

**LAW**  
**of the Republic of Tajikistan**  
**on Islamic Banking Activities**

This Law stipulates legal and organizational basis of the Islamic banking activities in the Republic of Tajikistan and creates favorable environment for its implementation.

**CHAPTER 1. GENERAL PROVISIONS**

**Article 1. Main Definitions**

For the purposes of this Law the following definitions shall be used:

- **banking system of the Republic of Tajikistan** – the National Bank of Tajikistan and other credit institutions functioning in the Republic of Tajikistan;
- **Islamic banking activities** – implementation of banking transactions and bargains by Islamic credit institutions as envisaged in this Law;
- **Islamic principles of finance** – implementation of Islamic banking activity in compliance with standards based on rules of Islamic law, applicable to issues of banking services;
- **standards of Islamic banking activities** – set of rules established by the Advisory Council on Islamic Banking Services and approved by the National Bank of Tajikistan, according to which the Islamic credit institutions implement Islamic banking activities;
- **Islamic credit institutions** – legal entities (Islamic banks, Islamic non-bank credit institutions and Islamic microfinance organizations including Islamic banking window) implementing all or some Islamic banking transactions envisaged in this Law in accordance with the license of the National Bank of Tajikistan;
- **traditional credit institutions** – legal entities (banks, non-bank credit institutions including microfinance institutions) implementing all or some banking transactions envisaged in this Law or other legislative acts of the Republic of Tajikistan on the base of a license issued by the National Bank of Tajikistan.
- **Islamic bank** – an Islamic credit institution, which effects Islamic banking transactions on the base of a license issued by the National Bank of Tajikistan.
- **Islamic non-bank credit institutions** – Islamic credit institutions entitled to execute some Islamic banking transactions. The list of banking transactions for Islamic non-bank credit institutions shall be established by legislation of the Republic of Tajikistan and the National Bank of Tajikistan;
- **Islamic microfinance institutions** – Islamic credit institutions engaged in performance of Islamic microfinance activities on the base of a license issued by the National Bank of Tajikistan. The amount of Islamic microfinance transaction shall be established by the National Bank of Tajikistan;

- **Islamic banking window** – a branch of ordinary credit institution, which implements all or part of Islamic banking transactions in accordance with a license issued by the National Bank of Tajikistan.
- **branch** – a special structural unit of an Islamic credit institution located outside its original location where all or some banking transactions are conducted on its behalf, with a single authorized capital and single balance sheet with that Islamic credit institution;
- **branch of foreign Islamic bank** – a special structural unit established by a foreign Islamic bank for implementation of Islamic banking activity in the Republic of Tajikistan;
- **subsidiary Islamic credit institution** – a credit institution, in which more than fifty percent of voting shares are held by other Islamic credit institution;
- **Islamic credit institution holding company** – a legal entity, to which an Islamic credit institution relates, or the one controlled by the Islamic credit institution;
- **affiliated company** – a legal entity that controls an Islamic credit institution, as well as any other legal entity under control of this legal entity, including a legal entity, which is related to this group in accordance with the regulations of the National Bank of Tajikistan;
- **representative office** – a special structural unit of an Islamic credit institution outside its location that protects and represents its interests with no rights to perform any Islamic banking activities;
- **Advisory Council on Islamic Banking Products** – a body regulating the activities of Islamic credit institutions, which operates on the basis of Islamic finance principles;
- **Committee on Islamic Financial Services** – a body of Islamic credit institution that is responsible for conformity of agreements (contracts) concluded to the standards of Islamic banking activities;
- **executives** – a chairman of Islamic credit institution and his deputies, chairman of the Board and other members, a chief accountant of Islamic credit institution, as well as a manager and chief accountant of branch of Islamic credit institution, manager and chief accountant of the “Islamic banking window” and branch of a foreign Islamic bank;
- **related person** – is a person who is:
  - (a) an administrator;
  - (b) family members of a bank administrator;
  - (c) a person and his family members, who have a senior interest in the Islamic credit institution, and any legal entity, in which has a senior interest;
  - (d) any legal entity, in which an Islamic credit institution has a senior interest, not subject to consolidation in the preparation of financial statements;
  - (e) a person, who renders services to an Islamic credit institution as the member of the Committee on Islamic Microfinance Services;

- **resident** – an individual or legal entity as recognized in this capacity in accordance with the Law of the Republic of Tajikistan “On Foreign Exchange Regulation and Foreign Exchange Control”.

- **non-resident** – an individual or legal entity who is not a resident;

- **forfeiting** – financing of commercial transaction through recording promissory notes with no trader’s responsibility;

- **factoring** – financing under the assignment of monetary claim;

- **bill of exchange (demand draft)** – a document offered on behalf of an Islamic credit institution (or on its behalf) equated to cash and returned by lender to borrower with no payment or written payment order of specified payment to a third party, which comes into force after reception by the borrower of the given document;

- **clearing** – system of non-cash and intra-bank settlements based on money clearing of mutual claims and liabilities;

- **fit and proper person** – an individual, who:

(a) has not been convicted by a criminal court of a deliberate offense (including a corrupt act) unless such a conviction was motivated by his/her religious or political views or activities;

(b) has not been declared bankrupt by a court of law within the past seven years;

(c) was not disqualified or suspended by the court from practicing a profession on grounds of misconduct unrelated to his or her religious or political views or actions.

- **investment account** – an account under which money is paid to and accepted by an Islamic credit institution for the purposes of investment, in accordance with Islamic principles on banking and finance, on terms of full repayment of money and subject to:

(a) either only the net profits, or both the profits or losses, thereon shall be shared between the person paying the money and the Islamic credit institution accepting the money; or

(b) with or without any return;

- **Islamic credit facility** – funds disbursed to clients by an Islamic credit institution in the manners which are compliant with the Islamic principles of banking and finance which may or may not include conditions of payments of the principal sum returns, profits, rents or fee;

- **Islamic deposit or Islamic saving** – money and other valuables of individuals and legal entities handed and placed for safekeeping to an Islamic credit institution on terms under which it will be repaid in full, with or without any gains, to holder of deposit or his/her representative on demand or within coordinated time periods as follows and in compliance of the Islamic finance principles:

(a) **time deposit** - money handed to an Islamic credit institution, which can be used by an Islamic credit institution on the permission of depositor or at its discretion as investment funds on terms of discretionary management. These funds can be withdrawn after expiration of term as provided by the contract;

(b) **savings deposit** – money funds handed to an Islamic credit institution for safekeeping with the right of their use for investment purposes. The withdrawal of funds shall be assumed subject to observance of terms provided by the contract;

(c) **demand deposit** - money funds handed to an Islamic credit institution which can be withdrawn by a depositor at any time;

(d) **custody storage** - storage of client’s assets in an Islamic credit institution with no right of their use;

(e) **investment deposit** - money funds handed by a client to an Islamic credit institution in form of deposit with the right of use on terms provided by the contract;

- **return or profit** – in relation to the definitions of “Islamic credit”, “investment account”, “Islamic deposit or savings”, includes any form of profit, dividend or benefit, rental (extra charge) and any fee or gift, payable or to be given to or by an Islamic credit institution.

