



Da Afghanistan Bank Decree No () of 2010

The Governor

The first action is to examine the existing banking laws to determine if the Afghanistan Banks Association can legally establish and operate the Afghanistan Clearing House. In reviewing the existing banking laws, The Afghanistan Bank Law and the Law of Banking, the following references to Payments Systems and Clearing of banking instruments are sighted:

- **The Afghanistan Bank Law**
 - **Article 87 Payment systems and payment system operators**
 - 87.1 Da Afghanistan Bank shall establish, maintain and promote sound and efficient payment systems.

This article states that the Da Afghanistan Bank is the owner and operator of the payment system.

- **Law of Banking**
 - **Article 33 Banking activities**
 - Banks may engage in the following activities subject to the provisions of their banking license and this law:
 - 33.5 providing clearing, settlement and transfer services for money, securities, and payment instruments (including checks; credit, debit and other payment cards; travelers' checks; and bank drafts, wire transfers, and preauthorized debits and credits).

Article 33.4 permits the commercial banks and the Afghanistan Banks Association to establish the Afghanistan Clearing House for the clearing and settlement of checks and other low-value payments.

Decreed

Article (1): Provisions of the accompanying by-laws of the Clearing House shall apply.

Article (2): This Decree shall enter into force as of date of issuance thereof.

The Governor

Date: / /2010



**Islamic Republic of Afghanistan
Da Afghanistan Bank**

By-laws of a Check Clearing House

Purpose: A clearing house is basically an association of banks organized to exchange checks, drafts, or other payment types, including electronic transfers, which maintain a daily log of transactions it accepts on behalf of members. At the close of business, the clearing house arranges the settlement of obligations and transfer of funds from members who owe money to members who have money due. In its capacity as a central facility, the clearing house acts as buyer to all sellers and seller to all buyers.

Part 1. Establishment of the check clearing house

§1.1. Purpose of check clearing house

The Da Afghanistan Bank (DAB) shall establish a check clearing house (CH) which shall supervise and regulate clearance transactions, address problems related to settlements and take actions it deems necessary in this respect.

§1.2. Currencies of check clearing house

The CH will handle transaction in three (3) currencies AFN (Afghanis), USD (dollars) and EUR (Euros) for the time being and eventually any other currency permitted by DAB.

§1.3. Permissible members of check clearing house

The CH members shall be banks registered at the DAB which have headquarters or branches in Kabul.

§1.4. Designation of branches by bank members

The CH shall cover entire governorates of Afghanistan. For the time being, only Head office or main office of the banks can be a member of the CH and member banks will provide the list of their branches which come under the CH.

§1.5. Representation of bank members

§1.5.1. Representatives of bank members of the CH shall attend the trading session. Such representatives shall have sufficient banking knowledge and show competence, good personal attributes and appropriate appearance as a

representative of the bank member of the CH. Representatives shall be empowered to act on behalf of the banks they represent in relation of clearing transactions including:

- a) Receipt and delivery of papers from and to the CH directly related to the CH;
- b) Return of papers the representatives receive as well as documents issued by the CH;
- c) The authority to sign any documents that may arise in the course of CH business. He / she must be empowered to act on behalf of the bank with regard to acceptance / rejection of transmittal documents related to the CH.

§1.5.2. A list of the representatives shall be maintained at the CH which includes their names, personal photos and samples of their signatures as approved by the bank they represent. Each Bank submits names of at least two representatives so that in the event that one is absent from work the alternate could attend the clearing. The DAB may require the bank member of the CH to change its representative at the CH for reasons deemed necessary by the DAB in order to guarantee the good course of business.

Part 2. Clearing house management, advisory support and fraud prevention

§2.1. Clearing house manager

The CH manager shall

- a) Be responsible for the day to day supervision and smooth operation of the CH;
- b) Be responsible for importing clearing account balances from, and exporting settlement positions to the DAB accounting system;
- c) Ensure that the CH and its computer systems are adequately secured;
- d) Ensure that the premises for clearing are accessible and usable during CH business hours;
- e) Be an ex-officio member of the CH and frauds committees.

