



**Da Afghanistan Bank**  
**Islamic Banking & Finance Department**

## **Mudarabah Product Guide**

2021

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## Chapter One

### General Provision

#### Legal Provision

##### Article 1:

This regulation is issued pursuant to Article 177 of Banking Law of Afghanistan.

#### Purpose

##### Article 2:

- (1) Provide reference on the shariah ruling associated with Mudarabah;
- (2) Provides a comprehensive guidance to IFI in discharging its duties in matters relating to the product;
- (3) Set out key operational requirements with regard to the implementation of mudarabah;
- (4) Provide concept and legitimacy of the Mudarabah contract under Shariah; and
- (5) Provide features of the Mudarabah contract.

#### Scope

##### Article 3:

This regulation is applicable on all Islamic banks, Islamic subsidiary of bank, Islamic banking window of conventional bank and Islamic branch of foreign bank licensed by Da Afghanistan Bank.

#### Definitions

##### Article 4:

The terms and expressions used in this document shall have the following meanings assigned to them, unless otherwise the subject/context required:

- 1- **Islamic Bank:** “Islamic Bank” means a bank or Islamic subsidiary of a bank which operates in accordance with shariah rules and principles.
- 2- **Islamic Banking Window or Islamic Window (IBW):** It refers to a department or division of a conventional bank that engages in Islamic banking activities and provides Islamic banking services;
- 3- **Islamic Financial Institutions (IFI) s:** Means Islamic Bank, Islamic Subsidiary of a bank, Islamic Window of conventional bank and Islamic branch of foreign bank
- 4- **Shari’a Supervisory Board (SSB):** It is established and continuously maintain by DAB and as the sole and highest Shari’a authority in all matters relating to Islamic Banking and Finance at the national level in the Country.
- 5- **Shari’a Board (SB):** “Shariah Board” means the group of Shariah scholars that independently endorses and approves the compliance of banking products and activities of IFIs with Shariah principles.
- 6- **Shariah compliance:** It refers to compliance to shariah rulings and decisions issued by the DAB’s Shariah Supervisory Board (SSB), Shariah Board (SB) of the IFIs and shariah respectively, and as determined by other relevant bodies.

- 7- **Shariah non-compliance risks:** It refer to possible failures to meet the obligation to shariah principles or in other words, possible incidences of shariah non-compliances.
- 8- **Fit & Proper Person:** As defined in Article 2.16 of Banking Law of Afghanistan.
- 9- **Confidential information** is information received by members of the Shariah board that is not public in nature and has not been authorized to be made public
- 10- **Mudarabah** is a partnership in profit whereby one party provides capital (Rab al-Mal) and the other party provides labour (Mudarib).
- 11- **Unrestricted Mudarabah (Mudarabah Mutlaqah):** An unrestricted *mudarabah* is a contract in which the *rabbul mal* permits the *mudarib* to manage the *mudarabah* capital without any specific restriction.
- 12- **Restricted Mudarabah (Mudarabah Muqayyadah):** A restricted *mudarabah* is a contract in which the *rabbul mal* imposes specific restrictions on the *mudarabah* terms. The *rabbul mal* may specify conditions restricting *the mudarib* such as the determination of location, period for investment, type of project and commingling of funds, provided it does not nullify the purpose/objective of the contract.
- 13- **Mudarabah asset:** Asset created under a mudarabah venture.
- 14- **Encumbered securities:** Encumbered securities (or **encumbered assets**) are securities that are owned by one entity, but which are at the same time subject to a legal claim by another.
- 15- **Mudarabah capital:**Mudarabah capital is an asset provided by a rabbul mal to a mudarib for the purpose of a mudarabah venture
- 16- **A mudarabah profit:**A mudarabah profit (the profit) is the value created over and above the capital which is determined based on a methodology acceptable by market conventions or practices
- 17- **Mudarabah venture:** Business or profit generating activities undertaken by mudarib in managing capital provided by the rabbul mal.
- 18- **Mudarib:** Entrepreneur of a mudarabah venture.
- 19- **Profit sharing ratio:**The ratio in which the profits are shared between the rabbul mal (capital provider) and mudarib.

## Chapter Two

### SHARIAH REQUIREMENTS OF THE PRODUCT

#### Introduction to product

##### Article 5:

- (1) Mudarabah is a contract based on a fiduciary relationship between a capital provider (rabbul mal) and an entrepreneur (mudarib). Under a mudarabah, any profit generated from the capital is shared while financial losses are borne by the rabbul mal or Mudarabah is a contract between a capital provider (rabbul mal) and an entrepreneur (mudarib) under which the rabbul mal provides capital to be managed by the mudarib and any profit generated from the capital is shared between the rabbul mal and the mudarib according to a mutually agreed profit sharing ratio (PSR) whilst financial losses are borne by the rabbul mal provided that such losses are not due to the mudarib's misconduct (ta`addi), negligence (taqsir) or breach of specified terms (mukhalafah al-shurut).

- (2) In the context of business and trade, it means a joint enterprise in which all the partners share the profit according to a mutually agreed upon profit sharing ratio but loss is borne solely by the capital provider/investor.
- (3) In general, the Mudarabah contract is a non-binding contract which allows any one of the contracting party to terminate the contract unilaterally except in the following conditions:
  - 1- the *mudarib* has commenced the work relating to the management of the capital of the *rabbul mal*; or
  - 2- the contracting parties have agreed not to terminate the *mudarabah* contract within a specified time; or
  - 3- the contracting parties have agreed to enter into *mudarabah* contract for a specified time.
- (4) The contract of mudarabah can be terminated at any time by either of the two parties (except as mentioned above) and the only condition is to give a notice to the other party. If all the assets of the mudarabah are in cash form at the time of termination, and some profit has been earned on the principal amount, it shall be distributed between the parties according to the agreed ratio. However, if the assets of the mudarabah are not in the cash form, the mudarib shall be given an opportunity to sell and liquidate them, so that the actual profit may be determined.
- (5) A Mudarabah is categorized into two types such as restricted and unrestricted mudarabah. The contracting parties may mutually agree to change the type of mudarabah they have entered into to another type of mudarabah at any point in time.

## **Contracting parties**

### **Article 6:**

- (1) The contracting parties in a mudarabah are a rabbul mal and a mudarib; both the rabbul mal and the mudarib must be a natural person or a legal entity who shall have legal capacity to enter into the mudarabah contract including the capacity to perform agency (Wakalah) contract either as a principal or as an agent.
- (2) The contracting parties in the mudarabah contract may involve more than one mudarib or rabbul mal.
- (3) In the case of the mudarabah involving more than one rabbul mal, an agreement among the rabbul mal may be established whereby:
  - 1- an existing rabbul mal agrees to relinquish his right over a certain portion of the profit if he withdraws from the mudarabah prior to its maturity date; and
  - 2- A new rabbul mal agrees to assume liability in respect of the mudarabah which is already in operation prior to his participation.
- (4) Any terms or conditions in the mudarabah contract has been mutually agreed between the rabbul mal and mudarib, and does not contravene the Shariah shall be binding on both parties.
- (5) A mudarabah contract shall be entered into by an offer (Ijab) and acceptance (Qabul) between a rabbul mal and a mudarib.
- (6) The offer and acceptance may be expressed verbally, in writing or any other methods which could be evidenced by appropriate documentation or record.

