



**Da Afghanistan Bank**  
**Non-Banking Financial Institutions Supervision Directorate General**

**Regulating and Supervising of Non-Banking Financial Institutions Activities Regulation**



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## Version History

Version	Date	Author	Comments
First	March 14, 2021	NBS	New
Second	April 4, 2021	NBS	Amended
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## Chapter 1: General Provisions

## Article 1: Basis

- (1) This Regulation has been enacted in accordance with the provisions of Paragraph 6 of Article 2 of the Da Afghanistan Bank Law.

## Article 2: Objectives

- (1) Objectives of this Regulation are as follows:
1. Setting/specifying the conditions and criteria for issuance, renewal, suspension, annulment, losing and burning of MSP/FXD license and other related issues.
  2. Better management/regulating of activities of the Money Service Providers and Foreign Exchange Dealers.
  3. Prevention of money laundering and terrorist financing and management of activities, obligations and responsibilities of Foreign Exchange Dealers in accordance with laws, regulations and international standards.

## Article 3: Scope

- (1) The MSPs/FXD Regulation shall be applicable to all natural and legal persons (local and international) who are engaged in providing money services and foreign exchange dealing in Afghanistan.
- (2) This Regulation shall not be applicable to licensed commercial banks, their branches, foreign bank branches, electronic money service providers, microfinance institutions, financial lessors which have the activity permission from DAB.

## Article 4: Definitions

- (1) **Applicant:** Means an individual or legal entity who applies to DAB for the acquisition of a license to provide money services and money exchange services.
- (2) **Authorized agent:** Means a person who, according to the provisions of this Regulation, has been authorized by a license to operate a business engaged in the provision of money services on behalf of the licensee.
- (3) **Branch:** Means sub-office of the main office in which all or part of activities of money service providing or foreign exchange dealing are carried out.
- (4) **Money Services:** Means money transfer services, currency exchange and check cashing (converting checks into cash).
- (5) **Money Service Provider:** Means provider of money services who has obtained license from DAB and who engages in business money services provision.
- (6) **Check Cashing:** Means receiving compensation for taking payment instruments or stored value (other than traveler's checks), in exchange for money, payment instruments, or stored value delivered to the person delivering the payment instrument or stored value.
- (7) **Foreign Exchange Dealing:** Means currency exchange services, currency pre-purchase contracts, voluntary exchange contract, arrangements or other derivatives of currency dealings.
- (8) **Foreign Exchange Dealer:** Means a person holding a valid license or permit from DAB.
- (9) **Concessionaire:** Means a legal entity that concludes contracts with money service providers who have branches in more than one country.



1. Act as a mediator between money service providers in terms of international money transfers.
  2. Providing money service providers with a common name, common corporate identity, and common marketing; and
  3. Compensate the sender of the money for any damages resulting from negligence, lack of fluidity, and frauds committed by trustees.
- (10) **Person:** A natural or legal person.
- (11) **Sender:** Means a person who wants to transfer money to another person.
- (12) **Receiver:** Means an authorized natural and legal person that receives the money transferred by another person.
- (13) **Money Transfer:** means moving money electronically or physically to a specified person from one location to another location. The term does not only refer to the physical delivery of money, online services, telecommunication and access to network it also includes national and international transfers.
- (14) **Fit and Proper Person:** A natural person who is considered to be honest, reliable, fair-minded, fit and proper and has good decision-making skills, be effective in personal, financial and commercial activities is considered fit and proper, and also who has the required skills and experience to fulfill the entrusted tasks. Based on determination of members of the Supervisory Board, members of the Board of Directors and other relevant bodies as well as determination of DAB a legal person may be considered fit and proper that have the above-mentioned characteristics, as determined by DAB. In one of the following cases, the person shall not be considered fit and proper:
1. He/she has been convicted of a crime by an authorized court, unless his/her conviction arises from political or religious beliefs or activities.
  2. Be declared bankrupt by an authorized court.
  3. Due to personal or professional misconduct, not to be allowed to perform any financial activity or to be declared disqualified by a competent authority.
  4. A branch or person who is influenced by a person who is not considered fit and proper according to conditions set forth in Parts 1, 2 and 3 of this Paragraph.
- (15) **Beneficiary (real owner):** A natural person or persons who are the real owners and have the final control of the money service provider or Foreign Exchange Dealer.
- (16) **Major Change:** this includes the changes such as; change in the physical address, replacement of responsible persons, change in type of activity, and other issues specified by DAB circular, in case of not reporting such changes, DAB will consider it as misleading or delayed inspection or monitoring.
- (17) **Ill Will:** The will and intend of a person to commit a criminal or illegal act.
- (18) **Occasional Customer:** A customer who has not previously had a business relationship with the Money Service Provider or Foreign Exchange Dealer.
- (19) **Currency Exchange:** means conversion of one country's currency into another.
- (20) **Currency:** Means currency of other countries except Afghan currency.
- (21) **Loan:** Means any kind of payment of money instead of an obligation to repay the amount paid with or without interest.
- (22) **Deposit:** The amount that a person deposits to a bank and has one of the specifications mentioned in Paragraph 11 of Article 2 of the banking law.
- (23) **Cross-Selling:** Includes cross-selling services such as purchase and sale of airline tickets, Mobile Top Up and other similar services by Foreign Exchange Dealing companies or money service providers in addition to their main activities. From time to time, these monetary services are determined by DAB circulars.





- (24) **A Reputable Person Providing Guarantee:** Includes providers of money services, licensed Foreign Exchange Dealers or entrepreneurs who have obtained license or valid legal document from the relevant authorities.

#### Article 5: Exemption

- (1) All persons, in accordance with the provisions of Articles 75 and 91 of the Da Afghanistan Bank Law, the nature and extent of their activity and trade, or type of their customers, are not subject to the said law or Regulation, may apply for an exemption.
- (2) Applicant must apply for exemption to the Licensing Section of the Non-Banking Financial Institutions Supervision Directorate General of DAB, located in Ibn-e-Sina Watt, Kabul, and in the provinces to DAB branches.
- (3) Granting an exemption is the authority of the Governor and/or Executive Board providing that DAB can request additional information before deciding on the exemption application.
- (4) If application is approved, the exemption can be conditional and limited in time. The Services that could be provided or not provided by such persons shall be listed by DAB.

#### Article 6: Exceptions

- (1) In exceptional cases such as natural disasters or unusual situations, DAB may set and approve different terms and conditions for licensing process and monitoring.

#### Article 7: Registration of Application

- (1) In order to obtain an FXD and MSP license the applicant is obliged to submit a written application to the Non-Banking Financial Institutions Supervision Directorate General of DAB or DAB offices in provinces.
- (2) Applicant can obtain the application form for obtaining a license for money services and exchange services from the Licensing Section of Non-Banking Financial Institutions Supervision Directorate General of DAB located at Ibn-e-Sina Watt, Kabul or DAB offices in provinces.
- (3) Applicant may be holder of the license or authorized representative of the owner with obtaining a power of attorney from the owner.

#### Article 8: Content of Application

- (1) An application for obtaining a license to provide MS and FX services shall be made in writing and by filling the special forms distributed by DAB, which includes the following information and documents:
  1. Types of services delivered;
  2. Commencement date;
  3. Business Location and address;
  4. Letter of Commitment for fulfillment of provisions of this Regulation;
  5. TIN and tax clearance certificate of the owner or his/her representatives;
  6. Provision of cash guarantee and submission of its receipt;
  7. Provision of three photos;
  8. Payment of application process fee and submission of the required documents; and
  9. Submission of guarantee letters from two reputable/reliable guarantors.
- (2) If applicant is a natural person, in addition to providing the documents and fulfillment of the provisions of Paragraph (1) of this Article, he/she shall also provide the following documents and information:



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1. Documents and information about identity of the owner and the responsible employee (secretary) that includes a certified copy of the Tazkira or passport.
2. Provision of information about the applicant's activities and occupation.
- (3) If applicant is a legal person, in addition to providing the documents and fulfillment of the provisions of Part 1 to 7 of Paragraph (1) of this Article, is also obliged to provide the following documents and information:
  1. A copy of the business license and its article of association;
  2. No objection letter from the authority that issued the license regarding obtaining money services and foreign exchange dealing services;
  3. Copies of Tazkiras, biography of shareholders, and their shareholding structure;
  4. Comprehensive information on activities, strategy or business plan and financial forecasting;
  5. Audited financial statements of the previous years (if available); and
  6. Biographies and Tazkiras of senior management and key people in the application.
- (4) If applicant intends to obtain a business license for a Money Service Provider and Foreign Exchange Dealer company, in addition to providing the documents stated in Paragraph (1) and (2) of this article, based on its natural and legal personalities, is also obliged to provide the following documents and information:
  1. One-page business plan which contains organizational structure and Supervisory Board.
  2. Observance of DAB laws and Regulations and other policies.
  3. Provision of Article of Association.
  4. Provision of information on the shareholding structure.
  5. Board of Directors, Laws and Regulations Compliance Officer.
  6. Submission of registration document and license from ACBR-IP.
- (5) The application form must contain the signature or fingerprint of owner/authorized representatives with obtaining a power of attorney from the owner.

#### Article 9: Conditions for Issuance of License

- (1) While issuing FXDs/MSPs corporate license, the responsible person shall consider below three categories explained table, it's worth to mention that those MSPs and FXDs who are operating in district level, they will be consider in first categories and those MSPs and FXDs who are willing to participate in the DAB USD auction and they are in 1<sup>st</sup> and 2<sup>nd</sup> category they have to meet the requirements of category III:
- (2) The 1st and 2nd categories applicants are only obliged to perform their activities as per the checklist of AML/CFT and HR.

	Facilities
Category I	<ul style="list-style-type: none"> <li>- Submitting the Application form;</li> <li>- Submitting the Identity Information (Tazkira, a copy of passport if available or if the person is a foreigner, Photo, mobile number);</li> <li>- Submitting the response of the criminal irresponsibility Estilam;</li> <li>- Submitting the Tax Identification Number (TIN) Information;</li> <li>- Introduction of Compliance Officer (the owner can take this responsibility);</li> <li>- Introducing of the Operational Officer (the owner can take this responsibility);</li> <li>- Introducing of the Bank Account for the company operations.</li> </ul>





<b>Category II</b>	Those FXDs/MSPs which are categorized in category II shall consider the followings beside the issues mentioned in Category I while applying for changing individual license to corporate license: <ul style="list-style-type: none"> <li>- Application of the AML/CFT policy including the checklist (the sample is already prepared by DAB);</li> <li>- Introducing of the board of supervisors' signatures (the owner can have the membership of the board of supervisors).</li> </ul>
<b>Category III</b>	Those FXDs/MSPs which are categorized in category III shall consider and submit the followings beside the issues mentioned in Category I and Category II while applying for changing individual license to corporate license: <ul style="list-style-type: none"> <li>- AML/CFT policy (the sample is already prepared by DAB);</li> <li>- Business Plan (the sample is already prepared by DAB);</li> <li>- Article of Association (AOA) (the sample is already prepared by DAB);</li> <li>- IT system (DAB may design a software via the IT Department of DAB and may make it available for the 3<sup>rd</sup> Category companies free of cost).</li> </ul>

- (3) Conditions for issuance of license to individual MSPs/FXD are as follows:
1. The applicant or key members of the applicant company must be competent;
  2. Have no tax liability;
  3. Must not be less than 18 years old;
  4. Must have a permanent address;
  5. Must provide two guarantees from reputable/reliable guarantors who hold an MSP license or FXD who have a business license
  6. Commitment to the implementation of the provisions of this Regulation and the laws and Regulations for prevention of money laundering and terrorist financing and depositing the cash guarantee according to the provisions of Article 12 of this Regulation.
- (4) Mobile Foreign Exchange Dealers (Street Foreign Exchange dealers) are not allowed to conduct money exchange and money service activities.
- (5) Issuance and renewing of individual licenses are ceased hereinafter by DAB.
- (6) Foreign nationals can provide Money Services and Foreign Exchange Dealings in Afghanistan independently or in partnership with Afghans.
- (7) DAB can request additional information and documents that are necessary to review the application.
- (8) As long as all the necessary information and documents are not received by DAB, the submitted application shall be considered incomplete.

#### Article 10: Reasons for Rejection of an Application

- (1) In case of any of the following reasons, DAB may reject the application for obtaining MSP/FXD license:
1. In accordance with the provisions of the Fit and Proper Regulation, if the proposed people by the applicant are considered not to be authorized and competent.
  2. If applicant provide DAB with incorrect and misleading information.
  3. If during the last 5 years, the previous license for providing Money Service and Foreign Exchange Dealings of the applicant has been cancelled.



4. Failure to comply with the conditions set forth in this Regulation to submit the requested documents within three months upon the request by DAB, in accordance with the relevant laws, Regulations and circulars.
5. If applicant do not sign the Letter of commitment for fulfillment of provisions of this Regulation.

#### Article 11: Financial Statements

- (1) MSP and FXD companies should hold the financial statement and they may have the option to disclose it to DAB.

#### Article 12: Amount of Guarantee

- (1) Before obtaining the license, the Individual MSPs shall deposit the following amounts as guarantee to DAB account:
  1. Amount of guarantee in Kabul AFN 300,000.
  2. Amount of guarantee in Nangarhar, Kandahar, Paktia, Herat, Balkh and Kunduz, AFN 200,000.
  3. Amount of guarantee in other provinces, AFN 150,000.
- (2) Amounts of guarantee for Individual FXDs are as follow:
  1. Amount of guarantee in Kabul AFN 200,000.
  2. Amount of guarantee in Nangarhar, Kandahar, Paktia, Herat, Balkh and Kunduz, AFN 150,000.
  3. Amount of guarantee in other provinces, AFN 100,000.
- (3) MSP and FXD companies shall not be required to provide cash guarantee and a natural person guarantor.
- (4) In case of abandoning or cancellation of license, the amount of guarantee shall be reimbursed to the owner/representative introduced bank account.
- (5) In the case of cash fines, the following conditions will apply to the MSPs/FXD:
  1. After receiving the tariff for payment of fine, MSPs/FXD are obliged to pay it within 15 working days. Otherwise, after 15 working days, a fine of AFN 500 shall be charged for each day.
  2. The fines imposed on the MSPs/FXD shall be deducted from the guarantee amount with DAB, if in a period of 30 days, the MSP/FXD did not pay the fine. This shall also include the delay in payment of fine.
  3. If the amount of guarantee is deducted due to the deduction of fines, MSPs/FXD shall increase their guarantee amount to the minimum amount specified in this Regulation within 15 working days. Otherwise, the provisions of Articles 39 (Issuance of Disciplinary Actions, Warnings and Fines) of this Regulation shall be applied to them.

#### Article 13: License Validity Period

- (1) Individual license validity period is one year and can be extended, unless DAB decides otherwise.
- (2) No one shall be allowed to provide Money Services and Foreign Exchange Dealings with an expired license.
- (3) Business license of the MSP/FXD companies that are issued according to this Regulation will be effective from the date of issuance for an unlimited period of time.





#### Article 14: Business Name

- (1) The MSPs/FXD may not add the words such as bank, investment company, trade company or other words showing the activities other than the money services or exchange to their business name.
- (2) Change in name of owner/shareholder of MSPs/FXD shall be based on application to DAB main office in the center or branches in the provinces.
- (3) The written notice of changing the name shall be published in a popular publication and its place of operation.
- (4) The following documents shall be provided along with the application:
  1. Original operation license;
  2. Receipt of application fees payment;
  3. Copy of name change notice; and
  4. Other issues specified by DAB.

#### Article 15: License renewal

- (1) The operation license shall be renewed after the MSP/FXD submits the application for renewal of the license three weeks before expiry date along with the following documents to DAB main office or branches in the provinces:
  1. Original activity license;
  2. Receipt of application fees payment;
  3. Receipt of tax payment or confirmation of no tax liability;
  4. Verifying no criminal background of the licensee and its employees by the relevant authorities;
  5. Three photos of the applicant;
  6. Renewal of the information and required documents of the first application for getting license (if there are major changes); and
  7. Other information deemed necessary by DAB.
- (2) The individual Money Service Provider and Foreign Exchange Dealer in the provinces shall submit the renewal application to the branches or zonal offices of DAB according to paragraph 1 of this Article. The relevant zone officers shall be obliged to ensure the application and all provided documents are correct and there is no missing document. The original documents shall be kept in the relevant branch and their copies shall be sent to the licensing section of DAB in the center for further process,
- (3) Eligibility of the licensee and its key personnel,
- (4) There shall be no violation of DAB laws, Regulations and orders during monitoring the money exchange or services provision,
- (5) If the applicant fails to complete the documents according to the paragraphs 1 and 2 of this Article within specified time or three months after the submitting the application, DAB may reject the renewal application and nullify the license.

#### Article 16: Registration of information

- (1) The licenses shall be registered based on the serial number by the licensing section of NBFISD of DAB according to the relevant procedure.





#### **Article 17: Legal Structure of Foreign Exchange Dealers and Money Services Providers**

- (1) The MSP/FXD are established by one person or more as the founder and shareholder according to the provisions of this Regulation.
- (2) The MSP/FXD shall be registered as individual or company. If there is more than one shareholder, it shall be established as a company. The legal personality of the MSP/FXD Company shall be limited liability or corporation.
- (3) The MSP/FXD may not change its legal personality without prior approval of DAB.
- (4) The provisions of LLC Law shall be implemented on MSP/FXD companies provided that not to be in contrast with DAB Law.
- (5) The MSP/FXD Company shall have by law which shall be enforced after approved by DAB and the company may not amend it without prior approval of DAB.
- (6) MSPs/FXDs shall comply with the requirements set forth in LLC Law in terms of administrative structure.

#### **Article 18: General Assembly of Shareholders**

- (1) The general assembly of shareholders is the highest decision-making authority in the company. The assembly should at least have a meeting once a year and in emergency cases they can hold the meeting as per need. The general assembly of shareholders have the following powers and responsibilities:
  1. Approving of by-law and the amendment within;
  2. Appointing and dismissal of Supervisory Board's members;
  3. Approval of the changes in legal structure of the company;
  4. Holding the authority in the change within the ownership of the company;
  5. Holding the authority of abandonment, suspension and/or revoking of the business; and
- (2) Shareholder can be a member of board of supervisors, operation manager or compliance, and can be appointed in each position at the same time.

#### **Article 19: Supervisory Board**

- (1) The supervisory board is the second highest authority of the company. The supervisory board shall have the following authorities and responsibilities:
  1. To evaluate the reports of operational section and issuing instructions in this regard to executive board;
  2. Regular and continual monitoring of the activities of main office and branches of the company;
  3. Holding the meetings of general assembly of shareholders and approving its agenda;
  4. Approving the administrative structure of the company;
  5. Making decision on establishing the branches;
  6. Approving the business plan, strategy, policy and procedures of the company;
  7. To assign, terminate and set salaries and wages of key personnel;
  8. To ensure the implementation of laws and regulations, internal policies and procedures and DAB instructions;
  9. To ensure the eligibility of the laws and regulations compliance officer, authorized employees and representatives of the company;



10. Making decision regarding changing the location of main office and branches of the company, and
11. The supervisory board shall be responsible for DAB, shareholders, customers and other involved entities according to the relevant laws and regulations.
- (2) The assignment and composition of the supervisory board is as follow:
  1. In 3<sup>rd</sup> category license, the number of supervisory boards shall be at least three and maximum five, it must be odd;
  2. The members of supervisory board shall be assigned for a period of three years by the shareholders of the company;
  3. If the shareholders meet the conditions of supervisory board, two of them can be the members of supervisory board. The director and other members shall be independent, but the shareholder cannot have membership of supervisory and executive board at the same time, and
  4. If there is any vacancy in the supervisory board, the company shall be obliged to notify DAB by written and assign other eligible person maximum within three months.
- (3) Any person who is assigned as the member of supervisory board shall meet the following conditions:
  1. Shall be eligible;
  2. DAB may set other conditions for the membership of supervisory board through circulars if required.
- (4) The meetings of supervisory board shall be held as follow:
  1. The members of supervisory board shall be obliged to hold regular meetings and also can hold special meeting in case of emergency;
  2. The quota for the meetings shall be at least 2/3 of the members;
  3. There shall be at least one in person meeting during a fiscal year;
  4. Any member of the supervisory board who does not attend two meetings of a fiscal year without any logical reason, he/she will lose the membership and the company shall be obliged to recruit another eligible person and introduce to DAB, and
  5. All decisions of the meetings shall be recorded and kept in the relevant files after signed by the members of the supervisory board.

#### Article 20: Operational Section Responsibilities

- (1) This employee(s) is only required for Category II and Category III FXDs/MSPs.
- (2) The Operational section of the company has the following duties and responsibilities:
  1. Administrating and managing of daily routine in comply with enforced laws, rules, regulations and policies;
  2. Supervising the daily activities of main office and branches employees;
  3. Recognizing, assessing and mitigating the risks taking into account the relevant regulations and policies;
  4. Reforming of the administrative structure of the company and its branches for the approval of Board of Supervisors;
  5. Conforming the activities of the company in comply with rules, regulations and internal policies;
  6. Submitting the cyclical reports of company's performances to the Board of Supervisors; and
  7. Submitting necessary documents to the examination team of DAB.





**Article 21: Conditions for Recruitment of operational manager**

- (1) This employee(s) is only required for Category II and Category III FXDs/MSPs;
- (2) Working experience, at least, in MSP and FXD activities;
- (3) Must be a fit and proper person; and
- (4) Must not be current employee in other MSPs/FXD;

**Article 22: Conditions for Recruitment of Laws and Regulations Compliance Officer**

- (1) This employee(s) is only required for Category II and Category III FXDs/MSPs
- (2) Conditions for recruitment of laws and Regulations compliance officer shall be as follow:
  1. Shall be eligible; and
  2. Shall have relevant working experience in MSP and FXD business.
- (3) The duties and responsibilities of laws and Regulations compliance officer shall be as follow:
  1. Shall have the knowledge of DAB laws and Regulations and internal policies and procedures of the company particularly the laws, Regulations, internal policy and procedures of the company on money laundering and terrorism financing,
  2. Identifying the risky areas of not observing the laws and Regulations in the company and adopting actions to solve it and provide required guidelines to prevent its repetition in the future,
  3. To review the amendment of policies and procedures of the company on money laundering and terrorism financing
  4. To ensure the implementation of laws, Regulations and circulars of DAB and company policies and procedures and money laundering and terrorism financing,
  5. To cooperate with the operational departments of the money exchange and services company to observe the legislative documents,
  6. To identify the suspicious transactions and monitor them,
  7. To identify large suspicious transactions and report them to FinTRACA and file them regularly
  8. To identify and report the violation of laws, Regulations and internal policies of the company to supervisory board,
  9. To conduct training programs for awareness of company employees regarding laws, Regulations and circulars of DAB and internal policies and procedures of the company,
  10. To implement the sanctions list, and
  11. To cooperate with the Supervisory team of DAB.

**Article 23: Start of operation**

- (1) The Money Service Provider and Foreign Exchange Dealer who obtain license from DAB, shall be obliged to start to work within three months after issuance of license and notify DAB in this regard.

**Article 24: Allowed activities**

- (1) The licensed MSP may do the following:
  1. Money transfer;
  2. Exchange of check to cash;



3. Currency exchange and other allowed activities related to money exchange;
  4. Keeping the money provided that the final objective of the transaction shall be the transfer or exchange maximum within 6 months;
  5. To participate DAB currency bidding or auction; and
  6. Other activities allowed by the relevant circular of DAB.
- (2) The licensed FXD may do the following:
1. Money exchange;
  2. Currency pre-purchase contracts;
  3. Voluntary exchange contract, payment or other relevant activities of currency exchange;
  4. To participate DAB currency bidding or auction;
  5. The companies can do the following in addition to the above-mentioned activities;
  6. The companies may provide cross selling services after getting approval of DAB. Other conditions for cross selling services shall be set through circulars of DAB, and
  7. The companies may transfer the money by its agent in the districts and villages where there is no branch of the company.

#### **Article 25: Prohibited Activities**

- (1) The MSP may not do the followings:
1. To accept the deposit of the customers;
  2. To provide loans;
  3. To facilitate the payment, provision of security and use of transfer system of security according to DAB Law; and
  4. The MSP may not work through unlicensed persons inside the country. Its details shall be specified in the relevant circular.
- (2) The MSP may not do the followings:
1. Using informal registers in contrast with the guidelines and standards of DAB for registration of customer's transactions and information; and
  2. To conceal the register of money services transactions from DAB and its auditors.
- (3) The FXD may not do the followings:
1. To accept the deposit of the customers;
  2. To provide loans; and
  3. Transfer money.
- (4) The FXD may not do the followings:
1. Using informal registers in contrast with the set guidelines and standards of DAB for registration of customer's transactions and information; and
  2. To conceal the register of money services transactions from DAB and its auditors.
- (5) The MSPs and FXDs cannot do the activities stated in the paragraphs 1, 2, 3 and 4 of this Article.

#### **Article 26: MSPs and FXDs duties and responsibilities**

- (1) The MSP/FXD shall be obliged to process their all bank transactions through the bank account opened by the name of money exchange or services provider in one of the banks and may not process their business transactions in their personal or other accounts.



- (2) If the MSP/FXD have agents, the agent transactions shall be processed through the separate account opened by the name of the agent or as directed by DAB.
- (3) The MSP/FXD shall not be involved in unethical competition or intentionally manipulate the market for money exchange or services provision. These are included the following but not limited to them:
1. Collusion with others in terms of rates;
  2. To restrict the public access to the facilities;
  3. To restrict the properties for the competitors;
  4. The MSP/FXD shall be obliged to write the rate of currency exchange and other fees on the board and reveal it for the customers;
  5. The MSP/FXD shall exchange the foreign currencies without considering the type of Afghan banknotes according to the rates written on the board;
  6. The MSP/FXD shall record their daily transactions and provide them and other required information to DAB on monthly basis;
  7. The MSP/FXD shall be obliged to choose a proper location for their activities and the business name shall be visible based on the license. The information in the letters and other official documents shall be inserted according to the license;
  8. The MSP/FXD shall be obliged to hang the license in the main office and the agent permit in the relevant branches that the customers know about the type of their operation;
  9. If the MSP/FXD remain close for more than three days, they shall be obliged to hang a written notice for the customers;
  10. The MSP/FXD may not disclose their customers' information to the third person without provision of law, relevant court permission or order of DAB;
  11. The MSP/FXD shall be obliged to provide the full information regarding the services, products, fees and etc. to the customers;
  12. The MSP/FXD shall be obliged to hang the written notices regarding their allowed services and activities in their offices according to Article 24 of this Regulation that the customers know about their type of activities;
  13. The MSP/FXD shall be obliged to have a standard and acceptable system for its activities and operations. The details of the system shall be specified through circular; and
  14. The MSP/FXD shall be obliged to implement the Regulation on customers' protection and other relevant Regulation in addition to the above-mentioned issues.

#### Article 27: Operation Location

- (1) The MSP/FXD and their agents may operate in the places chosen by them and confirmed by DAB. Two money exchange or services providers may work in one place if agree and provide no objection letter.
- (2) The MSP/FXD shall be obliged to get DAB approval for changing its main office or branches location.
- (3) The MSP/FXD shall get DAB no objection certificate before making working relation with the foreign money services providers.





#### **Article 28: Conditions for Branch Establishment**

- (1) The MSP/FXD companies may establish their branches in Kabul and other provinces after written approval of DAB and by provision of following documents:
  1. The application for branch establishment along with the following documents shall be provided and registered in the licensing Section of NBFISD and in the provinces or zonal offices of DAB;
  2. To obtain DAB approval before establishing branch;
  3. Information regarding type of services and location of the branch;
  4. Copy of verified NIC and information of branch in charge;
  5. Approval of supervisory board regarding the establishment of the branch; and
  6. Other required documents and information deemed necessary by DAB to process the application.
- (2) The MSP/FXD companies may establish the branch provided that to meet the conditions stated in this Regulation.
- (3) Domestic MSP/FXD companies may establish its branch outside the country based on the specified conditions by DAB.
- (4) The establishment conditions are set by DAB.

#### **Article 29: Conditions for Establishing Foreign MSP Branch**

- (1) Any person who wants to establish the branch of foreign MSP shall have Money Services Company and shall establish the foreign branch after approval of DAB.
- (2) The foreign money services company shall get DAB no objection certificate before establishing its branch.

#### **Article 30: Change in Ownership and Control**

- (1) Without prior approval of DAB, no one can obtain share or transfer ownership of license of MSP and FXD to other party.
- (2) A person who wants change ownership of his/her money services and exchange license, he/she shall present application to NBFISD of DAB and DAB Branches in the provinces.
- (3) Owner or shareholders or their authorized representative, and the person who wants to take ownership, shall be present to process application and provide following documents with application of ownership change and control:
  1. Original of activity license, and
  2. Other documents and information as per Article 8 of this Regulation.
- (4) The applicant shall publicize notice of change in ownership of money services and exchange in a local media and provide one copy of it to DAB; and
- (5) DAB can approve application of ownership change and control if new person fulfils all terms and conditions according to this Regulation.

#### **Article 31: Training Program**

- (1) The MSPs/FXD shall ensure their staff and representatives are aware of the prevention of money laundering and financing of terrorism laws and regulation, and other relevant regulations;
- (2) The MSPs/FXD shall be obliged to conduct training in order to enhance the capacity of their staff on regular basis; and



- (3) The MSPs/FXDs shall be obliged to attend in workshops and training programs conducted by DAB and center for analysis of financial reports of Afghanistan (FinTRACA).

#### Article 32: Prohibition of Information Disclosure

- (1) The MSPs/FXDs and their staffs shall be obliged to not share information related to anti-money laundering investigation and financing of terrorism or reporting and providing of information to clients or any other persons of Financial Transactions and Reports Analysis Center of Afghanistan (FinTRACA);
- (2) Sharing of this information between officials and MSPs/FXDs with competent authorities as per laws and Regulation of anti-money laundering and financing of terrorism shall not be included to this limitation;
- (3) The MSPs/FXDs and their staff shall not be responsible to compensate disclosure of professionals while reporting on duty unless disclosure is from bad intentions.