§2.2. Clearing House Committee / Fraud Committee

Clearing House Committee / Fraud Committee shall be combined to reduce administrative burden until such time as volumes warrant separation. The joint committee shall:

- a) Be a technical committee advising the DAB on CH operations;
- b) Be constituted by nominees of officials from member banks who can take decisions on behalf of their banks;
- c) Elect a chairperson and a secretary from among themselves who will be responsible for convening meetings;
- d) Formulate, review and propose amendments to the CH rules and procedures;
- e) Make recommendations for improvement of the clearing processes;
- f) Represent the interests of their organizations at the CH;
- g) Be a technical committee advising the ABA on ways of preventing and managing fraud;
- h) Study the nature, frequency and level of success of attempted frauds through the CH;
- i) Propose ways of mitigating CH fraud;
- j) The chairperson and the secretary should have tenure of two years until further notice and can be replaced by a majority vote of the committee members.

§2.3. Trading data

Paper-based trading between member banks shall be authentic. Trading of electronic data shall be used for accounting purposes regardless of paper items.

Part 3. Membership

§3.1. Applications for membership

Applications of banks applying for membership in the CH for the first time shall be filed at least 30 (thirty) days prior to their effective date as per attachment (1). Application shall define the current account reserved for settlements which shall be used to settle the balance of clearance results. Applications shall be submitted to the CH in duplicates. In case of admission, the CH shall notify the applicant bank as well as all member banks.

§3.2. Admission of sub-members

A financial institution (except licensed banks) may wish to apply for sub-membership of the CH if it is licensed by DAB, to carry on the business of banking in Afghanistan under the Law on Banks.

A sub-member shall be:

- a) A financial institution that does not hold a settlement account with DAB; or
- b) A bank that has recently been granted a banking license but is not yet in a position to become a full member.

A full fledged bank should not have the choice to become a sub member as it has to be a full member.

Every applicant for sub-membership shall be proposed by a member, which shall also act as a sponsor for that bank i.e. clearing items on its behalf. The application for sub-membership and termination thereof shall go through the prescribed stages for accepting a new member.

All the liabilities and risks of a sub-member participating in the CH shall be borne by the sponsoring bank.

§3.3. Discontinuance of membership

§3.3.1. A bank should not have the choice to discontinue its membership in the CH unless it ceases to do banking business activity. If the bank does cease operations, the bank shall notify the CH at least 30 (thirty) days prior to said discontinuation.

§3.3.2. In the event activity is suspended by virtue of a resolution by the DAB Board of Directors, the DAB shall determine the date when the bank is no longer a member of the CH. No papers may be submitted or received on behalf of the member whose activity is suspended after said date and paper, if any, submitted or received thereby shall be automatically rejected.

- a) The member bank shall pay its obligations that may fall due on a date later than that of its activity suspension as long as said obligations are presented and processed at the CH session on a date prior to activity suspension.

§3.4. Combination, acquisition or merger of bank members

If it is resolved that two (or more) member banks in the CH or otherwise one bank acquires another, the merging (or acquiring) bank shall notify the CH at least 30 (thirty) days prior to activation of said merger or acquisition provided that the notification shall be accompanied with a copy of the approval by the DAB Board of Directors of the merger or acquisition resolution. The two banks shall clarify the position of papers that show the old name of the bank (or merged banks) and are presented to them in the CH after this change takes effect. The CH shall inform all member banks of the merger or acquisition. Said period may not apply to any decision made by the DAB in this respect.

§3.5. Liquidity

If the balance of a bank is converted to **debit (not greater than the required reserve held at DAB including capital notes held at DAB)**, DAB will provide collateralized

intraday liquidity for the member banks up to end of that business day free of charge, and if not covered up at the end of that business day it will automatically be converted into an temporary overdraft facility to the bank and in the early hours of the following working day interest will be charged at the rate of 15%. If the member bank is not able to replenish its account with a maximum of 3 international banks business / working days (banks may transfer funds from their Nostro accounts from abroad) DAB may sellor use its collateral (Capital Notes or other Government Securities held with the DAB) to recover its money granted to the member bank.

§3.6. Inactive members

If the DAB finds out that the member bank whose activity is suspended can not continue as an active member in the CH for a long period, the DAB may decide to eliminate said bank from the CH.

§3.7. Fines for non-attendance or non-compliance

With the exception of occurrences due to force majeure (including bombings, earthquakes, fires, collapse of the building, etc.) the DAB may impose a fine on a bank that participates in the CH in any of the two cases:

- a) repeated failure of the bank's representative to attend the sessions 2 times per month.; and
- b) non-compliance of the bank or bank's representative with the regulatory rules of the CH.