## Management

### Article 7:

- (1) All works and activities undertaken by the manager in relation to the Mudarabah capital shall be Shariah compliant.
- (2) A mudarib shall have the exclusive right to manage a mudarabah venture.
- (3) The mudarib is responsible to ensure proper management of the mudarabah venture and acts in the interests of the rabbul mal.
- (4) The mudarib's mandate shall be provided under the terms and conditions of the contract which may include the scope and assignment of management of Mudarabah capital to a third party.
- (5) The mudarib may assign the mudarabah capital under his management to another mudarib in another mudarabah (mudarib yudarib) or to an agent (wakil) subject to the condition that the consent of the rabbul mal is obtained.
- (6) A rabbul mal shall not be involved in managing the mudarabah venture but shall have the right to supervise and monitor the conduct of the manager and a right of access to reasonable information regarding the mudarabah venture. In this regard, the rabbul mal shall not:
  - 1- be involved in the decision making in respect of the mudarabah venture;
  - 2- influence decision making in core business areas of the mudarabah venture; and
  - 3- Be involved in the day-to-day management of the mudarabah venture.

## Capital

### Article 8:

- (1) Capital is an asset provided by a *rabbul mal* to a *mudarib* for the purpose of a *mudarabah* venture.
- (2) The capital of *mudarabah* (the capital) shall be provided by the *rabbul mal* and managed by the *mudarib*.
- (3) The capital shall be identifiable, readily available and accessible for the *mudarib* to commence business activities.
- (4) The capital may be in the form of monetary assets or non-monetary asset, including intangible assets. Where the capital is non-monetary asset, it shall be valued in monetary terms.
- (5) Capital in the form of non-monetary assets shall be subject to market value or fair value to be determined by third party (which may include experts, values or any qualified person) or at a value to be agreed upon by the partners at the time of entering into a mudarabah contract.
- (6) Where the capital is denominated in a different currency, it shall be valued based on a specific currency as agreed by the contracting parties at the time of entering into the mudarabah contract according to the prevailing or current currency exchange rate.
- (7) All forms of debts shall not qualify as capital, including all account receivables and payments due to the rabbul mal either from the mudarib or a third party.
- (8) All remaining capital shall be returned to the rabbul mal, if any, upon dissolution or termination of the mudarabah contract.

- (9) Any amount of capital due to the rabbul mal under paragraph **8 of article 8(above)** and profit, if any, shall be deemed as a liability due to the rabbul mal.
- (10) The mudarib shall not guarantee the capital except in the case of his misconduct, negligence or breach of specified terms.
- (11) The mudarabah contract may provide for the gradual withdrawal of capital by the rabbul mal during the tenure of the mudarabah contract unless stated otherwise.
- (12) Subject to paragraph **13 of article 8(below)**, the mudarib may with the consent of the rabbul mal commingle the capital with other investment funds
- (13) The mudarib shall observe the agreed terms and conditions of the respective contract.
- (14) The mudarib may inject his own funds into the capital subject to the consent of the rabbul mal and hence a Musharakah contract is formed between the mudarib (as partner under Musharakah) and the mudarabah venture.
- (15) The mudarabah expenditure may be charged to the capital.
- (16) The mudarabah expenditure shall be direct expenses that are identifiable and measureable with regard to a specific investment activity. And the mentioned direct expenditure shall be approved by Shariah Board of the Bank.
- (17) The capital may be fully or partially disbursed as per the terms of the mudarabah contract
- (18) Where a rabbul mal fails to provide capital as agreed under a mudarabah contract (defaulting rabbul mal):
- 1- In the case where the defaulting rabbul mal has not paid the capital within the time stipulated in the mudarabah contract, the contracting parties may unilaterally terminate the contract. If the mudarib has commenced work, the rabbul mal has to reimburse the mudarib for any mudarabah expenditure incurred and pay the mudarib fair and reasonable wages or fees;
  - 2- In the case of the mudarabah contract involves one mudarib and one rabbul mal with staggered capital payment which the defaulting rabbul mal has made partial capital payment, the contracting parties may, subject to the terms and conditions of the mudarabah contract:
    - i- revise the mudarabah contract based on the actual capital paid by the defaulting rabbul mal; or
    - ii- terminate the mudarabah contract and consequently:
      - a- the mudarib shall return the capital contributed to the defaulting *rabbul mal* if any and share the profits with the defaulting *rabbul mal*, if any; and
      - b- The defaulting rabbul mal shall bear the mudarabah expenditure incurred by the mudarib. If the justified mudarabah expenditure incurred exceeds the actual capital contribution, such liability shall be borne by the defaulting rabbul mal up to the limit of the total capital amount committed under the mudarabah contract.
  - 3- in the case of the mudarabah contract involves one mudarib and multiple rabbul mal with single capital payment by each rabbul mal, and where one or more rabbul mal failed to pay, the mudarib may terminate the mudarabah contract with the defaulting rabbul mal who failed to pay and may base on agreed terms impose on him to indemnify the mudarabah venture for any expenses incurred due to his default.
  - 4- in the case of the mudarabah contract involves one mudarib and multiple rabbul mal with staggered capital payment by each or some of the rabbul mal and where one or more rabbul mal failed to make the subsequent capital payment, the non-defaulting contracting parties shall have the following remedies including:



- i- requiring the defaulting rabbul mal to sell his interest to the other rabbul mal or to a third party;
  - ii- the non-defaulting contracting parties may agree to revise the mudarabah contract based on actual capital paid; or
  - iii- The non-defaulting contracting parties may terminate the mudarabah contract with the defaulting rabbul mal and may, based on agreed terms, require him to indemnify the mudarabah venture for any expenses incurred due to his default.
- (19) Upon liquidation or maturity of the, mudarabah contract, all net assets of the Mudarabah venture after settlement of obligations to third parties shall be used by the manager to return the outstanding capital to the capital provider prior to profit distribution (if any). And any amount due to capital provider including profit (if any) shall be deemed as debt due to the capital provider.

