



**Islamic Republic of Afghanistan
Da Afghanistan Bank**

Part A – General Regulations and Definitions

§ 1.1.1. Authority

This regulation on the licensing, regulating, and supervision of foreign exchange dealers is pursuant to the authority granted to DAB by Article 77 of the Decree Law on Da Afghanistan Bank (Law).

§ 1.1.2. Exemptions

Consistent with Article 77(4)(c) of the DAB Law, persons who believe that because of the nature or size of their business or the origin of type of their customers that they should not be subject to the law or these regulations may apply for an exemption. Such persons must file an application with the Secretary of the Executive Board of Da Afghanistan Bank, Ibn-Sina watt, Kabul, Afghanistan, for an exemption, which only the Executive Board of Da Afghanistan Bank may grant. The application need not be in any specific form but should contain sufficient information such that the Executive Board may take an informed decision on the request for exemption. The Executive Board may require additional information before making a decision on the request for exemption. If granted, the exemption may be conditional, limited in time, or partial with a listing of services that may or may not be provided by the persons receiving the exemptions.

§ 1.1.3. 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.

§ 1.1.4. Definitions.

- a) *Applicant* means a person or legal entity that submits a notice or application to DAB under this part.
- b) *Application* means a submission requesting DAB's approval to engage in exchange of foreign currency activities and transaction.
- 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) *Foreign exchange dealer* means any person who engages in the business of buying and selling foreign currencies, forward exchange contracts, options, swaps or other derivative contracts involving a foreign currency, or arranging for payments in foreign currency, or any other person licensed by DAB for such purpose.
- f) *License* means an official document or permit issued pursuant to the law of Afghanistan authorizing a person to conduct business.

§ 1.1.5. Filing

An applicant must file an application acceptable to DAB to act as a foreign exchange dealer.

Applications, sample forms and instructions for filing are available from the Financial Supervision Department, Licensing Section, DAB, Ibn-Sina-watt, Kabul, Afghanistan.

Part B – Issuance of License

§ 1.2.1. Requirements

No person may act as a foreign exchange dealer unless he holds a license issued by DAB. In order to be eligible for the license, a person must:

- a) Be at least 18 years of age;
- b) Be the owner of personal property such as a house or apartment;
- c) Take a license in the name of a single person, with the license valid at a single location of a business or multiple locations within the same province.
- d) Be referenced by two businesspersons with at least three years of commercial experience.
- e) Provide a national taxpayer identification number.

§ 1.2.2 Deposit in Trust

Before obtaining a license, foreign exchange dealers must deposit in a trust account at DAB. This amount shall be refunded if the dealer subsequently leaves the profession and fulfils all the requirements for closing business specified by DAB, within DAB's established timeframes. The following Deposit in Trust schedule applies for licensees with primary locations in the following cities:

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| Kabul, Kandahar, Herat, Jallalabad and Mazar-e -Shariff: | Af 50,000 |
| Other primary locations in Afghanistan: | Af 25,000 |

§ 1.2.3. Contents of application.

Applications for the granting of a license to a business intending to act as a foreign exchange dealer must be submitted in writing and in the form designated by DAB. Each application shall at a minimum contain:

- a. the name, permanent address, date and place of birth for the foreign exchange dealer;
- b. copy of national identification card of the foreign exchange dealer;
- c. a photograph of the foreign exchange dealer;
- d. details on the year the foreign exchange dealer initiated business;
- e. a list of all provinces the business the foreign exchange dealer has or will operate in;
- f. copy of the foreign exchange dealer's National Taxpayer Identification Number (TIN) certificate;
- g. references from two businesspersons with at least three years of commercial experience;
- h. previous license to operate a foreign exchange business;
- i. copy of tax certification;
- j. certification from the Interior Ministry of the Criminal Department;
- k. receipt of licensing fee payment from DAB; and
- l. receipt of licensing deposit from DAB.

§ 1.2.4. Grounds for rejecting application.

- a. for failing to meet any of the requirements under § 1.2.1 above;
- b. the foreign exchange dealer has been convicted of a felony within 10 years;
- c. the foreign exchange dealer has charges pending for violations related to a financial transaction within the past 10 years;
- d. the applicant or foreign exchange dealer has falsified any information supplied in connection with this application;

- e. the foreign exchange dealer has had an adverse action taken against any business license within the past three years;
- f. the foreign exchange dealer fails to respond to a request from DAB for additional information within 10 days of a third request for the same information;
- g. the documents submitted are incomplete, deceptive or misleading; or
- h. the documents submitted do not comply with Afghanistan laws or regulations;

§ 1.2.5. Renewal

Application for renewal of license should be made to DAB at least two weeks before the expiry date of a current license along with, at a minimum, the following documents:

- a) Original foreign exchange dealer's license
- b) Application processing fee as prescribed in § 1.6.1. of these regulations.
- c) Police verification report to the effect that applicant was not involved in any illegal activities. Foreign exchange dealers' license will not be issued to a person who was found involved in criminal activities, currently on trial for criminal activities or was convicted by a court of law.
- d) Copy of National Identity Card

§ 1.2.6. Applicability to Banks

The preceding requirements in §1.2.1 to 1.2.5 do not apply to banks that have received a license from DAB under the Law of Banking in Afghanistan, or to bank branches that have received a branch banking permit from DAB.