§3.8. Expenses of the clearing house

Expenses incurred by the DAB in managing the CH shall be distributed among the member banks. The member bank should not bear any other expense, except fee per check of checks presented by the member bank. The check fee/charges will cover all the operational expenses including capital expenses depreciation. The charges will be deducted automatically from the members accounts on monthly. The charges will be decided by the CH committee on a semi-annual basis.

§3.9. Payment of expenses by withdrawing bank member

The member bank may not withdraw from the CH unless said bank discontinues to perform its business provided that the DAB is notified as per provision of Article §3.3 of the bylaws. The withdrawing bank undertakes to pay any expenses it may incur for its membership duration which have not been settled and shall indicate the way used to settle such expenses.

Part 4. Clearing house transactions

§4.1. Payment methods accepted

Payment methods accepted by the CH include the following:

- a) Checks;
- b) Drafts;
- c) Cash orders.

§4.2. Other types of transactions

Other securities or transactions may be added or may not be traded to those accepted by the CH upon a decision by the Governor of the DAB or its delegate.

There are two kinds of securities:

- a) Securities that are not rejected and include transfer orders, rejections and direct debit.
- b) Securities that may be rejected and include bank checks, certified bank checks and settlement orders.

§4.3. Settlement of transactions

- a) Securities that are not rejected shall be payable (settled) on the same day they are submitted.
- b) Bank checks shall be settled according to the geographical location of the drawee branch.
- c) Certified bank checks shall be settled on the day following to their submission regardless of the geographical location of the drawee branch.

Part 5. Clearing house trading

§5.1. Paper trading and electronic trading

The process of physical trading inside the CH shall comprise two elements, namely, paper items and electronic data.

Electronic files shall conform to the technical specifications priory identified by the DAB (provide the name of the specific document and date it became effective).

Banks shall be responsible for the clearing files dispatched to the clearing computer. The CH may not change any data contained in these files, nor any alteration may be made in the contents of the clearing files during the clearing sessions. However, in case of disagreement between securities submitter and receiver over certain security, a statement of the security disagreed upon shall be automatically deleted from the electronic file at the time of accounting in order to guarantee accuracy of data. The dispatching bank shall send the files via telecommunications lines or via data transmission media (disks and CDs) in case of failure of telecommunication lines. In case of double submission (via telecommunication lines and data transmission media), first files to come shall be taken into consideration.

Participating banks shall verify that electronic files communicated to the CH are free from viruses. Member banks may not modify the electronic files dispatched thereby after the time set for dispatch of said files in order to avoid any disturbance of the clearing data.

Banks shall observe all technical data of the communication line reported to the member bank by the DAB by virtue of a form prepared by the CH.

§5.2. Submission of transactions

[A standardized memo for rejection should be prepared containing different reasons.]

Transactions submitted by banks shall be accompanied by an overall statement that indicates number and value of the items presented to each bank in addition to another statement that denotes number of the packages submitted and type of each package. Each package shall be accompanied with a docket that states details of the items contained therein, number and type of the package, the bank thereto the package is presented, number and value of the item as well as the total value. The package docket shall be reviewed by the bank's representative to which the package is submitted.

The checks shall be stamped by the sender prior to submission thereof to the effect they are "submitted". In case of rejections, rejection shall be stamped by the seal of the bank and attached to the check after fulfilling all signatures required and indicating the reason for rejection.

During the course of doing day to day business, there may be conflicts among members. The CH / Fraud committee shall resolve such issues of conflict through internal arbitration. If the conflict is not resolved internally, the issue will be escalated to the Afghanistan Financial Dispute Resolution Commission.

§5.3. Submission of electronic data

Electronic data shall be submitted according to the code system specified by the CH, and the file of the electronic data shall include a thorough description of the items submitted and a complete list of such items.

The CH shall provide each submitting bank with a report of the items submitted and furnish each receiving bank with a statement of the paper items drawn thereupon classified as per details of the electronic submission for convenience of comparison against the statement previously dispatched with each paper package. In this sense, all items of a certain package shall be of the same kind and refer to the same participant and are drawn upon the same area.

The member bank shall be held responsible for technical faults detected in the bank's file by the electronic clearing system, which faults that may lead to elimination of part or all securities submitted in a session.

§5.4. Presence of representative required

Electronic files sent by the member banks to the CH shall be dealt with only if the bank's representative is present at the session. Should the representative of the bank fail to attend the session, the bank's file shall be eliminated from the session provided that papers presented to the bank by other banks shall be received under the representative's responsibility. These papers and submission statements of other banks shall be kept at the CH to deliver them to the drawee bank as soon as possible. The CH is not responsible for any items that are exchanged by banks in the presence or absence of their representatives. The problems arising from such exchanges shall be resolved directly between relevant banks.