## Profit

### Article 9:

- (1) Profit sharing is the primary motive of a mudarabah contract and therefore it is a fundamental component of the contract.
- (2) The profit to be distributed shall be the profit after deducting the operating expenses directly related to the performance (including taxes) of the capital specified in the scope of the agreement.
- (3) A mudarib shall not guarantee any portion of profit.
- (4) A rabbul mal and a mudarib shall share profit based on a ratio or percentage mutually agreed between them and the profit sharing ratio (PSR) shall be determined at the time of entering into a mudarabah contract.
- (5) The PSR may be revised during the tenure of the mudarabah contract, subject to mutual agreement.
- (6) The mudarabah contract shall not stipulate a pre-determined fixed amount of profit to one contracting party which deprives the profit share of the other contracting party.
- (7) Profit promised in the form of a percentage shall not be tied to the capital investment amount.
- (8) Notwithstanding **paragraph 8 of article 9** (above), the ex-post performance profit amount (based on the PSR which had been mutually agreed upon between the rabbul mal and the mudarib) may be translated into a fixed percentage yield of the capital.
- (9) In a multi-tiered mudarabah, two or more profit sharing arrangements may be agreed upon. In the first tier, a rabbul mal and a mudarib may agree on a certain PSR. Whilst in the second tier, the rabbul mal (mudarib in the first tier mudarabah) and the other mudarib may agree on another PSR. Such arrangement may apply to the following tier respectively. The profit generated in each tier shall be shared according to the respective PSR.
- (10) Pursuant to **paragraph 14 article 8**, where a mudarib commingles or injects his own fund to a mudarabah venture, the mudarib is entitled to the profit based on his capital contribution in the commingled fund and the remaining profit shall then be distributed based on PSR in the mudarabah contract.
- (11) The profit sharing ratio may be tiered to a target specific profit rate or threshold amount as per a specified benchmark. In the event that:
  - 1- The actual profit is equivalent or below the threshold, the profit shall be shared based on the agreed PSR.

- 2- the actual profit exceeds the threshold; the excess amount may be:
  - I. distributed based on a different PSR agreed by the parties; or
  - II. Paid to any of the contracting parties as agreed.
- (12) The PSR may be varied to correspond with different periods of investment, different amount of the capital or pre-mature withdrawal of the capital, provided that the conditions for the variation have been agreed upon by the contracting parties at the time of entering into the mudarabah contract.
- (13) In a single mudarabah contract involving more than one mudarib, a common PSR is agreed between the rabbul mal and all the mudarib. All mudarib shall share the mudariba profit portion as per the agreed terms.
- (14) IFF's share in Mudarabah profit or losses shall be recognize as follow:
  - 1- Profits or losses in respect of the Islamic bank's share in Mudarabah financing transactions that commence and end during a single financial period shall be recognized at the time of liquidation.
  - 2- In the case of Mudarabah financing that continues for more than one financial period, the Islamic bank's share of profits for any period, resulting from partial or final settlement between the Islamic bank and the Mudarib, shall be recognized in its accounts for that period to the extent that the profits are being distributed; the Islamic bank's share of losses for any period shall be recognized in its account for that period to the extent that such losses are being deducted from the Mudarabah capital.
  - 3- As implied **by 9.14.2(above)**, if the Mudarib does not pay the Islamic bank its due share of profits after liquidation or settlement of account is made, the due share of profits shall be recognized as a receivable due from the Mudarib.
  - 4- Losses resulting from liquidation shall be recognized at the time of liquidation by reducing the Mudaraba capital.
- (15) Unrealized gains recognized during the mudarabah tenure shall be recognized as the profit and be included in the profit and loss calculation for the mudarabah.
- (16) A mudarib is only entitled to the profit for works which are integral to the mudarabah venture and shall not earn any additional fee for such works. However, an independent and separate agreement may be constructed between the manager and the capital provider assigning the manager to perform a business activity that is not, by custom, part of Mudarabah operation for a fee. The independence of this separate agreement shall mean that if the contract providing this activity is terminated, it shall not affect the Mudarabah contract.
- (17) The parties to the contract may agree to set aside the profit as a reserve or for any other purpose;
- (18) In relation to **paragraph 9.17** (above), the reserve shall only be created from the profit.
- (19) In the case where profit reserved is utilized to cover depletion of the capital, only the profit portion of a rabbul mal in the reserve shall be utilized.

## Loss

### Article 10:

- (1) Loss shall be solely borne by a rabbul mal up to the capital value.
- (2) Mudarib shall not be liable for any impairment of asset unless such loss is due to the mudarib misconduct, negligence or breach of specified terms of the contract.
- (3) Notwithstanding **paragraph 10.2 (above)**, in the case of any loss, the mudarib shall furnish the reason for the occurrence of the loss.
- (4) Loss shall be recognized when the liability exceeds the value of the assets at a point in time from a balance sheet perspective. Alternatively, when expenses exceed revenue for a defined period, an operating loss shall be recorded. *Mudarabah* operating loss which is measured during the operating period may be offset against prior or future profits.
- (5) In the case of multiple rabbul mal in a single mudarabah, the loss shall be borne by each rabbul mal proportionate to his capital contribution.
- (6) In the case where a mudarib commingles or injects his own fund to a mudarabah venture, the loss shall be borne based on the proportion of the mudarib capital contribution in the commingled fund.

### Arrangement of mudarabah with guarantee and other contracts

#### Article 11:

- (1) Subject to paragraph **10 of article 8** (capital part), a mudarib shall not guarantee the capital and/or profit.
- (2) Notwithstanding **paragraph 11.1 (above)**, the following measures may be exercised:
  - 1- a rabbul mal may take a collateral from the mudarib, provided that the collateral could only be liquidated in the event of a misconduct or negligence or breach of terms of a contract by the mudarib; or
  - 2- The rabbul mal may require the mudarib to arrange for an independent third party guarantee.
- (3) Pursuant to paragraph **11.2.2(above)**, the following requirements shall be observed:
  - 1- the guarantee shall be executed in a separate contract;
  - 2- the guarantee shall be utilized to cover any loss (except misconduct, negligence or breach of contract) or depletion of the capital; and
  - 3- the third party guarantor shall be independent from the mudarib such that it shall not be a related party where:
    - i- the mudarib has majority ownership and/or has control over the third party guarantor; or
    - ii- The third party guarantor owns or has control over the mudarib.
- (4) A third party may undertake to bear the loss of capital due to misconduct or negligence on the part of the manager.
- (5) A mudarabah contract may be arranged with a promise (wa`d), a wadiah, a wakalah, a musharakah or a hibah, subject to unambiguity in the arrangement and prior approval of shariah board of Islamic financial institutions. For instance, contracting parties may agree to

an arrangement whereby a certain amount of fund is assigned as a mudarabah capital and another portion of the fund is assigned under wadiah, wakalah or musharakah contracts.

- (6) In the case of conflict between the provisions of this article and “asset classification and provisioning regulation”, the provisions of the regulation shall prevail.
- (7) The *Mudarabah* agreement may be reviewed to ascertain whether the loss impairs the future performance of the business activity and the partners may decide to restructure the agreement accordingly.
- (8) Operating loss directly related to mudarabah shall be recognized when the loss occurs during the course of ordinary business and the losses may be carried forward to the next period or set off against prior period profits.

