



Islamic Republic of Afghanistan
Da Afghanistan Bank

Summary

Da Afghanistan Bank (DAB) is issuing for public comment a regulation on acquiring a participation that yields a qualifying holding or that increases a qualifying holding above certain threshold limits. The circulation of the regulation for comment is consistent with Article 3 of the Decree Law of Banking in Afghanistan (Banking Law), which requires that a regulation be published in the manner “best calculated to bring the regulation to the attention of the domestic banking industry.” If DAB determines that the delay in issuing a regulation that would be caused by circulating the regulation for public comment would be a “serious threat to the interests of the banking system” it may forego this requirement. In the case of this regulation, DAB chooses to circulate the regulation for public comment.

Purpose of rule

The purpose of the regulation is to detail procedures for application to and review by DAB for obtaining a qualifying holding or increasing a qualifying holding above certain thresholds specified in Article 21 of the Banking Law.

The adoption and full implementation of this rule is generally in keeping with Principle 4 of the Core Principles of Effective Banking Supervision of the Basel Committee.

Background and summary of rule

A banking supervisor must have the authority to require application to acquire a participation in a bank that yields a significant ownership or controlling interest or an enterprise that holds a qualifying holding in a bank. This is accomplished in Articles 1 and 21 of the Banking Law, which detail the definition of “qualifying holding” and then prescribe certain levels at which an acquirer of a participation in a bank or an acquirer of a participation in an enterprise that holds a participation in a bank must make application.

The rule details the process that banks must follow in submitting their applications, including all the background and financial information that is needed for DAB to fully understand the applicant, as well as the specific transaction involved in acquiring or increasing a qualifying holding. There are also additional requirements placed on non-resident applicants to assure that the home supervisor is aware of the transaction, if it is required, and that the supervisory structure in the home country meets certain standards. All applicants must publish notice of application in a newspaper of wide circulation. Finally, the rule details a list of reasons that may cause DAB to deny a submitted application.



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Article Eleven: Qualifying Holdings

Part A — General.

§ 11.1.1. Authority

This regulation on qualifying holdings of banking organizations is pursuant to the authority granted to DAB by Article 21 of the Decree Law of Banking in Afghanistan (Banking Law).

§ 11.1.2. General goals and objectives.

- a) This regulation aims to detail and clarify Article 21 of the Banking Law on “qualifying holdings.”
- b) The objectives of this regulation:
 1. Set forth procedures for application and review to DAB for obtaining a qualifying holding or increasing a qualifying holding above certain thresholds specified in the Banking Law.
 2. Detail the reasons that an application for a qualifying holding or increase to a qualifying holding would be rejected by DAB.

Part B — Procedures

§ 11.2.1. Procedure for Submitting Application.

A person seeking approval to acquire a participation in a bank that yields a qualifying holding, or that increases an existing qualifying holding above the 20 percent, 33 percent or 50 percent thresholds or causes the bank to become a subsidiary of that person, shall submit an application to DAB at least three months prior to the date that the person intends to acquire that participation, with respect to resident applicants, and six months prior in the case of a non-resident applicant. Additionally, a person seeking to acquire a participation that constitutes a qualifying holding in an enterprise that has a qualifying

holding in a bank, or that increases an existing qualifying holding above the 20 percent, 33 percent or 50 percent thresholds shall submit an application to DAB under the same time constraints. The application shall contain the following information:

- a) If the applicant is a physical person, background data on the applicant, including educational background, professional activity and work experience;
- b) If the applicant is a legal person:
 - founding document of the applicant;
 - background data (professional qualifications, work experience and information relating to the fitness and propriety) on each director and person with the power of management of the applicant;
- c) data on sanctions/enforcement actions - applied to the applicant by any court or any ministry or commission having such enforcement authority, within five years prior to submission of the application.
- d) Financial data (balance sheet and income statement) for the last three fiscal years (or as of the close of each reporting period after the date of foundation of the legal person, if this period of time is less than three years), as well as for the end of the last quarter prior to submission of the application. In the case of a legal person, this data must be accompanied by an auditor's report.
- e) Information concerning the intended acquisition, including:
 - the intended source of funds to be used for the acquisition, with attachment of copies of confirming documents;
 - the identities of the persons from whom the applicant intends to acquire shares, and the percentage of the institution's shares to be held by the applicant;
 - financial prognosis of the consequences of the acquisition, including information about any plans which the acquirer may have to sell the assets of the institution, merge it with another legal person, or significant changes in the structure of its management or nature of its business activity (including, if applicable, detailed proposed business plan and organizational structure);
- f) information about existing or proposed connected related persons of the applicant, the nature and scale of their business, and the nature of their proposed business relationship with the financial institution, including any plans to transfer assets from related legal persons to the proposed financial institution;

