

**DA AFGHANISTAN BANK
(CENTRAL BANK OF AFGHANISTAN)**
Procedures for Islamic Banking

Procedures for Islamic Banking

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

Approved by DAB Management:	Date:
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DA AFGHANISTAN BANK
(CENTRAL BANK OF AFGHANISTAN)
Procedures for Islamic Banking

Contents

1.	BACKGROUND AND PREAMBLE.....	3
2.	PURPOSE AND SCOPE.....	4
3.	DEFINITION OF PROCEDURES	5
4.	THE PROCEDURES – UNDERSTANDING THE REGULATIONS.....	6
5.	THE PROCEDURES – DEVELOPING THE SHARIAH SUPERVISORY BOARD TERMS OF REFERENCE.....	7
6.	THE PROCEDURES – DEVELOPING SHARIAH GOVERNANCE FRAMEWORK	8
7.	THE PROCEDURES – SETTING UP ISLAMIC FINANCE OPERATIONS – ESSENTIAL MANUALS FOR ISLAMIC BANKING	9
8.	THE PROCEDURES – UNDERSTANDING THE ISLAMIC CONTRACT PARAMETERS	11
9.	THE PROCEDURES – KNOWING THE GUIDELINES FOR ISLAMIC BANKING	12
10	THE PROCEDURES – ON SITE SUPERVISION MANUAL AND GUIDELINES	14
11	THE PROCEDURES – OFF SITE SUPERVISION MANUAL AND GUIDELINES	14
12	THE PROCEDURES – PRODUCT DEVELOPMENT PROCESS	15
13	THE PROCEDURES – VERIFICATION PROCESS OF ISLAMIC BANKING PRODUCTS	15
14	PRODUCT OUTLINES OF ISLAMIC BANKING PRODUCTS	15
15	ISLAMIC BANKING LIBRARY WITHIN THE ISLAMIC BANKING DIVISION OF DAB.....	16
16	CUSTODIAN OF THE DOCUMENT.....	17
17	EFFECTIVE DATE OF THE DOCUMENT.....	17

DA AFGHANISTAN BANK (CENTRAL BANK OF AFGHANISTAN)

Procedures for Islamic Banking

1. BACKGROUND AND PREAMBLE

- 1.1. Da Afghanistan Bank (hereinafter referred to as “DAB”) has published a large volume of Guidelines, Manuals, Regulations and Product Outlines and other material for the nascent Islamic Finance industry in the Islamic Republic of Afghanistan (hereinafter referred to as “the Islamic Finance Material”). Islamic Financial Institutions (hereinafter referred to as “IFIs”), Financial Institution operating with Islamic Window (hereinafter referred to as “Islamic Window”) or Financial Institution operating with Islamic Units (hereinafter referred to as “Islamic Unit”) operating within the Islamic Republic of Afghanistan shall read the Islamic Finance Material and abide by the terms of same in the case of Regulations promulgated by DAB.
- 1.2. For the purpose of this document (hereinafter referred to as “the Procedures Manual”), all provisions as provided herein shall refer to IFIs, Islamic Window and Islamic Unit collectively as “the Bank”.

DA AFGHANISTAN BANK (CENTRAL BANK OF AFGHANISTAN)

Procedures for Islamic Banking

2. PURPOSE AND SCOPE

- 2.1. This Manual shall be endorsed by the Shariah Supervisory Board of the Da Afghanistan Bank (hereinafter referred to as “the SSB”) and assist the Bank in its understanding of the Islamic Finance Material and how each document fits into the overall Islamic Finance framework for the Islamic Republic of Afghanistan as developed by DAB and regulated by DAB.
- 2.2. With this understanding, DAB expects all Banks to implement the Islamic Finance Material in a logical and cohesive manner.
- 2.3. The potential benefits of the Manual are as follows:
 - 2.3.1. To provide clear understanding on steps and procedures on which the Bank can focus on at the early stage when developing its capabilities in Islamic Finance;
 - 2.3.2. To provide guidance to all Islamic finance practitioners, finance professionals, academics, scholars and the regulator in putting the proper priority of the Islamic Finance Material and providing guidance to Banks in mapping the relevant documents to the respective departments to facilitate the orderly development of Islamic finance in their operations;
 - 2.3.3. To assist in the understanding of the Islamic Finance Material in terms of its basic content and its roles and functions in the entire scheme of introducing and implementing Islamic finance;
 - 2.3.4. To serve as a road map for Banks in developing their Islamic Finance offering and to be a reference tool for Banks to provide them with necessary guidance to introduce, sustain and develop further Islamic financial products and services with proper compliance checks and balances.