### **Dissolution of mudarabah**

#### **Article 12:**

- (1) A mudarabah contract is dissolved under the following circumstances:
  - 1- unilateral termination by any of the parties in the absence of any prohibitive circumstances as per paragraph 3 of article 5.
  - 2- unilateral termination by any of the parties due to misconduct, negligence or breach of specified terms of contract by the other;
  - 3- mutual agreement to terminate the mudarabah contract between the parties;
  - 4- the mudarabah contract expires upon the maturity date agreed by the parties;
  - 5- demise or dissolution of either a mudarib or a rabbul mal;
  - 6- Loss of legal capacity;
  - 7- Invalidity of the mudarabah.
  - 8- The Court may issue an order to end a Mudarabah contract on any reason that the Court deems fit either upon the request of one or all the partners or by request of certain authorities.
  - 9- On the maturity or liquidation date of the *Mudarabah* partnership, the assets shall be liquidated in the manner specify in paragraph 4 of article 5.
- (2) The methodology of dissolution of mudarabah contract shall not be contradict to the provisions of this guide.

## **Chapter Three**

### **OPERATIONAL REQUIREMENTS OF MUDARABAH PRODUCT**

#### **Governance and oversight**

#### **Article 13:**

- (1) The IFI shall establish sound governance and oversight structure to ensure that mudarabah ventures are conducted based on sound practices and comply with Shariah requirements.
- (2) The supervisory board (the Board) of IFI shall establish a sound governance structure to facilitate an effective oversight function on the management of a mudarabah venture. The adequacy of governance structure shall commensurate with the nature, complexity and risk profile of the mudarabah venture.

- (3) The roles and responsibilities of the Board with respect to the mudarabah venture shall include the following:
- 1- setting the IFI's business strategy and risk appetite with regard to the mudarabah venture;
  - 2- approving and overseeing policies and procedures for effective risk management to ensure compliance with the relevant law and regulations;
  - 3- ensuring that a comprehensive and effective Shariah governance framework is in place;
  - 4- ensuring that the IFI has adequate and qualified personnel with sufficient knowledge and competency on the concept, application and risks associated with the mudarabah venture; and
  - 5- Ensuring that independent reviews are conducted regularly to assess compliance with the documents issued by the DAB and internal policies established by the IFI.

## **Shariah Board**

### **Article 14:**

- (1) The Shariah board shall perform the following to ensure that all activities associated with a mudarabah venture undertaken by the IFI are conducted in line with Shariah requirements:
- 1- endorse that the Shariah requirements are appropriately applied in the relevant policies and procedures governing the mudarabah venture;
  - 2- deliberate and endorse that the terms and conditions stipulated in legal documentation and other documents are in compliance with Shariah;
  - 3- ensure Shariah review and Shariah audit are conducted, identify issues and propose appropriate corrective measures; and
  - 4- Advise and provide clarification on relevant Shariah rulings, decisions or guidelines on Shariah matters issued by the Bank and, if relevant, any other authorities.

## **Management**

### **Article 15:**

- (1) The roles and responsibilities of the senior management with regards to the mudarabah venture shall include the following:
- 1- Developing and implementing business strategies, internal control and risk management requirements in line with IFI's business objectives;
  - 2- Establishing policies, processes and procedures with regard to proper management of the mudarabah venture;
  - 3- Implementing relevant internal systems, infrastructure and adequate mechanisms to identify, measure, control and monitor risk inherent in the mudarabah venture;
  - 4- Ensuring that the IFI monitors and has proper and adequate reporting of the mudarabah venture operations and performance;
  - 5- Identifying, assigning and training of key personnel with the appropriate skill set for the mudarabah venture and ensuring that the roles and responsibilities are properly delegated to the relevant functions within the IFI;
  - 6- undertaking regular reviews and monitoring compliance with the approved policies; and

- 7- Ensuring timely disclosure of relevant information to the Board and the Shariah board of IFI.

## **Shariah Compliance**

### **Article 16:**

- (1) An IFI shall be responsible for ensuring:
  - 1- the overall operations of a mudarabah venture are in compliance with Shariah requirements;
  - 2- the product structure, strategies, terms of agreement, asset portfolio and type of business involved are endorsed by the Shariah board;
- (2) The IFI shall establish an effective framework that is supported by adequate policies and procedures and competent personnel to ensure that the mudarabah venture continues to adhere to Shariah requirements.

## **Contracting Parties (Rabulmal & mudarib)**

### **Article 17:**

- (1) An IFI shall undertake an assessment on the suitability of the contracting Parties before entering into a *mudarabah* venture.
- (2) The contracting parties' roles and responsibilities shall be stipulated clearly in the legal documentations.
- (3) The contracting parties in a mudarabah venture may involve more than one rabbul mal which could exist under the following structures:
  - 1- a "single" PSR structure which creates a mudarabah venture between a group of rabbul mal with a mudarib; or
  - 2- A "multiple" PSR structure which creates a mudarabah venture between each rabbul mal with a mudarib.

## **Capital**

### **Article 18:**

- (1) An IFI shall determine the value of capital upon the execution of a mudarabah contract.
- (2) Notwithstanding the type of capital allowed under paragraph 8.4 the capital shall only be in the form of /monetary assets/cash. The capital shall be identifiable, readily available and accessible at the date of commencement of the mudarabah venture. The capital shall not be in the following forms:
  - 1- debt or receivables owing to the rabbul mal; and
  - 2- Encumbered assets/securities such as lien, assets pledged as collateral etc.
- (3) Upon disbursement of the capital, the rabbul mal shall assume its rights and liabilities of the mudarabah venture up to the limit of the amount of capital disbursed or contributed.
- (4) In the event where there is commingling of funds by a mudarib as mentioned in paragraph 8.12, the IFI shall ensure the following:
  - 1- Identification of funding purpose and assets is clearly stated in the terms and conditions;

- 2- proper tagging of assets at all times using an appropriate mechanism by the mudarib such as separate record keeping;
  - 3- proper valuation of underlying assets under the mudarabah venture is carried out periodically; and
  - 4- The rabbul mal has the rights (as stipulated in the legal documentations) on the underlying assets funded by the rabbul-mal at all times, including upon exit and upon the mudarib's winding-up.
  - 5- Any other requirement pertaining subsequent commingling of funds arising from the injection of the mudarib's own funds into the mudarabah venture.
- (5) The IFI shall observe the applicable prudential limits and requirements based on the type of mudarabah funds used as specified in the relevant document (if any).

