



Islamic Republic of Afghanistan Da Afghanistan Bank

Summary

Da Afghanistan Bank (DAB) is issued for a regulation on bank licensing and permitting. 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 the 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, the DAB chooses to circulate the regulation for public comment.

Purpose of rule

The purpose is to develop a transparent process for the DAB to follow in licensing and permitting of commercial banks. The procedures provide for public notice for an applicant to announce intentions to obtain a banking license or permit, the maintenance of a public file regarding the application, which will include supporting information for each filing, collection of written comments by interested parties to the application and a procedure for a hearing during the deliberations on the application. With regard to the internal deliberations of the DAB on the application, the regulation sets forth details on the precise information that will be needed to support an application, those foremost considerations DAB will assess in reviewing the application, the timeframes during which the DAB will make its decision and the grounds upon which the DAB may reject an application. Finally, a public register will be maintained of all banks that shall be made available for public inspection. This system of licensing is in keeping with Principle 3 of the Basle Committee on Banking Supervision’s Core Principles Methodology.

Background and details of rule

There are a number of banks currently operating in Afghanistan that will be going through a re-licensing process whereby they will apply for a license under the new Banking Law. Additionally, a number of newly-established banks not currently operating in Afghanistan will also be applying for a license to operate or a permit to open a branch or representative office. The regulation will be phased in to apply to these current applications as well as applications going forward.

The regulation details the supporting materials that an applicant is required to submit to obtain a license. This will include all founding and governing documents of the bank, including articles of association and by-laws; detailed information on the bank founders, administrators and sponsors; a business plan and projections for the operations of the bank; and an application fee. In turn, in its review of the application the DAB will take into account a number of factors in assessing whether the application should be approved, including the qualifications of the founders, administrators and sponsors; the initial capital strength of the bank; the likelihood that the bank will achieve profitability; the founders' familiarity with the banking laws, and the regulations, policies and procedures of the DAB; and the reasonableness of the applicant's business plan and projections. If an adverse condition exists or if the applicant fails to provide all information requested by DAB, or some other area of concern arises that is not fully addressed by the applicant, the DAB may reject the application.



**Islamic Republic of Afghanistan
Da Afghanistan Bank**

Article One: Bank Licensing and Permitting Regulation

Part A — General Regulations and Definitions.

§ 1.1.1. Authority.

This regulation on the licensing and permitting of banks is pursuant to the authority granted to DAB by Articles 6 through 16 of the Decree Law of Banking in Afghanistan (Banking Law).

§ 1.1.2. Exceptions

Da Afghanistan Bank may adopt materially different procedures for a particular filing, or class of filings, in exceptional circumstances, such as natural disasters or unusual transactions, after providing reasonable notice to the applicant and to any other party that Da Afghanistan Bank determines should receive notice.

§ 1.1.3. Initial and Paid in Capital

Banking licenses are issued by DAB only to companies registered and authorized to do business in Afghanistan that have initial and paid-in capital of not less than AF 500 million. The amount of minimum initial and paid-in capital may be increased by DAB from time to time by amendment to these regulations. The amount of initial and paid-in capital required for a specific banking license may be increased by DAB pursuant to Article 6 of the Banking Law.

§ 1.1.4. Procedures, guidelines, and manuals.

In furtherance of clarification with respect to bank licensing under this Article, DAB may issue from time to time procedures and guidelines. These procedures and guidelines may be published as manuals by DAB. Procedures and guidelines on bank licensing and permitting shall be binding on founders of proposed banks and applicants for permits unless contrary to applicable laws and DAB regulations.

§ 1.1.5. Definitions.