- **power of supervising another legal entity** – powers of a person, who:

(a) directly or indirectly through one or more owners, controlling or possessing 25 percent or more of the voting shares or shares of legal entities;

(b) has the opportunity to select the majority of executives of legal entities;

(c) possession of other supervisory powers established by the National Bank of Tajikistan;

- **senior interest** – a direct or indirect holding by a person acting alone or through or in concert with another/other person(s) in an undertaking, which represents more than 10 percent of the capital or voting rights of an Islamic credit institution or senior interest as defined by the National Bank of Tajikistan;

- **prudential standards** - economic standards established by the National Bank of Tajikistan with purpose of regulation of Islamic credit institutions activity which observance shall be compulsory to Islamic credit institutions;

- **external audit** - independent inspection of accounts and financial reporting, carried out by a local or foreign auditor;

- **rent (ijara)** - acquisition of equipment or any other property by an Islamic credit institution on client’s request and rent out to the client on agreed term.

## **Article 2. Legislation of the Republic of Tajikistan on Islamic Banking Activities**

The legislation of the Republic of Tajikistan on Islamic banking activities is based on the Constitution of the Republic of Tajikistan and comprises this Law and other statutory legal acts of the Republic of Tajikistan and also international legal acts recognized by Tajikistan.

### **Article 3. Scope of this Law**

1. The scope of this Law extends to all banks, non-bank credit institutions and microfinance institutions possessing the license of the National Bank of Tajikistan on carrying out of activities on the basis of the Islamic finance principles.
2. The scope of this Law does not apply to:
  - administration bodies;
  - credit institutions, which do not have the license for implementation of an Islamic banking activity;
  - credit unions, which are carrying out their activity according to the Law of the Republic of Tajikistan «On Credit Unions»;
  - commercial organizations that are not credit organizations

### **Article 4. Islamic Banking Operations and Other Transactions of Islamic Credit Institutions**

1. Islamic banking and finance activities, which can be operated or undertaken by Islamic credit institutions are the following:
  - (1) attracting and receiving Islamic deposits, Islamic savings or investment accounts from legal entities or individuals;
  - (2) opening and maintenance of clients' accounts (whether Islamic deposits, Islamic savings or investment accounts), correspondent accounts of banks and non-bank credit institutions as well as bank accounts for operations with precious metals and stones
  - (3) cash transactions: acceptance, converting, changing, exchange, packing and custody of bank-notes and coins;
  - (4) remittance operations: execution of transfer services for money transfer orders of legal entities and individuals;
  - (5) accounting operations: discount of bills of exchange and other promissory notes of legal entities and individuals;
  - (6) financing of business: extending cash Islamic credit facility or Islamic financing facility (whether secured or not), including without limitation:
  - (7) consumer, mortgage and interbank Islamic financing facility;
  - (8) factoring;
  - (9) forfeiting;
  - (10) Islamic financing facility for capital investments on the order of the owners or managers of the invested funds;
  - (12) fiduciary (trust) operations: management of funds, (securities) in favor and by the order of a principal;

(13) remote banking, clearing, settlement and transfer services connected with money funds, securities, payment orders and other payment instruments (including bank payment cards, checks, travelers' checks, bills of exchange and others);

(14) safekeeping and custody services, administration for papers, documents and valuables of clients including lease of safe boxes and premises, storage of valuables (money, securities, metals, jewelry, etc.);

(15) pawning: extending of short-term loans on the security of deposited convertible securities and movables that is used for savings purposes;

(16) issue of drafts;

(17) collection, acceptance, payment and confirmation of payment documents, opening and confirmation of commercial letters of credit;

(18) issuance of banking guarantees (including guarantees and letters of credit for its own account and for the account of customers);

(19) issue of payment instruments (including banking payment cards, checks, travelers' checks, promissory notes, and others);

(20) collection and forwarding of bank-notes, coins and valuables;

(21) arrangement of foreign currency exchange operations;

(22) purchase and sale for its own account or for the account of customers of:

- money market instruments (including checks, bills of exchange, promissory notes and certificates of deposits);
- foreign currency;
- stocks and other transferrable securities;
- forward contracts, swap agreements, futures, options, and other derivatives relating to currencies, stocks, bonds, precious metals and stones, or exchange or Islamic financing rates;

(22) any other transactions that shall be incidental to the foregoing and such other activities envisaged by the regulations of the National Bank of Tajikistan and not contradicting the Islamic financing principles.

2. Procedures of foregoing Islamic banking transactions shall be defined by standards of Islamic banking activities.

3. Only the National Bank of Tajikistan shall issue licenses to Islamic credit institutions for Islamic banking operations mentioned in the first paragraph of this Article. The license for the above mentioned types of activity shall be given to Islamic credit institutions only after the state registration in the established order.

4. Islamic credit institutions shall be entitled to implement the following transactions stipulated in the part 1 of this Article:

- issuing a guarantee envisaging execution of a monetary liability to a third person;
- financial rent (leasing);
- transactions with precious metals and stones as defined by the legislation of the Republic of Tajikistan;
- providing services of a financial agent;
- providing services of an adviser or a financial consultant;
- services on providing financial and credit information.

5. Islamic credit institutions are permitted to undertake only the following trade activities:

- (a) which are incidental to the Islamic banking and finance activities indicated in the part 1 and part 5 of this Article;
- (b) to the extent required by the Islamic principles of banking and finance; and
- (c) subject to any conditions as may be imposed by the regulations of the National Bank of Tajikistan.

#### **Article 5. Activity Features of Islamic Credit Institutions**

1. Islamic credit institutions shall be obliged to explain to clients banking operations features based on the Islamic finance principles, and connected risks.
2. Islamic credit institutions shall not be entitled:
  - to collect a reward as interest;
  - to guarantee a return of investment deposit or its income;
  - to finance (credit) activity connected with manufacture and (or) tobacco, alcoholic products, weapon and ammunition trade, gambling industry and drug trafficking and precursors;
  - to finance other kinds of enterprise activity, financing (crediting) of which is forbidden by Sharia.
3. Before granting funds to clients, Islamic credit institutions shall be obliged:
  - to be convinced of client's ability to discharge their obligations;
  - to make proper assessment of client with a view to competency, solvency, profitability of project and availability of mortgage security.
4. Islamic credit institutions shall not be participants of system of the compulsory insurance of deposits, and deposits in Islamic credit institutions shall not be guaranteed by deposit insurance system.
5. Applicable legal requirements of the Republic of Tajikistan regulating limits of participation in authorized capital shall not apply to Islamic credit institutions, in case of acquisition of shares by them (share ownership) with a view of financing of industrial and trading activity of legal entities.

#### **Article 6. Relationships of an Islamic Credit Institution and the State**

1. An Islamic credit institution shall not be responsible for the obligations of the State, and the State shall not be responsible for the obligations of an Islamic credit institution, unless they have undertaken such responsibility.

2. An Islamic credit institution shall not be responsible for the obligations of the National Bank of Tajikistan, and the National Bank of Tajikistan shall not be responsible for the obligations of an Islamic credit institution, unless they have undertaken such responsibility.