#### Article 33: Reporting

- (1) The MSPs/FXDs shall be obliged to share the following incidents within 30 working days in a written notification to monitoring SD of financial affairs in Kabul and to DAB's provincial regional offices:
  1. Changes in services, authorized representatives and staff;
  2. Changes of location or address of HQ or branches;
  3. Transferee of share in case of legal individuals, changes of guarantors of license; and
  4. Lost or burning of license or death of license owner.
- (2) Any other major changes: the MSPs/FXDs shall be obliged to report all financial reports, profit and lost accounts or any other items required by DAB.

#### Article 34: Supervision of MSPs/FXDs

- (1) DAB issues license to MSPs/FXDs and has the authority to supervise them in Afghanistan;
- (2) Supervision of MSPs/FXDs shall take place as per relevant laws, regulations and procedures;
- (3) The auditors of DAB may audit MSPs/FXD or its branches with prior notification on the extent and duration of audit or without prior notification on the spot;
- (4) The examiners of NBFISD shall have the following responsibilities:
  1. Auditing the accounts and files of offices of MSPs/FXD and their representatives;
  2. Obtaining of information from owners, managers, representatives regarding relevant issues of MSPs;
  3. Application of fines and legal measures as per laws and relevant Regulations;
  4. Inspection of markets, areas and shops suspected of conducting money service without license and who disregard provision of this Regulation; and
  5. Other issues determined as per enforced laws.
- (5) DAB may ask cooperation of FinTRACA, AGO, law enforcement entities etc. if needed for conducting of audit, accessing of offices and accounts of MSPs/FXD.
- (6) All the MSPs/FXD and their representatives shall be obliged to provide necessary assistance to DAB Audit team and cooperate with them on execution of affairs.





### Article 35: Abandoning Business

- (1) In case MSPs/FXD's wish to abandon their business, business abandon application form shall be acquired from licensing section of NBFISD of DAB and submit it to licensing section of NBFISD in Kabul or DAB's provincial regional offices after filing.
- (2) In case of filing for abandoning of business by owners/shareholders of MSPs/FXD's, the following documents and information shall be provided along with application:
  1. Reasons for abandoning of business;
  2. Submission of original license;
  3. Certificate of tax clearance;
  4. Provide criminal and financial background check; and
  5. Any other information asked by DAB.
- (3) Prior to approval of business abandoning application, the applicant can cancel the application via written notification and continue its activity.
- (4) The procedure and condition for approval of business abandoning shall be determined in a work procedure.
- (5) After approval of business abandoning application of FXD's/MSP's, their guarantee amounts shall be returned.

### Article 36: Suspension of License

- (1) DAB can suspend the license of MSPs/FXD's as follows:
  1. The shareholders or owner of license request for suspension of license;
  2. Repeated violation of Regulation;
  3. Lack of reporting for (3) consecutive months; and
  4. Any other conditions deemed necessary by DAB.
- (2) If the license is suspended by DAB, the owners shall be obliged to refer maximum in 3 months after suspension and resolve the suspension, other than that, the license shall be annulled. If the case is under proceeding of judicial organs, the owner shall take measures to resolve the suspension within (30) working days after final decision of competent entity, other than that the license shall be annulled.
- (3) If the suspension request is made by MSPs/FXD's, the applicant shall submit written document to licensing section of NBFISD of DAB in Kabul or provinces. If the validity of license is more than (1) year, the license shall be suspended for maximum (1) year, if the license validity is less than (1) year and more than (6) months, the license shall be suspended for (3) months;
- (4) The MSPs/FXD's cannot operate during suspension of license.
- (5) If the suspension is made as per provision of paragraph (3) of this Article, the license owner shall be obliged to:
  1. In a written application, Request for cancellation of suspension prior to pre-determined time;
  2. In case changes occurred in recorded information of DAB, the license owner shall notify the issue.
- (6) If the owner is not referred in pre-determined time, the issue shall be shared with him in a written document, if not returned after issuance of notification the license shall be cancelled.

### Article 37: Annulment of License

- (1) DAB may annul or cancel the licenses of MSPs/FXD's as follows:
  1. The MSPs/FXD's couldn't inaugurate the business (6) months after issuance of license;





2. The owner or officials of MSPs/FXD has stopped their activities without notifying the DAB for the last (6) months;
  3. The license owner or officials have obtained license through false or derogatory information;
  4. The owner of MSPs/FXD is bankrupted;
  5. The owner of license shall not succeed to record the data in official office;
  6. The business license not extended (3) months after expiration;
  7. Monthly reports not provided for (6) consecutive months;
  8. Violation of laws and Regulations of DAB and commitment letter;
  9. If the license is cancelled by DAB and MSPs/FXD fails to cancel the suspension as per paragraph (2) of Article (36);
  10. If the guarantee amounts of MSPs/FXD in guarantee account is less than 50% of fine by DAB;
- (2) If license is cancelled, the owner shall be obliged to stop money providing service immediately and return original license to DAB before pre-determined time.
  - (3) DAB can issue written warning before cancellation of license. If no consideration is paid to content and condition of warning by MSPs/FXD, DAB may take step on annulment of license.

#### **Article 38: Fees**

- (1) In order to cover part of its administrative costs, DAB may charge money against process and issuance of business license for MSPs/FXD.
- (2) The applied fees shall include the following:
  1. Application process fee of central office and branches license;
  2. Application process fee of duplicate license and its issuance;
  3. License extension fee;
  4. Ownership or shareholder changes application process fee;
  5. Business abandoning application process fee, suspension of business license and changes of commercial name;
  6. Transaction record and activity fee; and
  7. Any other fee specified as per DAB Circular letter.
- (3) DAB has the authority to apply annual evaluation fee on money service providers, Foreign Exchange Dealers and their representative when deemed necessary.
- (4) The named fee shall not be refundable.
- (5) The books provided to MSPs/FXD for recording, entries and reporting of transactions purposes shall be charged based on price of good sold.
- (6) Amount, method, measurement, amendment and how to collect fee shall be determined by DAB.

#### **Article 39: Issuance of Disciplinary Actions, Warnings and Fines**

- (1) In case of violation of this regulation or any other regulations or guidelines by MSPs/FXD, DAB can impose disciplinary actions or issue warnings and apply fines.
- (2) The MSPs/FXD shall apply the disciplinary actions completely and regularly report to DAB.
- (3) DAB can issue warnings or fines or both in the following conditions:
  1. Delay in extension of license;
  2. Lack or Delay in reporting of transactions;



3. Lack or delay in sending of other statistic reports;
  4. Lack of implementation of imposed disciplinary actions; and
  5. Other violations of laws and Regulations.
- (4) In case the MSPs/FXD fails to pay fines, DAB can apply fines from guarantee accounts of them saved with DAB directly.
- (5) In case individuals continue to operate MSPs/FXD without obtaining license from DAB; DAB can take the following measures:
1. Determination of time to suspend activity or forcing the individual to obtain license;
  2. Issuance of warning;
  3. Imposing fines;
  4. Closure (suspension) of activity; and
  5. Referring the issue to justice and judicial organs.

#### Article 40: Losing of License

- (1) In case license of HQ or a branch of MSPs/FXD gets lost, the MSPs/FXD shall be obliged to notify DAB within 40 days and publish the issue in one of mass circulation publication or publish a notification in the markets and area of operations.
- (2) In case the license is not found within 30 days after publicity, the MSPs/FXD shall be obliged apply for duplicate with the following documents to licensing section of NBFISD of DAB and DAB Branches in the provinces.
  1. Document or copy of lost notification;
  2. Copy of duplicate license fee payment;
  3. 3 photos as per instructions; and
  4. Any other documents deemed necessary by dept. of licensing.
- (3) If the lost license is found after issuance of duplicate, the MSPs/FXD shall be obliged submit the duplicate to licensing section of NBFISD of DAB in center or provincial entities with 7 working days.

#### Article 41: Burning of License

- (1) If the license of HQ or branch of MSPs/FXD burns, they are obliged to notify of the situation to DAB in 30 working days.
- (2) In order to obtain duplicate license, the MSP shall be obliged to refer to licensing section of NBFISD of DAB and DAB Branches in the provinces with following documentations:
  1. Certification of relevant union from burning of license;
  2. Duplicate license fee payment document;
  3. 3 photos; and
  4. Any other information and evidence deemed necessary by licensing section.

#### Article 42: Death of Owner

- (1) If the owner dies, the relevant union, authorized individual or his/her heirs shall be obliged to notify DAB within 45 working days of the incident via letter.
- (2) The authorized individual or heirs of the owner shall present its application for continuation or cancellation of activity within 60 working days of the incident.







the previous tier must be fulfilled in addition to the new requirements

Min (AFN)	Max (AFN)	Requirements
0	250,000	Name, address, occupation, and contact number
250,001	500,000	ID card copy
500,001	1,000,000	Tazkeera/passport copy, source of fund, purpose of transaction
1,000,001	3,000,000	Supporting documents
3,000,000	--	Beneficial owner

- (2) The KYC requirements table for natural persons is summarized in Attachment No. 1 of this regulation.
- (3) Supporting documents for source of fund and purpose of transaction includes: employment ID, Bank statement, employment contract, bills and invoices, title deed, real estate documents, business license & AOA in case the income is from business, or any other document that supports source of fund or purpose of the transactions.

#### Article 47: Legal Person Customers KYC Requirements

- (1) The information requirements below are tiered based on the amount kept in the account and/or the transaction amount. At each level, the requirements are additive, i.e. the requirements of the previous tier must be fulfilled in addition to the new requirements

Min (AFN)	Max (AFN)	Requirements
0	250,000	Name, address, contact, authorized person identity information
250,001	500,000	Valid business license
500,001	1,000,000	Information on source of fund, purpose of transaction, authorized person ID copy
1,000,001	3,000,000	Transaction supporting documents
3,000,000	--	Articles of Association, Beneficial Owner

- (2) The KYC requirements table for legal persons is summarized in Attachment No. 1 of this regulation.
- (3) Supporting documents for source of fund and purpose of transaction includes: invoices, bills, bank statement, contract, title deed, real estate documents and any other document that support the source of fund or purpose of transaction.

#### Article 48: Politically Exposed Persons

- (1) Money Services Providers and Foreign Exchange Dealers shall identify that whether customer or beneficial owner of cash are politically exposed persons or not.
- (2) Identification customer from viewpoint of politically exposed person shall include:
  1. Taking information from customer or real owner,
  2. Taking information and reviewing existed information about the customer,
  3. Access and review of database of political exposed persons and information provided by FinTRACA.
- (3) If the customer or real owner is politically exposed persons, Money Services Providers and Foreign Exchange Dealers in addition with strict customer identification measures should shall take following measures.





1. Obtaining agreement of authorized figure of Money Services Providers and Money Exchanger about conducting or establishment business transaction with customers,
2. Taking proper measures for identifications of source of fund, purpose of transaction and transfer of cash by politically exposed persons,
3. Ongoing monitoring of business relationship with political exposed persons on a regular basis.
- (4) for PEP, the required documents are employment ID card

#### Article 49: Suspicious Transactions Reporting

- (1) Money Services Providers and Foreign Exchange Dealers shall be obliged to identify suspicious transactions and report them to FinTRACA.
- (2) Without considering their amount and method payment, suspicious transactions maybe bearing the following specifications and conditions but not limited Amount of transaction is not in compliance with business capacity or financial condition and profession of the customer.
  1. Have no legal and commercial requirement and economic justification.
  2. Conditions indicates that the customer has organized the transaction in such a way as to avoid the reporting threshold
  3. Suspicion or existence of suspicious reasons that transaction or initiation to do it are relevant to originate crime originated proceeds or purpose of the transaction is money laundering and terrorism financing or has connection with main crime. Main crime is an action which its commission results direct or indirect obtaining of cash.
  4. Doubt or existence of doubtful reasons that money is belonged to a terrorist person or a terrorist organ or used for terror actions or used by terrorist organs.
  5. Identity of the customer is clear.
  6. It is found that the transaction directly or indirectly relevant to illegal or criminal activities.
  7. Other circumstances specified by FinTRACA.
- (3) Online reporting of suspicious transactions or through special forms provided by FinTRACA.
- (4) Branches of Foreign Exchange Dealers and money services providers can report doubtful transactions to FinTRACA directly or through their main office.

#### Article 50: Reporting Large Transactions

- (1) Money Services Providers and Foreign Exchange Dealers shall be obliged to report transaction of AFN 500,000 or more or equal to other currencies to FinTRACA, In addition, those MSPs and FXDs who participate in Auction process are obliged to report Auction related transactions to FNTRACA.
- (2) Transactions which are less than mentioned amount in paragraph 1 of this Article, but has been conducted by the same customer during two consecutive days and the transactions or are relevant to each other and their total amount is equal or more than threshold fixed amount in paragraph 1, also must be reported.
- (3) Reporting of the transactions shall be done during period set by FinTRACA through online tools or through special forms provided by FinTRACA.
- (4) Money Service Providers and Foreign Exchange Dealers Branches can report large cash transactions to FinTRACA directly or through their main offices.

#### Article 51: Wire transfer

- (1) Money Services Providers shall be obliged to record and maintain the collected information and enough documents of their transactions and transfers (local and foreign), register and keep their



(2) The information and documents which collected, recorded for a transaction and kept for a record.

1. Name and information of money sender;

2. Complete name and address of money receiving party;

3. Amount, type of currency and the purpose of transaction;

4. Date of transactions;

5. Exchange Rate if used;

6. Fee or commission; and

7. If customer is a Natural person and the transaction amount is more than AFN 500,000

or equal in other currencies, or if customer is a legal person and transaction amount is more than AFN 1,000,000 or equal in other currencies, in this case the customer shall provide valid supporting documents.

(3) If the receiver of cash is in Afghanistan, money service provider shall take following document during payment:

1. Identity of receiver of cash; and

2. Copy of Tazkera or Passport.

(4) If Money Services Providers is not able to identify the sender of cash as per article 30 of this Regulation, it shall execute the transaction and reported as suspicious transaction to FinTRACA;

(5) Money Services Providers which act as intermediate party in transfer of cash, and shall collect all information and documents according to this article and send them relevant authorities of financial institution.

## Article 52: Record keeping and Information

(1) Money Services Provider and Foreign Exchange Dealers shall keep the following document and information minimum for 5 years after transaction or business relation with the customer:

1. All information and documents relevant to identify if customer.

2. All information and documents relevant to transactions and local and international transfers;

3. Copies of reports and related documents which are sent to FinTRACA.

(2) All filed documents and information shall be with details, and kept in a way to be accessible for De Afghanistan Bank, FinTRACA and other relevant authorities.

(3) Document and information shall be kept by following means;

1. Soft copies,

2. Original printed documents and evidences and

3. Clear copies of original documents and evidences.

## Article 53: Combating Financing Terrorism

(1) The Money Services Provider and Foreign Exchange Dealers shall be obliged to take appropriate measures as per law and Regulation to prevent financing terrorism, this measure shall include the following but not limited:

1. Verification of customer and beneficial owners' identity before or during business transaction;

2. Information and database of individuals and companies included in sanction list and continuous update of the database. The sanction list includes UN Security council anti-

terrorism financing, NSC of Afghanistan, US OFAC, list of FinTRACA. Before any business





- transaction, the identity of real and legal individuals referred to in part 2 of this paragraph contained in sanction list shall be verified and maintained;
3. In order to identify the customer in sanction list, the Money Services Provider and Foreign Exchange Dealers shall be obliged to possess tools and electronic device system;
  4. The Money Services Providers and Foreign Exchange Dealers shall be obliged to match identity of their clients with sanction list and ensure that their clients are not in the sanction list;
  5. If a client name is included in the sanction list, the Money Services Provider and Foreign Exchange Dealers shall be obliged to:
    1. Prevent services to client; and
    2. Notify DAB and report to FinTRACA.
  6. The Money Services Provider and Foreign Exchange Dealers shall be obliged to take action on asset freeze of individuals or companies immediately after notification and decision of AGO;
    1. Asset freeze of individuals and companies included in sanction list based on provision of law; and
    2. Prevention of directly or indirectly financial services or possessing of named assets, financial resource in favor of individuals in sanction list.

#### **Article 54: Training Program**

- (1) The Money Services Provider and Foreign Exchange Dealers shall ensure their staff and representatives are aware of the prevention of money laundering and financing of terrorism laws and Regulation;
- (2) The Money Services Provider and Foreign Exchange Dealers shall be obliged to conduct training in order to enhance the capacity of their staff on regular basis;
- (3) The Money Services Provider and Foreign Exchange Dealers shall be obliged to attend in workshops and training programs conducted by DAB and center for analysis of financial reports of Afghanistan (FinTRACA).

#### **Article 55: Prohibition of Information Disclosure**

- (1) The Money Services Provider and Foreign Exchange Dealers and their staffs shall be obliged to not share information related to anti-money laundering investigation and financing of terrorism or reporting and providing of information to clients or any other persons of Financial Transactions and Reports Analysis Center of Afghanistan (FinTRACA);
- (2) Sharing of this information between officials and Money Services Provider and Foreign Exchange Dealers with competent authorities as per laws and Regulation anti-money laundering and financing of terrorism shall not be included to this limitation;
- (3) The Money Services Provider and Foreign Exchange Dealers and their staff shall not be responsible to compensate disclosure of professionals while reporting on duty unless disclosure is from bad intentions.



#### Article 56: MSP Union/Association

- (1) The MSPs/FXD's in order to better arrange their affairs shall have union or association, each MSP can have membership status of the union.
- (2) The union of MSPs/FXD's shall be registered with competent entities,
- (3) In order to better arrange the affairs and monitor the activity of MSP, the union shall be obliged to cooperate as per enforced DAB law and regulation.
- (4) The union shall be obliged to only issue membership status to those who pose license from DAB, if in areas of union a person operates without license or continue its activity after its license canceled or suspended by DAB, the union shall be obliged immediately notify DAB.
- (5) If the relevant union obtained information on violation of regulations, forgery or commission of crimes by its member (MSPs) the named union shall be obliged to notify relevant entities immediately.
- (6) The union shall be obliged to strengthen consideration of regulation, business ethics and respecting legal issues of clients among its member.
- (7) The union shall be obliged to cooperate on implementation of sanction list of UNs or another list provided by DAB.
- (8) The union is obliged to share notifications with all members sent by DAB.
- (9) The information and certification sent to DAB by the union shall be accurate and authentic, other than that, the later responsibility belongs to union.
- (10) In case of disputes among members (MSPs/FXD's) or between clients or member, the union shall act as a medium and respect impartiality in consideration of enforced laws and regulations and settle dispute, other than that the parties shall refer to competent entities.
- (11) The union shall have suitable organizational structure based on by law.
- (12) The chair of union shall have the following qualification but not limited to:
  1. shall be eligible;
  2. should be educated person with knowledge of laws and relevant regulations;
  3. should have minimum of 3 years work experience as MSPs/FXD's;
  4. Should have MSPs/FXD's license from DAB; and
  5. Should not be member of three branches of government.

#### Article 57: Application Process Procedure

- (1) The application process procedure of obtaining license, extension of license and creation of branch of MSPs/FXD's or any similar items related to licensing shall be arranged in a separate procedure by NBFISD.

#### Article 58: Enforcement Date

- (1) This Regulation shall be enforced after approval by high council of DAB and the previous version shall be null and void.

**Note:** To regulate the activities of the non-bank financial institutions, the AML/CFT responsibilities preventive measures regulation has been prepared separately; However, for the convenience of the FXD's & MSP's, the related issues have been added to FXD's/MSP's regulation but not limited to these articles.





# Attachment No. 1: KYC Requirements

Requirements																			
Legal	Type	<250k	250k-500k	500k-1M	1M-3M	3M+	Name	Address	Occupation	Contact #	ID Copy	TZKR/PP	Source	Purpose	Docs	Authorize	License	AoA	BO
Natural	MSP/FXD	<250k					X	X	X	X									
Natural	MSP/FXD		250k-500k				X	X	X	X	X								
Natural	MSP/FXD			500k-1M			X	X	X	X	X	X	X	X					
Natural	MSP/FXD				1M-3M		X	X	X	X	X	X	X	X					
Natural	MSP/FXD					3M+	X	X	X	X	X	X	X	X					
Legal	MSP/FXD	<250k					X	X	X	X									X
Legal	MSP/FXD		250k-500k				X	X	X	X						X	X		
Legal	MSP/FXD			500k-1M			X	X	X	X	X		X	X		X	X		
Legal	MSP/FXD				1M-3M		X	X	X	X	X	X	X	X		X	X		
Legal	MSP/FXD					3M+	X	X	X	X	X	X	X	X		X	X		X
		3,125	6,250	12,500	37,500														



## Chapter 1: General Provisions

## Article 1: Authority

- (1) This regulation on the licensing, regulating and supervising of Electronic Money Institutions (EMIs) is pursuant to the authority granted to DAB by Articles 87 and Article 88 of the Law on Da Afghanistan Bank (Law).

## Article 2: Scope

- (1) This regulation applies to all individuals and legal entities that are providing electronic money services in Afghanistan, whether or not the individuals and legal entities are domiciled in Afghanistan. For the purposes of this regulation, electronic money services are defined pursuant to Article 1 of the Law to include money transmission, and check cashing.
- (2) This regulation shall not apply to commercial banks licensed by DAB, their branches, and foreign bank branches permitted by DAB. E-Money services provided by these banking organizations are regulated and supervised as part of their overall operations, under the regulations issued pursuant to the Law of Banking in Afghanistan.
- (3) The licensing provisions of this regulation do not apply to any individual or legal entity currently holding a valid E-Money Service License issued under a previous version of this regulation. Upon expiration of those licenses, a new license must be applied for under the terms of the current regulation.
- (4) To the extent permitted by the aforesaid Law, powers enumerated herein are exclusively accorded to Da Afghanistan Bank. Exercise and implementation of those powers, including related omission, are the sole and exclusive discretion of Da Afghanistan Bank. Ambiguities herein shall be resolved at sole and exclusive discretion of Da Afghanistan Bank.

## Article 3: Definitions

- (1) "Active User" means any natural person or legal person who/which conducts at least twelve mobile money transactions per annum (or any equivalent pro-rata number of transactions during any period of time). As used herein, "mobile money transactions" include "cash-in," "cash-out," send/transfer money, receive money, and balance inquiry.
- (2) "Applicant" means any individual or legal entity who submits a notice or an application to DAB for the acquisition of a license to provide e-money services.
- (3) "Authorized e-money agent" means a legal entity or individual who has been authorized by an EMI to perform e-money account opening, cash-in, and cash-out services for customers of the EMI.
- (4) "cash-in" means accepting banknotes, coins, or other items of monetary value and performing the necessary steps to initiate the crediting of that monetary value to the customer's e-money account.
- (5) "cash-out" means giving out banknotes, coins, or other items of monetary value and performing the necessary steps to initiate the debiting of that monetary value from the customer's e-money account.
- (6) "e-money customer" means an individual who uses an EMI to make or receive small payments and/or to store value. The term does not include legal entities that use an EMI to pay salaries, disburse loan proceeds and receive loan repayments, and receive billing payments according to a regular schedule. These entities are defined below as "partners."





- (7) **"DAB"** means Da Afghanistan Bank, the central bank of Afghanistan, its head office and branches.
- (8) **"e-money"** means monetary value that is stored on an electronic device or server, accepted in exchange for undertakings other than the issuer, and generally intended to make payments or transfer money for another purpose, of a limited amount. E-money is not considered to be a deposit, as that term is defined in Article 1 of the Law of Banking in Afghanistan. Rather, cash-in/cash-out activities of EMIs are considered to be "check cashing," and MVT transactions are considered to be "money transmission" as those terms are defined in Article 1 of the Law on Da Afghanistan Bank.
- (9) **"e-money float"** means the total outstanding e-money liabilities of the EMI to its customers at any one point in time.
- (10) **"e-money institution"** or EMI means a legal entity, other than a commercial bank or depository microfinance institution that accepts banknotes, coins, or other means of payment in exchange for e-money, and facilitates the transfer of this e-money to make payments. A commercial bank or depository microfinance institutions that allows its accountholders access to their funds, located in individual, numbered accounts that are liabilities of that commercial bank or DMFI, by means of an electronic device, such as a mobile telephone handset, is not considered to be an EMI for the purposes of this regulation. Similarly, the third-party vendor of a commercial bank or DMFI that provides EMI technology to give customers additional electronic access channels to their funds are not considered to be money services providers for the purposes of this regulation.
- (11) **"NBFISD"** means Non-Banking Financial Institution Supervision Department which supervises nonbanking financial institutions.
- (12) **"MMoney Volume"** means the number of mobile money transactions conducted through an EMI in a calendar month. For the avoidance of doubt, "mobile money transactions" as used herein means, in addition to cash-in, cash-out, and send/transfer money activities, balance inquiries and PIN modifications.
- (13) **"MMoney Value"** means the total amount of currency transferred by virtue of mMoney Volume through an EMI in a calendar month.
- (14) **"Money service provider (MSP)"** means a person or entity that engages in funds transfers, and may also provide safekeeping and check cashing services.
- (15) **"Legal entity"** includes a single proprietorship, partnership, or corporation that is incorporated either in or outside of Afghanistan.
- (16) **"Licensee"** means an individual or legal entity that has been granted a license to provide money services.
- (17) **"Partner"** means a legal entity that has a contractual relationship with an EMI to use the EMI for salary payments, loan disbursements and receipt of loan repayments, and receipt of billing payments according to a regular schedule. Partners may be units of the Afghan government; corporations, with or without the participation of foreign capital; foreign embassies, consulates, and missions; other financial institutions licensed or permitted by DAB; domestic and foreign non-governmental organizations; foreign donor-financed projects, and other foreign organizations.
- (18) **"Policies and procedures"** are a set of documents that describe an organization's rules and regulations that are necessary for operations, risk management, continuous improvement and compliance. They are often initiated because of some external requirement, such as compliance or other governmental regulations, full openness and transparency. Policies and procedures may have many names, including but not limited to, "business policies and procedures," "standard operating procedures," "SOP," or "department operating procedures," or "DOP."



- (19) **Qualifying holding**” has the same meaning as given in Article 1 of the Law of Banking in Afghanistan.
- (20) **“Right of redemption”** means the right of a customer of an e-money institution to cash out all or part of his/her e-money account balance at any time.
- (21) **“Report”** is a piece of information describing, or an account of certain events given or presented to someone or to group or to an organization. Written reports are documents which present focused, salient content to a specific audience. Reports are often used to display the result of an experiment, investigation, or inquiry. The audience may be public or private, an individual or the public in general. Reports are used in government, business, education, science, and other fields. Some examples of reports are: scientific reports, recommendation reports, white papers, annual reports, auditor's reports, workplace reports, census reports, trip reports, progress reports, investigative reports, budget reports, policy reports, demographic reports, credit reports, appraisal reports, inspection reports, military reports, bound reports, etc.
- (22) **“Systems”** means a set of detailed methods, procedures, and routines established or formulated to carry out a specific activity, perform a duty, or solve a problem. Open systems mean that it is non-proprietary system based on publicly known standard set of interfaces that allow anyone to use and communicate with any system that adheres to the same standards. Open system standards have four basis requirements (1) they must be defined fully, so that vendors can work within the same framework, (2) be stable over a reasonable length of time, so that the vendors have fixed targets to aim at, (3) they must be fully published, so that their interfaces are publicly available, and (4) they are not under the control any one firm or vendor.
- (23) **“Service interruption”** means a breakdown in equipment, power outage, or IT problem that results in EMI customers not being able to transfer e-money balances or verify that e-money balances have been transferred to them. A service interruption that lasts more than two hours is considered an event triggering a mandatory report, as outlined in Article 2, 5, 11 below.
- (24) **“Stakeholder”** means a person, group, or organization that has direct or indirect stake in an organization because it can affect or be affected by the organization's actions, objectives, and policies. Key stakeholders in a business organization include creditors, customers, directors, employees, government (and its agencies), owners (shareholders), suppliers, unions, and the community from which the business draws its resources.
- (25) **“EMI Large cash transaction”** exclusively for the purpose of this regulation, a transaction affecting the transfer, conveyance, receipt of value equal to or in excess of 50,000 AFN. Any two (2) transactions by and between the same 2 parties that occur within 2 business days of one and other, which transactions aggregate 50,000 AFN or greater constitute a Large Cash Transaction.
- (26) **“Suspicious transaction”** a transaction, regardless of amount or means of payment, where any of the following circumstances exist: 1) there is no underlying legal or trade obligation, purpose, or economic justification; 2) the client is not properly identified; 3) the amount involved is not commensurate with the business or financial capacity of the client; 4) taking into account all known circumstances, it may be perceived that the client's transaction is structured in order to avoid being the subject of reporting requirements under law and regulations; 5) there are circumstances relating to the transaction which are observed to deviate from the profile of the client and/or the client's past transactions with the financial institution; 6) the transaction appears to be in any way related to an unlawful activity or offense that is about to be, is being, or has been committed; or 7) it is a transaction that is similar or analogous to any of the foregoing.
- (27) **“Multiple account transactions”** means any undertaking in which value is conveyed into or out of more than one account owned or controlled by the same individual or legal person.





- (28) **“Mobile Network Operator (MNO)”** is a telephone company legally in possession of a radio spectrum license granted by the Government of the Islamic Republic of Afghanistan, which telephone company provides services for mobile telephone subscribers on Afghanistan.
- (29) **“Peer to Cash”** Means when a mobile money registered subscriber sends money from his/her electronic wallet to a non-registered user (who must meet all the KYC requirements).