## Profit

### Article 19:

- (1) The PSR shall be mutually agreed between a rabbul mal and a mudarib and stipulated clearly in a mudarabah contract at the time of entering into the contract.
- (2) In determining the appropriate PSR, the IFI may consider the following factors:
  - 1- estimated return on the *mudarabah* venture;
  - 2- benchmark rate of return of equivalent product, underlying asset or business segment; and
  - 3- Estimated management or operational costs incurred by the mudarib in managing the mudarabah venture.
- (3) Notwithstanding the requirements in **paragraph 9.15**, the profit shall be and measured based on the applicable AAOIFI Standards.
- (4) If profit was distributed based on estimated figures, a final consolidation and rationalization shall be undertaken at the end of a certain period or at the times of actual realization of profit to arrive at the actual profit available for distribution as communicated and agreed upon by the contracting parties.
- (5) As required under **paragraph 9.14.2**, an IFI shall conduct and, in the case where the IFI is the rabbul mal, ensure that the mudarib conducts an assessment at the end of a certain period of the mudarabah venture or upon actual realization of profit to arrive at the actual amount of profit. A final adjustment in accordance with AAOIFI or DAB's regulations/circulars shall be undertaken to the amounts already recognized, to reflect the actual profit of the mudarabah venture.
- (6) The methodology used for determining the profit distribution shall be objective, transparent and acceptable to all contracting parties. Only direct expenses shall be deducted in calculating the profit, defined as expenses which are:
  - 1- identifiable and measurable; and
  - 2- Compulsory and incurred in order to complete specific activities in the mudarabah venture.
- (7) In addition to requirement set forth **above (19.6)**, the direct expense shall be clearly define and approve by Sharia board of IFI, prior executing the mudarabah contract by contracting parties.
- (8) The contracting parties shall determine the time period or date for the profit distribution of the mudarabah venture.

## Loss

### Article 20:

- (1) Pursuant to paragraph (10.1 check it at loss part), any loss shall be recognized and measured based on the provisions of this guide or other applicable guidelines/standard introduced by DAB accordingly.
- (2) Expectations and requirements on the *mudarib* shall be sufficiently provided in the terms and conditions to ensure proper conduct of the *mudarib* and to protect the interests of the *rabbul mal* in the event of loss.
- (3) The *mudarib* shall be fully liable if it is proven that the loss is due to his misconduct, negligence or breach of specified terms.
- (4) If the loss is not attributed to misconduct, negligence or breach of specified terms of the *mudarib*, the loss shall be borne by the *rabbul mal* up to the amount of capital contributed.
- (5) Application of any mechanism which will effectively cause the *mudarib* to guarantee the principal amount upfront is prohibited.

## Guarantee or Collateral

### Article 21:

- (1) For the purpose of paragraph **11.2.2**, an independent third party guarantee shall exclude the following parties:
  - 1- for corporate guarantors:
    - i- entities with control over the *mudarib*; or
    - ii- Entities controlled by the *mudarib* as defined in law, regulations and circulars.
  - 2- for individual guarantors:
    - i- employee (and his close relatives) of the *mudarib*; or
    - ii- Controlling shareholder (and his close relatives) of the *mudarib*.

## Exit from venture

### Article 22:

- (1) An IFI shall clearly stipulate the terms and conditions of an exit of a *mudarabah* venture, which includes the:
  - 1- tenure of the *mudarabah* venture;
  - 2- time or intervals allowed for the purpose of withdrawal or redemption;
  - 3- qualifying criteria for an exit before maturity;
  - 4- potential amount payable or to be received, including compensation or damages incurred; and
  - 5- Operational procedures for the exit including submission of relevant documents, notice period, number of days taken to process the transaction and settlement period.
- (2) The exit may be in the form of dissolution, termination, withdrawal or redemption of the *mudarabah* capital.
- (3) Processes and procedures on the exit mechanism shall be clearly stipulate and communicated to the relevant functions or departments in an IFI in Order ensure effective and efficient execution of exit.



- (4) An assessment on the impact of each exit options shall be conducted by the IFI to determine the best value realization.
- (5) The IFI shall obtain legal opinion that the exit mechanism can be executed without any legal impediments.
- (6) In the event the IFI exits from the mudarabah venture, an assessment on any potential damages payable to the mudarib or any other parties involved shall be conducted.

## **Documentations**

### **Article 23:**

- (1) An IFI shall develop comprehensive and legally enforceable documentation for a mudarabah venture which are in compliance with Shariah and regulatory requirements.
- (2) At a minimum, the legal documentations shall clearly stipulate the following:
  - 1- the purpose of the mudarabah venture;
  - 2- the contractual relationship between the various parties;
  - 3- the rights, roles and responsibilities of the parties to the mudarabah venture;
  - 4- the amount of capital contributed by the rabbul mal;
  - 5- the PSR;
  - 6- IRR & PER if any;
  - 7- the loss that shall be borne by the relevant contracting parties;
  - 8- the calculation methodologies and timing for profit distribution;
  - 9- the tenure of the mudarabah venture;
  - 10- the pricing or valuation method of underlying assets;
  - 11- requirements on the reporting of the mudarabah venture's performance which includes the frequency and the information to be reported;
  - 12- details on the collateral and guarantees including rights over assets, if any;
  - 13- the terms and mechanism of exit;
  - 14- The terms, fees and charges to be borne by the relevant contracting parties where applicable.
- (3) The use of Arabic/English and banking terminology in the documents shall be sufficiently clarified or translated to facilitate understanding of the contracting parties.
- (4) Where there is an arrangement of mudarabah with other Shariah contracts, the IFI shall ensure that the documentation involved is separated and executed in a sequence that is consistent with Shariah requirements.

## **Risk Management**

### **Article 24:**

- (1) A mudarabah venture may expose a rabbul mal to various types of risks, such as equity, market, liquidity, credit and operational risks. These risks, which appear at various stages of transactions, may change in nature and may necessitate a comprehensive and sound risk management infrastructure, reporting and control framework.
- (2) An IFI shall establish comprehensive risk management policies and procedures, systems and internal control to address risks in line with its risk appetite, throughout the life cycle of a mudarabah venture and shall include the following:
  - 1- the identification and monitoring of risks;

- 2- the appropriate valuation and calculation methodology for underlying assets and distribution of profit;
  - 3- the risk exposure limits;
  - 4- the risk mitigation techniques; and
  - 5- The monitoring and reporting mechanisms.
- (3) Internally, the IFI shall clearly specify and communicate the policies, procedures and limits to all its relevant functions.
  - (4) The IFI shall establish a systematic process to review and update its policies, procedures, internal limits and shall ensure consistency with the risk appetite of the IFI and material changes within the industry.
  - (5) In structuring the products based on mudarabah contract, the IFI shall ensure appropriateness of product structure against the intended risk and reward profile.
  - (6) An effective risk management framework shall consist of three main stages prevalent in a mudarabah venture:
    - 1- The pre-contractual stage;
    - 2- The during or on-going stage; and
    - 3- The exit stage.
  - (7) IFI shall explain the above stages in related policy with details.
  - (8) At the pre-contractual stage, the risk management objective is to enable sufficiency of information for decision making purposes before embarking on a mudarabah venture.
  - (9) An IFI shall ensure that the objectives and criteria of potential mudarabah ventures are in line with the IFI's investment strategy.
  - (10) The IFI shall ensure that a comprehensive and robust feasibility and due diligence framework is in place to facilitate effective decision making,
  - (11) The IFI shall ensure that the rights to fully access the books and records of the mudarib and any information that would potentially affect the mudarabah venture shall be clearly stipulated by the terms and conditions.

