refers to Clause 2(a) of this Manual.

c) As per item 5 of the Standard, the Management and not the SSB has overall responsibility for compliance with Shariah, therefore, it follows that the Management has overall responsibility for Shariah compliance. Item 5 of AAOIFI reads as follows:

*"While the SSB is responsible for forming and expressing an opinion on the extent of an IFI's compliance with the Shari'a, the responsibility for compliance therewith rests with the management of an IFI. (Consideration should be given to the definition of management in relevant national legislation and regulations). To enable management to carry out this responsibility effectively, the SSB of the IFI will assist by providing guidance, advice and training relating to compliance with the Shari'a. The Shari'a review of an IFI's does **not** relieve management of their responsibility to undertake all transactions in accordance with the Shari'a. It is the management's responsibility to provide to the SSB all information relating to the IFI's compliance with the Shari'a."*

*(emphasis added)*

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d) Practise and Standard of Malaysia:

The requirement for Shariah Compliance is encapsulated in Malaysia's Shariah Governance Framework under Section VI, Principle 7 whereby the Shariah compliance function (termed as Shariah Review in the said framework) is defined as a regular assessment on Shariah compliance activities and operations of the Islamic Financial Institutions ("IFI") by qualified Shariah officer(s), with the objective of ensuring that the activities and operations carried out by the IFI do not contravene with the Shariah. It also lays down the scope of the review processes.

### **3. Purpose and Application**

- a) This Manual shall be applicable to all types of Shariah compliant business activities of the Bank comprising of debt-based and equity-based Islamic financing products.
- b) 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 Shariah Compliance Manual pursuant to their internal set-up and governance structure. Such specific principles as provided in the internal Banks' Shariah Compliance Manual 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**

- a) This Manual 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.
- b) This Manual shall be read together with the following manuals/guidelines:
  - i. National Shariah Governance Framework; and
  - ii. Shariah Review Manual

## **PART B: POLICY AND PROCEDURES**

### **5 Overview of Shariah Compliance**

a) Definition of Shariah Compliance:

According to item 3 of the Standard, Shariah compliance is defined as follows:

*“Shari'a review is an examination of the extent of an IFI's compliance, in all its activities, with the Shari'a. This examination includes contracts, agreements, policies, products, transactions, memorandum and articles of association, financial statements, reports (especially internal audit and central bank inspection), circulars, etc.*

*The SSB shall have complete and unhindered access to all records, transactions, and information from all sources including professional advisers and all IFI employees.”*

Hence, Shariah compliance refers to compliance to Shariah rulings and decisions issued by the Bank's Shariah Board and the SSB.

Shariah compliance provides independent examination and evaluation of the Bank's Shariah-compliant business activities' level of compliance to the principles of Shariah, remedial rectification measures to resolve instances of Shariah non-compliance and to review/ amend control mechanisms to avoid recurrences of Shariah non-compliance.

b) Key Approach in Shariah Compliance Process:

Shariah compliance process is a course of action which ensures that the Bank's products, facilities, services, operations and transactions are implemented in line with Shariah requirements as prescribed by the DAB SSB and the Shariah Board in its Shariah decisions.

c) General Shariah Compliance:

The Bank should ensure that all Shariah-compliant products and services comply with all the requirements and tenets of the Shariah. The essential Shariah compliance processes are as follows:

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### **1. Product Development Process (Pre-Product Approval):**

All product proposals should be tabled for the Shariah Board's endorsement. Examples include, but are not limited to, the following:

- i. The terms and conditions contained in proposed forms;
- ii. Letters of Offer;
- iii. Agreements;
- iv. Other legal transaction documents;
- v. Accounting treatment;
- vi. Security documents;
- vii. Product manuals;
- viii. Advertisement or marketing materials;
- ix. Product illustrations and brochures related to the product.

### **2. Product Execution Process (Post-Product Approval)**

The Bank's operations shall always be in line with and within the ambit of Shariah principles and guidelines issued by the Shariah Board and the SSB, including but not limited to the areas listed below:

- i. The Bank's day to day operations including matters which are non-product related e.g. administrative matters such as tenancy arrangements, takaful coverage instead of conventional insurance, entertainment policies etc;
- ii. The execution and implementation of products and services according to the required flow and processes and resolutions issued by the Bank's Shariah Board; and
- iii. All other relevant activities of the Bank pertaining to the product such as promotional campaigns, third party engagements/outsourcing such as marketing, collecting agents, IT system, restructuring, foreclosure, etc.

