



Da Afghanistan Bank
Banking Supervision Department

Prohibited and Authorized Activities
Regulation

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Part One: General Provisions

Summary

Da Afghanistan Bank (DAB) issued a regulation on prohibited and authorized activities. The circulation of the regulation for comment is consistent with banking law in Afghanistan. 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 set forth activities that are prohibited and those incidental activities under Article 33.10 of the Banking Law that qualify as authorized activities.

The adoption and full implementation of this rule is generally in keeping with Principle 2 of the Core Principles of Effective Banking Supervision of the Basel Committee.

Background and summary of rule

A banking supervisor needs to clearly define those activities that banking organizations are prohibited from and authorized to engage in. This is accomplished in Article 33 of the Banking Law, which details a number of “banking activities” for banking organizations. Additionally, as authorized in this same article, DAB may through regulation authorize those activities that are “incidental” to these banking activities.

The rule details those activities that are considered incidental and thus authorized for banking institutions. These are activities that naturally flow from or are so very closely related to or are necessary to banking activities that DAB has determined that they are incidental to banking activities. The regulation enumerates a number of activities that it considers incidental to banking activities and notes that it will periodically review this list of incidental activities. Additionally, banking organizations may make application to DAB to have activities classified as incidental activities. DAB will review such applications for how closely related to banking the requested activities are and the risk involved to the banking organization in undertaking such activities.

The regulation also provides additional detail on specific activities that banking organizations are prohibited from engaging in because they are not incidental to banking. In particular, beyond providing detail for many of the enumerated activities prohibited under the Banking Law it notes that acquiring or possessing real estate held for investment is not an incidental activity to banking because it does not naturally flow from and is not so very closely related to or are necessary to banking activities. Finally, the regulation deems that credit that does not meet the definition of qualifying variable credit, as detailed in the regulation, is a prohibited activity under Article 36 of the Banking Law.

Part 1: General

Article 1: Authority

This regulation on prohibited and authorized activities of banking organizations (banks and branches of foreign banks) is pursuant to the authority granted to DAB by Articles 29, 33, 34, 36 and 38 of the Decree Law of Banking in Afghanistan (Banking Law).

Article 2: Definitions

- (1) *Agent* – a legal entity that acts on behalf of another legal entity or individual (principal). An agent acts on behalf of a principal if any of the following apply: a) the agent has the power to enter into binding legal relationships on behalf of the principal; b) the agent’s conduct is monitored or supervised by the principal; c) the agent’s conduct is covered by the principal’s compensation arrangements; d) the agent acts as a conduit for the payment of sales prices, fees, or commissions to the principal; or e) the agent advertises himself as an agent for the principal.
- (2) *Authorized activities* – activities that are specifically authorized by Article 33 of the Banking Law, plus incidental activities authorized under Article 33.10.
- (3) *Co-owner* – a person that has a qualifying holding in a legal entity.
- (4) *Partner* – a legal entity that joins with other legal entities or individuals to engage in commercial activity for profit and shares profits and losses with other partners. The term partner includes not only general partners, but also limited partners whose maximum losses are limited to their individual investments. It includes also joint venture partners, whose agreement with each other is limited to one specific project and not an ongoing business relationship.
- (5) *Premises and other fixed assets* – structures, land (including parking facilities), furniture, office equipment, and vehicles owned by the banking organization or leased by the banking organization from another company under a financial lease (not operating lease) arrangement and used in conducting banking business. For the purposes of this regulation, the whole of a structure or parcel of land is considered used in conducting banking business if 60 percent or more of the space is regularly occupied by administrators or employees of the banking organization, with administrators or employees of other companies not regularly present.
- (6) *Qualifying variable rate credit* – credit offered by banking organizations to their customers on which the banking organization may change the interest rate over the life of the credit only at fixed intervals and according to a fixed formula agreed on in advance between the banking organization and the customer. For the purposes of this regulation, a fixed formula means a variable index or reference interest rate that is not set by the banking organization itself, plus a certain number of percentage points that remains fixed for the life of the credit.
- (7) *Real estate held for investment* -- land or structures owned by the banking organization or leased by the banking organization from another company under a financial lease (not operating lease) arrangement and not used in conducting banking business, but rather to earn income from rentals or to gain from appreciation in value of the property. For the purposes of this regulation, a structure or parcel of land is considered real estate held for investment if less than 60 percent of the space is regularly occupied by administrators or employees of the banking organization. In such situations, the portion of the structure or land that is regularly occupied by the banking organization’s employees is considered premises and other fixed assets, and the remainder is considered real estate held for investment.