3. Government authorities shall not have the right to interfere with the activities of Islamic credit institutions.

#### **Article 7. Associations of Islamic Credit Institutions**

1. Credit institutions operating in accordance with Islamic financing principles may establish non-profit associations to protect their interests

2. Credit institutions operating in accordance with Islamic financing principles through associations may coordinate their activities, facilitate connections between domestic and foreign credit institutions, exchange scientific, information and professional achievements, provide recommendations pertaining to Islamic banking activities to the Government of the Republic of Tajikistan, National Bank of Tajikistan and other government authorities.

### **CHAPTER 2. PROCEDURE OF ESTABLISHMENT AND LICENSING OF ISLAMIC CREDIT INSTITUTIONS**

#### **Article 8. Procedure of Establishment and State Registration of Islamic Credit Institutions**

1. Islamic Credit institutions shall be established according to the procedure set in the Law of the Republic of Tajikistan “On Joint Stock Companies”, the Law of the Republic of Tajikistan “On Limited Liability Companies” and other statutory and legal acts of the Republic of Tajikistan taking into consideration the provisions of this Law.

2. To establish an Islamic credit institution, its branch or representations in the territory of Tajikistan and to appoint its executives, consent of local executive government authorities is not required.

3. Islamic banks, except for state Islamic banks shall be established as joint stock companies.

4. The state registration of Islamic credit institutions, their branches and representations shall be made according to the Law of the Republic of Tajikistan “On the State Registration of Legal Entities and Individual Entrepreneurs”.

5. Islamic credit institutions in the Republic of Tajikistan must have:

- an official title and its abbreviation showing legal form of organization of credit institution;
- list of activities recorded in the official language and one of the foreign languages;
- a seal showing the title of credit institution in the official language and one of the foreign languages.

#### **Article 9. Title and Symbols of Islamic Credit Institutions**

1. A credit institution that carries out activity on the basis of Islamic finance principles shall be entitled to use in its title the word "Islamic". The title and symbols of credit institution using Islamic finance principles can be used only for implementation of Islamic banking activity.

2. Words “an Islamic credit institution», «an Islamic bank», «an Islamic non-bank credit institution», «an Islamic microfinance organization» or resulting words in any formulation in respect of activities or services without a license issued by the National Bank of Tajikistan cannot be used unless such use is authorized by the legislation of the Republic of Tajikistan on international legal acts recognized by Tajikistan or unless the context in which used foregoing expressions and words, clarifies that no Islamic banking activities are involved.

#### **Article 10. Licensing of Islamic Banking Activities**

1. Islamic banking activities in the Republic of Tajikistan shall be implemented in accordance with the license for Islamic banking activities (hereinafter – license).

2. According to this Law the National Bank of Tajikistan shall have the right to require liquidation of any legal entity engaged in Islamic banking activity without a license.

3. A license shall be issued by the National Bank of Tajikistan in accordance with the laws of the Republic of Tajikistan and this Law.

4. The National Bank of Tajikistan shall have the right to implement Islamic banking activities without a license pursuant to the Law of the Republic of Tajikistan “On the National Bank of Tajikistan”.

5. Islamic credit institutions shall have the right to carry out Islamic banking activities as of the date of its license.

6. Traditional credit institutions can be reorganized to Islamic credit institutions. The procedure of reorganization of traditional credit institutions into Islamic credit institutions shall be established by the legislation of the Republic Tajikistan and statutory legal acts of the National Bank of Tajikistan.

7. Islamic credit institutions cannot be reorganized to traditional credit institutions.

8. Islamic credit institutions established as a result of reorganization of traditional credit institution can carry out Islamic banking activity or its separate types after reception of license of the National Bank of Tajikistan.

9. Traditional credit institutions for implementation of Islamic banking activity within the framework of "Islamic banking window» shall obtain a license from the National Bank of Tajikistan for implementation of Islamic banking activities. Traditional credit institution which has obtained the license for implementation of Islamic banking activities shall open corresponding subdivision within the head office or branch outside of the location of the head office.

10. Branches of foreign Islamic credit institutions shall be allowed to commence Islamic banking activities only when their head offices are subject to consolidated banking supervision and regulation by a relevant government authorities of the country where the Islamic credit institution is located.

11. Subsidiaries and branches of foreign Islamic banks shall be subject to supervision and regulation in accordance with requirements established by this Law and other banking legislation in the same way as domestic Islamic credit institutions.

12. The National Bank of Tajikistan may set restrictions to subsidiaries of Islamic credit institution and branches of foreign Islamic credit institutions in the implementation of Islamic banking activities unless in corresponding foreign states similar restrictions are set to subsidiaries of Islamic credit institutions and branches of local Islamic credit institutions.

### **Article 11. Documents Required for Obtaining a License**

1. An Islamic credit institutions except for Islamic microfinance institution and Islamic banking window, prior to the state registration and obtaining a license, must submit to the National Bank of Tajikistan an application, constituent documents and the following information in official language:

- (1) notarized copy of constituent documents showing the amount of the authorized capital;
- (2) information with the last name, the first name, the patronymic, citizenship, permanent place of residence, business or profession, education, detailed information on the record of service of each executive;
- (3) a copy of the document on higher economic education of executives and also a copy of documents (certificate, diploma) on higher education in field of Islamic banking activities;
- (4) a copy of the document certifying professional competence and reliability of each executive;
- (5) reference with indication of the last name, first name, patronymic, citizenship, permanent place of residence, business or profession of the senior interest holder including ultimate beneficial owner of senior interest confirming their financial situation;
- (6) information on the legal sources of funds invested to the authorized capital;
- (7) copies of the last three financial statements of a legal entity – owner of a qualified holding with the external auditors' opinion;
- (8) list of shareholders and ultimate beneficiary owners of shares with the location address, and the number of shares;
- (9) written declaration by each senior interest and executive that he or she has never been convicted for any crime, has never been a bankrupt, and has never faced restrictions in his or her professional activities;
- (10) a business-plan envisaging business objectives and types of activities, description of the organizational structure and internal control system, including relevant measures against legalizing profits acquired through criminal activities and financing terrorism, as well as forecast on the balance sheet, revenues and expenditures and money turnover for the next three years;

(11) for each senior interest, including the ultimate beneficiary of such a senior interest, a list of legal entities participating in capital indicating their share and location;

(12) information on establishment of the Committee of Islamic Financial Services in the structure of Islamic credit institution and persons involved in the Committee on Islamic Financial Services shall indicate their corresponding knowledge and experience in the Islamic law and Islamic banking activities;

(13) information on the location of the head office and any other location in or outside the Republic of Tajikistan, where banking operations are implemented;

(14) document certifying payment of a fee for consideration of an application;

(15) a document certifying that the banking supervision authority of the country, where a foreign (principal) bank or a holding company of an Islamic credit institution are established and operate, does not object against implementation of Islamic banking activities by the applicant Islamic credit institution in the Republic of Tajikistan and exercises consolidated banking supervision on the bank- applicant.