### **3. Shariah Approval of Products/Services:**



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In the interest of strict Shariah adherence, the product originator(s) shall observe the following:

- i. Engage the Bank's Shariah Department or Islamic Banking Department/Unit (hereinafter collectively referred to as "the Shariah Department") for discussions on the proposal especially on the underlying Shariah concept and contracts with their detailed terms and conditions thereof. In the event that the Management Board of the Bank has outsourced its Shariah Department function by virtue of clause 5.6 of the NSGF, the product originator must contact the Management who will in turn pass the request to the 3<sup>rd</sup> party service provider. In the event that the Bank has an in-house Shariah Department, the product originator will contact the Head of the Shariah Department (if more than 2 people in the department).
- ii. To seek and obtain the Bank's Shariah Board written approval which will contain all of the related facts and information that are reflected in the designated checklist (where applicable) and tabled during the Shariah Board meeting.
- iii. All product proposals should be assessed and validated by all members of the Shariah Board. However, approval by majority of the Shariah Board members is deemed sufficient.
- iv. In the event that the Shariah Board consists of four (4) or five (5) members, a majority of the Shariah Board is at least three (3) members out of that number and which will form a valid quorum for the Bank's Shariah Board meeting. However, at no time may a quorum of three (3) members of the Bank's Shariah Board allow a decision of two (2) members of the Bank's Shariah Board to be treated as a majority decision of the Bank's Shariah Board. In instances where only three (3) of the four (4) or five (5) Shariah Board members are making up a valid quorum for an SSB meeting, unanimity is required.
- v. Clause iv is subject to the proviso that where the Shariah Board includes individuals that are not Shariah scholars, (e.g. subject matter experts such as legal experts and accounting experts) a valid quorum of the Bank's Shariah Board shall only exist when the Shariah scholars form the majority of the quorum. In the instance where there is no valid quorum, the Shariah Board meeting will be adjourned and no resolutions shall be issued.

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- vi. In the event that the Shariah Board consists of three (3) members, a majority of the Bank's Shariah Board is two (2) members. A valid quorum for the Shariah Board meeting is two (2) members of the Bank's Shariah Board. Such smaller Shariah Board's shall consist of at least two (2) Shariah scholars and may have an individual who is a subject matter expert. However, such subject matter expert shall not be taken into account when determining whether or not a valid quorum is in existence i.e. **both** Shariah scholars must be present to make up the quorum or the Shariah Board meeting shall be adjourned.
- vii. The Shariah endorsement signed by the majority of the Shariah Board Shariah scholars will be duly issued subsequent to the approval by the Shariah Board.

## 6 Responsibility of Shariah Compliance

The primary objective of Shariah compliance is to ensure that the Shariah-compliant activities do not contravene the principles of Shariah with the Management of the Bank, as per the practise under AAOIFI under Clause 2(a) hereto, bearing the responsibility to ensure the implementation of the Shariah rules and principles as enshrined under this Manual and the Bank's internal Shariah Compliance Manual. The Management is also responsible for forming an opinion on the extent of the Bank's compliance with these Shariah standards to be presented to the Shariah Board and Board of Directors.

## 7 Shariah Compliance Procedures

- a) The procedures of the Shariah compliance shall be carried out pursuant to the rules applicable in the AAOIFI, Governance Standard for Financial Institutions No. 2 on Shari'a Review, item 7-13, which the detailed procedures are set forth as follows:

"7. *Shari'a review is to be carried out in the following stages:*

- *Planning review procedures.*
- *Executing review procedures and preparation and review of working papers.*
- *Documenting conclusions and report.*

*Each of the above stage is explained as below:*

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### *Planning and designing Shariah Review procedures*