## **Financial disclosure**

### **Article 25:**

- (1) The IFI shall provide adequate disclosure and transparency to facilitate stakeholders' understanding and assessment of mudarabah ventures.
- (2) An IFI shall maintain accounting records and other records in a timely manner which will sufficiently enable the preparation and reporting of financial statements that give a true and fair view.
- (3) The financial disclosure for a mudarabah venture shall include (but not limited) the following:
  - 1- the value of the mudarabah venture:
    - i- the initial capital contribution;
    - ii- the outstanding or recoverable value by sector including any losses incurred or provisions made during the period; and
- (4) The composition of aggregate sources of funds.
- (5) Any potential consolidation in the financial statements of an IFI arising from the mudarabah venture shall be notified to the Bank in advance.

- (6) Requirements stipulated in the Guidelines, circulars on financial reporting for IFIs and all applicable standards issued by DAB shall be observed by the IFI.

## **Fair dealings**

### **Article 26:**

- (1) An IFI shall give due regard to the interests of contracting parties in its policies and procedures to ensure that a mudarabah venture is conducted in a fair, transparent, responsible and professional manner.
- (2) The internal policies and procedures of an IFI on business and market conduct for a mudarabah venture shall reflect fair dealing practices to the contracting parties, including:
  - 1- the suitability assessment;
  - 2- the information provided which shall be accurate, clear and not misleading;
  - 3- the fees and charges (if any); and
  - 4- Reasonable care is taken to ensure suitability of advice and recommendations, if any.
- (3) All conflicts of interests including those that will potentially occur under a mudarabah venture shall be disclosed to the contracting parties by the IFI.
- (4) The IFI shall ensure fairness in the terms of the mudarabah contract including in any amendments to the mudarabah contract during renegotiation or extension of tenure.

## **Disclosure of information**

### **Article 27:**

At the pre-contractual stage, an IFI shall provide adequate and relevant information to the potential contracting parties in the marketing and promotional materials, product disclosure sheet and any other relevant materials with regard to a mudarabah venture. The information shall include:

- (1) a comprehensive description of the mudarabah venture, which includes:
  1. the contractual relationship between the mudarib and the rabbul mal;
  2. the concept of profit sharing between the mudarib and the rabbul mal and loss bearing by the rabbul mal;
- (2) an overview of the transaction's structure;
- (3) the roles, responsibilities, rights and obligations of the contracting parties;
- (4) the key terms and conditions of the mudarabah contract; and
- (5) The requirements, if any, for guarantee and/or collateral (including the rights and obligation of contracting parties on the collateral pledged).
- (6) The IFI is also required to observe the minimum information to be disclosed in the product disclosure documents as prescribed in the Guidelines/Circular on Product Transparency and Disclosure.
- (7) At the point of entering into the contract, the IFI shall disclose the salient features of the mudarabah venture in the legal documentation to facilitate the contracting parties' understanding of the terms and conditions of the mudarabah contract.

## Chapter Four

### SPECIFIC OPERATIONAL REQUIREMENTS FOR IFI AS CAPITAL PROVIDER

#### IFI's Level Oversight of Mudarabah Venture

##### Article 28:

- (1) An IFI shall have qualified staff with the relevant skills and expertise to provide oversight on the Islamic banking products specifically for mudarabah ventures.
- (2) The roles and responsibilities of the mentioned staff include:
  - 1- conducting appraisal of proposals received from a potential mudarib and recommending a mudarabah venture to the relevant person(s)/ department (s) if it is deemed viable;
  - 2- monitoring the progress of the mudarabah venture, regular on-site visits, on-going collection of relevant information and conducting analysis on impact to the mudarabah venture;
  - 3- ensuring that risk management policies and internal control to manage exposures are adhered to; and
  - 4- Promptly alerting the senior management according proper reporting line if abnormalities are detected and preparing progress reports to the management on a periodical basis.
- (3) Where the exposure to mudarabah ventures reaches to specific limit (determined by DAB or IFI internal policies) of the total capital, an IFI shall establish dedicated oversight committees (broad and managerial level) to enable higher level of focus and in-depth deliberation;
- (4) The IFI shall ensure that at least one member in the oversight committees has the expertise and experience in the main business segments relating to mudarabah ventures.

#### Mudarabah Venture's level Oversight

##### Article 29:

- (1) For an IFI as a rabbul mal, the IFI shall ensure that effective mechanisms are in place to monitor and assess whether the mudarib is executing his duties effectively, diligently and in accordance with the stipulated terms and conditions of the mudarabah contract.
- (2) The IFI shall establish appropriate safeguard measures to ensure effective governance and oversight at the venture level.
- (3) The safeguard measures may include having a suitable observer with the necessary skills and experience at the mudarabah venture's board, management or project level. This is to ensure that the IFI has access to timely information, enhanced understanding of issues and is able to closely monitor the mudarib's conduct in executing fiduciary duties both at the highest as well as at the working level in the mudarabah venture.

#### Sources & Usages of Fund

##### Article 30:

- (1) An IFI's capital contribution under a mudarabah venture shall be subjected to the following requirements:
  - 1- Funding from Unrestricted Investment Account (UA) and Restricted Investment Account (RA) are allowed provided that the requirements as per the policy/DAB's document on Investment Account are adhered to. In addition, any utilization of UA fund shall be subject to conditions that would significantly mitigate liquidity risks;
  - 2- funding from shareholders' funds are allowed subject to the following:
    - i- the IFI maintains adequate capital as required under the Capital Adequacy Regulation (Capital Components); and
    - ii- the IFI clearly establishes its risk appetite for mudarabah ventures and establishes an internal limit on the use of shareholders' funds which commensurate with its risk appetite; and
  - 3- Funding from current deposits are not allowed except, if investment and term deposits are fully employed to the specified limits determined by DAB's or IFI's documents.
- (2) In utilizing funds for purposes of a mudarabah venture, an IFI shall assess the business venture viability and risk profile i.e. cash flow and risk and reward, in line with the IFI's risk appetite and sources of funds.
- (3) Provisions of this article are subject to profit distribution regulation and in case of conflict between the provisions of this article and the regulation, the provisions of the regulation shall prevail.