2. An Islamic microfinance institution for obtaining a license shall submit to the National Bank of Tajikistan an application, documents and the following information in official language:

(1) an application;

(2) copies of the constituent documents approved by the executive of Islamic microfinance institution and certificate on the state registration of the Islamic microfinance institution;

(3) information on executives indicating last name, first name, patronymic, citizenship, permanent place of residence, profession, education, experience, clean record for economic crime and crimes of corruption character and evidence that he or she has never faced restrictions in his or her professional activities;

(4) a copy of the certificate on the state registration of shareholders for legal entities and individual taxpayer number for individuals;

(5) a copy of the financial statement of shareholders - legal entities for last year with external auditors' opinion;

(6) a certificate issued by a competent authority on fulfillment of obligations to the state budget for the last year activity;

(7) certificate on legal source of funds of shareholders invested in the authorized capital - for individuals, in accordance with the procedure established by law;

(8) list of shareholders and ultimate beneficiary owners of shares with addresses and the number of shares;

(9) a working plan that indicates purposes and types of activities, description of organizational structure and internal control system, as well as forecast on the balance sheet, revenues and expenditures, and money turnover for the next three years (except for Islamic microlending fund);

(10) information on establishment of the Committee on Islamic Financial Services in the structure of Islamic microfinance institution indicating knowledge and experience in Islamic law and Islamic banking activities;

(11) information on addresses;

(12) document certifying payment of a fee for consideration of an application;

3. The National Bank of Tajikistan may request additional information for its consideration of the application as provided in paragraphs 1 and 2 of this Law.

## **Article 12. Procedure on Granting of a License to Islamic Credit Institutions**

1. Within three months from the date of an application, the National Bank of Tajikistan shall provide its opinion to the applicant Islamic credit institution on the compliance or incompliance of submitted documents with the provisions of this Law. An application of traditional credit institutions on opening of “an Islamic banking window” and obtaining license shall be considered within one month.

2. In preparing the opinion, the National Bank of Tajikistan, having verified submitted documents, may request for required additional information from the applicant Islamic credit institution, other government authorities and relevant foreign supervision authorities of that applicant.

3. The National Bank of Tajikistan shall only grant a license upon being satisfied with an applicant Islamic credit institution within one month from the date of state registration. The National Bank of Tajikistan may impose conditions before issuing a license and may vary or revoke any of such condition of a license later on. It shall, prior to imposing any conditions on a license, notify its intention in writing to take such action to the applicant Islamic credit institution concerned and shall give the applicant Islamic credit institution an opportunity to submit within such period, being not less than fourteen days, as may be specified in the notification reasons why the condition of the license should not be imposed, varied or revoked.

4. In exceptional circumstances, the National Bank of Tajikistan may extend the term envisaged in the part 1 of this Article to additional two months, provided that it notifies the applicant Islamic credit institution on the reasons for such delay.

5. In case of a negative opinion, the National Bank of Tajikistan shall send to the applicant Islamic credit institution and a traditional credit institution the written response with a description of reasons for denial of license. In all cases, the applicant shall not be entitled to a refund for the application fees paid.

6. The National Bank of Tajikistan while considering the application for a license shall be obliged to decline a title of an Islamic credit institution, when such title already exists in the Register of Islamic credit institutions.

7. Based on its regulations, the National Bank of Tajikistan shall determine and publish requirements that it applies in considering any application for licensing.

8. The National Bank of Tajikistan shall grant a license to an Islamic credit institution upon being satisfied regarding:

- (1) legality, validity and accuracy of information and documents submitted by the applicant;
- (2) satisfactory financial status and activities of shareholders of the applicant;
- (3) identity and character of owners, qualifying holders and executives as competent persons;
- (4) adequacy of staffing, operational and financial resources, and capital structure of the applicant Islamic credit institution to cover the obligations required for licensing;
- (5) soundness of activities and operations indicated in the charter of the applicant;
- (6) viability of the applicant's business-plan;
- (7) decision of the applicant Islamic credit institution to maintain operations at a permanent address in the Republic of Tajikistan;
- (8) its ability to implement adequate level of prudential supervision on consolidated basis by the relevant foreign supervisory authority.

9. After the decision to grant a license, the applicant Islamic credit institution, within one month from such a decision, shall deposit the remaining part of the authorized capital and pay the license fee to the relevant accounts with the National Bank of Tajikistan. After the compliance with the indicated requirements by the Islamic credit institution, the National Bank of Tajikistan shall issue a license within three business days.

10. Decisions of the National Bank of Tajikistan to grant a license shall be published in its publication.

11. An Islamic credit institution shall further notify the National Bank of Tajikistan on any changes regarding documents it has submitted during or in the course of its licensing application.

### **Article 13. Branches and Other Structural Units of Local Islamic Credit Institutions**

1. A local Islamic credit institution must obtain written consent of the National Bank of Tajikistan to commence operation of any of its branches. For this purpose, a local Islamic credit institution shall submit the following documents and information to the National Bank of Tajikistan:

- a copy of decision of competent authority of a local Islamic credit institution for creation of a branch;
- a copy stamped and signed by the head of a local Islamic credit institution of the regulations of the branch with the list of Islamic banking and finance activities allowed to be implemented by that branch;
- detailed information on the executives of that branch as defined by this Law.

2. The National Bank of Tajikistan shall consider approval of a branch operation by a local Islamic credit institution within one month from date of receiving the application.
3. No Islamic credit institution shall be allowed to commence its branch operations in the following circumstances:
  - candidates for the position of branch managers do not comply with the qualification requirements;
  - the buildings and equipment of the branch do not comply with the regulations of the National Bank of Tajikistan;
  - the Islamic credit institution does not comply with this Law, any regulations of the National Bank of Tajikistan and other prudential regulations.
4. A local Islamic credit institution must notify the National Bank of Tajikistan on the closure of any of its branches within the Republic of Tajikistan within 10 days as the date of approval of decision.
5. A local Islamic credit institution and its branches may establish other structural units (banking service centers, money transfer outlets, currency exchange outlets, etc.) outside their location as defined by the National Bank of Tajikistan.
6. The above structural units may perform on behalf of local Islamic credit institutions certain Islamic banking transactions as listed or defined by the regulations of the National Bank of Tajikistan.

#### **Article 14. Establishment of Branch of a Foreign Islamic Bank**

1. A foreign Islamic bank in order to implement its branches' activity in the Republic of Tajikistan must obtain a written consent of the National Bank of Tajikistan.
2. An application for a permit shall be presented to the National Bank of Tajikistan in writing by the foreign Islamic bank in official language with the following documents attached:
  - (1) decision of the foreign Islamic bank to open a branch in the Republic of Tajikistan, registration documents indicating the location of the foreign Islamic bank and the branch to be opened;
  - (2) a copy stamped and signed by the head of the foreign Islamic credit institution of the regulations of the branch with the list of Islamic banking operations allowed to be implemented by that branch;
  - (3) information with the name, nationality, citizenship, permanent place of residence, business or profession, education degree, detailed information on the length of service for each executive;
  - (4) a copy of a document certifying higher economic education of an executive;
  - (5) a list of shareholders and ultimate beneficial owners of the foreign Islamic bank, indicating their location, number of shares and copies of shareholder registration documents;
  - (6) a copy of the three last annual reports of the foreign Islamic bank with the auditors' opinion;

(7) a written declaration by the executive affirming that he or she holds a clean record, with no record of bankruptcy and no restrictions in his or her professional activities;

(8) a business-plan envisaging business challenges and types of activities, description of the organizational structure and internal control system, including appropriate measures against legalization of profit obtained through criminal acts and financing terrorism, as well as forecast on balance accounts, revenue and expenditure accounts and money turnover for the next years;

(9) a document confirming payment of the fee for the review of application;

(10) written consent by the relevant foreign supervisory authority of the country where the foreign Islamic bank was established, for it to open a branch in the Republic of Tajikistan, and agreement by the relevant foreign supervisory authority to implement a comprehensive supervision of the foreign Islamic bank's activities;

(11) guarantees of the executive management of the foreign Islamic bank on the liabilities of the branch resulting from Islamic banking and finance activities envisaged in the permit. The type of currency and custody of such a guarantee amount shall be determined by the National Bank of Tajikistan.