Part 6. Frequency of transactions and sessions

§6.1. Frequency of clearing transactions

The clearing transaction shall be performed once a day in the official working days inside the premises of the CH. The officer of CH may, if necessary, change the place and time of the sessions and shall make such decision in coordination with member banks in accordance with emergency working procedures communicated to the banks.

§6.2. Clearing sessions

There should be two sessions of clearing for Saturday through Wednesday and one session for Thursday. The first session will be for main clearing and the second session for return clearance and daily settlement. The first session should take place at 10:00 AM and the second one at 02:00 PM from Saturday – Wednesday and on Thursday at 09:00 AM and 12:00 PM. The hours and number of sessions are subject to amendment by the CH committee.

In the event that the clearing could not be conducted all members of the CH should be informed in advance by DAB by 09:00 AM

Check CH Time Schedule. Checks presented to the CH will be processed in T+1. If the beneficiary bank does not credit the funds in T+1, the bank should pay interest (at the rate of their savings account) to their customer for the period credit was not provided to the customer. In addition, the beneficiary bank must pay a penalty of 1.5% of the amount to DAB.

Customer checks presented to the CH in Session 1 will be validated and approved or rejected by the owing bank the same day. In Session 2 the bank will either validate or reject the check and the customer's account will be credited or the check reject the next day.

§6.3. Clearing sessions for government financing

A separate clearing session shall be held among the member banks in this system, in respect of the government financing at the CH. Such session shall be subject to the same procedures applicable to the ordinary clearing session. Items presented in this session shall be settled two days after being presented (T+2). The method adopted in the ordinary clearing for creating files shall apply to such session. Such files shall be sent via the same network to the e-mail address specified by the DAB for every bank.

Part 7. Session results and settlement

§7.1.Reports on close of session

At the close of the clearing session, the CH shall create an electronic file indicating the clearance results of each member, which shall be added to or deducted from the account thereof, in order to list the accounting entries and electronically effect changes in the accounts of member banks that are opened with the DAB.

The representative of the member bank shall receive a group of printed reports with the same amounts. An electronic file of the results shall be sent to every bank via the connecting network.

This article shall apply as well to the banks participating in the government financing clearance session.

§7.2. Finality of settlements

Settlements effected on bank accounts, and resulting from clearing operations shall be deemed final and irrevocable settlements.

§7.3. Form of results files

Files resulting from clearing transactions shall take the same uniform form in which it was presented, and shall include a comprehensive list of all items presented to every member. The results of the session shall be available to the members immediately

after the adjournment of the meeting. The Administration inside the house shall assume preparing and providing the clearance results in the same manner of presentation.

§7.4.Return of rejected items

§7.4.1. Rejected items shall be returned as of the date of presentation up to the settlement date, and may not be returned after the settlement date. Rejection and resubmission times are unlimited within the effectiveness period of the payment device.

§7.4.2. There are two main reasons for rejection:

- a) Technical rejections, in terms of the file as a whole, in which case, the bank representative may not disseminate all the paper items upon the rest of subscribers, however, he may only receive the paper items submitted to the principal bank. For the partial rejection of one or more items, the bank representative in charge of presenting papers, shall exclude the rejected items only. The rejected item shall be deemed void and null. Technical rejection causes are indicated in appendix (2); and
- b) Bank rejections, which are made by the subscribers for the acknowledged legal causes as well as the rejection causes approved by the clearance system as indicated in the attached appendix (3).

§7.4.3. DAB may, upon consultation with the member banks, add new codes for technical or banking rejection, as the case necessitates and for the benefits of the work.

§7.5. Variation between electronic and paper files

In case of variations between the electronic files and paper items during the clearance session, the following measures shall be taken, according to the nature of discrepancy:

7.5.1. Excess paper items: Differences may appear in a package of rejectable and non-rejectable items. Should the number of papers in one package exceed the number of registrations in the clearance file, the excess papers shall be removed from the package and returned to the bank representative who submitted same.

7.5.2. Lost paper items: In this case the recipient bank representative shall register a memorandum of disagreement specifying therein the lost document, according to a specially prepared form, with the session observer, which will be signed by the representatives of the recipient and sender banks as well as the session observer during the session, before the final settlement. The item shall be reversely entered in the schedule of due dates, on electronic basis. The recipient bank shall be responsible for the missing papers, which were not reported to the session observer during the session, before the final settlements.