§ 1.2.7. Open for Business

Foreign exchange dealers, having obtained a business license from DAB shall open for business no later than 60 (sixty) days after the date of issuance of the license.

Foreign exchange dealers having opened business shall report the opening for business to DAB no later than 14 (fourteen) days after commencement of business operations.

§ 1.2.8. Term of License

The license shall be issued for a period of one year.

Part C - Activities

§ 1.3.1. Permissible Activities

- a. Foreign exchange dealers' activities will be restricted to the activities detailed in the definition of foreign exchange dealer in §1.1.4 above.

- b. Foreign exchange dealers are permitted to participate in foreign currency auctions according to the rules and regulations of DAB.

§ 1.3.2. Mandatory Activities

- a. Foreign exchange dealers must comply with all laws and regulations related to foreign exchange transactions in Afghanistan.
- b. Foreign exchange dealers must hold accounts in a licensed commercial bank or permitted foreign bank branch in Afghanistan in each currency in which they plan to do business.
- c. Foreign exchange dealers must have appropriate premises and appropriate security for the cash (vaults or similar fixtures.)
- d. Foreign exchange dealers are required to post their buy/sell exchange rates (and any other fees) to ensure that the market operates on a transparent and efficient basis and customers can easily compare rates at different dealers. This requirement to post rates applies not only at their main location of business, but also at all remote locations, no matter how small or informal.
- e. Foreign exchange dealers shall buy and sell foreign exchange at the posted rates, regardless of the denomination of the Afghani banknotes being traded.
- f. Foreign exchange dealers must record the details of their daily transactions in registers; the level of detail will be specified by DAB in the reporting requirements referenced hereunder.
- g. Foreign exchange dealers must be members of the foreign exchange dealers' association.
- h. A copy of the founding articles of the association must be submitted to DAB.
- i. Foreign exchange dealers must take all necessary measures for the effective prevention of money laundering as provided for in the relevant legislation of Afghanistan. These measures shall include, but not be limited to:
 - an appropriate customer acceptance policy that identifies circumstances when customers are to be rejected;
 - an appropriate customer identification policy that includes identification of the beneficial owner when such owner may differ from the customer;
 - continuous training of staff so that they are able to recognize transactions that might be related to money laundering;
 - instructions as to what action staff should take when they recognize transactions that might be related to money laundering;
 - effective internal control and communications procedures;

- submission of any required reports on suspicious transactions above the thresholds established in the relevant legislation or regulations of DAB to the Financial Intelligence Unit or any other repository of such reports as may be designated by the laws of Afghanistan; and
- required retention of records on transactions.

§1.3.3 Prohibited Activities

Any violation of these rules may result in penalty, suspension or cancellation of the license.

- a. Foreign exchange dealers' commercial name should not include words such as bank, financial institution, Investment Company, trading company, real estate or any other word indicative of activities other than as a foreign exchange dealer.
- b. The name/title of the business shall be displayed clearly and in a bold face outside the business premises.
- c. No foreign exchange dealers may accept deposits, whether interest is paid or received or not.
- d. No foreign exchange dealer shall use its license as authorization to engage in any activities for profit other than the foreign exchange business.

e. In addition to the above prohibitions, foreign exchange dealers shall not:

Engage in anti-competitive behavior or attempt to monopolize the market for foreign exchange; such behavior includes, but is not limited to, colluding with other dealers on prices; restricting (through ownership or other means) the supply of land, office space, or other real estate to potential competitors; restricting access by the public to the facilities.

Make a false or misleading advertisement or statement relating to its activities.

Part D - Supervision

§ 1.4.1. Supervision by DAB

DAB shall conduct supervision of foreign exchange dealers.

The intent of supervision is to evaluate compliance with laws and regulations, and to determine if there are grounds for license revocation.

§ 1.4.2. Conduct of Supervision

In conducting supervision of foreign exchange dealers, DAB may cooperate with the foreign exchange dealers' association or with another appointed party.