3. When necessary, the National Bank of Tajikistan may set an additional list of documents for detailed information not envisaged in the part 2 of this Article.

4. An application for an approval for a branch of Islamic foreign bank to perform its activity shall be considered by the National Bank of Tajikistan within two months from date of receiving the application.

### **Article 15. Establishment of “an Islamic Banking Window” in Traditional Islamic Credit Institutions**

1. A traditional credit institution to establish “an Islamic banking window” shall submit to the National Bank of Tajikistan the following documents in official language:

(1) an application;

(2) notarized copy of the charter with changes and supplements which determine implementation of the Islamic banking activity showing the share of the authorized capital directed on implementation of the Islamic banking activity;

(3) a document that confirms establishment of “an Islamic banking window”, with aim of implementing of the Islamic banking activity;

(4) information on establishment of the Committee for Islamic Financial Services in the structure of credit institution;

(5) information regarding individuals involved in the Committee of Islamic financial services indicating their corresponding knowledge and experience in Islamic law and Islamic banking activity;

(6) document certifying payment of a fee to consider an application;

2. Traditional credit institutions after being issued license by the National Bank of Tajikistan shall be entitled to exercise Islamic banking activity through “an Islamic banking window”.

3. A traditional credit institution shall obtain consent of the National Bank of Tajikistan to commence activity of each “Islamic banking window”. For this purpose, traditional credit institutions shall submit the following documents and information to the National Bank of Tajikistan:

(1) a copy of decision of competent authority of the traditional credit institution on establishment of “an Islamic banking window”;

(2) a copy stamped and signed by the head of the traditional credit institution of the regulations of “the Islamic banking window” with the list of Islamic banking operations allowed to be implemented;

(3) information with the last name, first name, patronymic, citizenship, permanent place of residence, business or profession, education degree, detailed information on the length of service for each executive of “the Islamic banking window”;

(4) a copy of the document of higher economic education of executives of “the Islamic banking window”, and copies of the documents (certificate, diploma) on education in Islamic banking activity;

(5) information on the location of “the Islamic banking window” in the Republic of Tajikistan, where Islamic banking activity are implemented;

4. The National Bank of Tajikistan withholds its consent to commence activity of “the Islamic banking window” of the traditional credit institution in the following circumstances:

- candidates for a position of executives of “the Islamic banking window” do not comply with the qualification requirements;
- buildings and equipment of “the Islamic banking window” do not comply with the regulations of the National Bank of Tajikistan;
- a traditional credit institution does not comply with Laws, any regulations of the National Bank of Tajikistan and prudential regulations.

5. A traditional credit institution within ten days from the date of decision-making must notify the National Bank of Tajikistan on the closure of “the Islamic banking window”.

#### **Article 16. Establishment of Representative Office of Islamic Credit Institutions**

1. To open a representative office anywhere within the Republic of Tajikistan, a foreign Islamic credit institution must obtain an approval from the National Bank of Tajikistan.

2. An application for an approval shall be presented to the National Bank of Tajikistan in writing by the foreign Islamic credit institution in official language with the following documents attached:

(a) decision of a relevant unit of the foreign Islamic credit institution to open a representative office in the Republic of Tajikistan;

(b) a written confirmation by the relevant foreign supervisory authority of the country where the foreign Islamic credit institution was established confirming that the applicant foreign Islamic credit institution has a valid license to carry on Islamic banking activities.

3. The National Bank of Tajikistan shall consider approval to open a representative office by a foreign Islamic credit institution within one month from date of receiving the application.

#### **Article 17. Peculiarities of Opening a Branch, Representative Office and Subsidiary Bank of an Islamic Credit Institution outside of the Republic of Tajikistan**

1. A local Islamic credit institution may not open a branch or a representative office, or establish a subsidiary outside the Republic of Tajikistan without obtaining a prior written approval of the National Bank of Tajikistan.

2. In order to obtain an approval from the National Bank of Tajikistan, an Islamic credit institution shall submit a copy of the resolution of its relative authority on establishing its branch, representative office, subsidiary bank outside the Republic of Tajikistan and the appointment of their managers.

3. Islamic credit institutions shall notify the National Bank of Tajikistan of any changes in respect of location or termination of a branch, a representative office or a subsidiary outside the Republic of Tajikistan within one month as the date of approval of respective decision.

#### **Article 18. Register of Islamic Credit Institutions and «Islamic Banking Windows»**

1. The National Bank of Tajikistan shall maintain the Register of Islamic credit institutions and «Islamic banking windows» (hereinafter referred to as Register).

2. The Register of Islamic credit institutions shall record the following information: the name, location, state registration certificate number, the Islamic credit institution's registration certificate number, date of issue and withdrawal, license number, date of issue and withdrawal.

3. The Register of Islamic credit institutions shall contain additional information as the National Bank of Tajikistan may require.

4. The list of Islamic credit institutions and «Islamic banking windows» including the name, location and type of license shall be published by the National Bank of Tajikistan each January in the mass media.

5. Any changes to the list of Islamic credit institutions and «Islamic banking windows» during the year shall be regularly published by the National Bank of Tajikistan in the mass media.

#### **Article 19. Fees for Services and Licensing Charges**

1. The National Bank of Tajikistan shall charge the following fees for processing an application for a license

(1) from Islamic banks:

- for processing an application – equivalent to 50 settlement indicators;
- for granting a license - equivalent to 100 settlement indicators;

- (2) from non-bank Islamic credit institutions:
  - for processing an application for a license – 25 settlement indicators;
  - for the issue of a license – 50 settlement indicators.
- (3) from Islamic microfinance organizations:
  - for processing an application for a license:
  - from an Islamic micro-credit deposit institution – 7 settlement indicators;
  - from an Islamic micro-credit institution - 5 settlement indicators;
  - from an Islamic micro-lending funds – 3 settlement indicators;
  - for granting a license:
  - from an Islamic micro-credit deposit institution – 40 settlement indicators;
  - from an Islamic micro-credit institution - 20 settlement indicators;
  - from an Islamic micro-lending fund – 10 settlement indicators;
- (4) from traditional credit institutions:
  - for processing an application for a license – equivalent to 25 settlement indicators;
  - for granting a license – equivalent to 50 settlement indicators;

## **Article 20. Liquidation of an Islamic Credit Institution**

Liquidation of an Islamic credit institution shall be done in accordance with the Law of the Republic of Tajikistan “On Liquidation of Credit Institutions”.

