



ISLAMIC REPUBLIC OF AFGHANISTAN
Da Afghanistan Bank

REGULATION ON FINANCIAL LEASING

1394



د افغانستان بانک
DA AFGHANISTAN BANK

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CHAPTER One

General Provisions

Basis

Article 1:

This Regulation is designed Pursuant to Article 27 of the Financial Leasing Law, official gazette number 1128 of 2014, for the purpose of regulating the process for licensing and supervision.

Purpose

Article 2:

The purpose of this Regulation is to:

- (1) Develop a transparent process for Da Afghanistan Bank to conduct the licensing and supervision of lessors and regulation of leasing activities in the country.
- (2) Ensure a more efficient implementation of the Financial Leasing Law
- (3) Promote leasing as an instrument for the financing of fixed assets such as machinery, equipment, vehicles and/or properties
- (4) Promote competition in the financial marketplace.

Scope

Article 3:

- (1) This Regulation shall apply to lessors operating in the Country whether local or foreign that conduct financial leasing activities qualified under this Regulation.
- (2) This Regulation shall not apply to banking institutions that are licensed by Da Afghanistan Bank except for Chapters 4 and 5.

Definitions

Article 4:

Unless the context indicates otherwise, definitions provided for in the Law on Financial Leasing shall apply to this Regulation along with the following definitions:

- (1) **Law on leasing means:** The Law on Financial Leasing # 1128 for 2014.
- (2) **Leasing activity means:** Activity practiced by lessors according to a definition of financial lease provided by the Law on Leasing under the condition that the minimum lease term is not less than 12 months.
- (3) **Lessor means:** A legal entity that is practicing leasing activities as defined according to this Regulation and is licensed by Da Afghanistan Bank
- (4) **Department means:** Supervision Department of Da Afghanistan Bank
- (5) **License means:** A written permission issued by Da Afghanistan Bank to a lessor to practice financial leasing activity as defined by this Regulation.
- (6) **Council means:** Supreme Council of Da Afghanistan Bank
- (7) **Registry of Lessors means:** The central registry of licensed lessors created in accordance with this Regulation.
- (8) **Senior Executives means:** The General Manager its Deputy, the Chief Financial Officer, and the Senior Department Managers.
- (9) **Minimum Lease term means:** A period during which a leased asset is provided to a lessee for temporary possession and use in accordance with a leasing agreement.

Chapter Two

Licensing

Issuance of license

Article 5:

- (1) Any legal entity willing to undertake financial leasing activity in the Country must apply to obtain a license from Da Afghanistan Bank in accordance with this Regulation.
- (2) It is prohibited to undertake Financial Leasing activity without prior licensing in accordance with this Regulation.
- (3) Any legal entity who has not obtained a license in accordance with the provisions of this Regulation shall be prohibited from using the phrase “financial leasing” or any synonym thereof, whether in Dari or Pashto or any other language, as a part of its name, nor to use this phrase in its papers, documents, or promotional material.
- (4) A lessor may practice other activities as defined in its articles of association including but not limited to providing credit, micro credit and other financial services such as factoring and installment credit

Licensing Requirements

Article 6:

- (1) The following is required to obtain a license from Da Afghanistan Bank to practice financial leasing activity:
 - 1- The applicant must be a shareholding company duly registered in accordance with the laws of Afghanistan, or a foreign shareholding company duly registered in its country of origin, provided it registers a branch in Afghanistan.
 - 2- The applicant company's paid in capital must not be less than Three million USD (3000000) and its equivalent in AFS.
 - 3- Licensing fees are paid
 - 4- Members of the applicant company's Board of Directors, the representative of the foreign shareholding company branch, Senior Executive Managers must fulfil the conditions, qualifications and experience delineated below in articles 7 and 8 of this Regulation.
- (2) The applicant is required to ensure compliance with all licensing requirements specified in this Regulation. In case of failure to do so, Da Afghanistan Bank may, after notifying the applicant, take actions in accordance with this Regulation.

Requirements for the Board of Directors

Article 7:

In addition to the requirements and conditions provided for in the relevant laws, the chairman and the members of the Lessor's Board of Directors must:

1. Not be a board member or a member of Senior Executive Management in another company practicing financial leasing activity in Afghanistan, unless the other company is a subsidiary of the Lessor.