- a) *Applicant* means a person or legal entity that submits a notice or application to DAB under this Article.
- b) *Application* means a submission requesting DAB's approval to engage in banking activities and transactions.
- c) *DAB* means Da Afghanistan Bank and all of its constituent parts including its branches.
- d) *Filing* means an application or notice submitted to DAB under this Article.
- e) *Founder* means a natural person or legal entity that is proposed in the application to own a qualifying holding in a newly established bank.
- f) *Notice* means a submission by DAB to a bank or applicant, or a submission by a bank or applicant to DAB, advising the person or legal entity receiving the submission of certain facts and proposed actions or that specified activities or transactions have begun or will begin.
- g) *Permit* means authorization by DAB i) for a domestic bank to maintain a domestic or non-resident branch office or ii) for a non-resident bank to maintain a domestic branch office or a domestic representative office in Afghanistan under the supervision of DAB as well as any foreign bank regulator, if any, with respect to non-resident banks.
- h) *Public notice* means a submission through an appropriate communications medium to appropriate segments of the population advising them of certain facts and intended actions to be taken.
- i) *Sponsor* means one or more founders an applicant designates that is a source of financial strength for the bank. A sponsor should be a bank or bank holding company, or an individual with significant successful experience in banking, as evidenced by at least three years' recent experience serving on a Board of Directors or in management at a well-performing bank.

Part B — Details of Filing and Public Involvement

§ 1.2.1. Filing.

- a) *Filing required.* An applicant must file an application acceptable to DAB to engage in banking activities.
- b) *Form of filing.* Sample forms and instructions for filings are available from Financial Supervision Department, Licensing Section, Da Afghanistan Bank, Ibni-Sina-Watt, Kabul, Afghanistan.
- c) *Where to file.* An applicant must address a filing under this part to Financial Supervision Department, Licensing Section, Da Afghanistan Bank, Ibni-Sina-Watt, Kabul, Afghanistan.
- d) *Incorporation of documents.* Information in support of an application may be attached and incorporated into the application by clear indication that any such attachments are incorporated and with a cross-reference to the portion of the application where such information is to be incorporated.
- e) *Language of documents.* Documents submitted for consideration must be either be in Dari or Pashtu. Documents in other languages can be provided as supporting detail or for cross-reference purposes.

§ 1.2.2. Fees.

An applicant must submit the appropriate application fee to DAB with the application. DAB will publish from time to time the various fees, including application fees, DAB may assess. Payment of fees must be made to DAB.

§ 1.2.3. Investigations.

DAB may examine or investigate and evaluate all facts related to a filing to the extent necessary to reach an informed decision on whether to grant a license or permit. Such investigations may include financial, criminal, personal and professional background checks of not only applicants for new licenses and permits and all persons and legal entities associated with them, but also persons associated with existing banks seeking new licenses or permits pursuant to the Banking Law, including but not limited to owners of qualifying holdings in the bank and administrators of the bank. Fees may be assessed for investigations. After issuance of the license and opening of the bank, the DAB shall confirm that the operations of the bank are in keeping with the submitted application.

§ 1.2.4. Public notice.

- a) *General.* Within two business days of filing, an applicant must publish a public notice of its filing in a newspaper of general circulation in the area in which the applicant proposes to engage in banking activities. If the applicant proposes to engage in banking activities in more than one area, it must publish the public notice so as to bring the filing to the attention of the public in each area where banking activities are anticipated to take place.
- b) *Contents of public notice.* The public notice shall state that a filing is being made, the date of the filing, the name of the applicant, the subject matter of the filing, that the public may submit comments to DAB, the address of the appropriate office in DAB where comments should be sent (Financial Supervision Department, Licensing Section, Da Afghanistan Bank, Ibni-Sina-Watt, Kabul, Afghanistan), the closing date of the public comment period, and any other information that DAB requires. The applicant must deliver two copies of the public notice to DAB, marked for the attention of the Financial Supervision Department, Licensing Section, Da Afghanistan Bank, Ibni-Sina-Watt, Kabul, Afghanistan.
- c) *Public notice by DAB.* In addition to sub-section (b) above, DAB may require or give public notice and request comment on any filing and in any manner it determines appropriate for the particular filing.

§ 1.2.5. Availability of filings.

- a) *General.* DAB shall provide a copy of the public file to any person who requests it in writing and pays the nominal fee prescribed by DAB. The public file shall be maintained in the Financial Supervision Department, Licensing Section, Da Afghanistan Bank, Ibni-Sina-Watt, Kabul, Afghanistan, and it is to that section that a person should submit a request for a copy of the public file.
- b) *Public file.* A public file consists of the portions of the filing, supporting data, supplementary information, and information submitted by interested persons such as comments on application, to the extent that those documents are not afforded confidential treatment. Applicants and other interested persons may request that confidential treatment be afforded information submitted to DAB pursuant to sub-section (c) below.