Article 3: General goals and objectives

- (1) This regulation aims to clarify various miscellaneous prohibitions stated in the Banking Law and, in particular, to specify the “incidental activities” referred to in Article 33.10 of the Banking Law. Other prohibitions, such as limitations on equity investments, large exposures, and credits to related persons, are dealt with in separate regulations.
- (2) More specifically, according to this regulation:

1. Banking organizations will be required to observe the secrecy obligations of Article 29 of the Banking Law.
 2. Banking organizations will be allowed to engage in only those activities outlined in Article 33 of the Banking Law and additional incidental, authorized activities. The ownership of real estate held for investment is not considered an incidental, authorized activity.
 3. Banking organizations will not be allowed to engage in the prohibited activities of Article 34 of the Banking Law. Banking organizations will not be allowed to offer variable-rate credit whose interest rate changes at irregular intervals or not according to fixed formulas, as required under Article 36 of the Banking Law.
 4. Banking organizations will not be allowed to accept their own shares as collateral for loans, without advance approval of DAB, as outlined in Article 38 of the Banking Law.
- (3) Adherence by banking organizations to the standards set by this regulation will be monitored by DAB through on-site examinations and off-site analysis of data.

Part 2: Incidental, Authorized Activities

Article 4: Incidental, Authorized Activities

The activities considered incidental and thus authorized under Article 33.10 will periodically be taken up for reconsideration. Additionally, banks may make application to DAB to have an activity deemed as incidental and authorized. The following activities are considered incidental banking activities:

Real estate appraisal, real estate brokerage, credit life and home mortgage insurance for the banking organization's own deposit or loan customers, investment in community development corporations, financial data processing services, bank-related courier services, collection agencies, tax preparation services, consumer credit bureaus, and printing and selling checks.

Part 3: Specific Prohibitions

Article 5: Prohibition against unauthorized use or disclosure of information

- (1) Present and past administrators (members of the Board of Supervisors, Management Board and Audit Committee) and employees of a banking organization may not release to others, disclose publicly, or use for personal gain any information that was obtained in the course of their services to the banking organization.
- (2) The prohibition on release on information in part a) does not extend to the release of customer information where the customer has given written consent to such release.
- (3) The prohibition on release of information in part a) does not extend to the release of information to the officers, staff, and agents of DAB, including the inspectors, auditors, conservators, and experts appointed by DAB.
- (4) The prohibition on release of information in part a) does not extend to the release of information to other parties, including courts, prosecutors, and police, when a court order demands such information.
- (5) The prohibition on release of information in part a) does not extend to the provision of information on suspicious transactions under legislation designed to curb money laundering or the financing of terrorism.

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- (6) The prohibition on release of information in part a) does not extend to information demanded at the request of an international legal organization or government of a foreign country which has concluded with Afghanistan an agreement on mutual legal assistance that does not contradict the laws of Afghanistan.
 - (7) In the absence of specific enabling legislation authorizing such requests, and a specific request from the Revenue Presidency of the Ministry of Finance, no information about customer transactions with the banking organization may be disclosed to the Ministry of Finance or to any law enforcement agent for tax administration purposes.

Article 6: Prohibition against real estate held for investment.

- (1) *General* -- Banking organizations may not acquire or possess real estate held for investment as it is not considered an activity incidental to banking under Article 33.10 of the Banking Law. Banking organizations may acquire and possess premises and other fixed assets that satisfy the definition in § 9.1.2 above.
- (2) *Transitional provisions* – Unless otherwise directed by DAB, banking organizations that currently possess real estate held for investment must present to the Financial Supervision Department of DAB before the last day of the year 1383 a plan to dispose of such real estate held for investment. The plan must envision full disinvestment before the last day of the year 1384.

Article 7: Prohibition against engaging in unauthorized activities.

- (1) *General*. Banking organizations may engage in any of the activities described as authorized activities in § 9.1.2 above. Banking organizations may not engage in directly, or participate as an agent, partner, or co-owner, as such terms are defined in § 9.1.2 above, in wholesale or retail trade, whether in intermediate goods or in finished products; manufacturing, whether of intermediate goods or of finished products; transportation, except for its own administrators and employees; agriculture or fisheries, including investing in or trading of derivatives based on agricultural or fishery commodities; mining, including investing in or trading of derivatives based on mineral commodities other than precious metals; building of any structures, including the acquisition and development of raw land for construction; and insurance, except for those products listed under authorized activities in § 9.1.2 above.
- (2) *Specific authorization required for temporary activities*. Banking organizations may temporarily become partners or co-owners in enterprises carrying out the above mentioned activities, if they acquire those partnership stakes or equity shares in satisfaction of debts previously contracted, but only with DAB's prior written authorization. Banking organizations must dispose of investments so acquired and cease all related activities within two years, or such shorter period as DAB may specify in its written authorization.

Article 8: Prohibition against non-qualifying variable rate credit.

Consistent with Article 36 of the Banking Law, banking organizations may not offer variable-rate credit to their customers that is not qualifying as defined in § 9.1.2 above.

Article 9: Prohibition against accepting the banking organization's own shares as collateral for a credit.

Banking organizations may not accept their own shares as collateral for a credit without the prior written authorization of DAB. DAB will rarely, if ever, grant such authorization, and specifically will not authorize such transactions if the purpose of the credit is to acquire the shares of the banking organization.

Part 4: Effective date of regulation

Article 10: Publication in DAB website

This regulation will become effective upon adoption by the supreme council of DAB.