2. Not be an executive or supervisory board member of the banking institution unless lessor is a subsidiary of such banking institution
3. Shall be at least a college graduate or have at least five (5) year experience in business;
4. Meet the requirements set forth in the paragraph 16 of Article 2 of the Banking Law of Afghanistan.

Requirements for Senior Executive Management

Article 8:

The conditions delineated in article 7 of this Regulation shall apply to the Lessor's Senior Executive Management members.

(1) The General Manager / CEO of the Lessor must:

- 1- Work on a full time basis for the duration of his employment by the Lessor.
- 2- Have obtained a university degree from a university recognized in Afghanistan, and have practical experience of no less than 7 years in the field of financial, banking or finance business.

Application

Article 9:

The application to obtain the license must be presented to Da Afghanistan Bank in accordance with the form developed by the Department and it should be signed by the applicant company's authorized signatories with an undertaking subject to legal liability that the information contained therein and in the attachments are accurate. It must at least include:

- 1- The name, type of entity, registration number, date of registration in the register of companies, the headquarters, and the number of branches of the applicant company.
- 2- The names of shareholders who own more than 5% of the applicant company's capital, their nationalities, the nature of their activities, the amount and percentage of their ownership in the capital.
- 3- The name, address, a short résumé for each individual proposed to be appointed in Senior Executive Management positions in the applicant company, including capacities and job titles.
- 4- The name and address of the applicant company's auditor.
- 5- The capital of the applicant company.
- 6- The name of the person authorized to represent the company before Da Afghanistan Bank for the purposes of licensing procedures and his full address, including e-mail address.

Documents to be attached to the Application

Article 10:

(1) The following documents must be attached to the license application form:

- 1- A Certificate of company's registration for an applicant, and a certificate including the names of its members of the board of directors, its authorized signatories.
- 2- The company's memorandum of association.
- 3- A certificate issued by a licensed bank certifying that the applicant company's capital has been fully paid-in.
- 4- The organizational structure of the applicant company.



- 5- Audited financial statements for the prior three years for legal entities who own more than 5% of the applicant company, if any.
 - 6- Proof of identity of the persons to be appointed in Senior Executive Management positions.
 - 7- The audited financial statements as follows:
 - a) if the applicant company has already been active for more than three years at the time of application – financial statements for the three years preceding the application;
 - b) if the applicant company has been active for three years or less at the time of application – financial statements for the period since applicant's registration,
 - c) The provision of this sub paragraph shall not be applicable to applicant companies operating for less than 12 months or newly established companies.
 - 8- A feasibility study related to the establishment of leasing operations covering a period of five years specifying, as a minimum, the following:
 - a) Sources of current and future funding
 - b) Projected profit and loss statements
 - c) Budgets
 - d) Projected cash flows
 - e) Number and locations of the company's branches to be established
 - f) Activities and services that the applicant company wishes to provide and the details related thereto.
- (2) If the applicant company is a foreign shareholding company, all documents issued abroad submitted thereby must be duly certified by the country of origin.
- 1- In addition to the documents listed in paragraphs 1-8 above, the following documents shall be attached to the application submitted by a foreign shareholding company:
 - a) written permission issued by the competent authorities in its country of origin allowing the foreign company to exercise financial leasing activity in the case it is registered in a country where financial leasing activity is required to be licensed.
 - b) the duly signed resolution of the board of directors of the foreign company approving the opening a branch in Afghanistan and the appointment of the representative of the company in Afghanistan and specifying his/her authorities.
 - 2- Any information, requirements, conditions or other documents deemed needed and necessary by Da Afghanistan Bank to decide on the application.

Verification of Information

Article 11:

The Department shall take the necessary action to verify the accuracy of the information included in the application and documents attached thereto.



Processing of Application

Article 12:

- (1) The Department shall scrutinize the application and its attachments, and shall notify the applicant company's authorized representative within 30 days either that the application is complete or, that it is incomplete which precludes processing of the application.
- (2) The Department will grant the applicant company a period of 45 days as of the day of notification of the applicant's authorized representative to complete the file. This period may be extended by the Department once only for a period not exceeding 30 days. In such case, the application and its attachments shall be retained by the Department until the missing documents or information is furnished.
- (3) Failure by the applicant company to furnish the required missing items within specified time shall render the application cancelled; however, the applicant company may submit a new application.
- (4) In all cases, the Department shall notify the applicant company's authorized representative once the application is complete.
- (5) The Council shall issue a reasoned decision regarding the granting or declining of the license within a period of 60 days from the date of receipt of the full application file and attachments.
- (6) The Department will notify the applicant company's authorized representative of the Council's decision within a period of 7 working days of its issuance, provided the notification includes the grounds for granting or declining, as the case may be.
- (7) If the license application is approved, the Department will collect the fees in accordance with Article 15 of this regulation, Da Afghanistan Bank shall then duly issue the license.