- c) *Confidential treatment.* The applicant or an interested person submitting information may request that specific information be treated as confidential. An applicant or an interested party seeking confidential treatment should draft its request narrowly to extend only to those portions of a document it considers confidential. If a submitter requests confidential treatment for information that DAB does not consider to be confidential, DAB may include that information in the public file after providing notice to the submitter. Moreover, at its own initiative, DAB may determine that certain information should be treated as confidential and withhold that information from the public file.

§ 1.2.6. Comments on application.

- a) *Submission.* During the comment period, any person may submit written comments on a filing to DAB for the attention of the Financial Supervision Department, Licensing Section, Da Afghanistan Bank, Ibni-Sina-Watt, Kabul, Afghanistan. Only written comments will be accepted and these comments will be made part of the public file. On rare occasions meetings may be held, but the details of the discussion will be transcribed and made a part of the public file.
- b) *Comment period.* In general, the comment period shall be for 30 days following the publication of the public notice required in §1.2.4(a) of this Article.
- c) *Extension.* DAB may extend the comment period if it determines that extenuating circumstances exist.

§ 1.2.7. Hearings and other meetings.

- a) *Request for a hearing.* Prior to the end of the comment period, any person may submit to DAB for the attention of the Financial Supervision Department a written request for a hearing on a filing with a statement on why a hearing is necessary and which aspects of the filing should be considered at the hearing.
- b) *Decision on a hearing request.* DAB may grant or reject a hearing request, and if it grants a request for hearing, it may limit the scope of the hearing. DAB may require a hearing without a hearing request if it determines that a hearing would be in the public interest.
- c) *Conduct of hearing.* A hearing shall be conducted on such terms and with such procedures as DAB determines shall benefit the public and as are set out by DAB when it publishes notice of the hearing.
- d) *Public or private hearing.* Any hearing on a filing may be public or private at the sole discretion of DAB.

Part C —Review and Approval of Application for License

§ 1.3.1. Purpose.

This part sets forth the standards and procedures with respect to DAB’s review and approval of an application for licensing a bank. It is DAB’s policy to approve applications that have a reasonable chance of success and that will be operated in a safe and sound manner. However, DAB does not ensure that a licensed bank will operate without risk of loss to its founders, nor does DAB protect a licensed bank from competition with other licensed banks so long as all banks are in compliance with all applicable laws, DAB policies and associated regulations currently in force.

§ 1.3.2. Application process for bank licensing.

- a) *General.* DAB licenses banks under the authority of the Banking Law. Each bank it licenses must include the word “bank” in its name. The following regulations may be supplemented by procedures, guidelines, and manuals issued by DAB from time to time.

- b) *Who may file an application.* An applicant must be the founders themselves or a certified representative of the founders.

- c) *What to file.* In addition to the application form available from Financial Supervision Department, Licensing Section, Da Afghanistan Bank, Ibni-Sina-Watt, Kabul, Afghanistan, an applicant shall submit the following documents to DAB.
 - i. The by-laws and any other founding or internal governing documents of the proposed bank. Names and biographical information on the members of the bank’s proposed Board of Supervisors, Management Board and Audit Committee. The format and detail of what is to be included in the biographical information may be supplemented by DAB procedures on bank licensing, but at a minimum must include a detailed CV with descriptions of recent positions held, dates held and reasons for leaving position.
 - ii. Relevant powers of attorney confirming that applicant is entitled to file the application;

- iii. A business plan (see §1.3.5.) and financial projections (see §1.3.6);
- iv. Share and shareholder details;
- v. Policies and procedures for risk management, anti-money laundering and internal controls;
- vi. Detailed information on related persons and significant shareholders;
- vii. Information on the organizational structure of the bank;
- viii. The proposed auditor for the bank and the financial recordkeeping system capable of meeting reporting requirements;
- ix. For foreign applicants, details on supervision in home country for the bank and bank holding company and a consent letter of the home supervisor;
- x. The application fee prescribed by DAB.

d) *Where to file.* The address for filing an application is Financial Supervision Department, Licensing Division, Da Afghanistan Bank, Ibni-Sina-Watt, Kabul, Afghanistan.