8. *The Shari'a review procedures shall be planned so that it is completed in an effective and efficient manner. The plan shall be adequately developed to include a complete understanding about the IFI's operations in terms of products, size of operation, locations, branches, subsidiaries and divisions. The planning shall include obtaining a list of all fatwas, rulings and guidelines issued by the SSB.*
9. *Understanding the activities, products and management's awareness and attitude towards compliance with the Shari'a is essential. This will have a direct effect on the nature, extent and timing of the Shari'a review procedures.*
10. *The plan shall be properly documented including the sample selection criteria and sizes, taking into consideration complexity, and frequency of transactions.*
11. *The review procedures shall be designed based on the above input. The review procedures shall cover all activities, products and locations. These procedures shall ascertain whether the SSB approved transactions and products have been undertaken and all related conditions have been met.*

### *Executing Shari'a review procedures and preparation and review of working papers*

12. *At this stage all the planned review procedures are executed. The SSB review procedures shall normally include:*
  - *obtaining an understanding of the management's awareness, commitment and compliance control procedures for adherence to the Shari'a;*
  - *reviewing of contracts, agreements, etc;*
  - *ascertaining whether transactions entered into during the year were for products authorised by the SSB;*
  - *reviewing other information and reports such as circulars, minutes, operating and financial reports, policies and procedures, etc.;*
  - *consultation/ co-ordination with advisors such as external auditors; and*
  - *discussing findings with an IFI's management.*

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*The execution of the above review procedures shall be documented in work papers which shall be complete, neat and cross referenced to review procedures.*

## *Documenting Conclusions and report*

13. *The SSB shall document their conclusions and prepare their report to the shareholders based on the work done and discussions held. The SSB report shall be read at the annual general meeting of the IFI. A detailed report, when warranted, shall also be issued to an IFI's management."*

b) For the purpose of application of the AAOIFI rules under Clause 7(a) above for the practice in the Islamic Republic of Afghanistan, the following substitutions, unless expressly stated otherwise, shall apply:

- i. IFI to Banks as defined under Clause 1(a) hereto;
- ii. SSB to Bank's Shariah Board; and
- iii. Under "Documenting and Report" section, it shall be read as follows:

"The Shariah Department of the Bank, or where this function has been outsourced to a 3<sup>rd</sup> party provider, the Management, shall document their conclusions and prepare their report to the Board of Directors (hereinafter referred to as "the BOD") based on the work done and discussions held. The Shariah Review report shall be read at the BOD meeting of the Bank. A detailed report, when warranted, shall be issued to the Shareholders of the Bank."

## **8 Shariah Non-Compliance Risk**

a) Definition of Shariah Non-Compliance Risk:

Shariah non-compliance risk refers to possible failure in fulfilling the required Shariah principles in any level of the value chain of Shariah compliance.

b) Tabulated below are a number of Potential Shariah Non-Compliance Incidents:

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No.	Non-Compliance	Non-Compliance Incidents	Example of Non-Compliance Incidents	Reasons behind Non-Compliance
1	Relating to Subject Matter of Contract	i. Non-Compliant status on underlying asset of transaction	e.g. underlying asset is forbidden such as pork, alcohol and any other forbidden substances.	Forbidden substances from the Islamic perspective.
		ii. Shariah related inquiry on type of asset possession	e.g. ownership transfer under Shariah, selling something which is not owned/fully owned (without consent from other jointly owned partners)	Islam has prohibited selling something which is not owned by the vendor at the time of sale.
		iii. Uncertainty in price / rebate / compensation / fee disputes (non-computation based disputes)	e.g. when the price is not stipulated in the agreement or any imposition in fees is not clearly mentioned upfront.	Islam has prohibited any kind of transaction involving uncertainty, as this may lead to disputes or litigation.

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No.	Non-Compliance	Non-Compliance Incidents	Example of Non-Compliance Incidents	Reasons behind Non-Compliance
2	Relating to Contract Execution (Aqad)	i. Breach of Shariah ruling on sequence of contract execution	e.g. execution of documentation not in proper sequence as it is supposed to be e.g. signing Property Sale Agreement (PSA) before signing Property Purchase Agreement (PPA) under Murabaha based transaction.	In Islamic contract law, the pillars of a contract in Islam are two Ijab – the positive proposal; and; Qabul, the acceptance. Offer (Ijab) must take place before acceptance (Qabul).
		ii. Shariah non-compliant terms and element in the agreement such as in the event whereby officer mistakenly used conventional contract in executing Shariah compliant products and services or any documentation that uses conventional terms and conditions e.g. interest and so forth.	e.g. the officer mistakenly uses conventional leasing agreement instead of using Ijara-based agreement.	Islamic banking and conventional banking have different sets of legal documentation whereby in Islamic banking its legal documentations must comply with Shariah principles.