License Duration

Article 13:

The license is issued for the indefinite term subject to revocation and annulment in accordance with this Regulation.

Registry of Lessors

Article 14:

- (1) Da Afghanistan Bank shall establish a special registry called the "Registry of Lessors" to register licensed Lessors and shall place it under the Department.
- (2) The registry established in accordance with paragraph (1) of this article, shall at least include the information pertaining to each Lessor's capital, branches, headquarters, the names of members of its board of directors, and its managers and member of Senior Executive Management.
- (3) Da Afghanistan Bank will allocate a file with a serial number for each Lessor, keeping in this file the application form and attachments, a copy of the license decision, license, and all relevant documents and correspondence relating to the Lessor.

Licensing Fees

Article 15:

Da Afghanistan Bank will charge the applicant an application fee of AFS [25,000],



Chapter Three

Supervision of Lessor's Activities

Prohibitions on Lessor's Board of Directors and Senior Executive Management's activities

Article 16:

- (1) The Chairman of the board of directors, members of the board of directors, and members of Senior Executive Management and their first degree relatives may not enter into any contracts, projects, or arrangements with the Lessor or for its account in which any of them has direct or indirect interests.
- (2) The Chairman of the board of directors, members of the board of directors, and members of Senior Executive Management may not:
 - 1- Participate in the management of a company similar or competing with the Lessor, or conduct directly or indirectly a competing business.
 - 2- Receive any commission for any leasing transaction that the Lessor is a party to.

Disclosure of Information

Article 17:

- (1) Every Lessor must provide the Department with the following information:
 - 1- Audited financial statements, within 90 days of the end of each fiscal year.
 - 2- Notification of any significant changes to the membership of the Lessor's board of directors or Senior Executive Management within two weeks as of the date of the occurrence of such change.
 - 3- Notifications related to closure of any branches, establishment of new branches, or moving of branches within 7 working days of its occurrence.
 - 4- Any amendment of the Lessor's capital, Memorandum of Association not relating to its objectives within two weeks of the date of passing the general assembly resolution in connection therewith.
 - 5- A report on Lessor's leasing activities in a form provided by the Department and prepared on a semi-annual basis within 30 days after the end of each six month period that starts on January 1 and on July 1 which should include unaudited financial statements and information on the leasing portfolio including:
 - a) number and volume of leases (subleases) concluded,
 - b) types of assets financed,
 - c) number and volume of non-performing leases specifying the provisions that were made in connection thereto,
 - d) the number and value of contracts terminated specifying the grounds for termination, and
 - e) Repossession cases filed.
 - f) Number of rescheduled leases.
- (2) The Lessor has the right to appeal to Da Afghanistan Bank's Council if the Lessor believes its rights were violated by the actions of the Department's representatives or that the Department's representatives have performed their function in violation of Leasing law, this Regulation or other laws of Afghanistan.

- (3) If the Lessor is not satisfied with the decision of the Council pursuant to paragraph 2 of this Article, it can refer the matter to the Financial Dispute Resolution Commission, and, if not resolved, file a lawsuit in competent court.

Matters Requiring the Approval of Da Afghanistan Bank

Article 18:

- (1) The Lessor must obtain Da Afghanistan Bank 's prior written approval for any of the following:
- 1- Amendments of any of its objectives.
 - 2- Merging with another company.
 - 3- Issuing a Resolution for voluntary liquidation.

Monitoring and Supervision of Lessors

Article 19:

- (1) Lessors are subject to Da Afghanistan Bank's monitoring and supervision.
- (2) The Lessor must provide data, information, and forms of documents and contracts used thereby whenever requested by Da Afghanistan Bank for monitoring and supervision purposes. All data and information submitted by the Lessor to Da Afghanistan Bank must be in written form and duly signed by the authorized signatory on behalf of the Lessor.