§ 1.3.3. Evaluation of an application.

In making its decision to grant, conditionally grant, or reject an application, DAB will consider the following issues:

- a) Are the founders familiar with applicable laws, especially the Banking Law, and the policies, regulations, procedures, and guidelines of DAB?
- b) Are the proposed members of the Board of Supervisors, the Management Board, the Audit Committee fit and proper persons having the ability and experience relevant to the types of services to be provided?
- c) Does the proposed bank have capital sufficient to support the projected volume and type of banking activities described in the business plan?
- d) Based on the materials submitted, is there reasonable expectation that the proposed bank will achieve and maintain profitability within the time period set out in the business plan?

- e) Will the proposed bank be operated in a safe and sound manner?
- f) Are all the general conditions not otherwise accounted for prior to issuing a banking license set forth in Article 12, section 1 of the Banking Law satisfied?
- g) DAB may consider other issues in evaluating an application depending on circumstances unique to the particular application submitted and the banking industry's environment at the time of application.

§ 1.3.4. Evaluation of founders, administrators, resources, expenses, and sponsors.

- a) *Founders.* In evaluating the founders, DAB will review the experience, competence, willingness, and ability to be active in directing the proposed bank's affairs in a safe and sound manner. There must be a collective ability to operate a successful bank in the current banking environment. A poor business plan reflects adversely on the founders' abilities, and DAB may reject an application with a poor business plan.
- b) *Administrators.* DAB will give special attention to the competence of the persons to be named to the proposed bank's Board of Supervisors, Management Board, Audit Committee, and to be appointed as senior officers. Election or appointment of anyone found not to be a fit and proper person shall be the basis for rejecting an application. DAB may condition a license on a preclusion of hiring or electing a person or persons to serve in a bank's management for a period of time specified in the license and subject to later removal of the preclusion or extension of the preclusion.
- c) *Financial resources.* Each founder must have a history of responsibility, personal honesty, integrity, and otherwise be a fit and proper person. If a founder is to be a member of the proposed bank's management, that person must reflect a financial commitment to the success of the bank. Such person should not have to depend on any bank dividends, fees, or other compensation to satisfy his or her financial obligations. Additionally, founders will be required to execute a capital maintenance agreement, in which they jointly pledge to DAB that they will invest additional capital if the bank's capital falls below regulatory minimums. Founders will be expected to have sufficient financial resources to act as a source of strength for the bank. Any financial arrangement or banking activity between a founder and the proposed bank, directly or indirectly, shall not be on preferential terms.

- d) *Expenses.* Founders are expected to devote time and effort to establishing the bank and may not charge excessive fees for professional and consulting services, nor rely on any such fees as a source of income. No fee may be contingent on obtaining a banking license, and if such an arrangement is discovered, DAB may reject the application on that ground alone.
- e) *Sponsors.* If a sponsor is involved with the establishment of the proposed new bank, DAB will consider the financial and managerial resources of the sponsor and the sponsor's record of performance.

§ 1.3.5. Business plan.

- a) *Evaluation.* DAB will evaluate the proposed bank's business plan. The business plan must include the information specified in DAB's bank licensing procedures.
- b) *Offsetting factors.* DAB may offset deficiencies in one aspect of the business plan by strengths in one or more other aspects. However, deficiencies in some aspects, such as unrealistic earnings prospects, may have a negative influence on the evaluation of other facts, such as capital adequacy, and may be serious enough to warrant a rejection of the application.

§ 1.3.6. Financial projections.

DAB will evaluate the proposed bank's financial projections. The proposed bank must submit financial projections, including profit or loss, for its first three years of operations in the format prescribed by DAB. Underlying assumptions of volume and prices must be made explicit. These projections must show that the bank's capital (defined as the difference between assets and liabilities) remains at or above the minimum amount, regardless of the impact of organizational expenses or other start-up costs.

§ 1.3.7. Decisions.