The foreign exchange dealers' association or other party cooperating with DAB shall be required to:

- a. maintain confidentiality of data obtained from the results of supervision and to be subject to prevailing laws and regulations concerning professional confidentiality; and
- b. submit reports to DAB.

§ 1.4.3. Accounting System

Foreign exchange dealers must maintain adequate accounts and recordkeeping sufficient to meet the reporting requirements of §1.4.4.

§ 1.4.4. Reporting

Reporting to DAB or other designated state bodies must include, at a minimum:

Quarterly reports on the number and total volume of transactions at each office and in aggregate.

Quarterly lists of large (above AF 250,000) individual transactions.

Information required to be submitted to DAB should be submitted in a form and frequency as may be prescribed by DAB.

Failure to comply with the reporting requirements in this section will be considered grounds for enforcement action under Part E of this regulation.

§ 1.4.5. Inspections and Monitoring

In assessing the compliance of foreign exchange dealers with laws and regulations, and their solvency, DAB may use on-site inspections and off-site monitoring and evaluations.

Part E-Enforcement

If DAB discovers violations of laws or regulations or that a foreign exchange dealer is operating unsafely or is near insolvency, DAB may apply enforcement actions. These actions may include any or all of the following:

§ 1.5.1. Written warning.

The first step in enforcement is to issue a written warning to the foreign exchange dealer. The warning, which may be issued on the basis of inspection findings, tells the foreign exchange dealer how he is operating unsafely or violating laws or regulations.

§ 1.5.2. Supervisory letter and plan for corrective actions.

If the foreign exchange dealer does not voluntarily address its problems, DAB may go on to the next step, which is the issuance of a supervisory letter. A supervisory letter is a request to the foreign exchange dealer to present a plan with specific written commitments to take corrective action in response to problems or concerns identified by DAB. If the foreign exchange dealer fails to present a plan, or if DAB deems the plan to be unacceptable, or if the bank does not take the corrective action as promised in the plan, then DAB may issue its own plan for corrective actions.

§ 1.5.3. Supervisory agreements.

If the above measures fail, DAB may present a plan for corrective action requiring the foreign exchange dealer to enter into a supervisory agreement. Supervisory agreements are formal written agreements between DAB and the foreign exchange dealer. DAB may use a supervisory agreement to require foreign exchange dealers to cease any statutory or regulatory violation or unsafe practice. The agreements may also require affirmative corrective action to address any existing violations, management or operation deficiencies, or other unsound practices.

§ 1.5.4. Cease and desist order.

If the supervisory agreement is not fulfilled, and corrective action is urgently required, DAB may issue a cease and desist (C&D) order. These orders may require the dealer to stop or undertake a variety of corrective actions.

§ 1.5.5. Hearing required.

Before entering into a supervisory letter, supervisory agreement, or C&D order with the foreign exchange dealers, DAB must send the foreign exchange dealer a “notice of charges” indicating the facts of the violation or threat to solvency and/or liquidity, and hold a hearing with the foreign exchange dealer to discuss the charges no later than 4 weeks after issuing the notice of charges.

§ 1.5.6. Temporary cease and desist order.

If the solvency of the foreign exchange dealer is imminently threatened, or if DAB cannot determine the true condition of the foreign exchange dealer from the records,

DAB can issue a C&D order before holding the required hearing. The foreign exchange dealer can ask the Financial Services Tribunal (FST) to annul the order.

§ 1.5.7. Revocation of license

Foreign exchange dealers that are found to be insolvent; engaged in criminal activities or suspected to be engaged in criminal activities; or engaged in activities or transactions that are inconsistent with the relevant laws and procedures shall have their licenses revoked by DAB.

Foreign exchange dealers shall not issue checks in that same currency unless they have adequate funds in their account. On the first such occurrence, a written notice shall be issued by DAB, and on the second occasion the dealer's license shall be revoked.

Part F-Miscellaneous and Transitional Provisions

§ 1.6.1. Fees

The applicant will be required to pay an application processing fee (non-refundable) to DAB.

The fee will be AF 6,000 for the initial license and AF 3,000 for each subsequent renewal.

§ 1.6.2. Transitional Provisions

- a. Any foreign exchange dealer that obtained a license prior to the promulgation of this regulation and whose license is still valid, shall be required to relicense within 60 days following the adoption of this regulation by the Supreme Council of DAB.
- b. Foreign exchange dealers that are operating with expired licenses or no license at all must submit an application for a license within 10 business days of the promulgation of this regulation or face immediate closure and fine of AF 20,000.
- c. With the enactment of this regulation, the regulation of the money changers Number (xxxxx) is declared no longer valid.
- d. This regulation shall come into force on the date of enactment by the Supreme Council of DAB and shall be published in DAB web site.