DA AFGHANISTAN BANK

(CENTRAL BANK OF AFGHANISTAN)

Procedures for Islamic Banking

3. DEFINITION OF PROCEDURES

3.1. Procedures is defined as:

(i) an act or a manner of proceeding in any action or process; conduct.

Or

(ii) a particular course or mode of action.

3.2. As stated above, the propose of this document is to assist the Regulator, the Islamic Finance practitioner and any other person working in or interested in the Islamic Finance industry in the Islamic Republic of Afghanistan to identify which part of the Islamic Finance Material is relevant and applicable to the issue they are confronted with at any point in time.

3.3. This document sets out the methodology that a Bank shall employ in developing itself as an Islamic Bank or starting an Islamic Finance offering. The appropriate order is as follows:

3.3.1 Engage a Shariah Board;

3.3.2 To develop a Shariah Governance Framework with all ancillary manuals and appendices as per the National Shariah Governance Framework as approved by the SSB;

3.3.3 To begin the process of product development;

3.3.4 Upon receipt of resolution authorising same from the Bank's Shariah Board, to offer Products to customers and ensure that same are offered in accordance with the resolution obtained from the Bank's Shariah Board;

3.3.5 To conduct the Bank's internal Shariah review;

3.3.6 To engage an external auditor to conduct the Bank's External Shariah review.

3.4. Once the Shariah Board is in place the Bank can work on a number of items concurrently. A Bank may not provide Islamic Finance services if it does not have a duly mandated Shariah Board.

DA AFGHANISTAN BANK (CENTRAL BANK OF AFGHANISTAN)

Procedures for Islamic Banking

4 THE PROCEDURES – UNDERSTANDING THE REGULATIONS

4.1 Compliance with Regulations issued by DAB in relation to Islamic Finance is mandatory 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 There are seven regulations that have been promulgated by DAB in relation to Islamic Banking in the Islamic Republic of Afghanistan (hereinafter referred to as “the Regulations”) and they are as follows:

4.2.1 Regulation on Licensing to Islamic Banks/ Windows:

This regulations sets out specific matters for DAB to consider when reviewing an application to open an Islamic Bank / Window.

4.2.2 Regulation on Islamic banking liquidity management:

Sets out certain matters that DAB must be aware of when reviewing a Bank’s liquidity management operation. DAB must ensure that the Bank does not commingle its Islamic funds with its conventional funds (in the case of Islamic window and Islamic unit).

4.2.3 Regulation on Capital Adequacy:

This relates to certain capital adequacy requirements that are particular to Islamic Financial Institutions and the laws of the country at any point in time.

4.2.4 Regulation on Asset classification:

This regulation deals with asset classification in the Islamic finance sense.

4.2.5 Regulation on Profit Distribution:

Unlike most conventional products, Islamic investment products returns are tied to the actual performance of the underlying investment. This guideline details how the profit generated by the investments (if any) is to be distributed between the Bank and the Islamic Investment Account Holder

4.2.6 Regulation on Large Exposures:

DA AFGHANISTAN BANK (CENTRAL BANK OF AFGHANISTAN)

Procedures for Islamic Banking

This document suggests some limits on large exposures of Islamic Banks. The precise limits shall be determined by DAB.

4.2.7 Regulation on enforcement actions:

Enforcement actions in Islamic Finance are no different to those in conventional finance. One item that is generally in Islamic contracts is that the parties thereto renounce any entitlement they may have to any damages awarded by the court in any damages claims they may have with other parties as this is deemed to be tainted income (the amount which exceeds the actual cost incurred by the Bank).

4.3 Banks shall be fully compliant with the Regulations. Failure to do so may involve remedial action being taken against the non-compliant Bank by DAB

5 THE PROCEDURES – DEVELOPING THE SHARIAH BOARD TERMS OF REFERENCE

5.1 The importance of a properly functioning Shariah board for the Bank (hereinafter referred to as “the Shariah Board”) cannot be overestimated. An Islamic Bank will have great difficulty functioning effectively and profitably without the support of its Shariah Board.