#### Article 4: Filing

- (1) An applicant must file an application acceptable to DAB and resulting in a license to conduct an e-money service provider business.
1. A successful applicant must sign and agree to abide by the terms of the “e-Money Service Providers Licensing Agreement” prior to issuance of a license.
  2. Sample forms and instruction for filings are available from Non-Banking Financial Institution Supervision Department, Licensing Section, Da Afghanistan Bank, Ibni-Sina-Watt, Kabul, Afghanistan.

#### Article 5: Application Requirements for an EMI license

- (1) Any legal entity that applies for an EMI license (sometimes hereinafter referred to as an “EMI”) from Da Afghanistan Bank must meet the following requirements (or possess the following attributes). Da Afghanistan Bank is not empowered to consider any application that does not comply with Article 5, Article 6, Article 7, Article 8, Article 9, Article 10 and Article 11 of this regulation. For the avoidance of doubt, the word “comply,” as used above, means that an application that contains or otherwise addresses each of items hereof, as well as each sub-item listed thereunder.
- (2) Must be a Stock Corporation:
1. The EMI must be established as a for-profit organization;
  2. The EMI shall only engage in the business of e-money;
  3. The application must set forth the applicant’s name, corporate status, and by-laws of the legal entity operating as an EMI;
  4. The application must contain a copy of the EMI’s corporate registration certificate;
  5. The application must contain a list of the current and/or proposed shareholders possessing a qualifying holding of the EMI, and the percentage of shares owned or to be owned by each, currently and at the end of the five calendar years;
  6. The application must set forth the name and full contact information of one designated individual who is authorized to act as the representative of the EMI through the licensing process;
  7. The application must contain biographical information on the Board of Supervisors (if any), and executive officers (chief executive officer, chief operating officer, chief financial officer, chief compliance officer) at a minimum. Depending on the scope and scale of the proposed operations, some of these positions (except for the Chief Compliance Officer) may be occupied by a single individual, as long as all the functions listed above are covered, and the application package makes it clear which individuals are performing which functions. This biographical information must be sufficient for DAB to judge the fitness and propriety of the individuals, as well as their experience and capabilities.
  8. Shareholder’s bio data, valid passport or national identity card and shareholding structure;
  9. Personal net worth;
  10. Proposed standard contract with:
    - a. Super-Agent or Distributor;



- b. Agent; and
  - c. Merchants.
11. Submit the set of policies, procedures, plans, manuals and guidelines stated in Article 7;
  12. Initial Acceptance Certificate from APS for the purposes of integration with APS—the National e-Payment Switch of Afghanistan. In this regard, submit all required documents to the APS as per APS guideline to obtain Initial Acceptance Certificate;
  13. AOA (Article of Association);
  14. Three (3) years Business Plan;
  15. Governance structure;
  16. Agreement with APS;
  17. Biography of the proposed Board of Supervisors;
  18. Biography of the proposed Board of Management; and
  19. Educational degrees and professional certificates of the Board of Supervisors and Board of Management.
- (3) Must be an Independent and/or wholly-owned subsidiary or entity of its parent company:
1. The company making the application to obtain an EMI license with Da Afghanistan Bank should be an independent organization or be a wholly-owned subsidiary of a parent company that may already be in operation inside or outside Afghanistan for a minimum of two 2 years.
  2. In the event that a company making an application for an EMI license is already an operational entity such as a Mobile Network Operator (MNO), that MNO must create a separate entity that is registered with other relevant and related Ministries of the Government and this entity must have its own set of Management Board, Audit Committee, Shareholders, and Supervisory Board.
  3. In the event that establishing such Independent Entity for EMI business would take a considerable amount of time to set up, the MNO can apply for an EMI license on the condition that they will establish this Independent Entity within 12 months from the issuance of an EMI license. The EMI license will thus be transferred to this Independent Entity from the MNO upon this time.

#### Article 6: Capitalization Requirements:

- (1) The Independent Entity completing an application for an EMI license must be adequately capitalized at all times in accordance to the requirements of Da Afghanistan Bank. These Requirements are subject to change without prior written notice.
- (2) The Share Capital of each applicant must be at least AFN 80,000,000 at the time of application, and throughout the pendency of any license granted hereunder, at all times in accordance to the requirements of Da Afghanistan Bank, whereby the Total Equity Capital of the EMI independent entity also must at any given time be at least AFN 80,000,000.

#### Article 7: Set of Policies and Procedures

- (1) Each EMI Should have the following policies and procedures:

1. Code of Ethics Guideline;
2. Compliance Policy;
3. Risk Management Policy;
4. Operation Policy;
5. Accounting, Reporting and Finance Policy;
6. Liquidity Policy;
7. Internal Audit;
8. Internal Control;





9. AML/CFT Policy;
  10. Human Resource Management Policy;
  11. Dispute Resolution Policy;
  12. Agent screening and selection policy;
  13. Conflicts of Interest Policy;
  14. Procurement Policy;
  15. Human Resources Policy;
- (2) The EMI must have a comprehensive Information Technology policy. the policy should have but not limited to the following attributes:
1. Network Policy;
  2. Security Policy;
  3. System Policy;
  4. Disaster recovery Management Policy;
  5. Fraud detection and Prevention Policy;
  6. Business Continuity Management Policy;
  7. User access Policy;
  8. Network Access Policy;
  9. Third Party Access Policy;
  10. IT Risk Management Policy;
  11. Violation and Enforcement Policy;
  12. Remote Access Policy;
  13. Malicious Software Management Policy; and
  14. Password Management Policy.

#### **Article 8: Approval of the Company and Product Name**

- (1) An entity who makes an application to be an EMI shall have a business license with an approved name by the Ministry of Industry and Commerce of Afghanistan.
- (2) An applicant shall not use the license issued under this regulation for any other purpose, unless the DAB grants the applicant a license.
- (3) An entity who makes an application for a new product or service shall apply to the DAB for approval of the name of the proposed product (or products) subject to any intellectual property rights that may be in existence.
- (4) An applicant shall function within the domain of activities that is permitted under this regulation.

#### **Article 9: Business Plan:**

- (1) The entity completing an application for an EMI license must present a comprehensive business plan reflecting a realistic representation of the entity's capacity and capability.
- (2) The business plan must include long-term business objectives supported by comprehensive strategies in marketing, operations, technical and finance. The minimum period to be covered within the business plan is three (3) years.
- (3) The business plan must include all assumptions to support the business objectives and any other requirements to be specified by Da Afghanistan Bank during the review process.

#### **Article 10: Due Diligence:**

- (1) Consideration of an application for an EMI license is subject to, but not limited to Da Afghanistan Bank conducting its own independent study, examination, and interpretation of:
  1. The financial condition and soundness of the entity;



2. The reputation of the entity and its shareholders and any other related parties, including business partners, in the market both within and outside Afghanistan;
3. Risk Management Policies, Practices, and Procedures in all areas that may be important to protect the financial stability and soundness of the entity;
4. Technical expertise of the employees and staff, especially if it relates to the conduct of mobile money business;
5. Compliance Policies, Practices, and Procedures in accordance with generally acceptable standards and international best practices necessary to conduct sound business decisions;
6. Proposed Anti-Money Laundering/Counter Financing Terrorism (AML/CFT) Policies the reasonableness of the Business Plan;

#### **Article 11: Contractual Agreements and Partnerships:**

##### **(1) Partners:**

1. The EMI must clearly and in full, to the extent possible, provide Da Afghanistan Bank information on its current and prospective business partners, including but not limited to banks, microfinance institutions, utility payment organizations, educational institutions and/or any other organizations which may be using the services of the entity, directly or indirectly, in relation to the entity's Mobil money services.
2. This information must include the proposed standard contract between EMI and any Organization with which the EMI intends to contract for the purpose of providing EMI services. At a minimum, this must detail the rights and responsibilities, contractual obligations, commissions and fees of each party.

##### **(2) Merchants:**

1. The EMI must clearly and in full, to the extent possible, provide Da Afghanistan Bank information and names of the entity's prospective merchants, including but not limited to department stores, small businesses and/or any other organization that will be using the services of this entity, directly or indirectly, in relation to the entity's mobile money services.
2. This information must include the proposed standard contract between EMI and its merchants outlining in detail the right and responsibilities, contractual obligations, commissions and fees of each party and customers.

##### **(3) Agents:** EMI intending to engage agents for providing E-Money services shall consider the followings:

1. EMI shall develop a policy on the Agent Network Management (ANM) being deployed by the EMI and the same shall be approved by its Board. The policy, at the minimum, should contain agent on-boarding procedures, agent risk management, agent training and development, service level agreement, roles and responsibilities of agents, agent code of conduct, quality of service parameters, fraud prevention and supervision, agent liquidity management, consumer protection and complaint handling, fees and penalties structure, agent monitoring and agent termination etc.;
2. EMI shall ensure that agents acting on its behalf do not represent themselves as an EMI or an employee/staff of the EMI;
3. In addition, DAB may have powers to:
  - a. Advise EMI for such data or information;
  - b. Request for any information from any agent directly or through an EMI at any time as DAB may deem necessary;
  - c. Conduct inspection of the books and premises of the agent as and when deemed necessary;





- d. Direct an EMI to instruct its agent to take such action or desist from such conduct as DAB may deem necessary;
  - e. Direct an EMI to terminate agreement with agent;
  - f. Direct an EMI to take such action or measures against or on behalf of the Agent as DAB may find appropriate; and
  - g. Direct an EMI to take such remedial action arising from the conduct of an agent as it may deem fit.
4. EMI shall publish an updated list of all agents and locations on their websites for information of the general public.
  5. EMI shall assign transaction limits to agents on the basis of potential business volume to be generated by the agents and risk category of each agent.
  6. EMI shall sign SLA/Agency Agreement with agents detailing the functions/activities to be performed by agent, roles, responsibilities and obligations of the EMI and its agents.
  7. Fees/revenue sharing structure, responsibility for bearing up-front/running costs of EMI operations shall be defined in the agreement
  8. The agent shall ensure secrecy of customer data/information and all transactions in accordance with all applicable laws, rules and regulations and safe-keeping of all relevant records, data and documents /files.
  9. The Agent must be a small business or be a merchant.
  10. The Agent must have a physical address of the business.
  11. The EMI must clearly and in full, to the extent possible, provide Da Afghanistan Bank with the list of prospective businesses or individuals that the entity expects to use as its agents in expanding its mobile money business.
  12. This information must include the proposed standard contract between EMI and its agents outlining in detail the right and responsibilities, contractual obligations, commissions and fees of each party and customers.
  13. The EMI is responsible for carefully screening, selecting, and supervising their authorized E-money agents.

#### Article 12: General Provisions

- (1) Any EMI applying for an EMI license must take into consideration the following provisions when providing mobile money services. Da Afghanistan Bank is empowered to revoke the license of any EMI (or refuse to grant a license to any applicant) that fails to structure its activities so as to accommodate the following: a. E – money denomination must be limited to Afghani (AFN) currency only;
- (2) E-money can be used to transfer and remit funds both for domestic and international use. However, initially all international remittance funds transfer via e money can only be incoming and no remittances are to be transferred internationally from Afghanistan. It is the responsibility of the EMI to ensure that best practices and proper Know Your Customer (KYC) procedures are conducted during such International transactions. DAB may amend this limitation from time to time, at its sole discretion, by official circular, and not by further amendments to this regulation.

#### Article 13: E-Money may be used in different forms

- (1) Cash Card;
- (2) Debit Card;
- (3) Electronic Mobile Wallet;
- (4) Stored Value Account (SVA) Card;



#### Article 14: EMIs Categories

- (1) When making an application for an EMI license, the entity making such application must qualify and comply under one of the following categories, and must maintain its status as such throughout the (a.) Pendency of any application; and (b.) The period of effectiveness of any license.
1. **EMI – Banks:**
  - a. Such institutions can provide E-money services and are subject to the existing Banking Rules and Regulations.
2. **EMI – Non-Banking Financial Institutions (NBFI):**
  - a. Such institutions can provide E-money services and are subject to the existing Non-Banking Financial Institutions Rules and Regulations.
3. **EMI – Special Institutions:**
  - a. Such institutions are subject to the same provisions as stated in scope of EMI Company – of this regulation.

#### Article 15: Further pre-requisites to the granting and/or maintenance of the effectiveness of an EMI license

- (1) The EMI entities are regulated by Da Afghanistan Bank and, as such, are considered to be reporting entities with legal obligations to Da Afghanistan Bank. Such institutions must comply with the laws and regulations of Da Afghanistan Bank that pertain to the EMIs, including, but not limited to, Anti Money Laundering (AML) laws and regulations and Counter Financing Terrorism (CFT) laws and regulations;

#### Article 16: Specific provisions

- (1) All entities applying for or holding an EMI license to Da Afghanistan Bank must adhere to the requirements set forth in items 2-9 hereof. Da Afghanistan Bank is empowered to revoke the license of any EMI that fails to do so (or refuse to issue a license to any applicant that so fails).
- (2) EMI must maintain accurate and complete records of all E-money transactions. It is required that access to historic data must be readily available online or through any electronic means up to a period of six (6) months by Da Afghanistan Bank. Additionally, all data must be stored offline for a minimum of ten (10) years for future access by Da Afghanistan Bank.
- (3) EMI must not refer to or consider E-money as a deposit. E-money is to be redeemed at face value by the customer at any point in time. Since E-money is not considered a deposit, E-money shall not earn any interest for the customer.
- (4) An EMI should not issue e-money at a discount; that is, credit the customer's account balance with more e-money than the banknotes or coins used to purchase it.
- (5) E-money must not be insured individually. Collectively E-money must (i) be deposited one hundred percent (100%) in the banking system; (ii) be deposited in an account that is denominated a trust account, the beneficiaries of which are the individual customers of the EMI that deposits the E-money; and (iii) The trustee of which is the EMI that deposits the E-money. E-money so deposited shall remain the property of the customers of the said EMI, and the said EMI shall owe to said customers the fullest fiduciary duties recognized by applicable law regarding said E-money.
- (6) Except with regard to (i) the foregoing provision requiring that E-money be deposited in a trust account; and (ii) other requirements set forth in this regulation, the terms and conditions





- of deposit is totally dependent on bilateral arrangements between the EMI that deposits E-money and the bank that said EMI chooses as its depository.
- (7) The "mother" or pooled account must be insured according to the provisions and limitations set forth by the Afghanistan Deposit Insurance Corporation (ADIC). In the event that ADIC does not exist (or fails to promulgate applicable provisions and limitations), the EMI shall otherwise ensure that E-money deposits are fully insured by a solvent, licensed insurer. Da Afghanistan Bank does not guarantee deposit accounts for any EMI. However, Da Afghanistan Bank, at its sole and exclusive discretion, may advise EMI licensees as to prudent depository operations. The EMI must address in its Dispute Resolution Policy an acceptable redress mechanism in place to ensure any instances where transactions may be misdirected or considered lost in the system.
- (8) The EMI must continuously work to ensure reduction, to the point of elimination, of such possible occurrences regardless of their frequency. This Dispute Resolution Policy must include, but shall not be limited to:
1. EMI must provide, with availability at least during normal business hours, a free-of-charge telephone hotline for customer comments and complaints;
  2. EMI, in their verbal and written explanations of functions to customers, must clearly explain how a customer may stop a transfer that was initiated erroneously or without the customer's consent; how the customer will be informed that a transfer has actually been executed; and how the customer can find out his current E-money balance and a list of recent transactions. An EMI must, at all times, fulfill the right of redemption of any customer since the customer's E-money account is a liability of the EMI,
  3. The EMI is responsible for ensuring that customers can verify that an enterprise representing itself as an authorized agent is actually an authorized agent. These measures should include a combination of some or all of the following mechanisms, at the discretion of the EMI: a publicly available database of agents; signage that cannot be copied; unique agent number and photo at every location along with customer assistance telephone numbers, and a general consumer awareness program.
- (9) Any determination made by Da Afghanistan Bank under this Section shall be made at Da Afghanistan Bank's sole and exclusive discretion.

#### Article 17: Transaction and e-money balance limitations

- (1) Electronic money institutions (EMIs) shall require to know the through identity of their customer, distributor, Super-agent, Agent, Merchant, Partners as per Attachment No. 2 of KYC regulation.
- (2) Transaction and E money balance limitation, EMI entities offering mobile money services are required to enforce the following transaction limits:

From Entity	To entity	Transaction Maximum	# Transactions per day
Business	Business	No limit	No limit
Business	Peer (Consumer)	No limit	No limit
Peer (Consumer)	Peer (Consumer)	AFN 50,000	20 Transactions
Peer (Consumer)	Business	No limit	20 Transactions
UN Agencies	Peer (Consumer)	AFN 250,000	1 Transaction
Government	Peer (Consumer)	AFN 500,000	1 Transaction
Peer to Cash		AFN 100,000	10 Transactions



*Note: the consumer-to-consumer transaction is considered peer-to-peer (P2P) transaction. If the aggregate transaction is above the amounts specified in articles 7 & 8 of KYC regulation, then the KYC standards specified in those articles must be applied.*

- (3) DAB may amend these limits from time to time, at its sole discretion, by official circular, and not by further amendments to this regulation.
- (4) NGOs work as UN agencies in humanitarian cash-based assistance needs to be specified by UN organization and to be shared with DAB and related EMIs.
- (5) List of individuals who need humanitarian cash based financial assistance should be stamped and approved by UN organizations before sharing with EMIs for further processes.
- (6) Simple Customer Identifications (IDs) shall mean any of the following:
  1. Any government-issued document or identity card that is specific as to the holder thereof;
  2. Any UN organizations ID that proof the identity of the customer.
  3. Any device or practice, whether customary or otherwise, that specifically distinguishes or identifies an individual; or
  4. Otherwise consistent with relevant AML/CFT regulations;
  5. DAB may amend these limits from time to time, at its sole discretion, by official circular, and not by further amendments to this regulation;
  6. IDs may also include electricity bills and letters from village or district councils;
  7. Non-photo ID may be accepted as ID for women only
  8. Simplified customer due diligence is required for transaction amount is less than or equal to AFN 200,000
- (7) EMI has to apply proper due diligence for the parties involved in P2C (peer to cash) transaction.

#### **Article 18: Corporate governance and organizational requirements**

- (1) Da Afghanistan Bank shall not issue an EMI license to any legal person that fails to maintain the organizational attributes contained in the part (2) and (18) of this Article. To the extent that Da Afghanistan Bank has issued a license to a legal person that fails to maintain the said organizational attributes, Da Afghanistan Bank shall suspend such license until the relevant licensee shall have caused itself to observe and maintain said organizational attributes. For the avoidance of doubt, the word "fails" as used in this Article shall mean the absence of inadequacy of systems and structures sufficient to ensure adherence to the letter and spirit of this Regulation. Da Afghanistan Bank shall, in its sole, exclusive, and non-appealable discretion, determine the presence or adequacy of said systems and structures.
- (2) An EMI's organizational structure shall, as part of its Corporate Governance, include at least all the safety, soundness, and security features of the EMI platform's functionalities, including all measures taken to ensure consumer protection in the event of breach or compromise of these security measures.
- (3) The EMI's Management Team must have the following key positions to be considered a functional organization:
  1. Chief Executive Officer (CEO);
  2. Head of Operations;
  3. Head of Finance;

None of the above positions are to be shared with the Parent Company and the right to remain in this position is subject to Da Afghanistan Bank's Fitness and Propriety Test. The above position holders cannot have any position at the same time with the parent company. However, for the first 12 months of the period of effectiveness of any license granted hereunder to duly licensed Mobile Network Operators, provided that such grant is made





within the 12 months following the date of effectiveness of this regulation, the above positions may be assumed by a single individual:

- (4) The Compliance Officer (CO) position must be held, and actual exercised, by an individual who does not hold any of the foregoing three (3) positions. The role of compliance officer is to make sure that the company is conducting its business in full compliance with all relevant laws and regulations that pertain to its particular industry, as well as professional standards, accepted business practices, and internal standards.
- (5) The Compliance officer:
  1. Must have at least a Bachelor's degree in Economic, Business management, accounting or law,
  2. Must have at least three year of experience in Compliance;
  3. May have International Certificate in AML/CFT;
  4. Must have the sufficient knowledge of relevant laws and regulations;
  5. Cannot have any position with parent company at the same time.
- (6) The EMIs Board of Supervisors can be appointed from the Parent Company's BOS.
- (7) For the purposes of Paragraph 5 of this Article the Board of Supervisors shall meet the following qualifications:
  1. Shall have relevant experience of at least five years;
  2. At least have degree in finance, business administration, economics, IT, or other relevant fields;
- (8) The EMIs Audit Committee shall be appointed from the Parent Company's AC.
- (9) For the above purpose the Audit Committee shall meet the following requirements:
  1. At least bachelor's degree in finance, IT, Business Management.
  2. Shall have experience of auditing at least 5 years; or
  3. May have CIA certification.
- (10) Da Afghanistan Bank is empowered to conduct, at its sole and exclusive discretion, background checks of these key positions in conjunction with other government institutions.
- (11) The EMI ensure that the mobile money system must use technological and other standards which will permit eventual interconnection and operation of other mobile money systems. The mobile money system should have built-in Application Programming Interface (API) in order to have the capability to interconnect and/or interoperate with other payment systems such as but not limited to:
  1. Mobile Banking;
  2. Bill Payments;
  3. Money Transfer System;
  4. Others;
- (12) **General Assembly of Shareholders**  
 The General Assembly of Shareholders of an EMI shall have the following duties and powers:
  1. To adopt amendments to the charter of the EMI;
  2. To adopt the by-laws of the EMI and amendments thereto, provided that the General Assembly of Shareholders may delegate authority to the Board of Supervisors to perform these functions, and may require that any adoption, amendment or repeal of a bylaw be subject to approval of the General Assembly of Shareholders;
  3. To appoint and to dismiss the members of the Board of Supervisors and determine remuneration of its members;
  4. To adopt increases in the authorized capital of the EMI and to determine the terms and conditions on which shares of the EMI may be issued;



5. To approve the annual reports and financial statements of the EMI, upon the recommendation of the Board of Supervisors of the EMI;
6. To decide on the sale, merger, amalgamation, dissolution and closure of the EMI;
7. To appoint EMI's well-known external audit firm, taking into account the recommendation of the Board of Supervisors; and
8. To establish and dissolve EMI's and its agent.
9. Shareholders shall have voting rights corresponding to their holding of shares of capital stock of the EMI. Each shareholder may exercise his or her voting rights at the General Assembly of Shareholders personally or through official agent which is introduced in writing.
10. At least one regular session of the General Assembly of Shareholders shall be held each year after the completion of the external audit of the balance sheet and financial statements of the EMI for the preceding financial year, no later than 3 months after the end of that financial year.
11. Extraordinary sessions of the General assembly of Shareholders may be convened at the request of the Board of Supervisors, the Board of Management, a shareholder or shareholders individually or together holding 20 percent or more of total voting rights, or DAB.
12. Written notice of the date, place and time of each session of the General assembly of Shareholders, together with the agenda for that session, shall be sent to the shareholders at least one month in advance. In urgent cases such notice may be given seven days in advance.
13. However, no decisions shall be made on issues that are not on the agenda. In case of urgent matters, notice can be sent by electronic mode and voting can also take place through electronic mode. However, in the subsequent session of the General Assembly of Shareholders the decisions taken by electronic mode should be confirmed.
14. Decisions of the General assembly of Shareholders should be written and signed by shareholders and secretary only. However, in case of urgent matters voting can take place through postal ballot or electronic mode.
15. Shareholders should ensure that effective and appropriate secretarial functions exist.

(13) **Board of Supervisor's Structure**

1. The Board of Supervisors should define appropriate governance structures and practices for its own work, and put in place the means for such practices to be followed and periodically reviewed for ongoing effectiveness.
2. The Board of Supervisors should structure itself in terms of leadership, size and the use of committees so as to effectively carry out its oversight role and other responsibilities. This includes ensuring that the Board has the time and means to cover all necessary subjects in sufficient depth and have a robust discussion of issues.
3. The chair of the Board of Supervisors plays a crucial role in the proper functioning of the Board of Supervisors. The chair provides leadership to the board and is responsible for its effective overall functioning, including maintaining a relationship of trust with board members. The chair should possess the requisite experience, competencies and personal qualities in order to fulfill these responsibilities. The chair should ensure that board decisions are taken on a sound and well-informed basis. The chair should encourage and promote critical discussion and ensure that dissenting views can be freely expressed and discussed within the decision-making process. The chair should dedicate sufficient time to the exercise of his or her responsibilities.





4. To promote checks and balances, the chair of the Board of Supervisors should be an independent or non-executive board member.
- (14) **Board of Supervisors' Appointment and Composition**
1. Board of Supervisors is elected by the General assembly of Shareholders of the EMI, and majority of its members shall not be shareholders, management or employees of the EMI.
  2. The Board of Supervisors consists of minimum of three and maximum of nine members, elected by the General assembly of Shareholders for the period of four years and they can be reappointed Board of Supervisors elects one of its members as the chairman.
  3. If a seat of Board of Supervisors becomes vacant, the remaining members should fill the vacant position by designating a temporary member until the next General assembly of Shareholders.

(15) **Board of Supervisors' Role and Responsibilities**

- 1) The Board of Supervisors of an EMI shall have the following duties and powers:
  1. Convene each session of the General Assembly of Shareholders and adopt the agenda for each session;
  2. Approve the EMI's organizational structure;
  3. Appoint, dismiss and determine the remuneration of the members of Board of Management of the EMI;
  4. Oversee the performance of the EMI's Board of Management;
  5. Approve the EMI's business strategy and annual budget;
  6. Approve policies for the conduct of operation performance, including the EMI's risk management policy, dealing with conflict of interest and issuance of guidance to Board of Management for implementation of those policies;
  7. Ensure the establishment, functionality, appropriateness, adherence of DAB law(s) and regulations and adequacy of internal controls and risk management for the EMI;
  8. Ensure the integrity of the EMI's financial reporting, including financial reporting to DAB;
  9. Ensure that appropriate Internal Audit function is established;
  10. Make recommendations to the General Assembly of Shareholders on matters requiring shareholder approval;
  11. Make recommendations to the General Assembly of Shareholders concerning appointment of the external audit firm for the EMI;
  12. Ensure execution of EMI's annual external audit, which includes the auditor's opinion of the truth and accuracy of the EMI's financial statements;
  13. Immediately inform DAB in writing, or require the Board of Management to do so, of any deterioration in the financial situation of the EMI, or danger of such deterioration, and any other facts that may materially affect the financial situation of the EMI.
  14. Ensure implementations of directives and instructions of DAB;
  15. Decide on other matters placed in the competence of the Board of Supervisors by the EMI's charter or by-laws.
- 2) The Board of Supervisors is ultimately responsible, and is accountable to all stakeholders (including the General assembly of Shareholders, other stakeholders, and DAB) for the conduct of the EMI's affairs and condition. In meeting its overall commitment to the



EMI's General assembly of Shareholders, stakeholders, and community, the Board of Supervisors must:

1. Ensure competent management;
2. Ensure that appropriate plans and policies are in place;
3. Monitor operations, ensure adequate internal controls and compliance with laws, regulations and decisions;
4. Oversee financial performance of the EMI; and
5. Prevent Conflicts of Interest.

- 3) The Board of supervisor shall conduct their meeting in every six months;

(16) **Fiduciary Duties of BoS and BoM**

- 1) Members of the Board of Supervisors and Board of Management must:
  1. Perform their duties honestly and in good faith with a view to the best interests of the EMI;
  2. Exercise such care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; and
  3. Avoid Conflicts of Interest between the EMI's interests and their own personal or business interests.
- 2) Members of the Board of Supervisors and Board of Management are liable for any damage caused to the EMI for violations of the duties referred to in paragraph (1) of this Article.
- 3) In the event of violations of the duties referred to in paragraph (1) of this Article by members of the Board of Supervisors and Board of Management resulting in losses to the EMI, shareholders of the EMI shall have the right to bring legal action on behalf of the EMI against such persons seeking compensation for such losses to the EMI in accordance with the procedures set forth in Article 48 of the Law on Corporations and Limited Liability Companies

(17) **General Principles – Board of Management**

- 1) Under the direction and oversight of the Board of Supervisors, the Board of Management shall carry out and manage the EMI's activities in a manner consistent with the business strategy, risk appetite, and other policies approved by the Board of Supervisors.
- 2) Board of Management shall consist of a core group of individuals responsible and accountable to the Board of Supervisors for the sound and prudent day-to-day management of the EMI.
- 3) The organization, procedures and decision-making of Board of Management should be clear and transparent and designed to promote effective management of the EMI. This includes clarity on the role, authority and responsibility of the various positions within Board of Management, including that of the CEO.