## **Article 21. Revocation of a License**

1. A license issued under this Law may be revoked only by decision of the National Bank of Tajikistan on one or more of the following grounds:

- (1) an Islamic credit institution has not used the license within 12 months after the date of its effectiveness or has suspended or ceased its operations for more than six months;
- (2) operations of the Islamic credit institution are conducted in a risky or unsound manner;  
or
- (3) an Islamic credit institution violates any laws and regulations of the National Bank of Tajikistan, or any licensing conditions and requirements that sufficiently impact on its financial stability;
- (4) an Islamic credit institution, the foreign Islamic bank, the Islamic credit institution holding company of which the banks and the Islamic non-bank credit institutions are a subsidiary engaged in criminal activities constituting legalization of funds obtained through criminal activities and financing terrorism or license is revoked;
- (5) a foreign Islamic credit institution or the Islamic credit institution holding company (of which the Islamic credit institution is a subsidiary) had their licenses revoked in its country of establishment;
- (6) appropriate banking supervision is hindered because all or part of an Islamic credit institution has been moved to another country;

(7) appropriate banking supervision is hindered due to an Islamic credit institution being a member of a group of companies, or is a subsidiary of a foreign Islamic bank or an Islamic credit institution holding company, that is not adequately supervised in its country of establishment;

(8) a foreign supervisory authority of a foreign Islamic credit institution or an Islamic credit institution holding company, of which the Islamic credit institutions and the Islamic non-bank credit institutions are a subsidiary, has appointed a temporary manager or a receiver for that foreign Islamic credit institution or that Islamic credit institution holding company.

2. The National Bank of Tajikistan shall further be obliged to revoke the license of an Islamic credit institution in the following cases:

- when it is established in court that an Islamic credit institution's license was obtained with forged documents or false information
- upon other cases as stipulated under the Law of the Republic of Tajikistan "On Liquidation of Credit Institutions".

3. A decision of the National Bank of Tajikistan to revoke a license pursuant to this Article shall be in writing and include the grounds on which the decision is taken.

4. A decision shall be issued immediately, at the day of approval, by the National Bank of Tajikistan to an Islamic credit institution. The decision shall take effect at the time it is served on the Islamic credit institution concerned, unless the decision specified another date for it to enter into force, which may not exceed 30 days.

5. The requirement of service of such decision on a foreign Islamic bank shall be met by its branch or a representative office addressed by the decision.

6. No license of Islamic credit institution may be revoked other than on one of those basis envisaged under this Law.

7. A decision to revoke a license shall be published by the National Bank of Tajikistan in the mass media within one week from the date such decision shall have been taken.

### **CHAPTER 3. CAPITAL**

#### **Article 19. Capital of Islamic Credit Institutions**

1. The authorized capital of an Islamic credit institution to commence its operations shall be formed in the national currency.

2. The Board of the National Bank of Tajikistan shall determine the minimum authorized capital for a newly established Islamic credit institution in the national currency.

3. A resolution of the Board of the National Bank of Tajikistan on changing the minimum size of capital of an Islamic credit institution shall become effective in 90 days after its official publication.

4. For the newly opened Islamic credit institutions, whether bank or and non-bank Islamic credit institution, the minimal authorized capital in effect at the day of license application shall apply.
5. The regulatory capital of a non-bank Islamic credit institution that approached the National Bank of Tajikistan to acquire a status of an Islamic bank shall be no less than the minimal authorized capital in effect for a newly opened Islamic bank at the day of the non-bank Islamic credit institution's application for an Islamic bank license.
6. Procedures of calculating the regulatory capital and its elements shall be determined in the regulations of the National Bank of Tajikistan in accordance with the international Islamic financial services supervision standards.
7. Islamic credit institutions (except for state Islamic credit institution) must not form and replenish capital from the state budget funds, grants of the Government of the Republic of Tajikistan or the state's external borrowings.
8. An Islamic credit institution must not distribute dividends to its shareholders from the net income:
  - if such an action causes non-compliance with the capital adequacy ratio requirement; or
  - prior to covering all administrative costs.

#### **Article 23. Net Local Assets Ratio for Branches of Foreign Islamic Banks**

The National Bank of Tajikistan shall require that the branch of foreign Islamic banks in Tajikistan maintain an excess of assets over liabilities to the residents of the Republic of Tajikistan.

### **CHAPTER 4. MANAGEMENT OF ISLAMIC CREDIT INSTITUTIONS**

#### **Article 24. Management Bodies of Islamic Credit Institutions**

1. Procedures of opening an Islamic credit institution and operations of its agencies shall be determined in the Law of the Republic of Tajikistan "On Joint Stock Companies", the Law of the Republic of Tajikistan "On Limited Liability Company" and other laws taking into account the provisions of this Law.
2. The management of an Islamic credit institution must comprise the following bodies:
  - a supreme authority of an Islamic credit institution - the General Meeting of Shareholders (participants) a supreme authority of Islamic microlending fund – Board of Guardians;
  - a management body – the Supervisory Board established by the General Meeting of shareholders (participants);
  - the Committee of Islamic Financial Services established by the Supervisory Board (Board of Guardians )in accordance with its charter.
  - an executive body established by the Supervisory Board;
3. The management bodies of a state Islamic credit institution and their authorities shall be determined by the Government of the Republic of Tajikistan taking into account provisions of this Law.

4. The Supervisory Board shall be responsible for determining core activities of the Islamic credit institution in consultation with the Committee of Islamic Financial Services and exercising control over their implementation, and managing the Islamic credit institution. The Supervisory Board of a credit institution shall have the following powers:

- (1) determining objectives of a credit institution and its prospects;
- (2) Establishing standards for risk management and minimum internal prudential ratios;
- (3) Identifying the main risks to which an Islamic credit institution is exposed and establishing an admissible level of these risks;
- (4) Exercising control over measures taken by the Islamic credit institution's executive body in identifying, measuring, monitoring and controlling risks;
- (5) Maintaining adequate efficient internal control system and monitoring the effectiveness of internal control system exercised by the executive body of an Islamic credit institution;
- (6) Establishing internal and investment policies, internal control system and ethics standards;
- (7) Approving appointment and dismissal of the Board members and executives of an Islamic credit institution (except for microfinance institutions) at the proposal of the Chairman or Chairman of the Supervisory Board of an Islamic credit institution, except for a head and chief accountant of branch of the Islamic credit institution;
- (8) Approving organizational structure and appointing the Head of Internal Audit unit (Chief Auditor) of an Islamic credit institution;
- (9) Determining terms and size of a salary payment for the chairman, his/her deputies and the chief auditor of an Islamic credit institution;
- (10) Determining terms and size of a salary payment for members of the Committee of Financial Services;
- (11) Establishing and liquidating branches and representative offices of an Islamic credit institution;
- (12) Reviewing auditors' opinion and findings of the internal and external auditors.

5. The Supervisory Board shall have not less than five members. The members of the Supervisory Board shall be appointed for a period of four years at the General Meeting of shareholders. Members of the Supervisory Board may be reelected during the next periods of the same length.

6. The Supervisory Board may be selected from among the shareholders (participants), including owners, as well as outside experts with higher education and being fit and proper persons. The Supervisory Board shall appoint the chairman of the Board among its members.

7. Members of the Supervisory Board must not be:

- (1) an employee of another traditional credit institution or Islamic credit institution, unless it is an affiliated company of the Islamic credit institution;
- (2) a family member of traditional credit institution or an Islamic credit institution's Supervisory Board member;
- (3) a member of the Supervisory Board or a shareholder (participant) in another traditional credit institution or Islamic credit institution;
- (4) a Chairman or member of the Board of another traditional credit institution or Islamic credit institution;
- (5) a civil servant (except for state Islamic credit institutions);
- (6) under the age of 30.