### **Saving & Investment Accounts Structure**

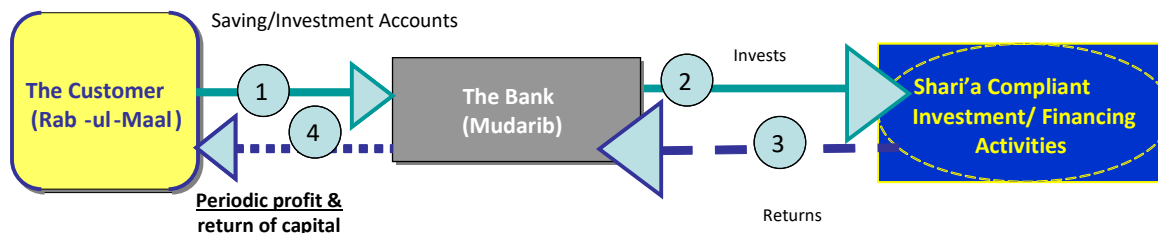
#### **Article 31:**

- (1) All the above provisions of this document are applicable to Mudarabah saving & investment accounts, unless otherwise the subject/context required.
- (2) In case of savings and investment accounts under Mudarabah arrangement, the customer becomes a capital provider (Rab al-Mal), and the Bank (the Bank) becomes the Manager (Mudarib) of the funds deposited by the customers. Besides acting as Mudarib, the Bank can also invest a share of its equity in the Mudarabah Pool.
- (3) All the funds for investment are collected in a pool of funds which will be used to invest in profit oriented Shariah-compliant financing and investments such as Murabaha or Ijara financing, etc. Both the Rab al Mal and the Mudarib will agree to a PSR prior to the start of the savings and investment accounts.
- (4) Mudarabah saving and investment accounts will be considered as Unrestricted Investment Accounts (URIA).
- (5) Account can be opened with a minimum balance to be decided by the Bank for savings and investment account.
- (6) Transaction charges for other services shall be in line with the Bank's approved Schedule of Charges.

## Saving & Investment Accounts Process Flow & Documentations

### Article 32:

- (1) Step by step process flow of mudarabah saving and investment accounts is as follow:



**Step 1:** The customer opens an investment/ a saving account by signing the account opening form (Mudarabah Agreement included) and providing the other required documentation and deposit amount to the Bank. The PSR will be agreed and documented. Neither the capital nor the profit will be guaranteed by the Bank.

**Step 2:** The Bank invests the funds in Shariah compliant financing and investments.

**Step 3:** The investment may make profits / incur losses.

#### Step 4:

- a- In case of profit, the total profit from the investment pool is split between the Bank and the account holders, in proportion to their respective shares in the joint investment pool. The Bank then deducts its share as Mudarib from the profit share of the account holders. The remaining profit of the account holders is then shared between different categories of accounts based on their respective weighted average balances. The weighted average balances should be consider as stated in profit distribution regulation.
  - b- In case of loss, the total loss from the investment pool is split between the Bank and the account holders, in proportion to their respective shares in the joint investment pool. The Bank will not get any profit as Mudarib, and the loss of account holders will be shared between different categories of accounts based on their respective weighted average balances as stated above (Step 4, a);
  - c- In case of loss or for business purposes such as displace commercial risk, the Bank may opt to pay some profit to the account holders as Hiba (profit) out of the shareholder's equity, if decided by the shareholders, to retain the deposit holders with the bank.
  - d- Where the loss is suffered due to negligence of, breach of contract by, or misconduct by, the Bank, the loss will not be borne by the account holders, and the Bank will have to bear this loss.
- (2) In general, the legal documentation for the Product will depend on the actual structure to be adopted by the Bank and the Bank's internal policies and procedures as advised by the respective Bank's legal counsel;
- (3) The following are minimum required documentation for saving and investment accounts:
- 1- Account Opening Application / Request through Internet Banking – duly approved by the Bank's Shariah Board.
  - 2- Payment amount through fund transfer instruction /cheque / transfer from existing Islamic / conventional account of the customer.

- 3- Investment withdrawal form duly approved by the Bank Shariah Board.
  - 4- Account Services Form duly approved by the Bank Shariah Board.
  - 5- Investment Receipt.
- (4) The bank should define the key elements of standard legal documentation for the product and should specify briefly who is responsible for origination of the documentation.

## Accounting Entries

### Article 33:

- (1) The Bank may opt to apply the following accounting entries/ accounting entries according to AAOIFI or as per Bank internal policies and guidelines for saving & investment account:

### Suggested Accounting Entries

#### 1- Opening Mudarabah Saving/Investment Account

DR Cash in Hand (B/S – Asset)  
CR Customer's saving / Investment Account (B/S – Liability)

#### 2- Recording of Mudarib Share of Profit

DR Mudarabah Expense Account (Mudarib Share) (P&L)  
CR Mudarib Income (P&L)

#### 3- Accrual of Mudarabah Profit Payable

DR Accrued Profit on Mudarabah Saving / Investment Account (B/S – Asset)  
CR Profit Payable on Mudarabah Saving / Investment Account (B/S – Liability)

#### 4- Profit Distribution

DR Profit Distribution Account (B/S – Liability)  
CR Accrued Profit on Mudarabah Saving / Investment Account (B/S – Asset)  
CR Profit Equalization Reserve (B/S – Liability) (if any)  
CR Investment Risk Reserve (B/S – Liability) (if any)

#### 5- Profit Payment

DR Profit Payable on Mudarabah Saving / Investment Account (B/S – Liability)  
CR Customer's saving / Investment Account (B/S – Liability)

#### 6- Cash Withdrawals or Purchase from Account

##### 6.1 For Cash Withdrawals

DR Customer's saving / Investment Account (B/S – Liability)  
CR Cash in Hand (B/S – Asset)

##### 6.2- For Purchases

DR Customer's saving / Investment Account  
CR Card Schemes Settlement Account

#### 7- For Inter – Branch/ Online Transactions

##### 7.1- For Cash withdrawals – using ATM / Debit Card

DR Transit Account (Suspense Account)  
CR Cash – at ATM (B/S – Asset)  
DR Customer's saving / Investment Account (B/S – Liability)  
CR Transit Account (Suspense Account)

- 7.2- **On Issuance of Pay order / DD/TT/MT (**  
 DR Customer's saving Investment Account (B/S – Liability)  
 CR Pay Order Issued / DD / TT / MT Suspense Account  
 CR Commission / Charges Income Account (P&L)

**8- Periodical Fee/Service Charges (if any)**

Transactions should be mapped only for those charges approved by the bank's shariah board and based on this given criteria, the following entry are proposing to pass by system:

- DR Customer's Saving / Investment Account (B/S – Asset)  
 CR Respective Fee/Charges/Income Account (P&L)

**9- Closure of Saving and Investment accounts:**

- DR Customer Saving/Investment Account (B/S – Liability)