(18) **Board of Management's Roles and Responsibilities**

- 1) Board of Management and Board of Supervisors contribute substantially to a EMI's sound corporate governance through personal conduct.
- 2) Board of Management is responsible for delegating duties to staff and should establish a management structure that promotes accountability and transparency throughout the EMI.
- 3) Board of Management should provide the Board of Supervisors with the information it needs to carry out its responsibilities, supervise Board of Management and assess the quality of senior management's performance. In this regard, Board of Management should keep the Board of Supervisors regularly and adequately informed of material matters, including:
  1. Preparation and developing of business strategy, risk strategy, risk appetite;





2. Make decisions regarding the establishment and dissolving of agents of the EMI;
  3. The EMI's performance and financial condition;
  4. Breaches of risk limits or compliance rules;
  5. Internal control failures;
  6. Legal or regulatory concerns; and
  7. Issues raised as a result of EMI's whistle blowing procedures.
- 4) Board of Management of a EMI shall:
1. Organize the work and direct the day-to-day business operation of the EMI, pursuant to the strategies and policies approved by the Board of Supervisors, and monitor the day-to-day activities of the EMI's employees;
  2. Implement the business strategy and policies of the EMI's approved by the Board of Supervisors. Consistent with the direction given by the Board of Supervisors, senior management should implement business strategies, risk management systems, risk culture, processes and controls for managing the risks both financial and nonfinancial.
  3. Identify and assess regularly all serious risks involved in the activities of the EMI and ensure the monitoring and control such risks in accordance with the policies approved by the Board of Supervisors;
  4. Develop the organizational structure of the EMI and its branches that is suitable for the EMI's overall strategy as determined by the Board of Supervisors, and submit the proposed structure for approval to the Board of Supervisors;
  5. Develop and implement systems for monitoring the activities of the EMI, ensure adherence to such systems, assess the sufficiency thereof regularly and improve them if necessary, in accordance with the policies established by the Board of Supervisors;
  6. Ensure that all employees of the EMI's are aware of the provisions of legislation relating to their duties of employment and of the principles approved by the Board of Supervisors;
  7. Ensure monitoring of the compliance of the activities of the EMI and its employees with legislation and the policies approved by Board of Supervisors;
  8. Ensure the existence and functioning of systems to guarantee that information necessary for employees of the EMI to perform their duties is communicated to them in a timely manner;
  9. Ensure the safety and regular monitoring of information technology systems used by the EMI and systems used for the safekeeping of assets of clients;
  10. Inform the Board of Supervisors of all discovered violations of legislation, internal rules or other rules established or approved by Board of Supervisors;
  11. Present periodic overviews of the activities and financial situation of the EMI to the Board of Supervisors.
- 5) Immediately inform the Board of Supervisors and DAB in writing of any deterioration in the financial situation of the EMI, or danger of such deterioration, and any other facts that may materially affect the financial situation of the EMI, and in particular if the EMI becomes undercapitalized or in severe breach of relevant regulations.

#### **Article 19: Mobile Money Systems Functionality and Interoperability**

- (1) The EMI must have its own Mobile Money System (Platform) and ensure that the system must use technological and other standards which will permit eventual interconnection and interoperation of other financial service providers. All EMI entities are required to align with the system of a switch. The Interoperability is subject to a fully functional system at all level, such as, but not limited to, Platform-level interconnectivity; Agent-level exclusivity; and Customer-level



interoperability, where the EMI is required to fully comply and consider required technical capacity. The mobile money system should have built-in Application Programming Interface (API) in order to have the capability to interconnect and/or interoperate with other payment systems such as, but not be limited to:

1. Mobile Banking;
2. Bill Payments;
3. Money Transfer System;
4. Others;

#### Article 20: Basic Functionality

(1) The EMI must have a system that can provide basic mobile money functionalities such as, but not be limited to:

1. Transfer virtual money from one virtual wallet to another virtual wallet via:
  - a. Peer-to-peer (P2P) or Person-to-person transfer;
  - b. Bill Payments;
  - c. Airtime Top-up or Electronic Voucher reload;
  - d. Money Transfer or Remittance;
    - i. Domestic transfer;
    - ii. Inward international remittances;

#### Article 21: Advance Functionality

(1) The EMI, may, at its discretion, have a system that can provide advance functionalities or interconnect with other payment systems that can provide advance functionalities in the future. These advance functionalities may include, but not be limited to:

1. Mobile Banking;
2. Microfinance;
3. Microcredit;
4. Micro insurance;
5. Others

#### Article 22: Internal Control Systems

(1) The EMI must have a system that has built-in control mechanism for a complete audit trail. These control mechanisms include, but not limited to:

1. Tracking and monitoring all E-money transactions;
2. Automatic Alerts and Flags on suspicious transactions;
3. Detection of Patterns of Transactions;
4. Multiple Account Transactions (A Single person maintaining 2 or more mobile money wallets and doing mobile money transactions simultaneously);

#### Article 23: Security

(1) The EMI must have a system that provides adequate security capabilities in order to ensure data integrity. These security capabilities should include, but not limited to:

1. Data Security up to the lowest data structure;
2. Authorization Levels according to Internal Control Policies and Procedures;
3. Complete Audit Trail;
4. Automated Reporting;
5. All methods of reporting should be automated to ensure data integrity;





6. Ad hoc reports should be provided due to special cases or conditions, as determined by Da Afghanistan Bank.

#### **Article 24: Operational policies and procedures**

- (1) The EMI must strictly implement Operational Policies and Procedures that conform to the following principles:
  1. Sound, Prudent Management, Administrative, Accounting Policies and Procedures;
  2. Adequate Internal Control Mechanisms;
  3. Properly designed Computer Systems and Applications that undergo rigorous testing procedures such as:
    - a. System Acceptance Testing (SAT);
    - b. User Acceptance Testing (UAT);
    - c. Pilot Testing;

#### **Article 25: Security Policies and Procedures**

- (1) The EMI must strictly implement Security Policies and Procedures that ensure:
  1. Data Integrity;
  2. Data Authentication;
  3. Confidentiality;
  4. Approval Levels and Authorization;

#### **Article 26: Business Continuity Policies and Practices**

- (1) The EMI must ensure complete business continuity in case of natural (force majeure) or man-made disasters. This shall include, at a minimum, different levels of back-up procedures for:
  1. Hardware Systems;
  2. Software Systems;
  3. Application Systems;
  4. Data;

#### **Article 27: Disaster Recovery Management**

- (1) The EMI must ensure separate locations of hardware and software systems to protect the operations of these systems from all kinds of disruptions and total collapse.

#### **Article 28: Audit Functions**

- (1) The EMI shall perform periodic internal audit review. External audit review should be conducted by an authorized External Audit company by DAB to ensure that International Auditing Standards (IAS) and internal policies and procedures are strictly followed.

#### **Article 29: Liquidity Management**

- (1) The EMI and its agents have to be sufficiently liquid at all the time, to meet all customer's need and transactions. The entity is responsible to assure the liquidity management at all levels.

#### **Article 30: Training Programs**

- (1) The EMI must conduct a complete and regular training program in order to ensure the proper implementation of procedures and practices on KYC, Audit, Security, Internal Control and Financial management. These training programs should be conducted on a quarterly or yearly



basis depending on business needs and requirements. These training programs should be given to the following:

1. EMI Employees and Staff;
  2. Third Parties such as:
    - a. Agents;
    - b. Merchants;
- (2) The EMI is responsible for ensuring that it's authorized e-money agents, merchants, and partners have received proper and adequate training on their AML/CFT responsibilities, including customer acceptance and customer identification. DAB may, from time to time, at its discretion, specify the form, content, and frequency of this mandatory training.

### Article 31: Reporting and Review

- (1) The EMI must provide automated reports to the appropriate regulatory institutions such as Da Afghanistan Bank, AML/CFT Councils, Financial Intelligence Unit, on a timely basis as required by these institutions.
- (2) Da Afghanistan Bank will provide the proper templates and formats for these reports. These monthly reports shall include the following E-money transactions based on mobile money system (platform):
  1. Beginning Balance;
  2. Inflows or Cash-in;
  3. Payments;
  4. E-money Transfers;
  5. Outflows or Cash-out;
  6. Net (Inflows/Outflows);
  7. End-of-month Balance;

### Article 32: Additional Reporting

- (1) The EMI must provide automated additional monthly reports on:
  1. Payment for goods and services;
  2. Salary payments;
  3. Bills payments;
  4. Loan disbursements for microfinance institutions (MFIs);
  5. Loan repayments for MFIs;
  6. Customer Complaints (number, nature, and manner of resolution thereof);
  7. Monthly Balance Sheet, Profit and Loss Statement, Statement of Cash-Flows and e-Money liability report;
  8. Quarterly report on authorized agents, merchants, partners, including a list of such agents, merchants, partners in each district or province in Afghanistan where these agents, merchants, partners are located or do business.
- (2) The EMI must provide the results and findings of the Internal Audit to DAB before the end of first quarter of next fiscal year;
- (3) The EMI must provide audited Financial Statements to DAB before the end of first quarter of next fiscal year Annual report of an external auditor, including audited financial statements with statement of financial condition, statement of profit and loss statement of cash flows, Statement of Changes in Owner's Equity and Notes in which the auditor comments on the accuracy of the information provided by the EMI, the adequacy of internal audit and internal controls, and the adequacy of information security, business continuity, and disaster recovery.





### Article 33: Application & Licensing Fees

- (1) The EMI is subject to licensing fees, administrative charges, and reporting penalties, all of which are subject to change. In addition, at no point in time should EMI together with other EMI entities or MNOs conduct charges or fees to their customers that may, directly or indirectly, indicate collusion or monopolistic practices to the detriment of their customers.

1. **Application Fee:**

All entities applying for an EMI license to Da Afghanistan Bank must pay a onetime application fee of AFN 25,000.

2. **License Fee:**

All entities that have successfully attained an approved EMI license from Da Afghanistan Bank must pay a licensing fee of AFN 10,000,000. This EMI license is valid over a period of five (5) years. This licensing fee will be payable over five (5) years with the following payment schedule:

Year 1: 250,000 AFN

Year 2: 750,000 AFN

Year 3: 2,000,000 AFN

Year 4: 3,500,000 AFN

Year 5: 3,500,000 AFN

### Article 34: Recurring Fee

- (1) After the 5<sup>th</sup> year of operating E-money services, all EMI entities will pay a recurring fee of AFN 5,000,000.
- (2) This license fee will be valid from one (1) day after the 5<sup>th</sup> year to the 10<sup>th</sup> year of operations.
- (3) This will be payable every year with a minimum payment of AFN 1,000,000. After the 10<sup>th</sup> year of operating E-money services, the EMI will pay a recurring license fee of AFN 3,000,000.
- (4) This license will be valid from one (1) day after the 10<sup>th</sup> year to the 15<sup>th</sup> year of operations and shall be payable every year with a minimum payment of AFN 600,000.

### Article 35: Assessment Fee

- (1) The EMI shall pay an annual assessment fee of AFN 250,000. This assessment fee is payable one (1) day after the end of each Fiscal Year of the EMI.

### Article 36: Transaction Fees

- (1) All entities holding a valid EMI license shall charge the appropriate and reasonable transactions fees on their E-money services. These transaction fees may apply, but not be limited to businesses, partners, merchants, agents and consumers.

### Article 37: Commission Charges

- (1) All entities holding a valid EMI license are to declare in their business plan all sets of charges in their commission structure with consumers. This commission structure will be submitted to Da Afghanistan Bank as part of their reporting responsibility.

### Article 38: Reporting Penalties

- (1) All entities holding a valid EMI license are subject to the following reporting penalty:
1. AFN 1,000 - Penalty per day for late reporting;



2. AFN 50,000 – For one (1) month non-reporting in lieu of the daily rate; EMI will also receive a warning letter from Da Afghanistan Bank;
3. AFN 100,000 – For two (2) months non-reporting; EMI will also receive a warning letter from Da Afghanistan Bank;
4. AFN 150,000 – For three (3) months non-reporting; EMI will also receive a warning letter from Da Afghanistan Bank and one-month suspension without pay of Compliance Officer;
5. If the EMI fails to send the appropriate reports to Da Afghanistan Bank beyond three (3) months period, Da Afghanistan Bank reserves the right to revoke the EMI license and charge a flat monthly fee of AFN 150,000 per month plus the initial three (3) months of non-reporting penalty stated in point (4) above.

#### **Article 39: Non – Compliance Penalties**

- (1) All entities holding a valid EMI license are subject to strict compliance measures as outlines by the EMIs Regulation and other Regulations of Da Afghanistan Bank. Violation of which can lead directly to reporting penalties outlined in Article 38 mentioned above. Additionally, the EMI management may be subject to criminal liability and/or prosecution depending on the severity of violation.

#### **Article 40: Fraud and Falsification of Documents**

- (1) All entities holding a valid EMI license are obliged to ensure all documents and information provided to any Da Afghanistan Bank representative are genuine and accurate, to the best their abilities. Any intent to defraud Da Afghanistan Bank or non-reporting of any specific transaction is subject to penalties stated in point (4) and (5) of Article 38.

#### **Article 41: Effective date of regulation**

This regulation is effective immediately upon adoption by the Supreme Council of Da Afghanistan Bank.





## Chapter 1: General Provisions

## Article 1: Basis

- (1) This Regulation on Payment Institutions (PIs) is pursuant to the authority granted to DAB by Articles 87, 88, 89, and 91 of the Da Afghanistan Bank law.

## Article 2: Objectives

- (1) The purpose of this Regulation is to:
1. Register, issue license, regulate and supervise payment institutions;
  2. Provide a clear guide on the conditions one must fulfill to be granted the designation status to operate as a payment institution in Afghanistan;
  3. Facilitate the provision of services offered by PIs without compromising the safety and efficiency of the national payment systems;
  4. Provide standards for consumer protection and risk management to be adhered to by all PIs; and
  5. Provide the regulatory framework to create an enabling and competitive environment to cater cost efficient and prompt electronic payment services.

## Article 3: Definitions

- (1) The terms used in this Regulation shall have the following meanings
1. **Da Afghanistan Bank (DAB):** Means the Central Bank of Afghanistan.
  2. **National e-Payment Switch:** is the entity which sets the interbank rules, practices and standards necessary for the functioning of the e-payment services across the country including the interoperability among all licensed financial institutions and payment institutions. It also, provide the rules and standards of the National Card scheme of the country including the technical and commercial arrangements.
  3. **Afghanistan Payment System (APS):** is the National e-Payment Switch of Afghanistan.
  4. **Financial Institution:** refers to any corporation that provides financial services and act as an intermediary.
  5. **Acquiring Bank (or Acquirer):** is an entity that holds deposit accounts for card acceptors/merchants and to which the card acceptors/merchants transmit the data relating to the transaction. The acquirer is responsible for the collection of transaction information and settlement with the acceptor/issuer.
  6. **Issuing Bank (or Issuer):** is an entity that provides payment instruments including debit, credit and prepaid card to customers.
  7. **Payment Service Provider (PSP):** is a category of business which came into being as a result of the enactment of DAB that facilitates providing of e-payment services in the country, which includes the EMI and PI.
  8. **Electronic Money Institution (EMI):** is a category of the PSP which is authorized to issue the e-money and provide e-wallet services to the customers.
  9. **Payment Institution (PI):** is a category of PSP, which came into being as a result of the enactment of DAB that provides agent and acquiring payment services. The Payment Institutions are not allowed to issue e-Money for the customers.
  10. **Electronic Payment Services:** is type of services that facilitates financial transactions through electronic means, i.e. ATM, POS, Online, Mobile, e-Wallet and etc.



11. **Acquiring Instrument:** is the hardware and software that facilitates the execution of the financial transaction for the customer.
12. **Payment Instrument:** is any kind of instrument, which can be used for execution of the transaction by the customer.
13. **Agent:** is any individual or corporation who is desired to take part in the acquiring services to the customer on behalf of the Payment Institutions upon an arrangement.
14. **Card Scheme:** is a payment network linked to the payment card, such as debit or credit cards of which any financial institution can be a member.
15. **Wallet Scheme:** is a payment network linked to the wallet and user can store e-money for any future e-transactions.
16. **National Card Scheme:** is a category of the card scheme, which is managed and implemented in Afghanistan.
17. **Afpay:** is the National Card scheme of Afghanistan which is owned by DAB and implemented by the National e-Payment Switch of the country, which includes the card scheme and wallet scheme.
18. **Initial Acceptance Certificate:** It is the certificate which will be issued by APS prior to applying of an applicant for the PI License. APS will assess the technical, business and operation procedures of the applicant to ensure that applicant's relevant IT systems (both hardware and software) have the capacity to integrate and interoperable with the National Switch.
19. **Account:** includes any facility or arrangement by which a financial institution accepts deposits of funds or monetary or negotiable instruments or permits withdrawals or transfers; pays the value of checks or payment orders drawn on a financial institution or another person; or collects checks and payment orders, bankers drafts, travelers checks, or electronic money on behalf of a person; or provides facilities or arrangements for the lease of safe deposit boxes or any other form of safe deposit.
20. **Board of directors (BOD):** refers to a group of individuals elected to represent shareholders.
21. **Customer:** in relation to a transaction or an account includes:
  - a. The person in whose name a transaction, business relationship, or account is arranged, opened or undertaken;
  - b. A signatory to a transaction, business relationship, or account;
  - c. Any person to whom an account, or rights or obligations under a transaction has been assigned or transferred;
  - d. Any person who is authorized to conduct a transaction, or to control a business relationship or an account; or
  - e. Such other persons as having ties to the account.
22. **Authorization:** is a process through which a merchant obtains permission from a customer's card issuing bank to accept the card for payment. Authorization involves assessing the card's transaction risk and, if approved, reserving the sales amount on the cardholder's account.
23. **Clearing:** the process of transmitting, reconciling and/or confirming funds or securities transfer instructions prior to Settlement and include the Netting of instructions and the establishment of final positions for Settlement.
24. **Settlement:** the act of discharging obligations by transferring funds or securities between two or more parties.





25. **Financial Market Infrastructure:** is a multilateral system among participating institutions, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives, or other financial transactions.
26. **Funds or Property:** means assets of every kind, whether material or immaterial, corporeal or incorporeal, movable or immovable, tangible or intangible, however, acquired, and legal documents or instruments, including electronic or digital, evidencing title to, or interest in, such assets including but not limited to money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets.
27. **Proceeds of Crime:** means any funds or property derived from or obtained directly or indirectly through the commission of a predicate offence. This also includes income or benefits derived from such proceeds, proceeds obtained from the investment of such funds or the funds or property that have been transferred into other types of assets, whether partially or in whole.
- (21) **Transaction:** includes any act or agreement made in order to carry out any economic or business activities and the term also means the purchase, sale, distribution, transfer or investment and possession of any assets, which includes but is not limited to:
  1. The opening of an account;
  2. Any deposit, withdrawal, exchange or transfer of funds in Afghani or any other currency whether in cash or by cheques, payment order or other instrument or by electronic or other non-physical means;
  3. The uses of a safety deposit box or any other form of safe deposit;
  4. Entering into any fiduciary relationship;
  5. Any payment made or received in satisfaction, in whole or in part, of any contractual or other legal obligation;
  6. Establishing or creating a legal person or legal arrangement; and
  7. Such other transaction as may be designated by the DAB.

#### Article 4: Authorized Payment Institutions' Model

- (1) A Payment Institution(s), abbreviated as PI(s), is a category of Payment Service Providers (PSPs) which came into being as a result of the enactment of the Da Afghanistan Bank (DAB) that provides agent and the acquiring services. Services include ATM, POS/mPOS, mobile application, online payment gateway and any other payment channels that accept domestic and international card schemes and wallet Schemes. For this purpose, and for the purpose of providing interoperability, the PIs are required to integrate with the National e-Payment Switch of Afghanistan (Afghanistan Payments System (APS) and make necessary arrangements with any financial institution to provide the agent and acquiring services.

#### Article 5: Eligible Activities

- (1) For the purpose of this regulation, the following activities are authorized acquiring activities:
  1. Acquiring services, including ATM, POS/mPOS, mobile application, online payment gateway and any other payment channels;
  2. Agent services on behalf of banking and non-banking institutions; and
  3. Any other relevant activities which are approved by DAB.

#### Article 6: Prohibited activities

- (1) For the purpose of this regulation, the following activities are prohibited:



1. Keeping fund of the customers;
  2. Issuing of the payment cards;
  3. Issuing of e-money; and
  4. Any other relevant activities which are prohibited by DAB.
- (2) DAB may amend the mentioned limitations from time to time, at its sole discretion by official circular or by further amendments to this regulation.

#### Article 7 Application and Licensing Process

- (1) A payment institution can be an Independent and/or wholly owned subsidiary or entity of its parent company that may already be in operation inside or outside Afghanistan;
- (2) In case of subsidiary, a payment institution must conduct its operations separate and distinct from the business of its parent company, including a separate Board of Supervisors, Audit Function, Compliance Function, Independent Risk Framework, Board of Management and keeping separate books of account for its acquiring services division; In order to be a Payment Institution, a company registered with Ministry of Industry and Commerce, having license from DAB, whether already established or desiring to establish and operate as a PI, is required to obtain a license from DAB through an application in writing, as per the format presented by DAB along with the required documents and applicable fee mentioned therein. In case of subsidiary arrangement, a PI can benefit from BOS or any other competent governing board of its parent company for 12 months after the issuance of PI license and:

No entity shall, in Afghanistan, conduct the business of a Payment Institution except authorized as a payment institution from DAB. DAB may introduce the person or entity engaging in the business of a Payment Institution to the law enforcement authorities, if they operate without obtaining license from DAB.

1. The applicant shall make the application in the prescribed form and shall forward to the Da Afghanistan Bank together with the prescribed fee.
2. In considering an application for the licensing, the DAB may require to be satisfied as to the financial condition and history of the applicant, the character of its management, the adequacy of its capital structure and the convenience and needs of the area to be served and the public interest which will be served by granting of the licensing.
3. The DAB may, subject to the payment of the prescribed fee and to provision of the necessary documents listed under Article 8 and article 20 of this regulation, grant license to the applicant.
4. The PIs must integrate with APS—The National e-Payment Switch of Afghanistan—for the purposes of providing acquiring services and interoperability to accept all the payment instruments of banking and non-banking institutions (card schemes and wallet schemes) and for this purpose obtain Initial Acceptance Certificate from APS.
5. Where license has been granted under this section, the DAB may add, vary, or substitute conditions attached thereto.
6. Within one (1) month after the issuance of the license, a PI is obliged to start its operation and provide services to the market.
7. A license issued under this section shall, unless earlier revoked, be valid for three years next following the date of issue: Provided that where an application for its renewal is made under this section, the license shall be deemed to continue in force until the application for renewal is determined.
8. A payment institution shall establish adequate operational arrangements for its acquiring services, which include the following:





- a. Rules and procedures setting out the rights and liabilities of the PI and the agent and the risks they may incur; and
- b. Measures to ensure safety, security and operational reliability of the service including contingency arrangements.

#### **Article 8: Required Documents to Obtain PI License**

- (1) The shareholder of a PI as natural person and PI as a legal person must provide the following documents and information:
  1. Business License from Ministry of Industry and Commerce.
  2. Shareholder's bio data, valid passport or national identity card and shareholding structure.
  3. List of personal net worth.
  4. Proposed standard contract with:
    - a. Agent, and
    - b. System participants.
  5. Submit the set of policies stated in Article 20 (Ensuring Appropriate Policies and Procedures).
  6. Initial Acceptance Certificate from APS for the purposes of integration with APS—The National e-Payment Switch of Afghanistan and to provide acquiring services and interoperability to accept all the payment instruments of banking and non-banking institutions (card schemes and wallet schemes). In this regard, submit all required documents to the APS as per APS guideline to obtain Initial Acceptance Certificate.
  7. A Comprehensive business plan (for 3 Years), that should include but not limited to:
    - a. Description of the nature, scope of the business,
    - b. Fees and commission structures,
    - c. Financial strategy,
    - d. Marketing strategy,
    - e. Technical Strategy, and
    - f. Operational strategy.
  8. AOA (Article of association).
  9. Governance structure (including agents, & outsourcing arrangements).
  10. Agreement with APS.
  11. Disaster Recovery Plan (DRP)
  12. Business Continuity Plan (BCP)
  13. Internal control mechanism.
  14. Biography of the proposed Board of Supervisors/Directors.
  15. Biography of the proposed Board of Management.
  16. Educational degrees and professional certificates of the Board of Supervisors and Board of Management.
- (2) In case the shareholder is a legal person, the following documents should be submitted in addition to the above documents:
  1. Business license from Ministry of Industry and Commerce of Afghanistan;
  2. Copies of national identity cards, biography of shareholders, and their shareholding structure;
  3. Audited financial statements of the previous three years;
  4. Biography of the Board of Supervisors/Directors;
  5. Biography of the Board of Management;
  6. business plan; and
- (3) Any other information and documents if deemed necessary by DAB.



#### Article 9: Criteria for Assessing Suitability

- (1) After receipt of an application, the DAB may make a preliminary investigation on the genuineness of the documents submitted by the applicant and completion of the information provided;
- (2) The DAB may either open a full procedure under sub article (1) of this Article or request the applicant to provide additional information. The DAB may indicate to the applicant any deadlines to provide such information and the applicant will make all reasonable efforts to comply;
- (3) The DAB, if satisfied after the investigation under sub article (1 and 2) of this Article that the application is complete in all respects, shall open a main procedure to evaluate whether it conforms to the provisions of this Regulation or related measures issued or will be issued by the DAB;
- (4) In case, the applicant did not submit the relevant documents, DAB may after two (2) notifications or deadlines shall refuse an application;
- (5) Unless the application is refused, DAB may grant a license to a payment institution, provided the PI meets all the required terms and conditions mentioned in the Articles 7 and 8 of this regulation within sixty (60) working days.

#### Article 10: Approval of the Company and Product Name

- (1) An entity who makes an application to be a PIs shall have a business license with an approved name by the Ministry of Industry and Commerce of Afghanistan.
- (2) An applicant shall not use the license issued under this regulation for any other purpose, unless the DAB grants the applicant a license.
- (3) An entity who makes an application for a new product or service shall apply to the DAB for approval of the name of the proposed product (or products) subject to any intellectual property rights that may be in existence.
- (4) An applicant shall function within the domain of activities that is permitted under this regulation.

#### Article 11: License Renewal

- (1) An authorization (license obtained) made under Article 7 (Application and Licensing Process) under this regulation, may be for three years and may be renewed each three years.
- (2) An application for the renewal of a license shall:
  1. Be made in the prescribed form and forwarded to DAB together with the prescribed fee;
  2. Be lodged with the DAB at least two months prior to the expiry of the license.
- (3) An application for renewal of a license shall be considered in accordance with the provisions of the Article 7 (Application and Licensing Process) under this regulation.

#### Article 12: Minimum capital requirement

- (1) PIs are subject to a minimum core capital requirement of AFN 5 million.
- (2) A PI shall at all times maintain minimum core capital specified in sub article (1) of this Article. The DAB may amend the minimum capital requirement from time to time.

#### Article 13: Revocation and Suspension

- (1) DAB may, by notice to a Payment Institution, suspend a license for such period as DAB may specify or revoke a license, if the license payment institution:
  1. Fails to meet relevant provisions of Da Afghanistan Bank Law.
  2. Fails to commence business within one (1) month from the date the license was issued.
  3. Ceases or fails to continue operations.





4. Obtains license on the premise of wrong, false, misleading information or conceals material information which, if known at any stage of revaluation and monitoring the granted license would be suspended.
  5. Applies to DAB for the revocation or suspension of the license where reasonable cause has been shown and where the rights of the third parties are not affected.
  6. Fails to comply with standards, guidelines, manuals and procedures of APS regarding interoperability.
  7. Fails to comply with provisions of this regulation.
  8. Becomes insolvent or is unable to effectively conduct its operations.
  9. Through its activities, the public trust is compromised.
  10. Engages in activities either restricted or not permitted under this Regulation.
  11. Is unable or fails to protect the confidentiality of data or information it collects.
  12. Without the consent of DAB, amalgamates with another entity or sells or otherwise transfers its business of a PI to another entity.
  13. Fails to pay a monetary penalty imposed by the DAB.
  14. Fails to comply with this Regulation and Counter Financing of Terrorism Act, and other relevant Regulations and Guidelines.
  15. Fails to manage its agents in a manner consistent with this Regulation.
  16. Fails to produce books of accounts, records, documents, correspondence, statements or other specified information without any reason after fourteen working days' notice has been issued and has not given sufficient cause why the license should not be revoked.
  17. Engages in criminal activities, or that there are grounds to suspect that PI engages in criminal activities.
- (2) DAB can, before revoking or suspending a license under sub article (1) of this article, give the PIs an opportunity to make representations to DAB on why the license should not be revoked or suspended.
  - (3) DAB can take into account the representations made by the PI under sub article (2), in its decision on the matter.
  - (4) DAB may require the PIs to take such corrective measures as the DAB may specify and may impose such monetary penalty or other sanctions as DAB may decide.
  - (5) DAB can, upon revoking or suspending a license under this regulation:
    1. Immediately inform the PI of the revocation or suspension; and
    2. Take over control of the business of the PIs to safeguard and facilitate distribution of the money in the Security deposit.
  - (6) A PI shall, where its license has been revoked or suspended:
    1. Hand over the entire database, electronic records in a readable format and other relevant information to DAB;
    2. Within seven days from the date of service of the notice of revocation, surrender the license to DAB; and
    3. Cease immediately from carrying out of all related domain of activities which is granted under this regulation.
  - (7) Where the DAB has revoked or suspended a license of a PI, DAB may:
    1. Notify the public of the revocation or suspension in at least two newspapers or TV channels of wide circulation; cease immediately, any further dealings of the PI with other entities for the purposes of this Regulation.



2. Where the DAB has revoked or suspended a license of a PI, DAB may distribute the balances held in the security deposit of the revoked PI at the time of revocation.

#### Article 14: Governance Structure

- (1) Each PI shall have the following governance structure:
  1. General Assembly of Shareholders;
  2. Board of Supervisors;
  3. Board of Management;
  4. Audit Function;
  5. Risk Management Function; and
  6. Compliance Officer.