- a) *New banks.* In the case of an application for a license for a bank that has not already been incorporated and registered as a company in Afghanistan, DAB shall review the filing, any additional information provided, the results of its investigation, and any other information available. In making its review DAB will apply the criteria in part B of this Article.
 - i. Upon receiving an application the DAB will request any required additional information and after meeting with the applicant and the proposed administrators of the new bank, DAB will determine if the

application is complete. Within 90 days of receiving all required information for a domestic applicant and 6 months for a foreign applicant, the DAB will notify the applicant indicating if the completed application is preliminarily approved or rejected. In the case of a preliminarily approved application the notice *a)* shall advise the applicant of the minimum capital that must be subscribed and paid in before a license is issued, *b)* shall list any conditions or restrictions that will be included in the license, and *c)* shall list any special conditions that must be met prior to issuance of the license. The notice shall explain the grounds for rejection of any application or for any conditions or restrictions applied to the application or proposed license.

- ii. DAB shall open an account in the name of the proposed new bank followed by the words “in formation,” unless the application is rejected. This account will be used for capital subscription payments for the proposed new bank.
 - iii. Within six months from the date the notice advising the applicant of preliminary approval is issued, the minimum amount of capital must be subscribed and paid into the account at DAB. As soon as the minimum capital is paid in, the applicant must submit a notice and request for issuance of the banking license accompanied by documentary evidence that the company has been established and registered, that any special conditions required in DAB’s notice of preliminary approval have been met, and that there are no material changes in the information contained in the filing, or if material changes have occurred, what those changes are.
 - iv. As soon as DAB is satisfied that all the requirements for issuing a banking license to a new company are met, DAB shall issue a final license in either unrestricted form or with the conditions or restrictions identified in the notice sent to the applicant.
- b) *Existing companies.* A company already incorporated and registered that wishes to form a bank must apply for a banking license. Such applications will be subject to and reviewed in the same manner as applications from new bank applicants.
- c) *Bases for approval, conditional approval or rejection.* DAB shall base its decision to grant approval, conditional approval or rejection of a filing using the provisions of §1.3.8.

§ 1.3.8. Rejection of application.

DAB may reject an applicant's filing for the reasons set forth in this section or for reasons set forth in part B of this Article.

- a) *General grounds for rejection.* DAB may reject a filing if —
 - i. a significant supervisory or compliance concern exists with respect to the application;
 - ii. approval of the filing is inconsistent with other applicable laws or regulations, or with DAB policies; or
 - iii. the applicant fails to provide information reasonably requested by DAB that is necessary for DAB to make an informed decision on the filing.
 - iv. the business plan or projections are not based on reasonable underlying assumptions.
 - v. the proposed bank is a subsidiary of a nonresident bank or bank holding company and DAB concludes that the parent bank or head office is not or will not be adequately supervised in its home country.

- b) *Abandonment of filing.* To the extent necessary to evaluate an application, DAB may require an applicant to provide additional information not contained in the applicant's original filing. DAB may deem a filing abandoned if the information required is not furnished within the time period specified by DAB. An application shall also be deemed abandoned if the applicant fails to provide the notice and accompanying documentation within six months.

Part D — Permitting of branch offices and representative offices.

§ 1.4.1. Permitting procedures.

- a) *General.* Applications for permits from domestic banks wishing to maintain a domestic or non-resident branch office or a non-resident representative office, and applications for permits from non-resident banks wanting to maintain a domestic branch office or domestic representative office, must be filed with DAB for the attention of the Financial Supervision Department, [address].

- b) *Format.* The form in which applications for permits must be submitted to DAB shall be available from DAB, Licensing Division, [address].

§ 1.4.2. Content of application for permits.

Applications for permits shall contain the following information:

- a) The by-laws and any other founding or governance documents of the bank.
- b) Name of the branch or representative office, its domestic address, and the name of the officer in charge of operations and who shall be the person with whom DAB may deal on behalf of the head office of the bank.
- c) Name and address of the head office of the bank wishing to establish the branch or representative office.
- d) Copy of the license or other evidence that the domestic bank is authorized to receive deposits and make loans in Afghanistan as a bank, or evidence that the non-resident foreign bank is authorized to receive deposits and make loans in the jurisdiction where its head office is located.
- e) Biographical information, including detailed CVs, on the officers who will operate the branch or representative office.
- f) Scope of work to be performed by the branch or representative office.
- g) Name and address of the foreign bank regulator of a non-resident bank if a non-resident bank is requesting a permit for a domestic branch office or representative office.
- h) A letter from the foreign bank regulator of a non-resident bank indicating that it authorizes the bank to open a branch or representative office in Afghanistan.
- i) Any of the other information in Article 12, paragraph 2 of the Banking Law not otherwise submitted.
- j) The filing fee prescribed by DAB.