5.2 The Terms of Reference for the Shariah Board (hereinafter referred to as “the TOR”) is an extremely important document as it sets out how the Shariah Board is to be appointed and engaged.

5.3 The TOR also sets out how individual Shariah Board members are to be assessed to ensure that they are carrying out their duties efficiently.

5.4 The composition of a Shariah Board is a matter for each Bank to carefully consider and the TOR goes into some detail on the qualifications of the individual scholars that DAB believes are acceptable to act as a Shariah board member.

DA AFGHANISTAN BANK (CENTRAL BANK OF AFGHANISTAN)

Procedures for Islamic Banking

6 THE PROCEDURES – DEVELOPING SHARIAH GOVERNANCE FRAMEWORK

- 6.1 The Shariah Governance Framework (hereinafter referred to as “the SGF”) is a very important corporate governance document that the Bank should put in place as soon as it wishes to develop an Islamic finance capability.
- 6.2 The SGF sets out who does what in the governance aspects of Islamic Finance and shall ensure the independence of the Bank’s Shariah Board (hereinafter referred to as “the Shariah Board”). The Bank may have a credibility issue if the Shariah Board is not perceived to be independent by the general public.
- 6.3 The SGF places the Bank’s Shariah Department (for full-fledged Islamic banks) or the Islamic Banking Department/Unit (for Conventional Banks with Islamic Window/Unit) (hereinafter collectively referred to as “the Shariah Department”) in the context of corporate governance generally and empowers the Shariah Department to be the main point of contact between the Shariah Board and the various departments within the Bank.
- 6.4 The SGF also makes it clear that compliance with Shariah is the main consideration of staff in the Shariah compliant business sections of the Bank when developing products and offering same to the public. Staff are to be mindful, at all times, to ensure that both the product itself and the **manner** in which they offer it to the public do not contravene the principles of Shariah.

E.g. an Investment Term Deposit has a Resolution from the Bank’s Shariah Board and has been offered to the market for a number of years and passed a number of Shariah audits may seem compliant to Bank staff. However, where a staff member offers a customer a guaranteed return on this product when selling it to the customer, this renders that transaction non-compliant. Bank staff may not guarantee returns on an investment product as it fundamentally undermines the concept of risk and reward upon which anticipated returns are based. Shariah-compliance is to be of paramount importance in the Bank and the Bank must ensure that frontline staff are knowledgeable in the products they are selling. Shariah compliance has no tolerance for complacency.

- 6.5 Islamic Finance has suffered credibility issues in the past. Principally these credibility issues arose due to lack of governance and oversight of the activities of the Shariah compliant business units of various banks were done once they obtained a resolution from their respective Shariah Board, or where a Shariah Board did not properly deliberate a particular issue or clearly set out

DA AFGHANISTAN BANK (CENTRAL BANK OF AFGHANISTAN)

Procedures for Islamic Banking

their decision in a resolution. These credibility issues generally do not affect just the delinquent bank, but the industry in general in that country / region.

- 6.6 The Islamic Republic of Afghanistan has a banking credibility issue as a large part of the population is unbanked.
- 6.7 Accordingly, the Islamic Republic of Afghanistan must tackle both the Banking credibility issue and any perceived Islamic Finance credibility issue at the same time. Ensuring that each Bank has a robust and tailor made SGF in place will go some way to bridging any credibility issue potential customers may have with the Bank.
- 6.8 The SGF will assist DAB in regulating Banks as the National Shariah Governance Framework will outline exactly what is expected of a Bank when it comes to Shariah compliance and rigorous pursuit of offenders will help rebut any perceived credibility issues.

7 THE PROCEDURES – SETTING UP ISLAMIC FINANCE OPERATIONS – ESSENTIAL MANUALS FOR ISLAMIC BANKING

- 7.1 The SGF contemplates a number of documents that shall be read in conjunction with it. These are as follows:
 - 7.1.1 Shariah Compliance Manual
 - 7.1.2 Shariah Review Manual
 - 7.1.3 Shariah Board Members Assessment Manual
- 7.2 The above three documents taken together (hereinafter referred to as “the Manuals”) are an integral part of the SGF and form part of the operative parts of the SGF.