#### Article 15: General Assembly of Shareholders

- (1) The General Assembly of Shareholders of a PI shall have the following duties and powers:
  1. To adopt amendments to the charter of the PI;
  2. To adopt the by-laws of the PI and amendments thereto, provided that the General Assembly of Shareholders may delegate authority to the Board of Supervisors to perform these functions, and may require that any adoption, amendment or repeal of a bylaw be subject to approval of the General Assembly of Shareholders;
  3. To appoint and to dismiss the members of the Board of Supervisors and determine remuneration of its members;
  4. To adopt increases in the authorized capital of the PI and to determine the terms and conditions on which shares of the PI may be issued;
  5. To approve the annual reports and financial statements of the PI, upon the recommendation of the Board of Supervisors of the PI;
  6. To decide on the sale, merger, amalgamation, dissolution and closure of the PI;
  7. To appoint PI's well-known external audit firm, taking into account the recommendation(s) of the Board of Supervisors; and
  8. To establish and dissolve a PI and its agent.
- (2) Shareholders shall have voting rights corresponding to their holding of shares of capital stock of the PI. Each shareholder may exercise his or her voting rights at the General Assembly of Shareholders personally or through official agent which is introduced in writing.
- (3) At least one regular session of the General Assembly of Shareholders shall be held each year after the completion of the external audit of the balance sheet and financial statements of the PI for the preceding financial year, no later than 3 months after the end of that financial year.
- (4) Extraordinary sessions of the General Assembly of Shareholders may be convened at the request of the Board of Supervisors, the Board of Management, a shareholder or shareholders individually or together holding 20 percent or more of total voting rights, or DAB.
- (5) Written notice of the date, place and time of each session of the General Assembly of Shareholders, together with the agenda for that session, shall be sent to the shareholders at least one month in advance. In urgent cases such notice may be given seven days in advance. However, no decisions shall be made on issues that are not on the agenda. In case of urgent matters, notice can be sent by electronic mode and voting can also take place through electronic mode. However, in the subsequent session of the General Assembly of Shareholders the decisions taken by electronic mode should be confirmed.





- (6) Decisions of the General Assembly of Shareholders should be written and signed by shareholders and secretary only. However, in case of urgent matters voting can take place through postal ballot or electronic mode.
- (7) Shareholders should ensure that effective and appropriate secretarial functions exist.

#### **Article 16: Board of Supervisor's Structure**

- (1) The Board of Supervisors should define appropriate governance structures and practices for its own work, and put in place the means for such practices to be followed and periodically reviewed for ongoing effectiveness.
- (2) The Board of Supervisors should structure itself in terms of leadership, size and the use of committees so as to effectively carry out its oversight role and other responsibilities. This includes ensuring that the Board has the time and means to cover all necessary subjects in sufficient depth and have a robust discussion of issues.
- (3) The chair of the Board of Supervisors plays a crucial role in the proper functioning of the Board of Supervisors. The chair provides leadership to the board and is responsible for its effective overall functioning, including maintaining a relationship of trust with board members. The chair should possess the requisite experience, competencies and personal qualities in order to fulfill these responsibilities. The chair should ensure that board decisions are taken on a sound and well-informed basis. The chair should encourage and promote critical discussion and ensure that dissenting views can be freely expressed and discussed within the decision-making process. The chair should dedicate sufficient time to the exercise of his or her responsibilities.
- (4) To promote checks and balances, the chair of the Board of Supervisors should be an independent or non-executive board member.

#### **Article 17: Board of Supervisors' Appointment and Composition**

- (1) Board of Supervisors is elected by the General Assembly of Shareholders of the PI, and majority of its members shall not be shareholder's representative.
- (2) Shareholders, whether legal entities or natural persons, may appoint representatives to the Board but these representatives shall not constitute a majority of Board members.
- (3) The Board of Supervisors consists of minimum of three and maximum of nine members, elected by the General Assembly of Shareholders for the period of four years and they can be reappointed. Board of Supervisors elects one of its members as the chairman.
- (4) At least two-third members along with chairman of Board of Supervisors should be independent members. PI shareholders, their representatives and close relatives cannot constitute majority of the Board of Supervisors.
- (5) If a seat of Board of Supervisors becomes vacant, the remaining members should fill the vacant position by designating a temporary member until the next General Assembly of Shareholders of shareholders.

#### **Article 18: Qualification of Board of Supervisors**

- (1) A person shall be eligible to serve as a member of the Board of Supervisors of a PI if:
  1. He/she is a Fit and Proper Person and meets conditions which are set in relevant procedures.
  2. He/she is not a public (government) employee other than in a teaching capacity.
- (2) In addition to above requirements, every member of Board of Supervisors of a PI must have a suitable professional background via previous work in business, accounting, law, academia or



supervision of financial institutions. At least one member of the Board of Supervisors shall have experience in payment institution, payment systems, accounting or financial management.

- (3) Other requirements and details of the qualification of Board of Supervisors will be provided through circulars of DAB from time to time.

#### **Article 19: Board of Supervisors' Role and Responsibilities**

- (1) The Board of Supervisors of a PI shall have the following duties and powers:

1. Convene each session of the General Assembly of Shareholders and adopt the agenda for each session;
2. Approve the PI's organizational structure;
3. Appoint, dismiss and determine the remuneration of the members of Board of Management of the PI;
4. Oversee the performance of the PI's Board of Management;
5. Approve the PI's business strategy and annual budget;
6. Approve policies for the conduct of operation performance, including the PI's risk management policy, dealing with conflict of interest and issuance of guidance to Board of Management for implementation of those policies;
7. Ensure the establishment, functionality, appropriateness, adherence of DAB law(s) and regulations and adequacy of internal controls and risk management for the PI;
8. Ensure the integrity of the PI's financial reporting, including financial reporting to DAB;
9. Ensure that appropriate Internal Audit function is established;
10. Make recommendations to the General Assembly of Shareholders on matters requiring shareholder approval;
11. Make recommendations to the General Assembly of Shareholders concerning appointment of the external audit firm for the PI;
12. Ensure execution of PI's annual external audit, which includes the auditor's opinion of the truth and accuracy of the PI's financial statements;
13. Immediately inform DAB in writing, or require the Board of Management to do so, of any deterioration in the financial situation of the PI, or danger of such deterioration, and any other facts that may materially affect the financial situation of the PI.
14. Ensure implementations of directives and instructions of DAB;
15. Decide on other matters placed in the competence of the Board of Supervisors by the PI's charter or by-laws.

- (2) The Board of Supervisors is ultimately responsible, and is accountable to all stakeholders (including the General Assembly of Shareholders, other stakeholders, and DAB) for the conduct of the PI's affairs and condition. In meeting its overall commitment to the PI's General Assembly of Shareholders, stakeholders, and community, the Board of Supervisors must:

1. Ensure competent management;
2. Ensure that appropriate plans and policies are in place;
3. Monitor operations, ensure adequate internal controls and compliance with laws, regulations and decisions;
4. Oversee financial performance of the PI; and
5. Prevent Conflicts of Interest.

#### **Article 20: Ensuring Appropriate Policies and Procedures**

- (1) The Board of Supervisors must adopt and approve written policies and procedures that direct management on all significant PI activities and the management of risk, including what PI and





payment systems practices and levels and types of risk are acceptable. Each PI should have additional written guidelines and policies as listed below:

1. Compliance Policy;
  2. Risk Management Policy;
  3. Operation Policy;
  4. Procurement Policy;
  5. Human Resource Manual;
  6. Corporate Governance Guideline;
  7. Internal Audit Guideline;
  8. Information Technology Policy;
  9. Accounting, reporting and financial Policy;
  10. Liquidity Management Policy (based on business model);
  11. Internal Control Policy; and
  12. Technical IT System or Platform Manual
  13. Fraud Prevention & Detection Policy.
- (2) The policies should establish clear standards and responsiveness to changing business conditions. Associated procedures should detail how the policies will be implemented and include steps for getting appropriate approval of Board of Supervisors for exceptions.

#### **Article 21: Meetings of Board of Supervisors**

- (1) Board of Supervisors shall meet regularly, at least quarterly Special meetings may be held as necessary. A special meeting shall be called if:
  1. The PI financial situation deteriorates;
  2. It is requested by the external auditor of the PI; or
  3. It is instructed by DAB.
- (2) Board of Supervisors may hold its meetings online (web conference); however, at least one meeting should be held face-to-face in a quarter;
- (3) The quorum of Board of Supervisors completes by presence of its two-third members.
- (4) Any member of Board of Supervisors who fails to attend three consecutive meetings or five meetings in a calendar year without an acceptable excuse, will lose his or her membership.
- (5) The Board of Supervisors should maintain appropriate records (e.g. meeting's minutes or summaries of matters reviewed, recommendations made, decisions taken and dissenting opinions) of its deliberations and decisions.
- (6) The Board of Supervisors shall designate an employee of the PI who is not a member of the Board of Supervisors as secretary. Minutes of each meeting of the Board of Supervisors shall be signed by members of Board of Supervisors, its chairman and secretary.

#### **Article 22: Relationships between Shareholders and Board of Supervisors**

- (1) Member of Board of Supervisors shall be appointed by the General Meeting of Shareholders or in any extraordinary meeting of the General Assembly of Shareholders.
- (2) The General Assembly of Shareholders shall be chaired by the chairperson of the Board of Supervisors. The chair is responsible for the proper conduct of business at such meetings so as to facilitate discussion during those meetings.

#### **Article 23: Risk Management Unit**

- (1) PIs should have an effective independent risk management function, under the direction of a Head of Risk, with sufficient stature, resources and access to the Board of Supervisors.



- (2) The risk management function should be sufficiently independent of the business units and should not be involved in revenue generation.
- (3) The risk management function should have a sufficient number of employees who possess the requisite experience and qualifications, including market and product knowledge as well as command of risk disciplines. Staff should have access to regular training.
- (4) The Head of Risk should report and have direct access to the Board of Supervisors without impediment.
- (5) Risks should be identified, monitored and controlled on an ongoing PI-wide and individual entity basis.
- (6) Risk identification and measurement should include both quantitative and qualitative elements. Risk measurements should also include qualitative, PI-wide views of risk relative to the PI's external operating environment. PIs should also consider and evaluate harder-to-quantify risks, such as reputation risk.
- (7) Risk reporting systems should be dynamic, comprehensive and accurate, and should draw on a range of underlying assumptions.
- (8) All PIs must have approved Enterprise Risk Management framework and policies and procedures to be implemented accordingly.
- (9) All PIs must have a strong monitoring mechanism in place for their merchants and agents.
- (10) All PIs must have approved policies and procedures for information and system security as well as necessary internal controls in place. Further, they must take proactive measures to detect and prevent fraudulent transactions and unwanted intrusions.
- (11) The above-mentioned documents are required to be submitted to Da Afghanistan Bank and will be subject to review through on-site examinations.

#### **Article 24: General Principles – Board of Management**

- (1) Under the direction and oversight of the Board of Supervisors, the Board of Management shall carry out and manage the PI's activities in a manner consistent with the business strategy, risk appetite, and other policies approved by the Board of Supervisors.
- (2) Board of Management shall consist of a core group of individuals responsible and accountable to the Board of Supervisors for the sound and prudent day-to-day management of the PI.
- (3) The organization, procedures and decision-making of Board of Management should be clear and transparent and designed to promote effective management of the PI. This includes clarity on the role, authority and responsibility of the various positions within Board of Management, including that of the CEO.

#### **Article 25: Appointment and Membership – Board of Management**

- (1) The Board of Management of a PI consists of at least five members, and shall include:
  1. Chief Executive Officer,
  2. Deputy Chief Executive Officer (Optional);
  3. Head of Operations,
  4. Head of Finance, and
  5. Head of IT.
- (2) Such other officials as may be specified in the PIs charter or by-laws or deemed appropriate by the Board of Supervisors.
- (3) Before a PI's appoints a person to serve on its Board of Management, the PI must propose the issue to Da Afghanistan Bank as well as submit required documents specified by DAB, during an





application for a PI license or during subsequent appointments, and shall obtain Da Afghanistan Bank approval.

- (4) Members of the Board of Management of a PI are eligible to serve for four consecutive years and shall be eligible for reappointment.
- (5) Members of Board of Management shall be full-time administrators or employees of the PI. Each member of the Board of Management does not necessarily need to have expert knowledge or expertise in every area of PI management, but should be generally familiar with each relevant area, in addition to having detailed knowledge of their own area of responsibility, so that the members of the Board of Management can work together effectively and professionally.
- (6) Remunerations, stipends, appointment and dismissals of CEO and members of the Board of Management are decided by Board of Supervisors.

#### **Article 26: Board of Management's Qualifications and Eligibility**

- (1) A person shall be eligible to serve as a member of the Board of Management of the PI if he or she:
  1. Is a Fit and Proper Person as per the relevant procedures

#### **Article 27: Board of Management's Roles and Responsibilities**

- (1) Board of Management and Board of Supervisors contribute substantially to a PI's sound corporate governance through personal conduct.
- (2) Board of Management is responsible for delegating duties to staff and should establish a management structure that promotes accountability and transparency throughout the PI.
- (3) Board of Management should provide the Board of Supervisors with the information it needs to carry out its responsibilities, supervise Board of Management and assess the quality of senior management's performance. In this regard, Board of Management should keep the Board of Supervisors regularly and adequately informed of material matters, including:
  1. Preparation and developing of business strategy, risk strategy/risk appetite;
  2. Make decisions regarding the establishment and dissolving of agents of the PI;
  3. The PI's performance and financial condition;
  4. Breaches of risk limits or compliance rules;
  5. Internal control failures;
  6. Legal or regulatory concerns; and
  7. Issues raised as a result of PI's whistle blowing procedures.
- (4) Board of Management of a PI shall:
  1. Organize the work and direct the day-to-day business operation of the PI, pursuant to the strategies and policies approved by the Board of Supervisors, and monitor the day-to-day activities of the PI's employees;
  2. Implement the business strategy and policies of the PI's approved by the Board of Supervisors. Consistent with the direction given by the Board of Supervisors, senior management should implement business strategies, risk management systems, risk culture, processes and controls for managing the risks both financial and nonfinancial.
  3. Identify and assess regularly all serious risks involved in the activities of the PI and ensure the monitoring and control such risks in accordance with the policies approved by the Board of Supervisors;
  4. Develop the organizational structure of the PI and its branches that is suitable for the PI's overall strategy as determined by the Board of Supervisors, and submit the proposed structure for approval to the Board of Supervisors;



5. Develop and implement systems for monitoring the activities of the PI, ensure adherence to such systems, assess the sufficiency thereof regularly and improve them if necessary, in accordance with the policies established by the Board of Supervisors;
6. Ensure that all employees of the PI's are aware of the provisions of legislation relating to their duties of employment and of the principles approved by the Board of Supervisors;
7. Ensure monitoring of the compliance of the activities of the PI and its employees with legislation and the policies approved by Board of Supervisors;
8. Ensure the existence and functioning of systems to guarantee that information necessary for employees of the PI to perform their duties is communicated to them in a timely manner;
9. Ensure the safety and regular monitoring of information technology systems used by the PI and systems used for the safekeeping of assets of clients;
10. Inform the Board of Supervisors of all discovered violations of legislation, internal rules or other rules established or approved by Board of Supervisors;
11. Present periodic overviews of the activities and financial situation of the PI to the Board of Supervisors.
12. Immediately inform the Board of Supervisors and DAB in writing of any deterioration in the financial situation of the PI, or danger of such deterioration, and any other facts that may materially affect the financial situation of the PI, and in particular if the PI becomes undercapitalized or in severe breach of relevant regulations.

#### **Article 28: Fiduciary Duties of BOS and BOM**

- (1) Members of the Board of Supervisors and Board of Management must:
  1. Perform their duties honestly and in good faith with a view to the best interests of the PI;
  2. Exercise such care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances; and
  3. Avoid Conflicts of Interest between the PI's interests and their own personal or business interests.
- (2) Members of the Board of Supervisors and Board of Management are liable for any damage caused to the PI for violations of the duties referred to in sub article (1) of this Article.
- (3) In the event of violations of the duties referred to in sub article (1) of this Article by members of the Board of Supervisors and Board of Management resulting in losses to the PI, shareholders of the PI shall have the right to bring legal action on behalf of the PI against such persons seeking compensation for such losses to the PI in accordance with the procedures set forth in Article 48 of the Law on Corporations and Limited Liability Companies.

#### **Article 29: Disclosure of Commercial Interests**

- (1) State whether any of the partners, agents, management board members, members of the Board of Supervisors, or a committee designated by the Board of Supervisors, or shareholders have a beneficial interest in any other business licensed to provide payment services.

#### **Article 30: Secrecy Obligations**

- (1) Present and past members of the Board of Supervisors and Board of Management and employees of a PI shall be required to keep confidential, not to use for personal gain and not to permit to be examined by others unless required by law, any information that they obtain in the course of their services to the PI. Such information may be disclosed to:





1. The officers, staff and agents of DAB, including supervisors, inspectors, auditors, conservators and experts appointed by DAB in accordance with the Banking Law of Afghanistan; and
2. Other state authorities, and judicial and justice departments assigned in accordance with the law or by a court of competent jurisdiction.

### Article 31: Operations of a Payment Institution

- (1) PIs shall provide an electronic platform for clearing, processing, routing and switching of electronic transactions. They can make necessary arrangements with Banks, FIs and other PIs Merchants, e-commerce service providers and any other company for the provision of services mandated to the PIs under these rules.
- (2) PIs must have:
  1. Policies, procedures and controls approved by their Board of Directors;
  2. Organizational structure approved by their Board of Director with appropriate segregation of organizational functions;
  3. Adequate staffing and resourcing arrangements technically qualified and experienced in the relevant field of business;
  4. Proper documented contracts and agreements pertaining to the critical functions to run the business; and
  5. Properly equipped and maintained facilities to house Technology and Processing Systems (Infrastructure) within Afghanistan.
- (3) PIs are required to take prior approval from DAB:
  1. For their acquiring products and services offering;
  2. About any changes in the Articles of Association, bylaw, ownership, board of directors, board of management, technological platform, information security implementations; and
  3. Any other significant changes.
- (4) PIs shall make agreement and integrate with APS for the purpose of providing acquiring services and interoperability to accept the card schemes and wallet schemes
- (5) PIs shall make necessary arrangements for the acquiring and providing of payment services purpose with other Financial Institutions licensed by DAB.
- (6) PIs shall conduct all activities in a professional, ethical and orderly manner and shall ensure provision of quality services at all times with an objective to satisfy its customers.
- (7) Where applicable, functions/operations of PIs are subject to relevant provisions of AML/CFT Responsibilities and Preventative Measures Regulation and related instructions issued by DAB from time to time.
- (8) PIs shall not outsource any of their function(s) without prior approval from DAB; and
- (9) Where applicable outsourcing arrangement and the contract with the concerned parties should have necessary provisions, including but not limited to, the following:
  1. Definition of the roles, rights and obligations of each party;
  2. Provide the Service Level Agreement (SLA), Non-Disclosure Agreement (NDA) and the logical reason for outsourcing the activities;
  3. Set the scope of work to be performed by the concerned parties and evidences that prove the capability of the concerned party to perform the outsourced activities;
  4. Fee or commission structure for the work to be performed by the concerned parties; and
  5. PIs shall provide the complete contact information of the concerned party to be responsive on any inquiry by DAB.



- (10) PIs must maintain accurate and complete records of all transactions. It is required that access to historic data must be readily available online or through any electronic means up to a period of six (6) months by DAB. Additionally, all data must be stored offline for a minimum of ten (10) years for future access by DAB.
- (11) DAB will be allowed to inspect data, records, facilities and infrastructure of PIs;
- (12) PIs and its concerned parties shall ensure secrecy of all transactions in accordance with all applicable laws, rules and regulations;
- (13) Standard and updated documentation of IT setup & architecture, integration, operations and technical controls for appropriate risks mitigation measures to ensure data security & integrity with standard operations and procedures for IT services;
- (14) PIs shall have disaster recovery plan (DRP) and business continuity plan (BCP);
- (15) Process Integrity – PIs need to ensure that the system processing is complete, accurate, timely, and authorized;
- (16) Fidelity and secrecy – PIs need to ensure that personal information obtained during the course of operations is used, disclosed, retained and protected as committed or agreed;
- (17) PIs need to ensure that the customer complaint redressed mechanism/procedures are in place, which clearly define the roles & responsibilities of all concerned parties in handling the customers' complaints; and
- (18) Any other conditions mentioned by DAB from time to time.

### Article 32: Pricing Mechanism

- (1) All charges/fees structure should be pre-agreed through contractual agreements in a fair and transparent manner among all relevant parties commensurate to the service requirements and standards and in accordance with the "Cap on Charges" determined by the Afghanistan Payment System (APS) time by time.
- (2) All charges/fees structure schedules should be fixed for a minimum period of six (6) months and should be reported to DAB on half-yearly basis.

### Article 33: Agents

- (1) A payment institution may appoint an agent to undertake certain services on its behalf.
- (2) A payment institution may enter into an agreement for the provision of certain services with the agent appointed under the Article 4 of this regulation.
- (3) The agreement for provision of acquiring services between PI and agents shall be exclusive and include the following terms and conditions
  1. Responsibilities and competencies of each party;
  2. Compliance of the agents with all policy and procedures of the PIs;
  3. Compliance of the agents with all related rules and regulations;
  4. The fees structure for provision of providing services by agents;
  5. The supervision mechanism of PI on agent activities and supervision power of DAB on agent activities; and
  6. Any other conditions may be defined by DAB from time to time.
- (4) An agent may, on behalf of the payment institutions:
  1. Process Straight Through Processing (STP) payments or provide other services in relation to payment services through any electronic system;
  2. Own, possess, operate, manage or control a public switched network for the provision of acquiring payment services; process or store data on behalf of the payment institutions or users of such payment services;





3. Provide cash withdrawal services; or
4. Provide any other services that the payment institutions are allowed in the provision of this regulation.
5. PIs shall notify DAB on appointment of any new agents and provide the list of their agents with complete contact information at the end of each reporting month.

#### **Article 34: Interoperability**

- (1) A payment institution shall use systems capable of becoming interoperable with other payment systems in the country and internationally through APS.
- (2) All Payment institutions must integrate with APS, the National e-Payment Switch of Afghanistan, for the purposes of providing the acquiring services and interoperability for acceptance of the cards and wallet schemes.

#### **Article 35: Processing and Settlement of Transactions**

- (1) The settlement and reconciliation of the PI transactions shall be performed as per the settlement and reconciliation policy of APS.
- (2) All the PIs shall have the settlement account with DAB.
- (3) Transactions processed by PIs will be settled amongst the participants at DAB or as per the instructions issued by DAB. At no point in time should the PI have access to or hold the consumer's or participant's funds.

#### **Article 36: Record Keeping and Reporting**

- (1) A Payment Institution shall:
  1. Utilize systems able to provide an accurate and fully accessible audit trail of all transactions from the origin of the transaction to its finality according to the payment messaging standards.
  2. Keep records of every transaction processed by it for a period of at least ten years.
- (2) Every Payment Institution shall, submit monthly reports within 5 days of every next calendar month to DAB through both in hard and through an online-based reporting mechanism. The report shall be provided by PIs include the following information:
  1. The volumes, values and geographic distribution of each electronic payment instrument offered by the PIs;
  2. Incidents of fraud, theft or robbery;
  3. Material service interruptions and major security breaches;
  4. Complaints reported, including remedial measures taken, those resolved and those outstanding
  5. Financial reports such as balance sheet, profit and loss statement, cash flow statement, and any other report(s) from PIs or in the formats specified by DAB.

#### **Article 37: Oversight and Supervision**

- (1) Based on Article 2 of Da Afghanistan Bank Law (Objectives and Basic Tasks), DAB shall provide oversight and supervision of Payment Institutions, as it deems necessary to ensure the safety, efficiency and soundness of such institutions. DAB shall conduct onsite supervision, offsite monitoring and special onsite supervision of PIs through its assigned supervision team who shall be provided full, timely and unrestricted access to systems (including those outsourced or hosted with third parties), documents, reports, records and officials of PIs.



- (2) DAB can co-operate with other countries regulatory and supervisory bodies for oversight of Payment Institutions and their Services in such manner and form as maybe specified by DAB.
- (3) If DAB discovers facts during its supervision indicating that criminal acts have been committed, it shall notify the relevant body regarding criminal proceedings of this fact without unreasonable delay.
- (4) DAB reserves the right to directly debit the penalty amount from the security deposits of PIs. The PIs shall, however, be required to maintain the minimum level of security deposit at all times.
- (5) Termination of any service and, or withdrawal of permission for whatever reason shall not discharge the PIs from any liability or obligation which at the time of termination or cancellation has accrued against it or which thereafter may accrue in respect of any act or omission prior to such termination or cancellation.

#### **Article 38: Security and confidentiality**

- (1) All PIs shall ensure the security, integrity, confidentiality and availability of data and services by adopting prevailing international standard(s) or as may be prescribed by DAB. Hence, PIs need to develop their own internal policy and procedure in line with the prevailing international standard(s) and or DAB instructions and guidelines
- (2) PIs are required to comply with the secrecy and privacy of information.
- (3) All security breaches must immediately be reported to relevant stakeholders including DAB. The incident and analysis report of security breaches (suspected or compromised) must be furnished to DAB from time to time.
- (4) PIs shall have an independent department for the information security in which operate under direct supervision of the CEO. The information security department shall have at least two information security specialist which shall be committed to keep the confidentiality and security of all information. Their capacity and assurance of security clearance shall be monitored from time to time by PIs' management.

#### **Article 39: Dispute Resolution**

- (1) Dispute Resolution Mechanism with defined turnaround time (TAT) with the business partners should be part of the Contract Agreement(s) between PIs and relevant parties.
- (2) Dispute resolution mechanism with the customers shall be applicable according to the card scheme (National or International) and wallet scheme.
- (3) PIs and their stakeholders/customers will mutually co-operate in good faith to resolve disputes. If the parties do not reach to the amicable solution within the stipulated time period for dispute settlement, then
  1. The case shall be referred to the Afghanistan Financial Dispute Resolution Commission.
  2. In case the disputes are not resolved by Financial Dispute Resolution Commission or the parties are not satisfied by the FDRC decision, then the case shall be referred to relevant law enforcement agencies or to the court of law.
- (4) PIs shall be liable to stakeholder(s) in case they fail to take appropriate measures to process financial transactions, ensure quality of service, security, integrity, and confidentiality in a manner agreed with stakeholder(s) in a contract and also in accordance with applicable DAB Laws and Regulations.
- (5) The PIs shall submit a report of the outstanding complaints and disputes to DAB on a quarterly basis.





#### Article 40: Consumer Protection

- (1) Within a period of six months after commencing the provision of payment services, PI shall establish a customer care system like but not limited to: Voice call, SMS alerts and social media, within which its customers can make inquiries and complaints concerning its services; prior to establishing a customer care system, PIs need to:
  1. Provide adequate means for customers to file complaints; and
  2. Address such complaints within a reasonable period from receipt of the complaint in accordance with the Article 43 (Dispute Resolution) of this regulation.
- (2) PI shall align its customer care system with the Dispute Management Framework of each relevant card schemes and wallet schemes to address consumer complaints due to loss of funds through fraudulent means or any other related complaint(s).
- (3) Provide, at all points of service, easily understood information about their complaint handling procedure.
- (4) File complaints with the payment institutions within the specified period of the time from the date of occurrence in accordance with the Dispute Management Framework of the relevant card schemes and wallet schemes.
- (5) Acknowledge all complaints filed with it.
- (6) Advise the complainant-
  1. Of the expected actions and timing for investigation and resolution of the complaint; in accordance with Dispute Management Framework of relevant card scheme and wallet scheme; and
  2. If the payment institution regards the complaint as frivolous or vexatious.
- (7) If a customer is dissatisfied with the advice given under sub article [6], the customer shall have further recourse in accordance with the Dispute Management Framework of the relevant card scheme and wallet scheme, this regulation and any other regulation issued by the DAB from time to time on consumer protection.
- (8) Provide reasonable assistance where a customer specifically requests assistance when filing a complaint in accordance with Dispute Management Framework of the relevant card scheme and wallet scheme.
- (9) Make adequate provision to ensure everyone has access to the provided services without discrimination of gender, age, ethic, religion and etc.
- (10) Make adequate provision to ensure that people with disabilities:
  1. Are able to access the agent and acquiring services without any limitation and discrimination;
  2. Are able to access their complaint handling processes; and
  3. Are easily represented by their authorized representatives in making a complaint.
- (11) Provide the complaint handling processes free.
- (12) Have a customer awareness mechanism, so that customers become aware of new changes made to the products or to the company that affect customers directly or indirectly.

#### Article 41: Application and License Fees

- (1) Application Fee: all entities applying for a Payment Institution license to Da Afghanistan Bank must pay a onetime application fee of AFN 10,000.
- (2) License Fee: all entities that have successfully attained an approved PI license from Da Afghanistan Bank must pay a licensing fee of AFN 500,000. This PI license is valid over a period of three (3) years and the above licensing fee will be payable over three (3) years with the following payment schedule:



1. Year 1: 50,000 AFN
2. Year 2: 200,000 AFN
3. Year 3: 250,000 AFN

#### Article 42: Recurring Fee:

- (1) After the 3rd year of operating PI services, all PIs will pay a recurring fee of AFN 450,000. This license fee will be valid from one (1) day after the 3rd year. This will be payable every year with a minimum payment of AFN 150,000.
- (2) After the 6th year of operating PI services, the PI will pay annual license fee of AFN 200,000 every year. This license fee is payable after the issuance of the license and shall be paid to DAB before the end of first month of the next year. In addition, the first-year license fee must be paid after the approval of the application.

#### Article 43: Assessment Fee

- (1) The PI shall pay an annual assessment fee of AFN 50,000. This assessment fee is payable one 1 day after the end of each Fiscal Year of the Payment Institution.

#### Article 44: Reporting Penalties

- (1) AFN 2,500 – Penalty per day for late reporting;
- (2) AFN 100,000 – For one (1) month non-reporting in lieu of the daily rate; PI will also receive a warning letter from DAB;
- (3) AFN 250,000 – For two (2) months non-reporting; PI will also receive a warning letter from DAB and replacement of Compliance officer by the PI;
- (4) AFN 500,000 – For three (3) months non-reporting; PI will also receive a warning letter from DAB and termination of compliance officer by the PI;
- (5) If the PI fails to send the appropriate reports to DAB beyond three (3) months period, DAB reserves the right to revoke the PI license and charge a flat monthly fee of AFN 100,000 per month plus the initial three (3) months of non-reporting penalty stated in point (4) above.