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No.	Non-Compliance	Non-Compliance Incidents	Example of Non-Compliance Incidents	Reasons behind Non-Compliance
3	Pertaining to Other Shariah Related Matters	i. Shariah non-compliant status of advertisement illustration / materials / forms / documentation use in offering products and services	<p>e.g. the advertisement materials such as brochures in marketing products and services uses words/terminologies that are not resembling Islamic banking concepts of the approved product such as guaranteeing profits, dividends, and/or misrepresentation towards the customer.</p> <p>e.g. promising souvenir or gift to customers who open saving accounts based on the Wadiah principle.</p>	Islam places emphasis on transparency and justice in performing transactions. Ensuring transparency in transactions and total honesty is achieved by each contracting party disclosing any important information to the other contracting party.
		ii. Inter-conditional clause in legal documentations	e.g., incorporation of a condition to repurchase the same asset in a contract will annul the said contract.	The conditional contract may invalidate the contract when the stipulated condition affects the objective of the first or other contract and no valid transfer of ownership of the underlying asset takes place. For the transfer to be Shariah compliant there must be a true sale of the underlying asset.

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No.	Non-Compliance	Non-Compliance Incidents	Example of Non-Compliance Incidents	Reasons behind Non-Compliance
4	Regarding Shariah Based Information	i. Misinterpretation of a Shariah statement or implementation of a misleading Shariah statement	e.g. misunderstanding in the resolutions that leads to a different execution in operations and business/or using prior precedent resolutions in performing current operations and business (due to having not received and / or read the latest Shariah resolution issued by the relevant authority).  e.g. implementation or application of a prior or superseded version of a resolution.	A typical process in the banking sector would require the Shariah advisor to first validate at the Bank level what is important to ensure that the operations and business of the Bank are compliant. Misinterpretation of Shariah rulings can lead to different practices that are at variance with the rulings issued by the Bank's Shariah Board, and other applicable regulatory authorities such as the SSB.

c) Implications of Shariah Non-Compliance:

The following are among the implications of Shariah non-compliance:

- i. Contravention of the provisions of the Afghanistan Banking Law and regulations relating thereto as amended from time to time;
- ii. Contravention of the SSB's regulations, resolutions and rulings;
- iii. Contravention of the Bank's Shariah Board's regulations, resolutions and rulings;



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- iv. Exposure to reputational and business risks for the Bank;
  - v. Invalidation of Contract (Aqad) from the Shariah perspective;
  - vi. Non-recognition of income;
  - vii. Imposition of a higher capital charge by the regulators. Various central banks will have risk management policies requiring the banks under the purview of the said central banks to put aside capital charges based on the risk exposure of the said banks. The capital charge calculation may be in accordance with BASEL I or the Internal Ratings Based Approach, depending on the central banks' risk management policy. As Shariah non-compliance risk is an additional risk type therefore capital charge **may** be applied by the regulator/central banks.
- d) Reporting Shariah Non-Compliance Incidents:
- i. It is the responsibility of the Incident Owner, the person in the Shariah Department of the Bank who has responsibility to report on Shariah non-compliance (hereinafter referred to as "the IO") to report all Shariah non-compliance incidents that have taken place in the Bank.
  - ii. The IO is the person who is responsible for the day to day operations or Shariah-compliant activities where the incident took place. The IOs can be within the two (2) Lines of Defence, as illustrated in the SGF.
  - iii. All Shariah non-compliance incidents are to be captured into an appropriate system by the respective designated officers within unit/department, upon the receipt of the incident report/template.
  - iv. All confirmed Shariah non-compliance incidents have to follow the appropriate reporting process to the Bank's Shariah Board, the Management, the Islamic Banking Division of DAB (if required) as outlined in the Bank's SGF.