- g) if the application entails obtaining a qualifying holding without ownership of shares, a description of the arrangements with shareholders, or persons with power of management of the institution that will result in the applicant exercising significant influence.

DAB may require any additional information that is necessary for consideration of the application. The application is not considered complete until all necessary information is received by DAB.

§ 11.2.2. Additional Requirements for Application by Non-resident Applicant.

A non-resident of Afghanistan must submit the following information in addition to the information listed in paragraph 11.2.1 of this Notification:

- a) Written confirmation from any relevant authority of the applicant's home country allowing the applicant to become a significant participant or person with power to exercise control of a financial institution in Afghanistan, if such authorization is required in the applicant's home country, or a written declaration from the applicant that such authorization, under the applicant's country's legislation, is not required;
- b) In the event that the applicant is a bank or other legal person authorized to take deposits in another country, information about the supervision of depository institutions in that country, confirming that the applicant is subject to comprehensive regulation and supervision on a consolidated basis in its home country.

In considering the standard of supervision exercised by the home supervisor, DAB will consider, in particular, the *Core Principles of Banking Supervision* promulgated by the Basel Committee on Banking Supervision. This includes whether the home supervisor supervises the foreign bank applicant on a consolidated basis in accordance with the principles contained in the Basel Principles, and is prepared to cooperate with DAB in the supervision of the financial institution in Afghanistan.

§ 11.2.3. Required Publication of Notice.

An applicant must publish a notice concerning application in at least one newspaper of wide circulation in the area in which the headquarters of the financial institution is located. Such notice may be published at any time after submission of the initial package of information concerning the application, and must be published no later than two weeks after DAB notifies the applicant that the application has been deemed to be complete. Any interested person may submit to DAB a statement of reasons for which the application should be denied.

Part C — Denial of Authorization.

§ 11.3.1. Grounds for Denying Approval.

DAB may deny approval to a natural or legal person (applicant) after application under § 11.2.1. for any of the following reasons:

- a) If DAB is not satisfied that all of the conditions in Article 21, Paragraph 6 of the Banking Law are met in full, including the limitation in Subparagraph 6(5) on ownership as a subsidiary by an enterprise that is not a bank or bank holding company.
- b) The applicant is in an unsatisfactory financial condition evidenced by any of the following factors:
 - i. The applicant has been declared bankrupt;
 - ii. The obligations of the applicant exceed its assets, even if the applicant has not been officially recognized as bankrupt;
 - iii. The applicant has a history of problems paying interest or principal on any financial obligations;
 - iv. The applicant's financial statements indicate that the applicant would not be a source of financial strength, in the sense that the applicant would have difficulty contributing additional capital to the bank should it become necessary; or
 - v. Other reasons that evidence to DAB a potential serious weakness in the overall financial condition of the applicant or a potential loss to the subject bank and/or its depositors.
- c) In the event that the applicant, for a natural person as to individual qualifications or for a legal person as to power of management, lacks the necessary professional qualifications or work experience to exercise significant influence over the management of the bank.
- d) The resulting relationship between the institution and any related persons of the applicant indicate a significant possibility of danger to the institution, its depositors or potential depositors, or the resulting pattern of corporate ties between the institution and related legal persons indicate that DAB could not conduct effective supervision of the institution (including the financial business group the institution is a component entity of on a consolidated basis).
- e) The applicant submitted information that does not comply with the requirements established by this regulation, or failed or refused to submit information requested by DAB to make a decision on the application.
- f) DAB determines that the applicant submitted false or misleading information in connection with the current application or any other application or request.

Part D — Effective Date of Regulation.

§ 11.4.1. Publication in the Official Gazette.

This regulation will become effective one calendar month following its publication in the Official Gazette.