Inspection Activities

Article 20:

- (1) The Department shall be authorized to conduct an inspection of the licensed Lessors to ensure compliance by the Lessors with the Leasing Law and this Regulation by any means necessary and appropriate.
- (2) The Department's authorities referred to paragraph 1 of this article include access to the Lessor's entire entries, books, files, relevant documents and forms, and may enlist the aid of a certified auditor at the expense of the Lessor.
- (3) Upon completion of the inspection, the Department shall issue a written report to the Lessor clearly identifying any areas of non-compliance with the Leasing Law, and this Regulation by the Lessor and the specific corrective actions necessary for it to become compliant, if there are instances of non-compliance.
- (4) If the Lessor commits any breach of the provisions of the Leasing Law, this Regulation, or orders issued in accordance thereto, or it came to Da Afghanistan Bank's attention that the Lessor does not comply with the applicable laws in the course of conducting its business, even if no judicial decisions indicting them are issued, the Council may take any of the following measures against the Lessor:
- 1- Addressing a written notification to request
 - a) the Lessor to stop the breach and take corrective actions to remove the effects of the breach.
 - b) the Lessor to suspend part or all of its operations until the breach is rectified.



- 2- Suspending the license for the period it deems appropriate provided it does not exceed 30 days.
 - 3- Revocation of the license granted to the Lessor.
- (5) Da Afghanistan Bank shall always ensure that the measures taken thereby are commensurate to the breach committed by the Lessor.
 - (6) Da Afghanistan Bank shall notify the relevant parties of its decision to suspend or revoke the license, and publish the decision, as the case may be, on Da Afghanistan Bank website.
 - (7) The measures taken in accordance with this Article shall not prevent civil or criminal liability in accordance with any other legislation.

Revocation of License

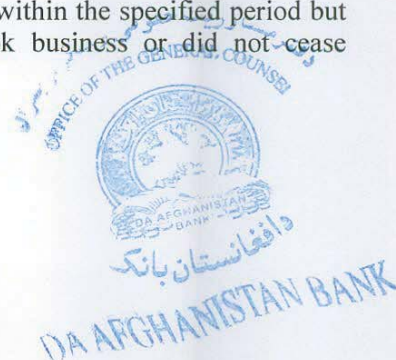
Article 21:

- (1) In addition to the other cases delineated in this Regulation, the Da Afghanistan Bank shall notify the Lessor of its intention to revoke the license granted to the Lessor giving the Lessor 30 days to respond in any of the following cases:
 - 1- If it transpires that the Lessor has provided Da Afghanistan Bank with incorrect information or intentionally omitted to disclose the information that should have been disclosed for the purposes of obtaining a license.
 - 2- If a final criminal judicial decision is obtained against members of its Board of Directors, or members of Senior Executive Management in relation to crimes committed in the course of conducting lessor's business activities.
- (2) The Council shall take the proper decision concerning the revocation of the license within 30 days of receiving the Lessor's response.
- (3) The Council revoke the license granted to the Lessor without notification in accordance with paragraph (1) of this Article in any of the following cases:
 - 1- Upon the Lessor's request following a Board of Director's resolution.
 - 2- If the Lessor has been declared bankrupt or placed under compulsory liquidation, or Lessor's parent company has been declared bankrupt or is under liquidation.

Annulment of license

Article 22:

- (1) If it comes to the Department's attention that a Lessor has not commenced operations after obtaining the license or ceased operations for a period exceeding 6 months, the Department may request the Lessor to provide justification for ceasing or not commencing operations within 15 days of notifying it.
- (2) If the Lessor responds to the Department's notice and the Department is convinced of the reasons for ceasing operations, the Department may recommend to the Council to grant an extension not exceeding 6 months to commence operations
- (3) If the Lessor does not respond within the specified period or responded within the specified period but the Department was not convinced of the response that it undertook business or did not cease



operations or did not resume operations after the lapse of the period granted, the Department may recommend to the Council to annul the license granted to the Lessor, and if the Council is convinced, it shall issue a resolution to annul the license.

Notification of the annulment or revocation of the License

Article 23:

- (1) Should the Council issue a decision to annul or revoke the license, the Department shall notify the Board of the Lessor of decision indicating its grounds.
- (2) The decision shall be published in the Da Afghanistan Bank website within 2 working days of its issuance and within seven working days from the date of issuance in a local newspaper.
- (3) The measures taken in accordance with this paragraph shall not prevent civil or criminal liability in accordance with any other legislation.