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**9 Guidelines for Deposits**

- a) Generally, the Bank may accept any application from individuals or companies to open a deposit account or investment account as well as transfer of funds without conducting investigation to ascertain whether the sources of the customer's funds are permissible (halal), forbidden (haram) or a mixture of the two.
- b) Without prejudice to the above, the Bank should not accept deposits/funds from the following sources as the Bank wants to source deposits / funds from legal sources and to be seen to do so:
- i. An entity whose activities are related to illegal or prohibited activities in the respective countries;
  - ii. An individual whose or entity which deposit cheques or cash or any other Over-the-Counter financial instruments reflect any relations to money laundering or similar activities; and
  - iii. Other type of businesses or activities that are deemed non-compliant by the relevant authorities from time to time.
- c) The Bank is allowed to accept deposits from the following customers:
- i. Conventional banks and conventional insurance companies;
  - ii. Non-Islamic organizations such as Churches or other non-Muslim institutions of worship;
  - iii. Individuals who are permanent employees of Non-Compliant entities; and
  - iv. When a transfer of funds from a conventional fixed deposit to an Islamic deposit account, the interest portion derived from the conventional fixed deposit is permitted to be transferred into the Islamic deposit account.

## **10 Guidelines for Financing**

### a) Individual Financing:

The Bank is allowed to provide financing facilities to an individual customer for the customer's personal consumption without owing any obligation to investigate the utilization of the granted facility. This includes any individual customer, either a Muslim or a non-Muslim, who works with a Shariah non-compliant entity or institution.

The grant of a financing facility to an individual customer for the purpose of acquiring an asset, is allowed subject to:

- i. The financed asset being an asset that is permissible under the Shariah principles; and
- ii. The use of the financed asset is intended for a purpose that is permitted by Shariah principles.

The Bank is not under an obligation to ensure that the customer uses the assets in accordance with the permitted use.

### b) Commercial / Corporate Financing:

The Bank may provide financing facility to the commercial or corporate customer for Shariah compliant purposes.

However, the Bank is not allowed to grant or continue granting facilities to a commercial or corporate customer whose core business activities are based on or related to the following:

- i. Gambling and gaming;
- ii. Entertainment business that is not permitted by the Shariah. By way of example, the provision of entertainment and leisure related to pornography or with an adult content. This includes film production, broadcast companies, magazine publishers, cinemas, cable TV companies, nightclubs and places of entertainment, record companies and those companies that produce pornographic, X-rated or adult content or elements of it. It includes the distributors and marketers of such content;

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- iii. The manufacturing, marketing, selling, and/or serving non-halal products including alcohol for the purpose of consumption, pork or any other subject matter that is prohibited by Shariah;
- iv. Non-compliant hotel businesses which are inclusive of resorts and chalets. The sale of alcohol on the hotel premises and the provision of non-halal food by the hotel are not permissible. The hotel business may provide these non-permissible services so long as the revenue from same is less than five percent (5%) of total revenue for the year. This non-permissible revenue stream must be purified by the hotel business. The onus is on the Bank to satisfy itself that the hotel business is compliant before providing financing; and
- v. Other businesses or activities that are not recognized or permitted by Shariah or by the Shariah Board.

The Bank is allowed to grant financing to a company or group of companies which nature of business, income or proceeds consists of a mixture of both the permissible and non-permissible sources but subject to the fulfilment of the following criteria:

- i. The image, reputation or general public perception of the customer shall be good and not of the effect that may tarnish the internal core values of the Bank if the financing is granted. In addition, the Bank believes that this company or group of companies reflects its own core values.
- ii. The core business of the customer is pertinent and considered as *maslahah* ('benefit' in general) for the public and the country and involves '*umum balwa* (unavoidable matter), "*urf*" (custom) and the rights of the non-Muslim community, which are recognized by Shariah.