DA AFGHANISTAN BANK (CENTRAL BANK OF AFGHANISTAN)

Procedures for Islamic Banking

Shariah Compliance Manual

- 7.3 The purpose of the **Shariah Compliance Manual** is as follows:
- 7.3.1 To support the Bank's 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
 - 7.3.2 To enable the Bank to effectively and efficiently communicate and execute its Shariah compliance requirements across the Bank.
- 7.4 Fundamentally, 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.
- 7.5 Responsibility for day to day Shariah-compliance of the Bank's activities rests with the Management Board of the Bank and not the Shariah Board. Accordingly, the Bank must adopt a robust methodology for ensuring Shariah compliance in all aspects of its Shariah-compliant business. The Shariah-compliance Guidelines set out at length what a Bank should do to ensure that its operations are Shariah-compliant.
- 7.6 The Shariah-compliance Guidelines also set out a number of hypothetical issues that could result in potential Shariah non-compliance and a methodology for the treatment of non-compliant income, if any.

Shariah Review Manual

- 7.7 The purpose of the **Shariah Review Manual** is to be a general guideline for the Banks to assist them in developing their own internal Shariah Review Manual pursuant to their internal set-up and governance structure.
- 7.8 The Shariah Review Manual provides a methodology that the Shariah reviewer could adopt in conducting his Shariah review of the Bank and the competency required to qualify as a Shariah reviewer.

DA AFGHANISTAN BANK (CENTRAL BANK OF AFGHANISTAN)

Procedures for Islamic Banking

Shariah Board Members' Assessment Manual

- 7.9 The purpose of the **Shariah Board Members' Assessment Manual** is to ensure that the Shariah Board is conducting itself in an open and efficient manner.
- 7.10 The assessment has three components:
- (i) Self-assessment;
 - (ii) Peer review; and
 - (iii) Bank internal review.

For all intents and purposes, the assessment does and shall not examine a scholar on his Shariah knowledge. However the assessment will look at the individual scholar's contribution to the Shariah Board attendance and deliberation in terms of the quality of attendance, preparation, deliberation, follow up and overall engagement to uphold the development of the Bank as well as the compliance and capacity building of the Bank.

- 7.11 The assessment process is a collaborative process and is designed to further professionally develop the scholars sitting on the various Shariah Boards in the Islamic Republic of Afghanistan to fill any gaps either at the Bank level or at the individual scholar level by providing necessary tools and training. It is not the intention of the document to be used as a device to dismiss scholars.

8 THE PROCEDURES – UNDERSTANDING THE ISLAMIC CONTRACT PARAMETERS

- 8.1. Contracts form the basis of Islamic Finance. Most products offered by Islamic Banks are a combination of a number of contracts. In addition to being clear and concise, all contracts in Islamic finance must be used to enable Shariah-compliant activities.
- 8.2. By reading and understanding the manuals the product team in the Banks will be able to, with the assistance of their Shariah Board, develop new retail, corporate and treasury products for the Islamic finance market in the Islamic Republic of Afghanistan.
- 8.3. **Murabaha** is one of the most used contracts in the Islamic Finance industry. It is a cost plus fixed profit contract. The Parameter goes into some detail on the requirements and workings of a Murabaha contract.

DA AFGHANISTAN BANK (CENTRAL BANK OF AFGHANISTAN)

Procedures for Islamic Banking

- 8.4. **Ijarah** is a leasing contract. It is used to pass the usufruct of a non-consumable asset to the lessee in return for a rental payment. The rental can be fixed, floating or a combination of both. The methodology for calculation the rent, in the case of floating rental, must be known at the outset of the lease contract.
- 8.5. **Qard** is an Islamic loan contract. It forms the basis of the Islamic current account whereby the Bank borrows the money from the customers' deposit for the purpose of their business activities. The customers shall however, neither be subject to any loss from the business activities (i.e. their deposit amount are guaranteed) nor shall they be entitled to any profit from such investments thereto.
- 8.6. **Mudarabah** is an equity partnership contract. The manual provides detail on the operation of the Mudarabah contract in practice and some of the prudential issues in dealing with Mudarabah.
- 8.7. **Musharakah** is an equity partnership contract. The manual provides detail on the operation of the Musharakah contract in practice.
- 8.8. **Salam** is a forward sale contract. It is useful for funding agriculture produce though it is not widely used currently in modern Islamic banking. The manual provides detail on all aspects of the Salam contract.
- 8.9. **Istisna** is a contract used for manufacturing and construction purposes. The manual provides detail on its practical application in Islamic Banking.