7.5.3. Difference of amounts:

a) If the paper is rejectable, it shall be dishonoured by the bank (the drawee bank) prior to the date of settlement thereof and with the same amount registered in the electronic file;

b) If the item is non-rejectable, a memorandum of disagreement shall be registered, through which the correction process shall be effected by reversing entry in the schedule of due dates during the session. The paper shall be delivered to the recipient bank to resubmit same with the right amount. The drawee bank shall be responsible for the inspection of difference, which shall take place in the trading session before the final settlement.

7.6. Member bank responsibility for ensuring sufficient balances

The member banks shall be responsible for settling the clearance transactions thereof and shall ensure that the balances of accounts thereof opened with DAB, are sufficient to settle such transactions.

7.7. Settlement on a “net settlement” basis.

Settlement will be on a “Net Settlement” basis.

7.8. Outsourcing of electronic file submission

The member bank may outsource one of the service companies, if possible, to send and receive the electronic files on its behalf. No change whatsoever shall result either in the provisions, periods or methods of applications defined in the Clearance House regulations. Papers shall be submitted to the CH by the Bank representative and not the service companies.

Member banks shall be responsible for all transactions presented on their behalf by such companies. Such companies shall neither be financially nor technically responsible, before DAB, for the electronic files sent to the CH. However, such responsibility shall fall upon the member bank itself.

The service company, cooperating with one of the subscribers, shall submit an application to DAB, supported by at least one of the member banks. The application shall indicate the financial position of the company, the methods of operation adopted, and the technical capacities and human resources of the companies.

DAB is duly authorized to:

Approve or reject the applications of the companies;

Suspend or restrict the activities of the company, if such company did not comply with the provisions of CH regulations, or if the continuation thereof would threaten the stability of the Clearance House system; and

Periodically review the transactions and technical capacities of the company to make sure that it satisfies all the requirements of the CH.

7.9. Submission of cheques

The bank shall submit the cheques to the CH not later than two days after receiving same from the customer.

The bank shall settle the customer account not later than the end of the same day of settling the bank account with DAB.

7.10. Member banks responsible for authenticity of submitted papers

The Bank, which submitted the papers, shall take all precautionary measures to make sure that no forged papers will be submitted in the clearing system, including the adoption of modern technology (e.g. X-ray inspectors...etc.) to examine the papers submitted by the Bank to member banks. DAB may decide in the matter of the bank that submitted forged papers, which might have been discovered through the methods acknowledged in other banks. The Bank shall be notified in the first time; however in case of recurrence, DAB may take the adequate measures vis-à-vis such Bank. In all cases, the Bank, in the event of discovering a forgery of a paper drawn thereto and presented through the CH, shall reject such paper due to its forgery, within the period prescribed for its rejection.

Part 8. Miscellaneous

§8.1. Alternative plans in case of force majeure event

In case of occurrence of force majeure (including earthquakes, fires, collapse of the building....etc.), in the manner that precludes the convention of the clearing session, member banks shall adopt the pre-defined and agreed upon alternative plans (name of plan and date), which have been reported by the CH to every bank. Such plans organize in detail, in cooperation with the experts in the CH, the method of sending files and the place of holding the session in each of the above mentioned cases.

§8.2. Holidays

In the event that DAB decided that the following working day is holiday (sudden holiday), or a decision to this effect has been taken at the state level, banks shall:

- a) amend the date of the electronic file sent by them to be the first working day after the sudden holiday;
- b) send another file with the right date, if such Bank was informed of the sudden holiday after already sending the file, subject to article (23);
and
- c) the clearing system shall carry over the amounts that should be settled within the coming days for a period equivalent to the days of the sudden

holiday, and banks shall amend its systems accordingly to the same period in order to conform with the clearing system.

§8.3. Islamic banking transactions

The CH will have the ability to handle Islamic banking transactions. All reporting and settlement will be the same as with the conventional banks processing along with commercial bank clearing.

§8.4. Name

The name Afghanistan Clearing and Settlement System (ACSS) will continue to be used.

§8.5. Applicability of the Decree Law of Negotiable Instruments

The collecting and paying bank responsibilities and any other related issues are covered in the Decree Negotiable Instruments Law of the Islamic Republic of Afghanistan.

Part 9 — Effective date of regulation.

This regulation approved on 11-12 March 2010 by the DAB Supreme Council and the regulation will publish in DAB web site.