## **11 Guidelines for Islamic Legal Documentations**

- a) All legal documentations for both Islamic deposit and financing product must contain all essential *rukhn* (elements) and the necessary *shart* (conditions) of the essential elements as the validity of the contracts are dependent on the compliance with this requirement. The Bank shall ensure that it standardises the conditions in its documents to the greatest extent possible to facilitate ready comprehension from its staff and customers alike and to facilitate efficient auditing of the documents and products that they relate to.
- b) A valid contract must fulfill the requirements of and consist of the following:
- i. A clear, definite and absolute offer and acceptance;
  - ii. An acceptance that corresponds to the offer;
  - iii. An offer and acceptance that is properly executed and completed; and
  - iv. All of the above elements must be compliant with Shariah principles.
- c) The related documents must satisfy and observe the principles governing Islamic commercial contracts such as:
- i. Avoidance of using conventional terms and any other terms, clauses and provisions which are not consistent with Shariah principles;
  - ii. Contracts shall be absolute and independent of one another to avoid conditionality;
  - iii. Strict assurance against any ambiguity in the contractual terms;
  - iv. Shariah standards shall be frequently and prudently referred to;
  - v. Rights and obligations of the contracting parties are clearly stipulated;
  - vi. Transparency, equity and justice to the contracting parties are reflected in the stipulations and terms of the contract.
- d) In furtherance to the above, the following shall be observed in the preparation and execution of the related legal documentations:
- i. The type and category of the contract;
  - ii. The type of banking transaction involved;
  - iii. Essential elements of the underlying Shariah contract;
  - iv. Conditions prescribed to the said essential elements;
  - v. Relevant law, regulations, guidelines, Shariah rulings applicable to the contract;
  - vi. Proper sequence of the contract execution;

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- vii. Legal documentation shall be prepared in a manner and undergo the necessary processes so as to make it enforceable in a court of law.

## **12 Guidelines on Treatment of Shariah Non-Compliant Income**

- a) The Bank's Shariah Board shall determine what charitable organisations shall be entitled to all tainted income collected by Banks in the Islamic Republic of Afghanistan (hereinafter referred to as "the Approved Panel of Charities"). These Approved Panel of Charities must also be approved by the DAB SSB. Each Shariah Board shall bear responsibility to ensure that all tainted income collected by the bank goes solely to the Approved Panel of Charities. The Shariah Board may favour one charity over another in the Approved Panel of Charities or disburse the tainted income rateably.
- b) Shariah non-compliant income is an income which is derived or resulting from Shariah non-compliant business activities (haram activities). It consists of:
  - i. Contributions from the activities that are clearly prohibited such as *riba* (interest-based companies like conventional banks), *maysir* (gambling) and the production of and/or dealing with any forbidden substances including liquor and pork;
  - ii. Contributions from interest income from fixed deposits in conventional banks and tobacco-related activities;
  - iii. Contributions from rental payment which is from Shariah non-compliant tenant activities such as rental payment from a premise that is involved in gambling or the production of and/or dealing with any forbidden substances including the sale of liquor;
  - iv. Contributions from Shariah non-compliant hotel and resort operations, trading of shares that are not in a Shariah compliant universe or identified as Shariah compliant equities by a reputable Index provider such as the Dow Jones Islamic Index, stockbroking of Shariah non-compliant shares; and
  - v. Other contributions of which the activities may involve activities that are deemed to be non-permissible according to the Shariah.

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- c) The Bank's exposure to Shariah non-compliant income can only result from an incidental breach:
- i. resulting from its placement or investment activities which contain tolerable levels of Shariah non-compliant income, as determined by the Shariah Board; or
  - ii. resulting from its placement or investment activities which was Shariah compliant at the time of the commencement but later had its status changed to Shariah Non-Compliant irrespective of the reason for such a change in designation.

d) Non-Entitlement to Purification Money

Purified money shall be sent solely to the Approved Panel of Charities. In the event that DAB changes its policy, the following parameters shall apply should the Shariah Board gain the ability to disburse tainted income itself. The purified money cannot be distributed to the benefit of the following:

- i. Direct or indirect benefit to the Bank;
- ii. Organisations or activities which may have detrimental effect to the image of Islam and its teachings or Muslims;
- iii. Things that are clearly prohibited, against the teachings of Islam, for example an organisation that promotes alcohol consumption; or
- iv. Missionary hospitals and schools, for example St Mary Hospital and St John School.

### **13 Custodian of the Shariah Compliance Manual**

- a) This Manual shall be under the safe custody of the Islamic Banking Division ("IBD") of DAB. Any changes to this Manual 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 Manual shall be made available to all stakeholders and SSB members for reference and implementation.

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- b) Banks may further refine the Manual to suit their particular structure and policies. Such amendments shall be approved by the Bank's Shariah Board. The Management will have custody over the Bank's Shariah Compliance Manual.

## **14 Effective Date of the Document**

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

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