9 THE PROCEDURES – KNOWING THE GUIDELINES FOR ISLAMIC BANKING

- 9.1. DAB has developed a number of policy guidelines that deal with a number of common issues in Islamic Banking. Banks are expected to adopt the guidelines on a wholesale basis except where their discretion is specifically set out and the approval of DAB is obtained.
- 9.2. **Guidelines on Financial reporting for Islamic banking institutions** provides the basis for presentation and disclosure of reports and financial statements of the Banks in carrying out its banking and finance activities.

DA AFGHANISTAN BANK (CENTRAL BANK OF AFGHANISTAN)

Procedures for Islamic Banking

- 9.3. **Guiding Principles of Risk Management for Islamic Banks** provides detail on Shariah Risk management covering all common risks which include market risk, credit risk, operational risk and displaced commercial risk.
- 9.4. **Guidelines on Recognition and Measurement of Profit Sharing Investment Account as Risk Absorbent.** This is a technical manual in relation to the recognition of Profit from investment accounts and sharing of same between the Bank and its investment account holders. It sets out the minimum qualifying requirements for Banks to accord Profit Sharing Investment Accounts ("PSIA") as a risk absorbent mechanism under the Bank's Risk Weighted Capital Ratio calculation.
- 9.5. **Guidelines on Late Payment Charges.** These guidelines are guiding principles for Banks in deciding what their policy will be on charging Late Payment Fees to their customers. In addition, they also outline what the SSB's policy is on the utilisation of Late Payment Fees obtained from customers.
- 9.6. **Guidelines on Product Transparency and Disclosure.** These guidelines provide guidelines that illustrate the duty of the Bank, under Shariah, to disclose everything to a customer about a product, especially bank fees and charges. The Bank must identify what service it is providing to the customer in return for fees/ charges.
- 9.7. **Guidelines on Prohibition on Specific / Restricted and loss bearing fund placement from Islamic Banks to parent banking institutions.** These guidelines illustrate the position of an Islamic Bank placing funds with a conventional parent and the Shariah requirement of this activity.
- 9.8. **Guidelines on the appointment of external auditors.** These guidelines are guidelines for a Bank to abide by when appointing external auditors in relation to their Shariah compliant business operations.
- 9.9. **Guidelines on Islamic Financing for Agriculture** are guidelines for the provision of agriculture based financing or investment products.
- 9.10. **Guidelines on Shariah resolutions in Islamic Finance** are guidelines to accomplish three things:
- 9.10.1 communicate a disciplined approach and process of the Shariah Board in arriving at Shariah decisions;
 - 9.10.2 ensure quality and consistency of the Shariah decisions; and

DA AFGHANISTAN BANK (CENTRAL BANK OF AFGHANISTAN)

Procedures for Islamic Banking

- 9.10.3 ensure the credibility of decision-making process and protect the Shariah Board from undue influences.
- 9.11. The guidelines also set out the methodology a Shariah Board shall follow when reaching a resolution and also sets out a mechanism whereby the Shariah Board can retract a resolution if overruled by the SSB.
- 9.12. **Guidelines on Outsourcing of Islamic Banking Operations.** These are guidelines for the Bank to consider and abide by when they plan to outsource any part of their Islamic Finance operations.
- 9.13. **Guidelines on Ibra' (rebate).** These are guiding principles for Banks in deciding the policy on granting Ibra' to their customers for instance in pre-payment or early settlement event.

10 THE PROCEDURES – ON SITE SUPERVISION MANUAL AND GUIDELINES

- 10.1. The purpose of the On-Site Supervision Manual is to supply a methodology to the DAB to enable it to regularly verify that the Banks, implement and operate under all the relevant governing principles and guidelines that respectively apply to them.
- 10.2. The On-Site Supervision Manual assists DAB to carry out its statutory functions in a comprehensive manner to ensure that nothing is overlooked with regards to Shariah-compliance when conducting an On-Site review of the Bank's operations.
- 10.3. Having a clear investigative methodology in place where the industry is in a nascent stage will assist the development of Islamic finance in the Islamic Republic of Afghanistan as the regulator will, from day one, have a clear understanding of its role in supervising the Shariah compliant business operations of Islamic Banks.