CR Account Close Fee/Charges Due (if any)

CR Cash in Hand/Pay Order Account (B/S – Asset/Liability)

**Risk associated with product**

**Article 34:**

The following risk mitigation measures are proposed to IFI and in addition to that the IFI should take more stringent risk mitigations measures for mudarabah saving and investment accounts:

- 1- General risk associated with the product:

Risk Category & Nature of Risk		Mitigating Factors
Documentation Risks	Incomplete Documentation	Obtain all the common and business related in the manual and ensure completeness in all respect before opening of account.
Quality Related Risk	Customer Identification	Original identification documents to be personally checked by Customer Service Officer KYC formalities to be completed Returned mails should be properly reviewed
	Employee Fraud	Establish a set of internal controls to prevent and detect fraud.
		Tool of segregation of duties shall be employed to mitigate the risk
Loss of Computerized Data	Daily back up by department	
	Ensure contingency planning	



Operational Risks	Shariah Compliance	
	It system implementation	
	Sequence of documentation is not correct	
Business Risk	Rate of return	The Bank will gather market information about similar products and ensure that the pricing of the product is competitive. Effective assets and liability and liability management policy.

2- Specific risk associated with the product:

Risk Category & Nature of Risk	Mitigating Factors
<p>Displace Commercial</p> <p>Risk Bank may confront commercial pressure to pay returns that exceed the rate that has been earned on its assets financial by account holders</p>	<p>Build effective risk management framework and ensure its implementation. Keep profit equalization reserve and pay account holders out of such reserves if needed, in order to maintain a certain level of returns to the account holders.</p> <p>Bank may forgo part or its entire share of profits in order to retain its account holders and dissuade them from withdrawing their funds.</p>
<p>Equity Investment Risk</p> <p>Risk arising from entering in to partnership for the purpose of undertaking or participating in a particular financing or investment activity &amp; in which the capital provider shares in the business risk</p>	<p>Prudent selection of investment activities and robust selection criteria for financing candidates.</p>

### Specific Requirement of Saving Account

#### Article 35:

- (1) The Rabb al-Mal may withdraw their capital from the bank as they wish with regards to the amount and time. Both parties may agree on the effective or minimum amount of investment to maintain the Mudarabah arrangement.

- (1) This product will be offered to the customers who seek to earn a nominal return of investment (if any) on their savings and at the same time having the flexibility to withdraw their capital as they wish according to saving account terms and conditions.
- (2) Profit for savings account shall be calculated based on daily accrual basis and could be paid on periodical basis as agreed in the contract. The profit calculation is based on the lowest monthly balance or any monthly balance (but not less than the lowest monthly balance) in the account provided that the balance of the account does not fall below the minimum balance, as agreed between the parties, at any day of the month.
- (3) The Banks may opt to have an arrangement where profit will not be paid for the month in which the account does not have a credit balance for at least 15 days, e.g., a savings account opened on the 17th day of the month shall not be eligible to share in the profits for that month, however, a saving account opened on 13th day of a month shall share in the profits for that month in proportion to the number of days the account had the minimum required balance.
- (4) Customer may give standing instructions for payment of bills and other periodical payments including the payment to the same bank for any financing obligation which is to be debited from the savings account.
- (5) Savings account holders are entitled to ATM Card Facilities (daily ATM Cash withdrawals and limit as per Risk Policies).
- (6) There is a minimum balance restriction of an amount to be decided by the Bank, and the balance shall not participate in the profit for a month if it falls below that particular amount at any time during the period of profit calculation. Subject to maintenance of minimum balance in the account, there are no limits on number of withdrawals.
- (7) The bank may advertise the expected profit for this account and may also provide some incentive such as lucky draw or any other rewards for opening and maintaining certain amount in this account.

### **Specific Requirement of Investment Account**

#### **Article 36:**

- (2) The Rabb al-Maal may be allowed to withdraw their capital from the bank as per the terms of the investment account and the effective amount of investment is as per agreed between the two parties.
- (3) Profit for investment accounts (if any) shall be calculated based on a pre- determined accrual basis and will be paid on the maturity of the investment or any other periodical basis as agreed in the contract.
- (4) Profit will be distributed based on the agreed Profit Sharing Ratio and proportionate to the respective investment amount.
- (5) Unlike deposit accounts based on Qard, this account allows the Bank to advertise the expected profit based on historical performance.
- (6) The Bank may opt to allow early withdrawal but will either penalize the customer for any early withdrawal of these funds or request that the customer waives any profit realized

should the customer opts for early withdrawal. This is to deter the practice of early withdrawal of Mudarabah funds from the investment account. The Bank's Shariah Board will be consulted with for any mechanism to this effect

## **Miscellaneous**

### **Article 37:**

- (1) The Guide shall, however, be read in conjunction with other related internal and external policies, manuals and regulations/ circulars issued by DAB from time to time.
- (2) This Guide shall be reviewed periodically by Islamic banking & Finance Department of DAB to ensure that it is in line with the leading industry practices and caters to the customer requirements as well as ensure that the guide is in line with other applicable changes introduced by DAB and other regulatory authorities.
- (3) A *Mudarabah* agreement shall include the definition of the general contractual framework; the intention of the parties on restrictions on the contract or otherwise; the intention of the parties on having either a revolving transaction or separate transactions; the profit sharing arrangement; and types of guarantees or collaterals involved in the contract in the event of loss due to misconduct, negligence and breach of contract.
- (4) A business venture of *Mudarabah* may be in various sectors including but not limited to trading, plantation, construction, manufacturing, investment and services according to IFI & DAB documents.
- (5) The terms and conditions for the appointment of a mudarib shall include clarification of the liabilities to be borne by the mudarib.
- (6) As part of the measures to mitigate risks, an IFI shall identify potential exit options in order to immediately cut loss, taking into consideration the overall impact to the IFI which may include potential compensation or damages payable to a mudarib.
- (7) An IFI shall not disclose any material information, for example trade secrets, of the mudarabah venture to any third party without authorization from the mudarib.
- (8) In the case of conflict between the provisions of this guide and profit distribution and risk management documents the provisions of this document shall not prevail.
- (9) AAOIFI standards are applicable in case the issues (related to mudarabah) not covered in this guide.
- (10) The Islamic banks shall be given (3) months from the effective date of the guide to comply with all the requirements.
- (11) IFI may add any new additional guidelines within the framework of this document and the Shariah Board of the IFI shall always be consulted first before the adoption of same and in addition to that "the new additional guidelines" shall not contradict to provisions of this guide.
- (12) After the effective date of this document, the mudarabah product guide and mudarabah outlines (saving and investment mudarabah accounts) are nullified.

### **Effective date of document**

#### **Article 38:**

This regulation shall take effect upon the date of its issuance by Da Afghanistan Bank.