8. At least one quarter of the members of the Supervisory Board must have more than three years of experience in banking system.

9. Every member of the Supervisory Board who holds any office or possesses any property which duties or interest thereof may directly or indirectly create conflicts with his duties or interest as a member of the Supervisory Board shall declare at a meeting of the Supervisory Board the fact and the nature, character and extent of the conflict. He shall the refrain himself from voting or participating in the deliberation or decision making of the Supervisory Board in so far as those conflicts of interest are concerned.

#### **Article 25. Advisory Board on Islamic Banking Products**

1. In order to regulate activities of credit institutions operating on the base of Islamic finance principles it shall be established an Advisory Board on Islamic Banking Products under the National Bank of Tajikistan.

2. The chairman of the National Bank of Tajikistan shall appoint members of the Advisory Board on Islamic banking products from those, who have sufficient qualities and knowledge regarding Islamic finance principles and experience in the spheres of banking, its legislation and other areas related to them.

3. The National Bank of Tajikistan through its regulations shall define an activity of the Advisory Board on Islamic Banking Products.

#### **Article 26. Authorities of Advisory Board on Islamic Banking Products**

The Advisory Board on Islamic Banking Products shall have the following authorities:

(1) participation in development of regulations of the National Bank of Tajikistan related to principles of Islamic finance.

(2) Rendering advices to the National Bank of Tajikistan on different issues concerning Islamic banking, activity and transactions of Islamic credit institutions;

(3) Analysis and approval of compliance of Islamic banking services provided by Islamic credit institutions to principles of Islamic finance.

(4) Rendering advices to individuals and legal entities on issues of Islamic finances.

(5) Other duties that can be defined by the National Bank of Tajikistan.

#### **Article 27. Committee on Islamic Financial Services**

1. Committee on Islamic Financial Services shall consist of individuals that are capable to render advices to Islamic credit institutions as experts of Islamic banking with the purpose of ensuring a compliance of their activity to Islamic banking law.

2. Authorities of the Committee on Islamic Financial Services, a procedure of establishing and requirements to its members shall be set by regulations of the National Bank of Tajikistan.

3. Members of the Committee on Islamic Financial Services shall:

(1) be unprejudiced and fair at consideration of faced issues;

(2) give reliable, well grounded and motivated findings and recommendations on considered issues;

(3) follow established order and timely provide findings and recommendations on assigned issues;

(4) keep a rule of banking and commercial secrecy in relation to information received by them in process of performance of duties;

(5) follow ethics while giving their opinion and do not undermine a decision of the Committee of Islamic Financial Services;

(6) follow procedures and standards approved by the Advisory Board on Islamic Banking Products and established by the National Bank of Tajikistan.

#### **Article 28. Executive Bodies of Islamic Credit Institutions**

1. The direct management of the day-to-day operations of an Islamic credit institution shall be carried out by its executive body – the Board (collegial executive body) or by the Chairman of an Islamic credit institution (one-man executive body) or the Board and the Chairman of an Islamic credit institution. When the Board and the Chairman of an Islamic credit institution are established as an executive body at the same time, the Chairman shall perform the functions of the Chairman of the Board.

2. The executive body of an Islamic credit institution shall be responsible for the implementation of decisions of the Supervisory Board and for the management of the day-to-day operations of an Islamic credit institution. There shall not be less than three people in the membership of the Board of an Islamic credit institution.

3. The Chairman and members of the Board of an Islamic credit institution cannot be elected as members of the Supervisory Board and Committee of Islamic Banking Products.

4. The Board of the Islamic credit institution shall have the following powers:

- Implementing core activities of the Islamic credit institution;
- Ensuring compliance with corporate governance standards and risk management requirements of the Islamic credit institution;
- Ensuring proper management controls in an Islamic credit institution by establishing responsibilities, powers and relationships of internal structures, officers and other employees of the Islamic credit institution;
- Establishing an internal control system of the Islamic credit institution, its compliance and efficiency monitoring.

5. Chairman of the Islamic credit institution shall have the following powers:

- (1) Act on behalf of the Islamic credit institution without a warranty, represent it in relations with governmental and nongovernmental bodies, and conclude agreements on its behalf;
- (2) Recruit and dismiss employees of the Islamic credit institution;
- (3) Preside in meetings of the Board of the Islamic credit institution;
- (4) Sign resolutions and minutes of meetings of the Board of the Islamic credit institution;
- (5) Allocate functions among the deputies in the Islamic credit institution;
- (6) Issue binding orders and instructions for the employees of the Islamic credit institution;
- (7) Define terms and size of salary payments for employees of the Islamic credit institution, except those of the Chairman, Deputy Chairmen and Chief Auditor of an Islamic credit institution;
- (8) Bear full responsibility for activities of the Islamic credit institution;
- (9) Consider other issues related to activities of the Islamic credit institution that fall outside the competence of the Board, Supervisory Board or General Meeting of shareholders (participants) of an Islamic credit institution.

6. When an Islamic credit institution (except for Islamic microfinance institution) is established by one person, this person must not be the Chairman or the Chairman of the Board of the Islamic credit institution.

## **Article 29. Procedure of Appointment and Dismissal of Executives**

1. The executives of an Islamic credit institution (except for microfinance institutions) shall be appointed at the approval of the National Bank of Tajikistan after going through personnel appraisal at the National Bank of Tajikistan. Procedure of appraisal of the candidates to the position of executives of the Islamic credit institution (except for microfinance institutions)

shall be established in accordance with statutory and legal acts of the National Bank of Tajikistan.

2. The Supervisory Board shall select members of the Board of the Islamic credit institution (except for microfinance institutions), assign them to a position of the Chairman of an Islamic credit institution and the Chairman of its Board and release them from the office.

3. The Deputy Chairman of an Islamic credit institution and the Chief Accountant (except for microfinance institutions) shall be appointed and dismissed by Chairman of the Islamic credit institution with the approval of the Supervisory Board.

4. The director and chief accountant of a branch of an Islamic credit institution and «an Islamic banking window» shall be appointed and dismissed by the Chairman or Chairman of the Board of an Islamic credit institution.

5. Executives of an Islamic credit institution and «an Islamic banking window» must meet the following requirements:

(1) for members of the Board, Chairman, his deputies and chief accountant: hold tertiary or professional qualification in economics disciplines and education in Islamic banking and have at least five years of working experience specializing in the banking system, at least three years of which as a head or deputy head of the structural economic units;

(2) for the manager and chief accountant of the branch and also for the manager and chief accountant of an Islamic banking window (i) hold tertiary or professional qualification in economics disciplines and (ii) have at least three years of working experience in the economic structures of the banking system or hold tertiary or professional qualification in another discipline (iv) have at least ten years of working experience in economic structures of the banking system.

(3) be a professionally competent and reliable person;

(4) have sufficient knowledge of the Islamic banking legislation and statutory acts of the National Bank of Tajikistan in field of Islamic banking;

(5) must not be employees of another traditional credit institutions or Islamic credit institutions;

(6) shall work full time in the Islamic credit institution and hold a position;

(7) reside in the Republic of Tajikistan.