#### Article 45: Non – Compliance Penalties

- (1) All PIs holding a valid license are subject to strict compliance measures as outlined in the AML/CFT Law and AML/CFT Responsibilities and Preventative Measures Regulation of DAB, violation of which can lead directly to penalties outlined in AML/CFT law and related regulation.
- (2) Additionally, the PI management may be subject to criminal liability and/or prosecution depending on the severity of violation as per the relevant laws and regulations.

#### Article 46: Fraud and Falsification of Documents Penalties

- (1) All PIs holding a valid license are obliged to ensure all documents and information provided to any DAB representative are genuine and accurate. Any intent to defraud DAB or non-reporting of any specific transaction is subject to penalties stated in Article 44 sub article (4) and (5) of reporting penalties of this regulation.

#### Article 47: Sanctions and Penalties

- (1) DAB may impose the following sanctions:
  1. Prohibition from offering acquiring services;
  2. Termination of employment contract of an employee of the payment institutions;
  3. Prohibition from appointing new agents or introduction of new products;
  4. Limit the range of activities and the locations in which such activities can be conducted.





5. Prohibition or suspension from any other activity that DAB perceives to be contributing to violation of this regulation;
- (2) Before imposing a penalty on any PI under this regulation, DAB may give not less than seven days' notice in writing requiring the PI to show cause as to why the penalty prescribed should not be imposed;
- (3) DAB's decision shall be considered as final with regard to the imposition of penalties.
- (4) Where a monetary penalty is prescribed under this regulation, such penalty shall:
  1. Be paid to DAB;
  2. Be paid within 15 days unless otherwise stated;
  3. Where a Payment Institution fails to pay the penalty, DAB may take such other action or make such decision as permitted under this regulation and/or any other relevant laws and regulations.

#### **Article 48: Winding Up/Liquidation and Dissolution**

- (1) Liquidation/winding up of the authorized PIs will be carried out as per applicable the Limited Liability Company and other related laws.
- (2) In case of voluntary dissolution, DAB must be informed at least three (3) months prior to starting the actual dissolution. The dissolution will not be effective unless approved by DAB and only after discharging all the liabilities and obligations, especially license fee for the issued period and those pertaining to clearing and settlement of payments and resolution of related disputes.
- (3) PIs shall submit all the data, record, information to DAB at the time of liquidation, winding up, and voluntary dissolution or otherwise.
- (4) Shall notify the public of the winding up/liquidation and dissolution through at least two national newspapers or TV channels of wide circulation.

#### **Article 49: Enforcement**

- (1) This Regulation will become effective immediately after its adoption by the High Council of DAB.



## Chapter 1: General Provisions

## Article 1: Basis

- (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.

## Article 2: Purpose

- (1) The purpose of this regulation is to:
1. Develop a transparent process for Da Afghanistan Bank to proceed with the licensing and conduct supervision of lessors and regulate leasing activities in the financial market of 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; and
  4. Promote competition in the financial market.

## Article 3: Scope

- (1) This regulation shall apply to all local and foreign lessors who are qualified according to this regulation and operating in Afghanistan.
- (2) This regulation shall not apply to banking institutions that are licensed by Da Afghanistan Bank.
- (3) This regulation and financial leasing Law are not applied to the relationship between Lessor and Lessee which is governed by civil law in leasing affairs.

## Article 4: Definition

- (1) 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 fo4r 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 in not less than 12 months.
  3. **Lessor:** Is a legal entity licensed by Da Afghanistan Bank who practices financial leasing activities as defined by Financial Leasing Law. According to the Law "A Lessor is a person who, under the financial lease contract transfers the right of possession and use of the asset to the Lessee. This terminology covers the sub-lease, unless otherwise stated in the Law".
  4. **Lessee:** Is the user of the leased assets as defined according to financial leasing law and this regulation. According to the Law "A lessee is a person who under a financial lease contract acquires the right of possession and use of the asset from the Lessor. This terminology covers the sub-lease, unless otherwise stated in this Law."
  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.
10. **Board of Director:** means the highest body of authority in a financial leasing institution responsible for strategically guiding the institution, effectively monitoring management and properly accounting to shareholders.
11. **Book value:** means the value of a leased asset as stated on the books of account of a financial leasing institution being the amount of the financial leasing institution's investment in that less any specific general provision for loss.
12. **Charge-off:** means the accounting process of expensing institution's income statement in view a facility being demand uncollectible, such that continuation as a recoverable advance is no longer warranted and being purely an accounting entry, it does not forfeit the lessee's obligation to pay the outstanding payments due or the right of the financial leasing institution to institute legal action to enforce payment of the outstanding payments due under the financial lease.
13. **Regulatory capital:** means the sum of Tier1 capital and Tier 2 capital divided by risk weighted assets minus equity investment. The regulatory capital measurement will be introducing by DAB through separate circular or regulation.
14. **Collateral:** means the net realizable value of the following assets in which the interest of the financial leasing institution is fully enforceable.
15. **Readily marketable collateral:** the collateral must be salable under ordinary market conditions with reasonable promptness at a fair market value determined by quotations upon actual transactions on an auction or similarly available daily bid and ask price market. The types of the collateral that meets the characteristics of readily marketable collateral will be introduced through a separate guideline.
16. **Large exposure:** means an exposure to a customer, or group of closely-related customers, that meets or exceeds 15 percent of Regulatory capital but does not exceed more than 25 percent of regulatory capital.
17. **Group of related obligors:** a group of related obligors is defined as two or more persons (natural, juridical or both) who are connected, directly or indirectly, in such a way that the financial soundness of any of them may affect the financial soundness of some or all of them.
18. **Financial lease concentration:** means an exposure to a customer, or group of closely-related customers that meets or exceeds 40 percent of the Regulatory capital.
19. **Related person:** includes where the interests of two or more persons or a group of persons are so interrelated that they could be considered as a single unit, and one or more of these persons are a related person, then they are all considered related persons. Including the management board and their close relatives, supervisory board and close relative, shareholder's close relatives, parent company top management and their close relatives.
20. **Arm's length basis:** a transaction in which customer and financial leasing institution act independently and have no relationship to each other; or a transaction where both parties in the deal are acting in their own self-interest and are not subject to any inappropriate pressure or duress from other party.
21. **Net financial lease balance:** means the outstanding principle of financial lease less the net realizable value of any eligible collateral.



22. **Net realizable value:** means the estimated selling price of an asset in the ordinary course of business less the estimated costs of recovery of the asset and the estimated costs necessary to sell the asset.
23. **Non-performing financial lease:** means a financial lease that is classified as sub-standard, doubtful, or loss in accordance with these regulations.
24. **Re-negotiated financial lease:** means a financial lease which has been refinanced, rescheduled, rolled over or otherwise modified because of weaknesses in the lessee's financial position or non-repayment of the outstanding facility according to the original terms.
25. **Standard Asset:** means any asset that can be easily resold and highly demanded in secondary market due to its wide scope of use.
26. **Specific Asset:** means any asset that is difficult to resell and has low demand in secondary market due to thin scope of use.
27. **Gearing:** means a measure of financial leverage demonstrating the degree to which the independent financial leasing company taking financial leasing operations are funded by owner's funds and various creditor funds.
28. **Gearing ratio:** means a ratio indicating the proportion of independent financial leasing company's debt to its equity.
29. **Limitation on gearing ratio**  
Every financial leasing institution shall at all times ensure that the total debt of the company shall not be an amount greater than 7 times its equity capital that is a gearing ratio which does not exceed 7:1
30. **Interpretation:**  
Debt means the sum of:
  - a. Loans and overdrafts;
  - b. Bonds;
  - c. Debenture;
  - d. Amount due to related companies;
  - e. Promissory notes;
  - f. Commercial papers; and
  - g. Any other dues and other form of borrowings as may be determined by the Da Afghanistan Bank (DAB).
31. **Equity means the sum of:**
  - a. Unimpaired ordinary paid up share capital or assigned capital;
  - b. Unimpaired paid up non-cumulative perpetual preference shares;
  - c. Share premium;
  - d. General or other disclosed reserves;
  - e. Retained profits or losses; and
  - f. Current unaudited profits and losses since the first day of the current financial year.
  - g. Every financial leasing institution shall submit a report to Da Afghanistan Bank on its calculation of gearing ratio and information on its borrowings on a monthly basis.

#### Article 5: Issuance of License

- (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 materials.
- (4) Any entity who is undertaking financial leasing activities should apply to DAB for license within 4 months after the enactment of this regulation.

#### Article 6: Licensing Requirements

- (1) The followings are required to obtain a license from Da Afghanistan Bank to practice financial leasing activity:
  1. The applicant must be Shareholding Company duly registered in accordance with the laws of Afghanistan or foreign shareholding company duly registered in its country of origin, provided it registers a branch in Afghanistan;
  2. The number of shareholders could be one or more than persons. (natural or legal person);
  3. The applicant company's paid in capital must not be less than Seven Hundred Thousand USD (\$700,000) or its equivalent in AFs;
  4. Non-refundable licensing fees are paid; and
  5. Members of the applicant company's Board of Directors, shareholders, the representative of the foreign shareholding company branch, Senior Executive managers must fulfill the conditions, meet the 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 mortifying the applicant, act in accordance with this regulation.

#### Article 7: Requirements for the Shareholders, members of the BODs and Board of Senior Executive Management

- (1) In addition to the requirements and conditions provided for in the relevant laws, the shareholders, members of the board of supervisors and management board must:
  1. Be a "Fit and Proper Person" a person who in the judgment of Da Afghanistan Bank is honest, trustworthy, fair, displays integrity and has the ability to make sound and effective decisions in his personal, financial and business activities and possesses good skills and experience for conducting the intended activities of the leasing company.
  2. A legal person is considered to be a fit and proper person if in the judgment of Da Afghanistan Bank all members of its board of supervisors, management board, or equivalent governing bodies, and persons with qualifying holding in such enterprise have these qualities.
  3. No person shall be regarded as a fit and proper if he:
    - a. Has been convicted by an authorized court of an offense for which he was sentenced to imprisonment unless such sentence was motivated by its religious or political views or activities;
    - b. Has been declared bankrupt by an authorized court of law;
    - c. On grounds of personal or professional misconduct, has been disqualified or his authority in conducting financial affairs is under suspension by a competent authority;
    - d. Is an associate, a representative of a person which would not be regarded as a fit and proper person according to first, second and third sub-paragraph of this paragraph; and
    - e. Has a beneficial owner which would not be regarded a fit and proper person according to the first, second and third sub-paragraph of this paragraph.



## Article 8: Requirements for the Board of Directors

- (1) In addition to the requirements and conditions provided in the relevant laws, the chairman and the members of the lessor's Board of Directors:
  1. Must not be a board member or a member of a Senior Executive Management in another company practicing financial leasing activity in Afghanistan, unless the other company is a subsidiary of the lessor:
    - a. Must not be an Executive or Supervisory board member of the banking institution unless lessor is a subsidiary of such banking institution;
    - b. Shall be at least a college graduate with a business-related degree and have at least five (5) years of working experience in a business operating or in a relevant field; and
    - c. Shall be a "Fit and Proper Person" a person who in the judgment of Da Afghanistan Bank is honest, trustworthy, fair, displays integrity and has the ability to make sound and effective decisions in his personal, financial and business activities and possesses good skills and experience for conducting the intended activities of the leasing company.
  2. The chairman of the board of directors, members of the board of directors, and their first-degree relatives may not enter into any contracts, projects, or arrangements with the Lessor or for its accounts in which any of them has direct or indirect interests.
  3. The first-degree relatives of the management board and board of directors may enter into contracts, if the contract has been arranged on an Arm's length basis.
  4. The board members may not receive any commission for any leasing transaction in which the Lessor is a party to it.
  5. The Board of Directors (including the Chairman) must be maintained as an odd number
  6. The finance leasing company must have at least one independent non-executive director as a member of the Board.
  7. The Board may not have any Executive Directors.

## Article 9: Requirements for Senior Executive Management

- (1) The conditions delineated in article 7 of this regulation shall apply to the lessor's Senior Executive Management members.
- (2) The CEO and CFO of the lessor, appointed by the Board, must:
  1. Work on a full-time basis for the duration of his employment by the lessor; and
  2. Have obtained a university degree from a recognized university and have practical experience of no less than 7 years in the field of financial, banking or finance business. The conditions above shall apply to all members of the Senior Executive Management when appointed by the Board.
- (3) The Board is responsible for creating a "Terms of Reference" (job description and associated responsibilities) for each member of the Senior Executive Management team which must be submitted for assessment and suitability to Da Afghanistan Bank.
- (4) The members of Senior Executive Management may not:
  1. Participate in the management of any similar or competing business with the Lessor, or conduct directly or indirectly a competing business.
  2. Receive any commission for any leasing transaction in which the Lessor is a party to it.

## Article 10: Application

- (1) The application to obtain the license must be presented to Da Afghanistan Bank in accordance with the form developed by the DAB 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.

- (2) The application must at least include the following:
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 all shareholders 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 full resume of each individual proposed to be appointed in Senior Executive Management position in the applicant company, including capacities and job titles;
  4. The name, address, a short resume of each individual proposed to be appointed to a Board position in the applicant company, including previous and current experience of being a board member and any association with any other company as a board member, shareholder or employee;
  5. The name and address of the applicant company's auditor;
  6. The capital of the applicant company; and
  7. The name of the person authorized to represent the company before Da Afghanistan Bank for the purpose of licensing procedures and his full address, including e-mail address.

#### Article 11: Documents to be attached to the application

- (1) The following documents must be attached to the license application form:
1. A certificate of company's registration of the applicant, and a certificate including the names of its members of the board of management, its authorized signatories;
  2. A "No Objection Certificate" if any of the shareholders is a bank or financial institution, including a micro-finance company, and is registered in Afghanistan;
  3. The company's memorandum of association;
  4. A certificate issued by licensed bank certifying that the applicant company's capital has been fully paid-in;
  5. The organizational structure of the applicant company;
  6. Audited financial statements for the prior three years for legal entities who own more than 5% of the applicant company, if any;
  7. Proof of identify of the persons to be appointed in Senior Executive Management positions; and
  8. The Audit 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 those applicant companies operating for less than 12 months or newly established companies.
  9. A Business Plan related to the establishment of leasing operations covering a period of at least three years shall be specifying, as a minimum, the followings:
    - a. Source of current and future funding;
    - b. Projected financial statements
    - c. Organization chart for each year;
    - d. Projected cash flows;
    - e. Number and location of the company's branches to be established (if any)
    - f. Source(s) of new business activity;



- g. Business activity sectors;
  - h. Geographical activity;
  - i. Customer profile (e.g. corporate, SME); and
  - j. If the financial leasing company is a subsidiary, their degree of independence from the parent company.
10. Credit policy and risk management policy.
- (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.
- (3) In addition to the document listed in a paragraphs 1-10 above, the following documents shall be attached to the application submitted by the foreign shareholding company:
- 1. 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;
  - 2. The duly signed regulation 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; and
  - 3. If any of the shareholders is a bank, then a "No Objection Certificate" from the bank's home regulator.
- (4) Any information requirements, conditions or other documents deemed needed and necessary by Da Afghanistan Bank to decide on the application.

#### Article 12: Verification of Information

- (1) DAB can take the necessary action to verify the accuracy of the information included in the application and documents attached thereto.

#### Article 13: Processing of Application

- (1) DAB can charge the applicant an up-front and non-refundable fee.
- (2) DAB can scrutinize the application and its attachments, and shall notify the applicant company's authorized representative within 7 days either that the application is complete or, that it is incomplete which precludes processing of the application.
- (3) DAB 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 DAB once only for a period not exceeding 30 days. In such case, the application and its attachments shall be retained by DAB until the missing documents or the information is furnished.
- (4) Failure by the applicant company to furnish the required missing items within the authorized time period shall render the application cancelled. However, the applicant company may submit a new application.
- (5) In all cases, DAB may notify the applicant company's authorized representative once the application is complete.
- (6) The DAB may 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 with reasons for the decline, if relevant and shall notify the application company's authorized representative accordingly.
- (7) No license granted by DAB may be transferred at any time by any entity to any other entity regardless of any situation which may occur.





#### Article 14: License Duration

- (1) The license is issued for the indefinite term subject to revocation and annulment in accordance with this regulation and is not transferable.

#### Article 15: Reporting Requirements

- (1) Every Lessor must provide DAB with the following information:
1. Audited financial statement, 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 7 days as of the date of the occurrence of such change. DAB will assess the eligibility of all new board members and Senior Executive Management team members using the same criteria authorized during the license application procedure;
  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. Monthly financial reports (unaudited); and
  6. A report on Lessor's leasing activities in a form provided by DAB and prepared on a monthly basis within 15 days after the end of each month which should include information on the leasing portfolio including:
    - a. Number and volume of leases (including subleases);
    - b. Number and volume of non-performing leases;
    - c. General lease loss provision and Specific provisions;
    - d. The number and value of contracts terminated;
    - e. Repossession cases filed;
    - f. Number of rescheduled leases;
    - g. Large exposures;
    - h. business sector concentration and closed related customer;
    - i. Any other data and information demanded by DAB.
- (2) Under Article 107 of Da Afghanistan Bank Law the Lessor has the right to appeal to DAB if the Lessor believes its rights were violated by the actions of DAB's representatives or that DAB's representatives have performed their supervisory and monitoring functions in violation of Leasing Law, this regulation or other laws of Afghanistan.
- (3) If the Lessor is not satisfied with the decision of DAB pursuant to paragraph 2 of this Article, it can refer the matter to the Financial Dispute Commission, and, if not resolved, file a lawsuit in competent court.

#### Article 16: Matters Requiring the Approval of DAB

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



#### Article 17: Monitoring and supervision of Lessors

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

#### Article 18: Inspection Activities – on-site and off-site

- (1) The DAB may be authorized to conduct an inspection of the licensed Lessors to ensure compliance by the Lessors with relevant Law, Regulations and circulars by any means necessary and appropriate.
- (2) The DAB'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 DAB may issue a written report to the Lessor clearly identifying any area of non-compliance with the financial leasing law, Regulations and circulars 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 provision 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 indicating them are issued, DAB 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. DAB will communicate in writing with the Lessor detailing the actions deemed necessary to be implemented which may be both mandatory and advisory; and
    - c. 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 measure 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 measure taken in accordance with this Article shall not prevent civil or criminal liability in accordance with any other legislation.

#### Article 19: Revocation of License

- (1) In addition to the other cases delineated in this regulation, the Da Afghanistan Bank shall notify the Lessor of its intention to suspend, immediately or within a stated time period, or revoke the license granted to the Lessor:





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; and
  2. If a final criminal judicial decision is obtained against a shareholder (if a private individual), member of its Board of Director, or member of Senior Executive Management in relation to crimes committed in the course of conducting Lessor's business activities.
- (2) DAB may take the proper decision concerning the revocation of the license Within 30 Days of receiving the Lessor's response.
- (3) The DAB revokes 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 Broad of Director's resolution; and
  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.
- (4) In the event that the Lessor does not have a valid license, the Lessor's company may still exist as a legal Afghan business entity but will be unable to enter into any new finance leasing contracts. DAB will retain its right of supervision and monitoring of the company for a period of time of its sole choosing as though the company remained an active Lessor.

#### **Article 20: Annulment of License**

- (1) If it comes to DAB's attention that a Lessor has not commenced finance leasing activities after obtaining the License or ceased operations for a period exceeding 6 months, DAB may require the Lessor to provide justification for ceasing or not commencing operations within 7 days of notifying it.
- (2) If the Lessor responds to DAB's notice and DAB is convinced of the reasons for not commencing or ceasing operations, DAB may grant an extension not exceeding 6 months to commence or recommence operations.
- (3) If the Lessor does not respond within the specified period or responded within the specified period but DAB was not convinced of the response that it commenced operations or did not cease operations or did not resume operations after the lapse of the period granted, DAB may annul the license granted to the Lessor.

#### **Article 21: Notification of the annulment or revocation of the license**

- (1) The DAB will issue a decision to annual or revoke the license, the DAB may notify the board of director of the lessor decision indicating its grounds.
- (2) The decision shall be in the Da Afghanistan bank website within 2 working days of 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.

#### **Article 22: Consequences of license annulment or revocation**

- (1) If the license is annulled or revoked in accordance to the provision of this Regulation or Financial Leasing Law or other DAB's legislative documents, the lessor shall not practice financial leasing.
- (2) All leasing contracts that the lessor entered into before license annulment or revocation, remain valid within duration.



### Article 23: Penalties

- (1) The entity shall be penalized, if it conducts leasing activities without obtaining a license from DAB.
- (2) The lessor shall be penalized if it fails to provide information with the established timeframe in according with the sub paragraphs 1- and 2- of the paragraph 1 of the Article 15 of this regulation.
- (3) The amount of fines referred to in this Article shall be published in a DAB Circular from time to time.
- (4) The proposed penalties stated in paragraph 1, 2 and 3 of this Article shall be imposed by Da Afghanistan Bank.

### Article 24: Requirements for Lease classification process

- (1) For the purpose of Lease classification, the Lessor shall review on a monthly basis in accordance with this regulation and the internal policy and guidelines of the financial leasing companies.
- (2) The lease portfolio review shall be made by a person who is independent form the lease origination function of the Lessor.
- (3) The financial leasing company or Lessor may develop internal risk grading system to indicate various level of risk exposure in financial leases which shall be reconciled to the 5 classification categories under this regulation for the purpose of reporting to DAB.
- (4) While small homogenous financial lease may be reviewed on a group-wise basis, the following financial lease must be reviewed on an individual basis.
  1. Large exposure;
  2. Lease concentrations;
  3. Non-performing financial leases; and
  4. Financial lease that have been charged off.
- (5) The remaining of the financial lease portfolio may be divided into groups of leases with similar credit risk characteristics (such as type of facility) for review on collective basis.
- (6) Where a financial leasing company has more than one financial lease extended to a single customer of group of closely- related customers and one such facility is non-performing, the financial lease company shall review all other facilities to that customer or group of closely- related customer for the purpose of classification and shall document such review.
- (7) The financial leasing company or Lessor shall, based on the financial lease portfolio review, assign each facility to the classification categories on the basis of credit risk.

### Article 25: Lease classification category

- (1) A financial leasing institution's facility are to be classified on the basis credit risk into the 5 categories as provided schedule under this regulation.

### Article 26: Re-negotiated financial lease

- (1) A non-performing financial lease, once re-negotiated, shall be classified as a sub-standard asset, or continue to remain in the same category in which it was, prior to its re-negotiation.
- (2) The classification of a facility which has been re-negotiated to modify one or more of its terms shall be improved unless repayment of principle and interest, in accordance with the new payment schedule under the financial lease, has been made for 6 instalment periods or for a period of not less than 6 months, whichever period is greater.





- (3) On the expiry of the period reference in above point (2) the re-negotiated may be classified no more favorably than "watch" until repayment of principle and interest has been made for 6 additional instalment periods or for an additional period of not less than 6 months, which ever period is greater.

#### Article 27: Minimum provisioning requirement

- (1) Any impairment to the value of a financial lease or group of financial leases shall, at least monthly and based on the financial leasing review and classification process, be recognized by reducing the book value of the financial lease and charging the income statement in the period in which the impaired occurred.
- (2) All lease assets that are Non-performing shall be provisioned by multiplying the outstanding balance of the investment in a financial lease by applicable provision rate less cash collateral and value of the asset.
- (3) The financial institution may not set provision for lease portfolio which are secured by readily marketable collateral as mentioned under article 4.

The applicable provision rates shall be as follows

Classification	Provision Rate
Standard	1% (Optional)
Watch	5%
Sub-standard	25%
Doubtful	50%
Loss	100%

- (4) The value of the asset shall be determined based on the unamortized amount for each of the following asset categories.

Asset category	Amortization
Standard equipment	Shall be amortized over five years.
Specific equipment	Shall be amortized over three years 40% in years in one and two each and 20% in the third year.

- (5) The DAB may direct a financial leasing company or Lessor to increase its level of provisions where reliable information indicates that losses are likely to be more than the minimum amounts as specified in the above table.
- (6) The financial leasing company shall apply provisions of this regulation in reporting under the International Financial Reporting Standard 39 and this regulation.



#### Article 28: Charge-Off

- (1) A financial lease which is uncollectible and that continuation as a recoverable advance is no longer warranted shall be charged off.
- (2) A financial lease or any portion thereof shall be charged off within 12 months of being classified as loss.
- (3) A charge-off shall be made against the specific financial lease loss reserve account and if the amount of the financial lease to be charged off exceeds the balance of the specific financial lease loss reserves account, additional reserves shall be established to cover the shortfall through charges to income or through transfers from the general financial lease loss reserves account.
- (4) The recovery on a financial lease previously charged off shall be recorded as income in the financial period during which such recovery occurs.

#### Article 29: Income recognition requirement

- (1) A non-performing financial lease shall be placed on a non-accrual basis, and interest due but uncollected shall not be accrued as income but instead be shown as interest in suspense.
- (2) Notwithstanding with paragraph (1) above interest on a financial lease to the Government of Afghanistan and leased asset guaranteed by the Government of Afghanistan which becomes non-performing shall continue to accrue interest up to the limit of the guarantee.
- (3) Any interest on any non-performing financial lease previously accrued as income but uncollected shall be reversed and credited into interest in suspense account until paid in cash by the lessee.

#### Article 30: Repossession of asset in lieu of repayment of the financial lease

- (1) Where a financial leasing institution repossess an asset in lieu of repayment of a facility, the book value of the repossessed asset shall be the unpaid balance of the financial lease or the net realizable value of the asset, whichever is lower.
- (2) Where the net realizable value of the asset is less than the book value of the financial lease, the difference shall be charged off through the provisions for bad and doubtful account when the asset is added to the book of account of the financial leasing institution.

#### Article 31: Management information system and reporting requirement

- (1) When a lease is classified doubtful or loss, the financial leasing institution shall obtain a current and reliable written indication of the net realizable value of the asset and obtain regular updates thereafter.
- (2) Every financial leasing institution shall maintain a management information system adequate to identify and track-
  1. The features of individual financial lease, groups of leases, and the financial lease portfolio;
  2. The evolving condition of a facility or leased asset such as-
    - a. Regularity of payments;
    - b. The financial condition of the obligor;
    - c. The status and value of collateral; and
    - d. All other attributes of the leased asset;
  3. The characteristics of obligors and groups of related customers;
  4. Sectors in it which the financial leasing institution has credit exposures.
- (3) Every financial leasing company shall maintain, and make available to an authorized examiner of the Da Afghanistan Bank, adequate written records and reports in support of-
  1. Financial lease review and classification functions;





2. Evaluation and calculation of potential loss exposure in the financial lease portfolio;
  3. The entries made to the provisions for bad and doubtful accounts; and
  4. Actions taken to ensure that the amount of the provisions for bad and doubtful accounts is adequate to cover the identified potential loss exposure in the financial lease portfolio.
- (4) The Board of Directors shall require regular written reports showing that-
1. The lending activities of the Lessor are in compliance with the financial lease policies approved by the Board of Directors, and this regulation;
  2. The risks and potential loss exposure in the financial leasing company's financial lease portfolio have been identified;
  3. The problem or deteriorating facilities have been identified, classified, placed on non-accrual status, and the action taken by management to reduce the risk of loss on such facilities;
  4. The amount of accrued, but uncollected interest on the books of account of the financial leasing institution is appropriate;
  5. Adequate provisions for potential financial lease losses have been made to the proper account; and
  6. Losses have been identified and written off.
- (5) Every financial leasing company shall, within 15 days after the end of the month, submit to DAB reports in such form provided by DAB showing an analysis and classification of its leases, provisions, and interest in suspense account.

#### Article 32: Financial Lease Classification Criteria

- (1) **Standard:** Must meet all of the following conditions:
1. Facility is performing and expected to continue to perform in accordance with the financial lease agreement;
  2. Past due period less than 30 days past due and despite any fluctuations, can at least service the interest applied/charged;
  3. Sufficient documentation to support the outstanding facility, evidence the financial leasing institution's perfected interest in eligible collateral (if any), or permit the financial leasing institution to properly supervise the financial lease or any collateral held (if any);
  4. Financial condition of the obligor is sound and expected to remain sound; and
  5. If a lease asset in respect of which, no default in payment of interest or repayment of principal has occurred, or payment thereof has not been past due and which does not carry more than normal risk attached to the business and does not disclose any problem.
- (2) **Watch:** Meets one or more of the following criteria.
1. Despite the facilities may be currently performing and/or secured by unimpaired collateral, certain factors are known which could, in the future impinge on the performance of the facility or impair the value of the asset or eligible collateral (if any) including deteriorating general economic or sector conditions and adverse trends in the obligor's financial condition;
  2. 31-60 days past due or is not in compliance with any other term or condition of the financial lease;
  3. Insufficient documentation to support the outstanding facility, evidence that financial leasing institution's perfected interest in eligible collateral (if any) or permit the financial leasing institution to properly supervise the facility or any additional collateral held (if any); and
  4. The financial leasing company asset-based lending officer's inability to properly supervise them due to lack of expertise.



(3) **Substandard:** has one or more of the following deficiencies.

1. Primary source of repayment of the facility is insufficient to service the facility and the financial leasing institution is relying on one or more secondary of repayment (such as sale of fixed assets or restructuring of the facility);
2. 61-90 days past due or is not in compliance with any other term or condition of the financial lease agreement;
3. Display well defined credit weakness that jeopardize that payment of the rentals;
4. Inadequate liquidity and cash flow less than repayment of principle and interest;
5. Is not protected by the current (sound) net-worth and payment capacity of the Lessee;
6. Terms regarding interest and/or principle have been re-negotiated/ re-scheduled after commencement of operations; and
7. If default occurs to "initial conditions amended asset" the asset should be classified at least in sub-standard class.