11 THE PROCEDURES – OFF SITE SUPERVISION MANUAL AND GUIDELINES

- 11.1. The purpose of the Off-Site Supervision Manual is to enable DAB to follow on, on an off-site basis from its work undertaken in the On-Site examination and ensure that the Bank carries out its Shariah-compliant business operations in a manner satisfactory to DAB.

DA AFGHANISTAN BANK (CENTRAL BANK OF AFGHANISTAN)

Procedures for Islamic Banking

12 THE PROCEDURES – PRODUCT DEVELOPMENT PROCESS

- 12.1. Product development and innovation is a crucial component in the development of Islamic Finance globally. A challenge for DAB and the Banks is to persuade the general population to place their money in a bank, and secondly to place their money with a Bank using a Shariah-compliant product.
- 12.2. Products to be developed for the Islamic Republic of Afghanistan, like all jurisdictions must have competitive pricing and must have a clear economic need that they are trying to address to appeal to the general public as well as the corporate sector.
- 12.3. The Product development guideline sets out internationally adopted methodology to assist a Bank in developing a Shariah-compliant product setting out the pre-product approval processes and an approval procedure whereby the Bank can conduct its own product development in a coherent and effective manner.

13 THE PROCEDURES – VERIFICATION PROCESS OF ISLAMIC BANKING PRODUCTS

- 13.1. The purpose of the verification procedure manual is to assist the Bank in ensuring that when it operationalises a product as approved by the Shariah Board via a duly executed Resolution (“Fatwa”) it does so in a Shariah-compliant manner.
- 13.2. The product development manual is a general guide and all Banks are expected to adopt it and refine it for their particular operations.

14 PRODUCT OUTLINES OF ISLAMIC BANKING PRODUCTS

- 14.1. DAB has developed a number of sample products. These are an example of how the Bank can populate its product development guide for a new product that the Bank plans to bring to market.
- 14.2. **Savings account (liability product)** is based on the Mudarabah contract.

DA AFGHANISTAN BANK (CENTRAL BANK OF AFGHANISTAN)

Procedures for Islamic Banking

- 14.3. **Current account (liability product)** is based on the Qard contract.
- 14.4. **Investment account (liability product)** is based on the Mudarabah contract.
- 14.5. **Ijarah (Asset financing)** is based on the Ijarah contract.
- 14.6. **Murabaha Financing (Asset financing)** is based on the Murabaha contract, specifically the Murabaha to the Purchase Orderer product.
- 14.7. **Musharqah mutanaqisah (Asset financing)** is based on the combination of the Musharaka and Ijarah contract.
- 14.8. **Murabaha Tawarruq (Cash financing and working capital)** is based on the Commodity Murabaha structure.
- 14.9. **Letter of Credit (Trade financing; pre and post)** is based on the combination of the Wakala, Murabaha and Kafalah contracts.
- 14.10. **Letter of Guarantee (trade financing; pre and post)** is based on the Kafalah contract.
- 14.11. **Receivables Financing (trade financing; pre and post)** is based on the Bay' al- Dayn Bi al- Sila' structure.

15 ISLAMIC BANKING LIBRARY WITHIN THE ISLAMIC BANKING DIVISION OF DAB

- 15.1. The Islamic Banking Library is a resource that staff in DAB shall utilise to familiarise themselves with the concepts of Islamic Finance.
- 15.2. It is intended to be a living library and the IBD upon continuous consultation with the SSB shall, whenever it deems it appropriate, add further books / articles to same.

**DA AFGHANISTAN BANK
(CENTRAL BANK OF AFGHANISTAN)**
Procedures for Islamic Banking

16 CUSTODIAN OF THE DOCUMENT

This Manual shall be under the safe custody of the Islamic Banking Division of DAB. Any changes to the 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.

17 EFFECTIVE DATE OF THE DOCUMENT

The Effective date of this Manual is the _____ day of _____ 20____