Consequences of License Annulment or Revocation

Article 24:

- (1) If the license is annulled or revoked for whatever reason the Lessor shall not practice financial leasing.
- (2) All leasing contracts that the Lessor entered into before license annulment or revocation remain valid within their duration.

Penalties

Article 25:

- (1) The entity shall be penalized, with the fine in the amount of AFS 50,000 if it conducts leasing activities without obtaining a license from Da Afghanistan Bank.
- (2) The lessors shall be penalized with a fine in the amount of up to AFS 25,000 if it fails to provide information within the established timeframe in accordance with the sub paragraphs 1- and 2- of the paragraph 1 of the Article 17 of this Regulation.
- (3) The amount of the fines referred to in paragraphs 2 of this Article shall not be less than AFS10,000.
- (4) The proposed penalty stated in Paragraph 2 of this article must be approved in writing by the Governor of Da Afghanistan Bank.
- (5) The proposed penalties stated in paragraph 1,2 and 3 of this article shall be imposed by Da Afghanistan Bank in light of the authorities referred to in provisions of article 107 of Banking Law of Afghanistan.



Chapter Four

Additional Rights and Responsibilities of the Parties to a lease

Subleasing

Article 26:

- (1) The lessee has the right, with the written approval of the lessor, to sublease the leased asset, where the sub-lessor and the sub-lessee act as the lessor and the lessee as per the provisions of the Law on Financial Lease and have the rights and obligations for such parties to a lease.
- (2) The subleasing agreement will be void in case no written approval was obtained from the lessor.
- (3) Subleasing of the leased asset does not affect lessee's rights and obligations towards the lessor as stipulated in the original leasing agreement.
- (4) The term of the subleasing agreement must not exceed that of the original leasing agreement.
- (5) Premature termination of the original leasing agreement shall result in termination of the subleasing agreement, unless agreed otherwise.
- (6) In case the lessor wishes to continue with the sub-lease, the sub-lessee has a preemptive right to enter into a new lease with the lessor under the terms of the terminated leasing agreement and for the remaining period of the subleasing agreement.
- (7) In case when the leasing agreement becomes invalid due to reasons stipulated by the Leasing Law and this Regulation, the subleasing agreement becomes invalid as well.

Lessee as a beneficiary of the Supply Contract

Article 27:

- (1) When the absence of direct contractual relationships between the lessee and the supplier prevents the lessee from enforcing its rights against the supplier, the lessor that signs supply contract with the supplier, is bound to take necessary measures to ensure fulfillment of the obligation of the supplier towards the lessee.
- (2) Measures referred to in paragraph one of this article will include an assignment of lessor's rights towards the lessee for the supply agreement to be duly enforced.

Warranty of Quiet Possession

Article 28:

- (1) In a financial lease the lessee is responsible for the selection of the supplier and, therefore, bears responsibility for ascertaining the quality of the supplier's rights in the leased asset before the asset is purchased by the lessor.
- (2) The lessor warrants that the quiet possession of the lessee will not be disturbed by a person who has or claims a superior title or right to the asset or acts under the authority of a court however such warranty is limited to a disturbance of quiet possession by a third party whose superior title, right or claim derives from a negligent or intentional act or omission of the lessor.



- (3) The lessor's warranty of quiet possession does not interfere with any right of an owner or any other holder of a superior interest to take possession of the asset subject to the lease. In case third parties' claims to the leased asset violate rights of the lessee, lessee has the right to file a lawsuit for damages against lessor however only in cases stipulated by the preceding sub-paragraph.
- (4) A lessee who furnishes specifications to a lessor or a supplier shall hold the lessor and the supplier harmless against any claim of infringement that arises out of its compliance with such specifications.

Warranty of Acceptability of Leased Asset

Article 29:

- (1) The supplier warrants that the asset will be at least such as is accepted in the trade under the description in the lease and is fit for the ordinary purposes for which an asset of that description is used.
- (2) The warranty stated in paragraph one of this article must be given in writing.

Maintenance of the leased Asset

Article 30:

- (1) The lessee shall take proper care of the asset, use the asset reasonably in the light of the manner in which such assets are ordinarily used and keep the asset in the condition in which it was delivered, subject to fair wear and tear.
- (2) When the lease comes to an end or is terminated, the lessee, unless exercising a right to buy the asset or to hold the asset on lease for a further period, shall return the asset to the lessor in the condition specified in the paragraph 1 of this article..
- (3) If lessee fails to return the asset to the lessor in the condition specified in the preceding sub-paragraph, the lessor has the right to claim compensation from the lessee.