§ 1.4.3. Issuance of permit.

When DAB has all the information needed to process an application for a permit, it will so notify the applicant. Within three months from the date DAB notifies the applicant that its application for a permit is complete and consistent with the considerations contained in part B of this Article, DAB will issue an unconditional permit, a conditional permit, or reject a permit. If DAB issues a conditional permit or denies a permit, DAB will provide the applicant with a detailed statement explaining the conditions or the rejection.

§ 1.4.4. Reasons for denial.

In general the grounds detailed in §1.3.8. will be applied to permitting as well as licensing.

Part E — Agreement of Cooperation with Foreign Bank Regulators

§ 1.5.1. Agreement of cooperation with foreign bank regulator.

No license for a domestic subsidiary of a non-resident bank or non-resident bank holding company and no permit for a domestic branch office and domestic representative office of a non-resident bank may be issued unless an agreement of cooperation has been concluded between DAB and the competent foreign authorities that supervise the banking activities of the non-resident bank or bank holding company concerned. The agreement need not be a formal contract but may be executed as a memorandum or an exchange of letters. The agreement between DAB and competent foreign authorities that supervise banking activities of the non-resident bank or bank holding company must specify the allocation of responsibilities between DAB and the foreign authorities for supervising the proposed subsidiary, branch office or representative office. The agreement must also establish the rules and procedures governing exchanges of information between DAB and the foreign authorities on the administration, operation and financial condition of the non-resident bank or bank holding company and the subsidiary, branch office or representative office in Afghanistan. The agreement of cooperation for a license or permit by a non-resident bank or bank holding company shall not be accepted by DAB unless the following documents and undertakings are delivered in form and substance satisfactory to it:

- a) A notarized certification from the licensing and supervisory authorities of the applicant's home jurisdiction to the effect that the applicant is a duly organized and validly licensed depository institution; that pursuant to an on-site examination completed within the last 180 days, its capital levels, asset quality and liquidity ratios are deemed by such authorities to be above satisfactory; that the applicant is not the object of corrective action or supervisory concern under any early warning surveillance program or otherwise, and that the establishment of the branch and its proposed activities in Afghanistan are unconditionally permitted.
- b) The compliance of Afghanistan branches of non-resident banks with regulations calling for capital-based measurements shall be assessed by reference to their home country capital bases. The compliance of Afghanistan subsidiaries of non-resident banks with such regulations shall be assessed by reference to their own capital bases as if they were not part of larger organizations.

§ 1.5.2. Non-discrimination against foreign owners.

Non-residents that seek to own banking organizations in Afghanistan, whether these organizations be stand-alone banks, subsidiaries of foreign banks or bank holding companies or branches of foreign banks, shall be subject to the provisions of these regulations, in the same manner as domestic residents and neither they nor their banking organisations shall be discriminated against in any way which would, save for the above special provisions, place any burdens on them greater than those placed upon domestic residents or their organisations.

Part F – Register of Banks

§1.6.1. Establishment of Register of Banks

DAB shall maintain for the information of the public a Register of Banks in the Financial Supervision Department, Da Afghanistan Bank, Ibni-Sina-Watt, Kabul, Afghanistan. This register shall contain the information required in Article 13, paragraphs 1 and 2, of the Banking Law. The register of banks shall be maintained in electronic form.

§1.6.2. Inspection by Public of the Register of Banks

Members of the public may inspect the Register of Banks during the hours DAB is open for business. A nominal fee will be charged for printing and duplication of documents. As soon as practicable after DAB establishes its Internet website, the Register of Banks will be made available at the website.

§1.6.3. Obligation to Report Changes to the Register of Banks

Changes originating with domestic and foreign resident banks and any of their subsidiary banks, branch offices or representative offices that alter the information contained in the Register of Banks shall be reported in writing to the Financial Supervision Department, Register of Banks, Da Afghanistan Bank, Ibni-Sina-Watt, Kabul, Afghanistan, within three business days of any such changes.