(4) **Doubtful:** has one or more of the following deficiencies;

1. Collection of the facility in full is highly questionable or unlikely;
2. 91-180 days past due;
3. Operational losses, including the necessity to sell assets to meet operating expenses;
4. Illiquidity and cash flow less than required interest rate;
5. Complete absence of faith in financial statement;
6. Likelihood of loss on the facility; however, the situation could improve due to near-term important and reasonably specific pending factors such as a proposed merger, acquisition, liquidation, perfection of liens, additional collateral, or other arrangement; and
7. Exhibits all the weaknesses inherent in sub-standard assets with the added characteristics that the credit is not well secured and the weaknesses make collection or liquidation of the debt in full improbable- on the basis of currently existing facts.

(5) **Loss:** has one or more of the following deficiencies.

1. Facility is regarded as uncollectable such that its continuation on the financial leasing institution's books of account is not warranted;
2. 181 days past due;
3. The obligor seeks new loans to finance operational losses;
4. Location in an industry that is disappearing;
5. Very high losses;
6. Total revenue less than production cost;
7. No repayment source except liquidation;
8. Presence of money laundering, fraud, embezzlement or other criminal activity;
9. Facility may have some recovery value; however, the financial leasing institution deems it to be neither, sensible nor desirable to postpone removing the facility from its books pursues long-term recovery efforts; and
10. Is considered uncollectible and of such little value that its continuation as a recoverable advance is not warranted.

### Article 33: Compliance with Regulations

- (1) Any legal entity, currently conducting finance leasing activities, must fully comply with the provisions and requirements of financial leasing Law and Regulations on Financial Leasing within 6 months from the date the Regulations come into force. DAB may grant any lessor an extension to this period for a maximum of one year but reserves its full rights of supervision and monitoring during this period of time.





- (2) If any entity does not comply with the requirements of Clause 1 of this Article, it shall be prohibited by DAB from conducting finance leasing activities. However, all leasing contracts that the entity entered into before the date of this prohibition remain valid within their duration.
- (3) Any legal entity which is established as a merger with an existing finance leasing company must comply with Clauses 1) and 2) above and with Article 13 Clause 7) of these Regulations.

#### **Article 34: Compliance with Reporting Requirements**

- (1) DAB may grant new finance leasing license holders a grace period of 4 (four) months before being required to submit reports.

#### **Article 35: Risk management**

- (1) A Lessor shall design, adopt and put in place system and processes to identify, manage and mitigate risks.
- (2) A Lessor shall identify, measure, control and monitor all risks involved in a financial lease service. The following categories of risk shall follow the best practices of risk management.
  1. Credit risk;
  2. Residual risk;
  3. Liquidity risks or Asset and Liability management;
  4. Market risks;
  5. Operational risks;
  6. Legal risk;
  7. Reputational risk;
  8. Strategic risks; and
  9. Any other risk that financial leasing company may determine.

#### **Article 36: Requirements when entering to related person Transaction**

- (1) A financial leasing company or Lessor is prohibited from entering to transaction with a related person except when the majority of the Board of Director approves the transaction in advance. A board of Director is prohibited from concluding a related person transaction unless it has received such necessary information as in reasonably required to come to a sound decision on the proposed related party transaction.
- (2) Board of Director is obliged, in meeting minutes, to
  1. Specify the key term and conditions of the related party transaction;
  2. Confirm that the related party transaction is entered in to in arm's length basis; and
  3. Affirm that it is in the reasonable best interest of the lessor to enter into the related party transaction.
- (3) A Lessor is obliged to maintain comprehensive record of all related party transaction, including the information on which the approval of related party transaction is based, as well as the name of Board of Director's member who approved the transaction.

#### **Article 37: Reporting related person's transaction to DAB**

- (1) The Lessor or financial leasing company must report on a monthly basis information on related person transactions and exposure to DAB. The report must contain the following:
  1. Related person lease transaction, to which the Lessor is committed and extended during the lasted quarter.



2. Total number of related person lease contracts and the outstanding lease receivables or outstanding amount. Along with related person name, lease term.
3. Related person individual lease or asset classification, provisioning and write-off.

**Article 38: Limitation on maximum size to related party exposure**

- (1) A Lessor is obliged to observe the following maximum limits in relation to exposures to an individual related person, group of connected related persons or all related persons:
  1. A Lessor total exposure to an individual related person or group of connected individual related persons may not under any circumstances exceed 25 percent of financial leasing Regulatory capital; and
  2. A Lessor total exposure to all related persons may not under any circumstances exceed 40 percent of the institution's Regulatory capital.

**Article 39: Large exposure and concentration of asset**

- (1) This Article aims at the following:
  1. To prevent the possibility that the default by one obligor or Lessee or group of related obligors will have a significant effect on the financial leasing institution's profitability or capital. More specifically the, individual obligors of a financial leasing institution are considered a group of related obligors:
    - a. When the expected source of repayment for each financial lease is the same for each obligor, and neither obligor has another source of income from which the financial lease may be fully paid;
    - b. When financial lease made to obligor who are related directly or indirectly through common control, including where one obligor is directly or indirectly controlled by another obligor;
    - c. When substantial financial interdependence exists between or among the lessee or obligors. Substantial financial interdependence is deemed to exist when 50 percent or more of one obligor's gross receipts or gross expenditure (on annual basis) are derived from transactions with the other obligor; and
    - d. When DAB determines, based on evaluation of the facts and circumstances of particular transactions, that the financial soundness of any obligor may affect the financial soundness of other.

**Article 40: General Limitation on exposure to a single obligor or group of related obligors**

- (1) No financial leasing company or Lessor to grant financial lease to single obligor or group of related obligors exceeds 25 percent of regulatory capital or increases the financial lease by which the exposure already exceeds 25 percent of regulatory capital;
- (2) In calculating compliance with this limitation, exposure to each of the obligors in a group of related obligors are aggregated and considered as an exposure to single obligor;
- (3) No financial leasing institution is permitted to grant financial lease on aggregate large exposures that exceeds 200 percent of the regulatory capital.
- (4) Financial lease to single obligor or group of related obligors that are fully secured by readily marketable collateral are excluded from the calculation of general limitation paragraph (1) above under this article;





- (5) If the financial leasing institution falls out of compliance with limitation on aggregate large exposure or single exposure for any reason, it is required to act to eliminate the non-conformity within 90 days;
- (6) A financial leasing institution can take the following action within the time frame to eliminate the non-conformity:
1. Demand the additional down payments;
  2. Increase the instalment payments;
  3. Ask for additional collateral; and
  4. Inject the paid in capital.

**Article 41: Enforcement**

- (1) This regulation shall be effective upon adoption by supreme council of Da Afghanistan bank.



## Chapter (1): General Provisions

### Article 1: Basis

- (1) The Da Afghanistan Bank pursuant to Article 69 of the Anti-Money Laundering and Proceeds of Crime Law issues this Regulation.

### Article 2: Scope

- (1) This regulation shall be complied/adopted by all non-banking financial institutions licensed by DAB.

### Article 3: Goals and Objectives

- (1) Non-bank financial institutions licensed by Da Afghanistan bank are required to develop effective frameworks, preventive measures, systems, controls, and practices to manage their potential money laundering/terrorist financing (ML/TF) risks. It is important that non-banking financial institutions licensed to operate in Afghanistan have adequate controls and procedures in place so that they know the customers with whom they are establishing business relationships and dealings. Adequate due diligence on new and existing customers is a key part of these controls. Without adequate due diligence measures, NBFIs could be exposed to reputational, operational and legal risks, which can result in significant financial cost.
- (2) This regulation aims at protecting non-banking financial institutions from being abused by criminals and terrorists, thereby protecting their reputations and minimizing operational risk, NBFIs are expected to perform their duties in the fight against money laundering and terrorist financing, particularly in the provisions of information that may lead to investigations and prosecutions of money launderers and terrorist financiers. In that way, the integrity and solvency of the financial system is fostered, contributing to the financial security of the country.
- (3) The objectives of this regulation are as follow:
1. To have policies on customer acceptance that clearly identify when customers are to be rejected.
  2. To identify their customers properly.
  3. To submit reports to the FinTRACA on large cash transactions and suspicious transactions.
  4. To retain records of transactions.
  5. To have staffs that have been trained sufficiently to carry out their duties under this regulation.
  6. To monitor their customer transactions.
  7. to screen their customers against sanction lists
- (4) Adherence by Non-bank financial institutions to the standards set by this regulation will be monitored by DAB through on-site examinations and off-site data analysis.

### Article 4: Definitions

- (1) Subject to paragraph (2) of this article, words and terms in this Regulation shall have the same meaning as the Anti Money Laundering and Proceeds of Crime law (AML-PC law) Unless the subject or context otherwise requires, in this Regulation:





1. Board of supervisor Is the second competent authority in a Financial Institution
2. "Senior management" comprise persons employed by non-banking financial institution who exercise senior management responsibilities.
3. AML/CFT means Anti Money laundering and Combating the Financing of Terrorism
4. "CDD" means Customer Due Diligence as defined in this Regulation.
5. Customer is defined in AML-PC law and include user, distributor, agent, merchant, partner
6. "Person" includes natural and legal persons.
7. NBFISD means non-banking financial institutions supervision Department.
8. "FINTRACA" means Financial Transactions and Reports Analysis Center of Afghanistan established pursuant to Article 25 of the Anti-Money Laundering and Proceeds of Crime Law.
9. "Threshold Reporting (Large Cash Transaction Report)" means report of the particulars of transactions (cash in, cash out or transfers, and exchange) in excess of an amount specified in this regulation or any other applicable regulations.
10. "Money Laundering" shall mean the offence set forth in article 4 of anti-money laundering and proceed of crime law
11. "Terrorist financing" the offense as defined in Article 4 of Combating Financing of Terrorism Law.
12. "Settlor" means a natural or legal person who transfers ownership of their assets to trustees by means of a trust deed or similar arrangement
13. "Occasional Transaction" means any transaction that is initiated by a customer who is not a regular customer of the non-banking financial institution. In the case of depository institutions, all transactions initiated by customers who do not have a deposit wallet are to be considered occasional transaction.
14. The terms "Trust" and Trustee" should be understood as described in and consistent with Article 2 of The Hague Convention on the law applicable to trusts and their recognition. Trustees may be professional (e.g., depending on the jurisdiction, a lawyer or trust company) if they are paid to act as a trustee in the course of their business, or non-professional (e.g. a person acting without reward on behalf of family).
15. "Beneficiary" means the natural or legal person who is identified by the originator as the receiver of the requested wire transfer and refers to the term "recipient" as it appears in the AML & PC law article 3.3.2.
16. "Originator" means the account holder, or where there is no account, the person (natural or legal) that places the order with non-banking financial institution to perform a wire transfer.

#### Article 5: Policies and procedures

- (1) Non-banking Financial Institutions should have internal policies, procedures, systems, controls and customer acceptance policy that clearly indicates situations when a customer will be rejected, and must be able to demonstrate to the satisfaction of Da Afghanistan Bank examiners that the policy has been implemented.
- (2) The internal policies, procedures, systems, and controls to combat money laundering and terrorism financing developed by non-banking financial institutions should address the following requirements:



1. Risk evaluation of the customers, products, services, geographic locations, and delivery channels as well as transactions.
  2. Identification and verification of the customers and beneficial owners, including walk-in/occasional customers, and politically exposed person(s).
  3. Identification and verification of disturbers/partners, agents, and merchants for EMI and PI sectors.
  4. Applying of customer due diligence measures
  5. Maintaining records and information obtained in the CDD and EDD process and information of transactions.
  6. Monitoring of transactions, including monitoring to identify unusual or suspicious transactions.
  7. Reporting threshold transactions to FinTRACA Including all auction related transactions.
  8. Reporting suspicious transactions to FinTRACA.
  9. Ensuring that internal policies, procedures, systems and controls are subject to independent testing and review.
  10. Appointment of a Chief compliance officer at senior management level of non-banking financial institution to ensure compliance with the provisions of the Anti-Money Laundering and Proceeds of Crime Law and this Regulation.
  11. Ensuring high standards as set out in fit and proper requirements while recruiting employees. This should include separate fit and proper requirements for employees in management positions or in positions perceived to have greater exposure to money laundering or terrorist financing.
  12. Conducting training programs and providing on-going trainings to all new and existing employees, directors, board members, executive or supervisory management.
  13. Other arrangements as prescribed by DAB or FinTRACA.
- (3) The internal policies, procedures, systems and controls should be consistent with the non-banking financial institution's size, nature, risks, and complexity of operations and should be adopted by non-banking financial institution's board of directors and be applicable to all domestic and foreign branches and majority-owned subsidiaries of the financial institutions.
- (4) Non-banking financial institutions must designate one individual as an "AML/CFT Officer" having primary responsibility for development and implementation of the anti-money laundering and combating financing of terrorism measures contained in this regulation. a different individual must be designated as having responsibility for auditing the implementation by (AML/CFT Officer) of the policies and procedures developed. In particular, the system of internal controls, necessary reports are filed to FINTRACA and other related issues. This audit function should report directly to the Board of Supervisors and its reports should include examples, if any, of the AML officer's failure to implement these measures.

#### Article 6: Conducting risk assessments

- (1) Non-banking financial institutions shall have processes in place to identify, understand, assess, manage, monitor and mitigate money laundering and terrorist financing risks. The risk assessment process shall be documented, kept up to date and shall be readily available on request.





- (2) Non-banking financial institutions shall consider the following factors, among others in accordance with the pertinent information, when conducting their ML/TF risk assessments:
1. Customers (i.e., nature of their business, occupation, or anticipated transaction activities, among others);
  2. Origin and source of the customers' funds;
  3. Products and services (i.e., the risks that arise from the products and services offered);
  4. Geographic locations (i.e., countries or domestic geographic areas in which customers operate or the place of origination or destination of transactions);
  5. Delivery channels (i.e., the risks that arise from the channels used to deliver products and services). and
  6. The purpose of an account or relationship:  
Risks associated with transactions (transfer, exchange, deposit and withdrawal), including the size of or transactions undertaken by a customer; the frequency of transactions or duration of the relationship; whether the transactions are outside the scope of normal transactions conducted by the customer or whether the transaction originated or is destined for a high-risk jurisdiction.
- (3) Non-banking financial institution shall classify their customers to low, medium and high risk based on the risk assessment conducted reference to this article.
- (4) Possible factors of high-risk situations where non-banking financial institutions should apply enhanced CDD measures are set out Article 12 of AML-PC law and Annex II.
- (5) Possible factors of lower risks where non-banking financial institutions may apply simplified due diligence include but are not limited to those situations set out in Annex II, and in case of medium risk, merit additional scrutiny, but not raise to the level of high risk.
- (6) In designing and implementing customer identification programs, non-banking financial institutions should take into consideration the risks set out above. Non-banking financial institutions, on the basis of the evaluation pursuant to this Chapter shall adopt the following measures to manage the risk:
1. To obtain additional information on the customer, beneficial owner, beneficiary and transaction.
  2. To establish a risk profile on customers and transactions. The customer profile should be based upon sufficient knowledge of the customer (and beneficial owner(s) as applicable), including the customer's anticipated business with non-banking financial institution, and where necessary the source of funds and source of wealth of the customer should be identified.
  3. To apply enhanced customer due diligence to high-risk customers.
  4. To update more regularly the information on all customers.
  5. To adopt other measures as may be prescribed by Da Afghanistan Bank or the FINTRACA

#### Article 7: Customer Identification Requirements

- (1) Non-banking financial institutions licensed by DAB may not maintain or open an anonymous account or an account in fictitious names.
- (2) Non-banking financial institutions must set up a registration system to identify their customers and identifying their customer when performing any transaction for them.



- (3) Non-banking financial institutions must ensure that they know the true identity of their customers, including beneficial owners. Customer due diligence should be carried out in the following circumstance:
  1. Before establishing a business relationship with a customer or opening a wallet;
  2. Before a non-banking financial institution carrying out a transaction for an occasional or walk-in customer;
  3. Before carrying out domestic or international wire transfers as provided in Article (17) of this regulation;
  4. Whenever doubts exist about the veracity or adequacy of previously obtained customer identification data; and
  5. Whenever there is a suspicion of money laundering or terrorist financing.
- (4) Non-banking financial institutions shall carry out the following customer due diligence measures:
  1. Identify and verify the identity of the customer and beneficial owner using reliable, independent source documents, data or information.
  2. Verify that any person acting on behalf of the customer is authorized to do so and identify and verify the identity of that person.
  3. Understand and, as appropriate, obtain information on the purpose and intended nature of the business relationship.
  4. To the extent possible, obtain the customers' tax identification number (TIN) and tax statements and in addition, in the case of legal persons, detailed audited financial statements as specified by Da Afghanistan Bank or the regulatory agency, shall be obtained if possible.
  5. Monitor the business relationship on an ongoing basis and examine any transactions carried out to ensure they are consistent with their knowledge of the customer, commercial activities and risk profile, and where required, the source of funds.
  6. For legal persons, understanding and documenting the ownership and control structure of their customer.
- (5) For customers who are natural persons, non-banking financial institutions must verify the identity of their customers using reliable and independent source documents, data, or information as outlined in Annex II of this Regulation.
- (6) For customers who are legal persons or legal arrangements, non-banking financial institutions must identify the customers and its beneficial owners, including by understanding the nature of their business, ownership and control structure. Non-banking financial institutions should obtain and verify the information required using reliable, independent source documents, data, or information as outlined in Annex II of this regulation. Where relevant, customer identification requirements for natural persons can be applied for customers who are legal persons and arrangements. Procedures established in this Regulation relating to the identification and verification of natural persons who are individual customer are similarly applicable to beneficial owners of legal persons and arrangements.
- (7) Non-banking financial institution should screen their customers including (walking customers) against sanction lists through sanction screen software.
- (8) Non-banking financial institutions should verify whether any natural person is purporting to act on behalf of a customer who is legal persons or legal arrangements.
- (9) For legal persons, the following information should be obtained at a minimum:
  1. Name, legal form and proof of existence of the legal persons;
  2. Location/principal place of the business of the legal person;





3. Resolution of the Board of Directors to open an account and identification of those individuals who have authority to operate the account and names of relevant persons holding senior management positions.
  4. Mailing and registered address of legal person;
  5. Nature and purpose of the business;
  6. The identity of the beneficial owner;
- (10) Legible file copies of relevant identification and supporting documentation should be taken for all customers both natural and legal persons. The customer's signature or finger print should be obtained on each page of such copies.
- (11) Da Afghanistan Bank may set out in guideline additional identification and verification requirements for customers to be applied by non-banking financial institutions.

#### Article 8: Natural Person Customers KYC Requirements

- (1) The information requirements below are tiered based on the amount kept in the account and/or the transaction amount. At each level, the requirements are additive, i.e. the requirements of the previous tier must be fulfilled in addition to the new requirements

Min (AFN)	Max (AFN)	Requirements
0	250,000	Name, address, occupation, and contact number
250,001	500,000	ID card copy
500,001	1,000,000	Tazkeera/passport copy, source of fund, purpose of transaction
1,000,001	3,000,000	Supporting documents
3,000,000	--	Beneficial owner

- (2) The KYC requirements table for natural persons is summarized in Attachment No. 4 of this regulation.
- (3) Supporting documents for source of fund and purpose of transaction includes: employment ID, Bank statement, employment contract, bills and invoices, title deed, real estate documents, business license & AOA in case the income is from business, or any other document that supports source of fund or purpose of the transactions.

#### Article 9: Legal Person Customers KYC Requirements

- (1) The information requirements below are tiered based on the amount kept in the account and/or the transaction amount. At each level, the requirements are additive, i.e. the requirements of the previous tier must be fulfilled in addition to the new requirements

Min (AFN)	Max (AFN)	Requirements
0	250,000	Name, address, contact, authorized person identity information
250,001	500,000	Valid business license
500,001	1,000,000	Information on source of fund, purpose of transaction, authorized person ID copy
1,000,001	3,000,000	Transaction supporting documents
3,000,000	--	Articles of Association, Beneficial Owner

- (2) The KYC requirements table for legal persons is summarized in Attachment No. 4 of this regulation.



- (3) Supporting documents for source of fund and purpose of transaction includes: invoices, bills, bank statement, contract, title deed, real estate documents and any other document that support the source of fund or purpose of transaction.

#### Article 10: KYC Requirements for EMI transactions

- (1) Electronic money institutions (EMIs) shall require to know the through identity of their customer, distributor, Super-agent, Agent, Merchant, Partners as per Attachment No. 3 of this regulation.
- (2) Transaction and E money balance limitation, EMI entities offering mobile money services are required to enforce the following transaction limits:

From Entity	To entity	Transaction Maximum	# Transactions per day
Business	Business	No limit	No limit
Business	Peer (Consumer)	No limit	No limit
Peer (Consumer)	Peer (Consumer)	AFN 50,000	20 Transactions
Peer (Consumer)	Business	No limit	20 Transactions
UN Agencies	Peer (Consumer)	AFN 250,000	1 Transaction
Government	Peer (Consumer)	AFN 500,000	1 Transaction
Peer to Cash		AFN 100,000	10 Transactions

*Note: the consumer-to-consumer transaction is considered peer-to-peer (P2P) transaction. If the aggregate transaction is above the amounts specified in articles 8 & 9 of this regulation, then the KYC standards specified in those articles must be applied.*

- (3) DAB may amend these limits from time to time, at its sole discretion, by official circular, and not by further amendments to this regulation.
- (4) NGOs work as UN agencies in humanitarian cash-based assistance needs to be specified by UN organization and to be shared with DAB and related EMIs.
- (5) List of individuals who need humanitarian cash based financial assistance should be stamped and approved by UN organizations before sharing with EMIs for further processes.
- (6) Simple Customer Identifications (IDs) shall mean any of the following:
1. Any government-issued document or identity card that is specific as to the holder thereof;
  2. Any UN organizations ID that proof the identity of the customer.
  3. Any device or practice, whether customary or otherwise, that specifically distinguishes or identifies an individual; or
  4. Otherwise consistent with relevant AML/CFT regulations;
  5. DAB may amend these limits from time to time, at its sole discretion, by official circular, and not by further amendments to this regulation;
  6. IDs may also include electricity bills and letters from village or district councils;
  7. Non-photo ID may be accepted as ID for women only
  8. Simplified customer due diligence is required for transaction amount is less than or equal to AFN 200,000
- (7) EMI has to apply proper due diligence for the parties involved in P2C (peer to cash) transaction.

#### Article 11: Verification of Beneficial Owners

- (1) Non-banking financial institutions must take reasonable measures to determine if a customer is acting on his/her own or on behalf of one or more beneficial owners. If a Non-banking financial institution determines that the customer is acting on behalf of one or more beneficial owners, non-banking financial institutions should take steps to verify the identity of the beneficial owner(s) by using relevant information or data obtained from a reliable source such that the non-banking





financial institution is satisfied that it knows the identity of the beneficial owner(s). The information to be obtained on a beneficial owner should be consistent with the requirements outlined in Annex II of this Regulation.

(2) The below documents confirm the Beneficial owners:

1. Tazkira/Passport
2. Article of Association
3. Employment card

(3) For customers that are other legal entities or legal arrangements, non-banking financial institutions should take adequate measures to understand the ownership and control structure of the customer, including the ultimate natural person who owns or controls it as described below:

1. With respect to such legal entity's identification should be made of each natural person that:
  - a. Owns or controls directly or indirectly more than 10% of the legal entity;
  - b. Is responsible for the management of the legal entity; or
  - c. Exercise control of the legal person through other means.
2. With respect to legal arrangements, identification should be made of the settlor, trustee, protector, beneficiaries or of persons in similar position.

#### Article 12: Politically Exposed Persons

Non-banking financial institutions shall establish appropriate risk management systems to determine whether a customer or beneficial owner is a politically exposed person (PEP) and if so, apply the following additional customer due diligence measures:

- (1) obtain approval from senior management before establishing or continuing a business relationship with such a person or beneficial owner;
- (2) for PEP, the required documents are employment ID card
- (3) take all reasonable measures to identify the source of wealth and funds of customers and beneficial owners identified as PEPs;
  1. apply enhanced ongoing monitoring to the business relationship.
  2. Procedures for determining whether a customer or beneficial owner is a PEP, should include:
  3. seeking relevant information from the customer or beneficial owner;
  4. accessing and reviewing available information from any reliable source about the customer or beneficial owner;
  5. accessing and reviewing commercial electronic databases of PEPs, if available; and
  6. Accessing and reviewing the FINTRACA's non-confidential information if available on PEPs which should not be the sole source of information.

#### Article 13: Enhanced Measures for assessing Customer Identification risks related ML and TF

- (1) Non-banking financial institutions should examine, including by seeking additional information from the customer, the background and purpose of all complex, unusual large transactions, and all unusual patterns of transactions, which have no apparent economic or lawful purpose. Such information shall include information on the nature or reason for the transactions
- (2) Where the risks of money laundering or terrorism financing are higher, non-banking financial institutions should conduct enhanced CDD measures, consistent with the risks identified. In particular, they should increase the degree and nature of monitoring of the business relationship, in order to determine whether those transactions or activities appear unusual or suspicious.



- (3) Enhanced CDD measures that should be applied for higher-risk business relationships include, but are not limited to the following:
  1. Obtaining additional information on the customer (e.g., occupation, volume of assets, available information on the customers), and updating more regularly the identification data of customer and beneficial owners.
  2. Obtaining additional information on the intended nature of the business relationship.
  3. Obtaining information on the source of funds or source of assets of the customer.
  4. Obtaining information on the reasons for intended or performed transactions.
  5. Obtaining the approval of senior management to commence or continue the business relationship.
  6. Conducting enhanced monitoring of the business relationship, by increasing the number and timing of controls applied, and selecting patterns of transactions that need further examination.
- (4) Enhanced Due Diligence should be applied to higher risk customers at each stage of the CDD process and on an on-going basis.
- (5) Enhanced CDD procedures for business relationships with natural persons not physically present for the purpose of identification should include:
  1. Certification of documents in line with relevant Laws and Regulations;
  2. Requisition of additional documents and development of independent verification measures and/or contact with the customer.

#### Article 14: Simplified CDD/ ML and TF Risks

- (1) Non-banking financial institutions may apply simplified customer due diligence procedures upon undertaking a documented risk assessment of the customer relationship
- (2) Simplified CDD may be applied for transactions based on the analysis of the financial institution;
- (3) The general rule is that customers must be subject to the full range of customer due diligence measures as provided in this Regulation. In certain circumstances where the risk of money laundering or terrorist financing is lower, as determined by a risk assessment undertaken by the related non-banking financial institution, where information on the identity of the customer and the beneficial owner of a customer is publicly available, or where adequate checks and controls exist elsewhere in national systems, simplified measures may be applied.
- (4) Non-banking financial institutions shall not apply simplified CDD measures whenever there is a suspicion of money laundering or terrorism financing or when the customer has a business relationship with or in countries as mentioned in Annex III of this regulation.
- (5) Where requested by DAB, Non-banking financial institutions shall submit the underlying risk assessment and basis for the application of simplified customer due diligence and shall make the related assessment processes and procedures documents available to Da Afghanistan Bank.
  1. The simplified CDD measures should be commensurate with the risk factors.
  2. Where the risks have been identified as low, possible simplified CDD measures could include, but are not limited to the following:
    - a. Reducing the frequency of customer identification updates.
    - b. Reducing the degree of on-going monitoring and scrutinizing transactions

#### Article 15: Additional requirements for Customer Information

- (1) Non-banking financial institutions must gather and maintain customer and beneficial owner(s) information throughout the course of the business relationship. Documents, data, or information collected under the CDD process should be kept up to date and relevant by





undertaking reviews of existing records at appropriate times as determined by non-banking financial institution, for example when:

1. A significant transaction is to take place;
  2. There is a material change in the way the account is operated or transactions begin to deviate from the usual patterns;
  3. Information held on the customer is insufficient to enable non-banking financial institution to understand the nature of the business relationship or transactions being conducted.
- (2) In addition to the requirements of Article 12 of the AML & PC Law, in the case of legal persons, non-banking financial institutions must ensure:
1. That business and company registration and licensing documents are current and remain valid throughout the duration of the relationship.
  2. That they obtain updated financial statements from customers if available.
  3. That all transactions conducted by customers are accompanied by supporting documentation, such as customs certifications confirming the value of the goods.
  4. That all transactions above 1,000,000 AFN or its equivalent into other currencies conducted by customers are accompanied by required supporting documents; and
  5. All transactions including deposits, conducted by customers shall contain supporting documents showing source of fund, purpose of transaction and any other required supporting documents.
- (3) Non-banking financial institutions should apply the CDD requirements of this regulation to existing customers on the basis of materiality and risk.
- (4) The KYC/ account opening forms should be prepared by non-banking financial institution, and filled out by customer in any of national languages unless the customer is a foreign citizen.
- (5) Banks, NBF and MFIs should review and update KYC and profile of their customers when there are changes in customer's profile, activity or transaction, business nature and management structure. When there are no changes in the above-mentioned areas the KYC and profile update of customers shall be done as following:
1. Once in a year for high-risk customers;
  2. Once in two years for medium risk customers; and
  3. Once in three years for low-risk customers.
- (6) The Non-banking financial institution should screen their customers against sanction list before opening accounts/establishing business relationship and processing their transactions, NBFIs shall ensure that individual accounts are not used for commercial/business purpose if such case is found, it shall be immediately reported to FINTRACA.
- (7) All financial institutions shall collect and keep customer identification information and evidence and shall revise and update on regular basis.

#### Article 16: Ongoing Monitoring of Customer Transactions

- (1) Non-banking financial institutions should conduct ongoing monitoring based on customer transactions and relationship. Monitoring must include the scrutiny of customer transactions to ensure that they are being conducted in line with non-banking financial institution's knowledge of the customer and the customer risk profile and, where necessary, the source of funds and wealth, and may include predetermined limits on the amount and volume of transactions and type of transactions.
- (2) Non-banking financial institutions must monitor the customers' account activity, on a regular, reasonable scheduling basis, to be able to establish patterns, and deviation from which may indicate suspicious activity.