Chapter Five

Procedures for Repossession of Leased Asset

Lessor's right to repossess

Article 31:

- (1) Upon Lessee's default, the Lessor may directly enforce its rights against the leased asset as provided in the leasing agreement.
- (2) Lessor may enforce the agreement upon lessee's default by taking possession and disposing of the leased asset according to the provisions of the Leasing Law and this Regulation.
- (3) Any costs or expenses incurred while enforcing shall be paid from the funds recovered to the Lessor.
- (4) Lessor may dispose of some or the entire leased asset before or after any commercially reasonable repair, processing or preparation.



Method of Disposal

Article 32:

- (1) Leased Asset may be disposed of by public sale, private sale, secondary lease or otherwise, subject to provision of the relevant legislation, and may take place at any time or place and on any terms that are considered commercially reasonable.
- (2) When the leased asset is of a kind that cannot readily be moved from the premises of lessee or is of a kind for which adequate storage facilities are not readily available, the leased asset may be seized or disposed without removing it from its place.
- (3) The Lessor must not sell the leased asset from the premises if this causes a major hardship to the Lessee or requires costs that are more than is necessary for the disposal.

Notice of Disposal

Article 33:

- (1) The Lessor shall give Notice of disposal not less than fifteen (15) days prior to disposal of the asset to the Lessee.
- (2) The Notice of Paragraph (1) of this Article shall include:
 - 1- A description of leased asset;
 - 2- The unpaid amount of the leasing payments
 - 3- The day, time and place of any sale by public auction.

The Right of the Lessee to redeem the leased asset

Article 34:

- (1) At any time before the Lessor has disposed or contracted for disposal of the leased asset, or before the Lessor choose to retain the leased asset, the lessee may redeem the leased asset by paying all unpaid debt to the Lessor. If applicable, the lessee must also pay the lessor reasonable expenses for seizing, holding, repairing, and preparing the leased asset for disposal.
- (2) When a Lessor disposes of leased asset to a buyer for value, such buyer acquires the leased asset free from the lessor's rights and any claims.

Possession or Disposal by the court

Article 35:

If the Lessor cannot or chooses not to take possession of the leased asset without judicial support in accordance with the provisions of this chapter., and elects to take possession of leased asset or dispose of the asset he may request in writing that the competent court orders compulsory enforcement



Chapter Six

Miscellaneous provisions

Adjusting of Status

Article 36:

- (1) Any legal entity that is currently conducting leasing activities must adjust its status in accordance with the provisions of this Regulation within 6 months from the date it come into force. The Council may grant any Lessor an extension to this period for a maximum of one year.
- (2) If any entity does not adjust its status in accordance with the preceding paragraph, it shall be prohibited from conducting leasing activities. However, all leasing contracts that the entity entered into before the status adjustment period remain valid within their duration.

Confidentiality

Article 37:

- (1) The Lessor shall observe confidentiality of all data and information related to the Lessee, and shall be prohibited from providing directly or indirectly any data on any Lessee except upon a written consent of the Lessee or upon a decision issued by a competent judicial authority, or due to a situation requiring such disclosure pursuant to the provisions of the relevant legislations and this Regulation. This prohibition shall remain in effect even if the relationship between the lessor and the client has terminated for any reason whatsoever.
- (2) Any person who, by virtue of his profession, position, or work directly or indirectly, may have access to such information and data, including officers of Da Afghanistan Bank, auditors, or any other advisor appointed by Da Afghanistan Bank or the Lessor shall observe confidentiality.
- (3) The provisions of paragraphs (1) and (2) above shall not apply to:
 - 1- Disclosure made to the auditors and advisors appointed by the Da Afghanistan Bank or the Lessor in accordance with the Leasing Law or this Regulation to enable them to perform their duties.
 - 2- Disclosure made to enable Da Afghanistan Bank to perform the acts and measures undertaken by it pursuant to the Leasing Law or this Regulation.
 - 3- Disclosure by a Lessor, in full or in part, of data and information on transactions concluded with lessees required to substantiate a claim of its rights in a judicial dispute between it and the Lessee in respect of such transactions.

Entry into Force

Article 38:

This regulation shall be effective upon adoption by the Supreme Council of Da Afghanistan Bank.