#### Article 17: Termination of Customer Relationship

- (1) If a Non-banking financial institution is unable to comply with the CDD required for a customer, including, on the basis of materiality and risk, on existing customer relationships established prior to the enactment of this regulation, it should terminate the customer relationship and consider filing a report with the FINTRACA.
- (2) Where a Non-banking financial institution is unable to verify the identity of the customer and beneficial owner(s), it shall refrain from opening the account or commencing the business relationship or carrying out the transaction. In such cases, non-banking financial institution shall consider filing a suspicious transaction report to the FinTRACA.

#### Article 18: Reliance on third parties

- (1) Non-banking financial institutions may rely on third party intermediaries to perform the CDD requirements of this regulation if the following conditions are met:
  1. They are satisfied that the third party is regulated, supervised or monitored for and has measures in place for compliance with the customer due diligence and record keeping requirements;
  2. They can immediately obtain all required customer due diligence information; and
  3. They are satisfied that copies of identification information and other documents relating to customer due diligence measures will be made available from the third party upon request and without delay.
- (2) Before entering into a relationship with a third-party non-banking financial institution should have regard to the money laundering and terrorist financing risk associated with the country in which the third party is based.
- (3) The ultimate responsibility for customer identification and verification shall remain with non-banking financial institution relying on the third party.

#### Article 19: Policies and Procedures on Wire Transfers

- (1) Non-banking financial institutions that engage in cross border wire transfer shall include accurate originator and beneficiary information on wire transfer and ensure that the information remains with wire transfer throughout the payment chain. Information accompanying all transfers should always contain:
  1. The full name, address and information of the originators;
  2. Complete name and address and full information of receivers;
  3. Amount, type of currency and purpose of transaction including date of transactions;
  4. Date of birth from both parties;
  5. The originator account number/reference number where such an account is used to process the transaction or, in the absence of an account, a unique transaction reference number which permits traceability of the transaction must be available with receiver;
  6. The originator's address, or customer identification, or date and place of birth;
  7. Date if transactions;
  8. Exchange rate if used;
  9. Fee or commission; and
  10. The name and address of the beneficiary and the beneficiary account number or a unique identification number where such an account or number is used to process the transaction.
- (2) In MSP/MSB If customer is a natural person and transaction amount is more that AFN 500,000 or equivalent to other currencies, or customer is a legal person and transaction amount is more that AFN 1,000,000 or equivalent to other currencies, in this case the customer shall provide valid supporting documents.





- (3) Non-banking financial institutions shall obtain necessary supporting documents, based on the purpose of transfer for legal and natural person.
- (4) If Non-banking financial institution is unable to comply with these requirements, it shall not execute the wire transfers and consider submitting a suspicious transaction report to the FinTRACA.
- (5) For domestic wire transfers (including transactions using a credit or debit card as a payment system to affect a money transfer), the ordering institution must include either:
  1. Full originator information in the message or payment form accompanying the wire transfer; or
  2. Only the originator's account number, where no account number exists, a unique identifier, within the message or payment form.
- (6) Non-banking financial institutions should ensure that non-routine wire transfers are not batched where this would increase the risk of money laundering or terrorism financing.
- (7) For cross-border wire transfers, financial institutions processing an intermediary element of the payment chain should keep all wire transfer information including originator and beneficiary information.
- (8) Where technical limitations prevent the required originator or beneficiary information accompanying a cross-border wire transfer from remaining with related domestic wire transfer information, the intermediary financial institution should keep a record, for at least five years, by the receiving intermediary financial institution of all the information received from the ordering financial institution or another intermediary financial institution.
- (9) Non-banking financial institutions should have effective risk-based procedures for determining:
  1. When to execute, reject, or suspend a wire transfers lacking required originator's or required beneficiary's information and considering reporting to the FinTRACA;
  2. The appropriate follow-up action which may include restricting or terminating business relationships.
- (10) For wire transfers, a beneficiary non-banking financial institution should verify the identity of the beneficiary, if the identity has not been previously verified, and maintain this information in accordance with the record keeping requirements of this regulation.

#### Article 20: Suspicious Transaction Reporting Requirement

- (1) Non-banking financial institutions must, as soon as possible but no later than 3 working days, after forming a suspicious transaction report (any transaction or attempted transaction, regardless of value, involves proceeds of crime or funds related or linked to or to be used for money laundering or terrorism financing) to FinTRACA.
- (2) Non-banking financial institutions should report details of suspicious transactions to the FINTRACA in the prescribed form as set out in a guideline to be issued by FinTRACA.
- (3) Suspicious transaction report should be submitted to FinTRACA in any of official languages of Afghanistan together with all necessary supporting documents including but not limited to: updated customers KYCs and account opening forms, updated account/wallet statement/s, identification documents (Tazkira or passport, Business license and etc.) and other relevant documents support the reasons for forming suspicion about the customer.
- (4) While forming suspicion about a customer, non-banking financial institution should conduct primary analysis on its customers based on all information available to it including the records of its previous transactions, and other documents provided to it by customers since establishment of its business relationship with Financial Institution, and include the result of such analysis in its report to FinTRACA.



- (5) If FinTRACA determines that the STR quality is not at a level satisfactory to work on it, or missing necessary supporting documents set out in paragraph 4 of this Article, FinTRACA may reject the receipt of the STR and notify non-banking financial institution of reasons of such rejection, and non-banking financial institution should rectify the deficiencies and inform the FinTRACA.
- (6) Suspicious transaction refers to any transaction (including attempted or proposed), regardless of the amount and methods of payments that have the following characteristics and conditions but are not limited to these:
  1. Have no legal and commercial requirement and economic justification.
  2. Condition indicate that the customer organized the transactions on such a way to avoid reporting.
  3. Suspicion that the transaction or initiation to do it, is relevant to organized crime or used for the purpose of Money laundering and terrorist financing or has connection to the main crime. Main crime is an action which its commission result direct or indirect obtaining of cash.
  4. Suspicion or availability of suspicion reasons that the fund is belong to a terrorist person or a terrorist organ or used for terror action or organ.
  5. Identity of the customer is not clear.
  6. Suspicion that the customer transaction directly or indirectly relevant to illegal or criminal activities.
- (7) MSP/FXD can report the STR directly or through their main office to FinTRACA.

#### **Article 21: Threshold Reporting Requirements for Large cash Transaction**

- (1) FXDs & MSPs shall report the particulars of transactions (exchanges or transfers) equal or in excess of AFS 500,000 or its equivalent to other currencies to FINTRACA no later than the tenth official day of a month following to the month during which the transaction occurred.
- (2) MSPs and FXDs can report the particulars of their Large Cash Transactions prescribed paragraph one of this article, on daily basis, but the final date to report a transaction is tenth business day of the month which the transaction is occurred
- (3) EMI shall report the particulars of transactions equal or in excess of AFS 50,000 or its equivalent to other currencies to FinTRACA no later than the fifth official day of a month following to the month during which the transaction occurred
- (4) NBFIs should report Transactions by and between the same two parties that occur within two consecutive working days and constitute the specific LCTR threshold amount should also be reported to FinTRACA
- (5) NBFIs shall report the LCTR based on prescribed format specified by FinTRACA without insufficient information or dummy value or any other incorrect information.
- (6) FXDs & MSPs can report large cash transactions to FinTRACA directly or through their main office.
- (7) Other non-banking financial institutions should report their LCTR according to the threshold and timeframe prescribed in their relevant Regulations or circulars issued by FinTRACA.
- (8) Non-banking financial institutions should report details of transactions to the FINTRACA in the prescribed form as set out in a guideline to be issued by FINTRACA and may be updated from time to time.





- (9) Non-banking financial institutions should include all details required by FINTRACA under paragraph 4 of this Article in a precise manner. In case of submitting, deficient or carelessly filled out LCTR forms to FINTRACA, FINTRACA can apply the sanctions provided for in article 24 of AML&PC Law on Non-bank financial institution.

#### **Article 22: Tipping-off Offences**

- (1) Non-banking financial institutions, their directors and employees are prohibited from disclosing the report and any money laundering or terrorism financing investigation or any relevant information under Article (18) of AML & PC law and Article (21) of this regulation being sent to FINTRACA. This shall not preclude disclosures or communications between and among directors and employees of the non-banking financial institution, in addition to lawyers, competent authorities, and the public prosecution.
- (2) No criminal, civil, disciplinary or administrative proceedings for breach of professional secrecy or contract shall lie against non-banking financial institutions or their respective directors, principals, officers, partners, professionals or employees who in good faith submit reports or provide information in accordance with the provisions of this regulation and the AML & PC Law.

#### **Article 23: New products and business practices**

- (1) Before launching new products and business practices or using new technologies, non-banking financial institutions should identify, assess and, take appropriate measures to manage and mitigate the money laundering or terrorism financing risks that may arise in relation to:
1. the development of new products and new business practices including new delivery mechanisms for products and services; and
  2. the use of new or developing technologies for both new and pre-existing products.

#### **Article 24: Internal Policies, Procedures, Systems and Controls**

- (1) Chief compliance officer and other compliance staff should have timely access to customer identification data and other CDD information, transaction records, and other relevant information. Chief compliance officer should have appropriate experience and qualifications in the field of AM/CFT and have the authority to act independently and to report to the Board of supervisor and senior management.
- (2) Non-bank financial institution should provide Da Afghanistan Bank with details of the compliance officer, including name, details on qualifications, address, contact number, email address and get the approval of Da Afghanistan Bank for Chief Compliance Officer Position. Non-bank financial institution should promptly inform Da Afghanistan Bank of any change in chief compliance officer.
- (3) The board of directors of non-banking financial institution shall periodically review the institution's compliance with the requirements of the Anti-Money Laundering and Proceeds of Crime Law and this Regulation. Such regular reports to the board of directors should include a statement on all suspicious transactions detected, implications and measures taken by compliance staff to strengthen non-banking financial institution's AML/CFT policies, procedures, systems and controls. Reports on suspicious transactions should be general and not include any information on specific transactions or customers. The board should also be informed of the results of any onsite inspections conducted by Da Afghanistan Bank, including remedial actions required to be implemented by the financial institution.



- (4) Non-banking financial institutions must maintain an adequately resourced and independent audit function to ensure that the chief compliance officer and other staff of non-banking financial institution are performing their duties in accordance with the financial institution's AML/CFT internal policies, procedures, systems and controls. It is worth mentionable that this paragraph is not applicable to MSPs and FXDs.
- (5) Non-banking financial institutions' external auditors shall report on the adequacy of the financial institution's AML/CFT internal control systems and include an explicit opinion on the institution's adherence to all applicable local laws, ministerial decisions and Da Afghanistan Bank regulations and Instructions, as well as non-bank financial institution's adherence to its own policies, procedures, systems and controls. This report shall be made available to the Da Afghanistan Bank on request. It's worth mentionable that this paragraph is not applicable on MSPs/FXD.
- (6) Non-banking financial institutions must establish screening procedures when hiring employees. Such screening procedures should include fit and proper requirements to be applied when hiring employees. More stringent fit and proper requirements are required for employees in management positions or in positions perceived to have greater exposure to money laundering or terrorist financing risks. Employee screening procedures and fit and proper requirements must ensure that:
  1. Employees have the high level of competence necessary for performing their duties as set out in their job descriptions;
  2. Employees have appropriate ability and integrity to conduct the business activities of the financial institutions;
  3. Potential conflicts of interests are taken into account, including the financial background of the employee;
  4. Fit and proper and code of conduct requirements are defined;
  5. Persons convicted of offences involving fraud, dishonesty, money laundering or other similar offences are not employed by the financial institution, subject to laws of Afghanistan.
- (7) Duties and responsibilities of Board of Supervisors in respect to AML/CFT as following but are not limited to this:
  1. To evaluate the reports of executive board and issuing instructions in this regard to executive board;
  2. Regular and continual monitoring of the activities of main office and branches of the company;
  3. Approving the administrative structure of the company;
  4. Approving the business plan, strategy, policies and procedures of the company;
  5. To ensure the implementation of laws and regulations, internal policies and procedures and DAB instructions;
  6. To ensure the eligibility of the executive board, laws and regulations, chief compliance officer, authorized employees and representatives of the company;
  7. Obtaining periodic reports of compliance department and issuing instruction regarding the provided reports.
  8. To ensure the implementation of internal policies and procedures by the board of management of the financial institution.
  9. To assign, terminate and set salaries and wages of executive board, chief compliance officer and other key personnel;
  10. The supervisory board shall be responsible for DAB, shareholders, customers and other involved entities according to the relevant laws and regulations
- (8) Board of management having primary responsibility for the following:





1. High level decision making;
  2. Implementing strategies and policies approved by the Board of supervisor;
  3. Developing processes that identify, manage and monitor risks incurred by the institution;
  4. Monitoring the appropriateness, adequacy and effectiveness of the risk management system.
  5. To ensure the awareness of employees regarding AML/CFT laws and regulations. And internal policies and procedures of the financial institution.
  6. Submitting periodic reports to Board of directors from the overall operation of the financial institution; and
  7. Cooperate with DAB examiners during the on-site examinations.
- (9) duties and responsibilities Chief Compliance Officer shall be as follow:
1. Shall have the knowledge of DAB relevant laws, Regulations and their internal policies and procedures of the financial institutions
  2. To prepare, review and amend the related policies and procedure annually and need base and share with board of supervisor for further review and approvals.
  3. To ensure the implementation of AML/CFT laws, Regulations and circulars of DAB and company policies and procedures;
  4. To identify, assess and monitor the suspicious transactions and report them to FinTRACA,
  5. To identify large cash transactions and report them to FinTRACA;
  6. To report from the compliance department performance functionally to the board of supervisor and administratively to the board of management,
  7. To ensure the AML/CFT training programs conducted for employees and relevant parties;
  8. To screen customers including walking customers against sanction lists;
  9. To ensure the identification and verification of customers and transactions of customers;
  10. To ensure the implement of the EDD procedures based on AML/CFT laws and regulations; and
  11. Conducting AML/CFT risk assessment, in coordination with relevant departments of financial institutions.

#### Article 25: Record-Keeping Requirements

Non-banking financial institutions shall maintain records of the following information:

- (1) Copies of all records obtained through the customer due diligence process under including documents evidencing the identities of customers and beneficial owners, account files and business correspondence, for at least five years after the transaction is occurred or a transaction with a customer who does not have an established business relationship with non-banking financial institutions has been carried out;
- (2) The documents and Data shall be recorded either soft or hard and it should be retrievable and readable for the internal use and supervisory bodies.
- (3) All records of transactions, both domestic and international, attempted or executed for at least five years
  1. After the attempt or execution of the transaction;
  2. After the business relationship has ended
  3. After a transaction with a customer whom does not have an established business relationship with the financial institution has been carried out; which is the longest.
- (4) Such records must be sufficiently detailed to permit the reconstruction of each individual transaction;



- (5) Copies of suspicious transactions reports sent and related documents for at least Ten years and for other reports and its related documents at least five years after the date the report was made to the FinTRACA;
- (6) The risk assessment and any underlying information for a period of five years from the date the assessment was carried out or updated.
- (7) Document and information shall be kept by following means:
  1. Soft Copies
  2. Original printed and evidence and
  3. Clear copies of original documents and evidence.

#### Article 26: Compliance with CFT

- (1) Non-banking financial institutions are required to develop and implement procedures to ensure compliance with the requirements of the Counter Financing of Terrorism Law and CFT Regulations, Terrorist Asset Freezing Procedure including:
  1. Procedures to freeze without delay funds, property and assets held by the financial institution, including in safe custody, in response to directions received from competent authorities pursuant to the Counter Financing of Terrorism Law;
  2. Procedures to monitor attempted access by customers or other parties to the funds, property or assets;
  3. Procedures to allow access to the funds, property or assets held in response to directions from competent authorities;
  4. Procedures to unfreeze funds, property or assets in response to directions from competent authorities.
- (2) Non-banking financial institutions are required to submit a report to FinTRACA in relation to any attempt to access the funds, property or assets, which are subject to an order under the Counter Financing of Terrorism Law. Such reports should be submitted without delay.
- (3) The Non-bank financial institution shall be obliged to take appropriate measures as per law and Regulation to prevent financing terrorism, this measure shall include the following but not limited:
  1. Screening and Verification of customers and real owners' identity before or during business transaction;
  2. Non-Bank financial institutions are required to screen their customers before or during business relationship against UN, OFAC and FinTRACA sanction lists.
  3. In order to identify the clients in sanction list, the non-banking financial institution shall be obliged to possess tools and electronic device system;
  4. If a customer name is included/matched (real match) in the sanction list, the non-banking financial institution shall be obliged to:
    - a. Prevent services to customer; and
    - b. Report a STR to FinTRACA
  5. The Money Services Provider and Foreign Exchange Dealers shall be obliged to take action on asset freeze of individuals or companies immediately after notification and decision of AGO;
  6. Asset freeze of individuals and companies included in sanction list based on provision of law; and
  7. Prevention of directly or indirectly financial services or possessing of named assets, financial resource in favor of individuals in sanction list.





### Article 27: Counter Measures on High-Risk Countries

- (1) Non-banking financial institutions shall implement measures imposed by Da Afghanistan Bank issued under Article 14 paragraph (4) of the AML & PC Law. The measures that Da Afghanistan Bank may impose include, but are not limited to the following:
1. Applying specific elements of enhanced due diligence such as obtaining additional information on the customer, purpose of transactions, nature of the business relationship and the source of funds or wealth of the customer;
  2. Obtaining senior management approval to continue the relationship; and,
  3. Increased monitoring of transactions.
- (2) Da Afghanistan Bank may take certain actions including, but not limited to the following:
1. Imposing additional reporting requirements on non-banking financial institutions;
  2. Refusing the establishment of subsidiaries or branches or representative offices of financial institutions from the country identified under Article 14 paragraph (4) of the AML & PC Law;
  3. Prohibiting Afghani, Non-bank financial institutions from establishing branches or representative offices in the country identified under Article 14 paragraph (4) of the AML & PC Law;
  4. Requiring Non-bank financial institutions to limit business relationships or financial transactions with the country identified under Article 14 paragraph (4) of the AML & PC Law or persons in that country;
  5. Increasing supervisory examinations and/or external audit requirements for branches and subsidiaries of financial institutions from the country identified under Article 14 paragraph (4) of the AML & PC Law operating in the Islamic Republic of Afghanistan; and
  6. Requiring increased external audit requirements for Afghan's financial groups with respect to any of their branches and subsidiaries located in the country identified under Article 14 paragraph (4) of the AML & PC Law.
- (3) NBFIs are required to report any transactions with countries identified under Article 14 paragraph (4) of the AML & PC Law to the FinTRACA.

### Article 28: Confidentiality

- (1) Non-banking financial institutions and their staff shall maintain confidentiality, and not disclose information concerning their anti-money laundering activities to their customer or to others, except to the FinTRACA. The exception is that they may disclose to other financial institutions or to their professional association's information about potential clients or transactions that they have refused. In particular, non-banking financial institutions must not disclose to customer that they have filed suspicious transactions reports about their activity. Non-banking financial institutions are advised to maintain signage in a prominent place or to hand out written notices to their customers that they are required to report all large cash transactions to the Financial Intelligence Unit. Staff may also orally advise each customer at the time the transaction is initiated.
- (2) Non-bank financial institutions and their staff shall not be responsible to compensate disclosure of professionals while reporting on duty unless disclosure is from bad intentions



- (3) Sharing of this information between officials and Money Services Provider and Foreign Exchange Dealers with competent authorities as per laws and Regulation anti-money laundering and financing of terrorism shall not be included to this limitation;

#### Article 29: Staff Training

- (1) Non-banking financial institutions are responsible for training their staff in the requirements of this regulation and continually improving the skills of their staff as requirements and situations change. This training should include AML/CFT laws and regulation and real-world examples of transactions that constituted money laundering and terrorist financing, and an awareness of the role that staff play in the overall process of detecting and punishing money launderers and terrorist financiers
- (2) Non-bank financial institution shall be obliged to attend in workshops and training programs conducted by DAB and FinTRACA

#### Article 30: On-site Supervision

- (1) Examination personnel of the Non-bank Financial Supervision Department of DAB will examine the non-banking financial institutions' compliance on the basis of this regulations as a part of their regularly-scheduled on site examinations. Findings by the examiners that the institution's policies are inadequate or poorly implemented will result in a low rating for the Management of Financial institution, and the possibility of enforcement action against all types of non-banking financial institutions will be taken.

#### Article 31: Penalty and Actions

- (1) Any Non-banking financial institution breaching this Regulation is liable to the sanctions as provided for in Article 24 of AML-PC law and the method of administrative AML/CFT sanction procedure is detailed in the relevant administrative sanction procedure.
- (2) In cases where a financial institution is found to have committed any of the following acts, the Non-banking Financial Supervision Department and FinTRACA shall request it to remedial action within a specified period of time, and issue enforcement actions that may include license revocation, fines, the requirement of an external audit, or the removal of administrators and the replacement with administrators acceptable to DAB. Violations leading to enforcement actions include, but are not limited to:
1. Failing to set up an internal control system for anti-money laundering activities
  2. Failing to designate an AML officer.
  3. Failing to identify customers properly.
  4. Disclosing to customers or potential customers that reports are being filed about them to the FINTRACA.
  5. Failing to maintain account information and transactions records on clients, and updating the information.
  6. Failing to report large cash transactions or suspicious transactions to the FINTRACA, as required.
  7. Failing to implement this regulation in addition, non-banking financial institutions that knowingly participate in money laundering or terrorist financing, and the administrators of these financial institutions, will be punished according to the provisions of Anti Money Laundering or Terrorist Financing Laws.





8. Any other violation which relevant regulation, procedures and circulars considers it as administrative violation

**Article 32: Cooperation with law enforcement**

- (1) Non-banking Financial Institutions shall cooperate, coordinate their anti-money laundering activities with FINTRACA, and cooperate with the FINTRACA in any freezing or transferring the deposits of clients, according to the relevant provisions in law and regulation.

**Article 33: Responsibilities of foreign branches of NBFI licensed in Afghanistan**

- (1) The foreign branches of NBFI licensed in Afghanistan shall abide by the provisions of laws governing anti-money laundering of the country or region where they are located, and provide cooperation and assistance to the anti-money laundering efforts of law enforcement officials of their host country, according to the laws of the host country.

**Article 34: Responsibilities of professional associations of financial institutions**

- (1) The Union of MSPs and FXDs, EMIs and other non-bank financial institution unions and other financial self-disciplinary organizations may draft working guidelines or codes of conduct for their members concerning anti money laundering activities, in line with this regulation. they may discipline or suspend the membership of non-banking financial institutions that do not comply with these guidelines. These organizations are also expected to encourage information- sharing among their members concerning the details of customers or individual transactions that have been refused.

**Article 35: Other Provisions**

- (1) The Da Afghanistan Bank and FinTRACA may issue sector specific guidelines or circulars to non-banking financial institutions to provide further guidance on the implementation of the requirements of the Law and this Regulation.

**Article 36: Effective Date of Regulation**

- (1) This regulation is effective immediately after adoption by supreme council of Da Afghanistan Bank.



**Annex 1: List of Non-Bank Financial Institution to comply with AML/CFT responsibilities and preventative measures regulation**

No	Name
1	Corporate and individual MSPs and FXDs
2	EMIs
3	Financial Leasing Institution
4	Payment institution
5	Other Financial Institutions come under NBFISD Structure

**Annex II- Customer Identification Requirements for Customers**

Non-banking financial institutions shall obtain the following information and documents from the customers depending on the type of customer.

(1) Natural persons

1. Full name, Father Name including any aliases.
2. Business Name (in case of sole trader).
3. Gender.
4. National Registration Card/Citizen Scrutiny Card/Passport.
5. Permanent and mailing address.
6. Date of birth.
7. Nationality.
8. Occupation.
9. Income and source of income.
10. Phone number (if any).
11. Photo.

In the case of joint accounts, a NBFI shall obtain the above information on all parties to the account.

(2) Legal persons and Legal Arrangements including partnerships, limited liability partnerships and Trusts

1. Name of the company
2. Address of head office.
3. Full address (including phone, fax and email address).
4. Certificate of Incorporation should be updated annually, Memorandum of Association, Article of Association
5. Partnership Agreement
6. Trust deed
7. Name and address of Board of directors (phone number, if available)
8. Identification documents of Directors/Shareholders/Partners as paragraph (1) above."
9. "Identification documents of Settlers, Trustees, Protectors and beneficiaries with respect to trusts as paragraph (1)."
10. Board or any other competent authority's resolution authorizing opening and operation of the account.
11. Authorization by Board of directors to Chief Executive Officer or other officers for conducting financial transactions.
12. Identification documents to identify the person authorized to represent the company/business in its dealings with the bank/financial institution.





13. Financial institutions should verify the authenticity of the information provided by the company/business with the relevant license issuing authority.

For foreign incorporated or foreign registered business entities, comparable documents should be obtained. Banks and financial institutions should make all efforts to verify the documents supplied including requiring that they be certified by the Office of Foreign Affairs and endorsed by the Embassy of Afghanistan.

- (3) Non-Government Organization (NGO) and Non-Profit Organizations (NPOs)
  1. Name of Non-Government Organization/Non-Profit Organization.
  2. Full Address.
  3. Certification of registration.
  4. Constitution of the NGO/NPO.
  5. Name and address of Executive committee.
  6. Telephone No. and email address.
  7. Executive committee's decision regarding opening of account.
  8. Identification documents of directors/senior officers of the NGO/NPO.
  9. Authorization for the operation of accounts financial transactions.
  10. Identification documents to identify the person authorized to represent the NGO/NPO in its dealings with the bank/financial institution.
  11. Copy of the latest certified taxation return and related documentation.
  12. Copy of the latest financial statement.

### Annex III- Examples High and Low Risk Situations Requiring Enhanced or Simplified Customer Due Diligence

- (1) When assessing the money laundering and terrorist financing risks relating to types of customers, countries or geographic areas and particular products, services, transactions or delivery channels, non-banking financial institutions can have regard to the following potentially higher risk situations that would require the application of enhanced customer due diligence:

#### 1. Customer risk factors:

1. The business relationship is conducted in unusual circumstances (e.g., significant unexplained geographic distance between the financial institution and the customer).
2. Non-resident customers.
3. Legal persons or arrangements that manage the assets of third parties.
4. Companies that have nominee shareholders or shares in bearer form.
5. Activities that are cash-intensive or susceptible to money laundering or terrorism financing.
6. The ownership structure of the company appears unusual or excessively complex with no visible economic or lawful purpose given the nature of the company's business.
7. Business relationships and transactions conducted other than "face-to-face".
8. Business relationships conducted in or with countries as identified in Section 11(b) below.
9. Politically exposed persons ("PEP") or customers linked to a PEP.
10. High net worth customers, or customers whose source of income or assets is unclear.
11. Businesses/activities identified by the FIU, Da Afghanistan Bank or the FATF as of higher money laundering or financing of terrorism risk.



2. Country or geographic risk factors:

1. Countries classified by credible sources, such as mutual evaluation reports or published follow-up reports, as not having adequate AML/CFT systems.
2. Countries identified by Da Afghanistan Bank or the FIU as high risk.
3. Countries subject to sanctions, embargos or similar measures issued by, for example, the United Nations.
4. Countries classified by credible sources as having significant levels of corruption or other criminal activity.
5. Countries or geographic areas classified by credible sources as providing funding or support for terrorist activities, or that have designated terrorist organizations operating within their country.

3. Products, services, transaction or delivery channel risk factors:

1. Anonymous transactions (which may include cash).
2. Accounts opened, business relationships or transactions conducted with customers that are not physically present for the purpose of identification.
3. Payment received from unknown or un-associated third parties
4. Complex trade financing products.

(2) When assessing the money laundering and terrorist financing risks relating to types of customers, countries or geographic areas and particular products, services, transactions or delivery channels, non-banking financial institutions can have regard to the following potentially low risk situations that would require the application of simplified customer due diligence:

1. Customer risk factors:

1. Non-banking financial institutions where they are subject to requirements to combat money laundering and terrorism financing consistent with the FATF Recommendations, have effectively implemented those requirements, and are effectively supervised or monitored in accordance with the Recommendations to ensure compliance with those requirements.
2. Companies listed on a stock exchange and subject to disclosure requirements (either by law, or stock exchange rules or other binding Instructions or Regulations), which define requirements to ensure disclosure of beneficial ownership.
3. Public enterprises.

2. Product, service, transaction or delivery channel risk factors:

Financial products or services where there is a proven low risk of money laundering or terrorist financing which occurs in strictly limited and justified circumstances and it relates to a particular type of financial institution or activity or a financial activity is carried out by a natural or legal person on an occasional or very limited basis such that there is a low risk of money laundering and terrorist financing and that are provided to a low risk customer for financial inclusion purposes.

### 3. Country risk factors:

1. Countries classified by credible sources, such as mutual evaluation reports, as having effective AML/CFT systems.
2. Countries classified by credible sources as having a low level of corruption or other





# Annex IV- KYC Requirements

Requirements												
Legal	Type	<250k	250k-500k	500k-1M	1M-3M	3M+	Name	Address	Occupation	Contact #	ID Copy	TZMR/P>
Natural	MSP/FXD						X	X	X	X	X	
Natural	MSP/FXD		250k-500k				X	X	X	X	X	
Natural	MSP/FXD			500k-1M			X	X	X	X	X	
Natural	MSP/FXD				1M-3M		X	X	X	X	X	
Natural	MSP/FXD					3M+	X	X	X	X	X	
Legal	MSP/FXD						X	X	X	X	X	
Legal	MSP/FXD		250k-500k				X	X	X	X	X	
Legal	MSP/FXD			500k-1M			X	X	X	X	X	
Legal	MSP/FXD				1M-3M		X	X	X	X	X	
Legal	MSP/FXD					3M+	X	X	X	X	X	
		3.125	6.250	12.500	37.500							