6. An Islamic credit institution shall be obliged to inform the National Bank of Tajikistan regarding withdrawal of any senior officials, whether through dismissal or retirement, within three days from the date of such withdrawal.

7. An executive who is dismissed from or retires from the position in connection with the use of urgent remedial measures and enforcement actions to the Islamic credit institution cannot continue to hold the position of an executive employee of the Islamic credit institution.

8. The Chairman, the Deputy Chairman of the executive body or the Chief Accountant of an Islamic credit institution must not continue to hold the position of an executive employee of the Islamic credit institution if during the period of their activity the license of this Islamic credit institution has been revoked in connection with the use of urgent remedial measures and enforcement actions.

### **Article 30. Audit Committee and Chief Internal Auditor of Islamic Credit Institutions**

1. An Islamic credit institution must establish an Audit committee.
2. Members and the chairman of the Committee shall be selected by the Supervisory Board for the period of four years.
3. The Chairman of the Supervisory Board, the Chairman of an Islamic credit institution or members of the Managing Board of an Islamic credit institution must not be members of the Audit committee.
4. The Audit committee shall function under the Supervisory Board of the Islamic credit institution and shall have the following duties and powers:
  - (1) review and recommend the approval of the annual audit plan and accounting and risk management rules and controls in the Islamic credit institution;
  - (2) recommend an external auditor of an Islamic credit institution;
  - (3) review an external auditor's report on the financial statements of the Islamic credit institution and to report any revealed weaknesses to the Supervisory Board prior to the approval of the financial statements;
  - (4) request reports from the chief internal auditor of the Islamic credit institution;
  - (5) monitor compliance of an Islamic credit institution with the laws and regulations and report to the Supervisory Board thereon;
  - (6) review reports of the Islamic credit institution to be submitted to the National Bank of Tajikistan;
  - (7) report on any matters raised by the Supervisory Board to the audit committee;
  - (8) review operations and transactions of an Islamic credit institution on the basis of plans adopted by the audit committee at the request of either:
    - the Supervisory Board;
    - the Committee on Islamic Financial Services;
    - shareholders (participants) of an Islamic credit institution, who hold more than 10 percent of voting shares or as specified by the charter of an Islamic credit institution;
  - (9) report on its activities at least annually to the General Meeting of shareholders (participants).

5. Decisions of the audit committee shall be adopted by the majority of votes of the shareholders present. If the vote is evenly divided, the Chairman's vote shall be the deciding vote.
6. An internal audit structure headed by the chief internal auditor shall function in an Islamic credit institution.
7. The chief internal auditor of the Islamic credit institution must comply with the requirements specified in the part 5 of the Article 29 of this Law.
8. The National Bank of Tajikistan may require the Islamic credit institution to appoint any person as the National Bank of Tajikistan may approve, to carry out a review or an audit on Islamic finance principles compliance by the Islamic credit institution.
9. The person appointed shall have such duties and functions as may be specified by the National Bank of Tajikistan and shall submit a report to the National Bank of Tajikistan on the review or audit carried out pursuant to part 8 of this Article.
10. The remuneration and expenses of the person appointed relating to any review or audit on Islamic finance principles compliance under this Article shall be borne by an Islamic credit institution.
11. A person appointed under part 8 of this Article shall not be liable for a breach of duty of confidentiality between such person and the Islamic credit institution in respect of matters reported to the National Bank of Tajikistan pursuant to an audit or review on Islamic finance principles compliance undertaken by that person under this Article.

### **Article 31. Disclosure of Personal Interest**

1. The executive of an Islamic credit institution and members of the Committee on Islamic Financial Products must provide information in writing to the Supervisory Board regarding any personal financial interest, whether direct or indirect, through family members and other persons with a common household, upon his or her election or appointment as executive and annually thereafter.
2. When the Supervisory Board of an Islamic credit institution or its other authorized agency is examining the issues related to personal financial interests of the senior executives and members of Committee on Islamic Financial Services, he or she has a right to participate in such examination.

### **Article 32. Procedures of Acquiring Senior Interest**

1. A senior interest in an Islamic credit institution may only be acquired upon the approval of the National Bank of Tajikistan.
2. Any person acting directly or indirectly, through or in concert with other persons, who proposes to acquire a senior interest in an Islamic credit institution, shall submit a written application to the National Bank of Tajikistan.
3. The application for the acquisition of a qualifying holding shall include:

- (1) the name, nationality, permanent place of residence, business and professional record of every proposed owner of a senior interest, including the ultimate beneficial owner of such senior interest;
- (2) information for each proposed owner of a senior interest, including the ultimate beneficial owner of such a senior interest indicating the last name, the first name, and the patronymic, the citizenship, permanent place of residence, employment record or profession of the senior interest holder, including the ultimate beneficial owner of the senior interest holder confirming their financial standing;
- (3) in the event that a proposed owner of a senior interest, including the ultimate beneficial owner of such a senior interest, is a legal entity, copies of the audited balance sheets and profit and loss accounts for the past year;
- (4) a list and location of every undertaking, in which each proposed owner of a senior interest, including the ultimate beneficial owner of such a senior interest, holds a share specifying the size of the share;
- (5) terms and conditions of the proposed acquisition of a senior interest;
- (6) legal sources of funds to be used in the acquisition;
- (7) any plans or proposals regarding major changes in the business, corporate structure or management of the target Islamic credit institution;
- (8) preliminary written conclusion of the target Islamic credit institution;
- (9) such other information as the National Bank of Tajikistan may require.

4. The National Bank of Tajikistan shall assess the expected effects of changing the owner on the financial soundness of the target Islamic credit institution and satisfy itself as to the identity of the proposed owners, including the ultimate beneficial owners, and within 60 days from the date of receiving an application for a senior interest, the National Bank of Tajikistan shall notify the applicant or applicants in writing of its approval or rejection of the application. If the National Bank of Tajikistan rejects the application, the reasons for the rejection must be provided.

5. If the National Bank of Tajikistan does not communicate its decision within the specified period of 60 days, the decision of the National Bank of Tajikistan shall be deemed to have been granted. The National Bank of Tajikistan shall have the right to require any such senior interest transaction to be cancelled if the financial position and reputation of the owners is established by the National Bank of Tajikistan as unsatisfactory.

6. The National Bank of Tajikistan shall not approve the application if:

- (1) the financial position, source of funds, reliability of any person directly or indirectly acquiring a senior interest, including the ultimate beneficial owner, is established by the National Bank of Tajikistan to be unsatisfactory; or
- (2) it is satisfied that such an acquisition would either:
  - substantially restrict competition;
  - jeopardize the financial sustainability of an Islamic credit institution;

- endanger the interests of the depositors, investors and creditors of an Islamic credit institution.

7. Any person acting directly or indirectly, through or in concert with other persons, who proposes to increase an existing senior interest in an Islamic credit institution in a manner that would reach 10, 20, 33, 50, or 75 percent of the capital or the voting share respectively, or more, of an Islamic credit institution, shall give at least 30 days prior notice in writing to the National Bank of Tajikistan.

8. Any Islamic credit institution that becomes aware of a proposed acquisition of a senior interest or of a proposed increase in an existing senior interest in the Islamic credit institution must immediately give written notice of the proposal to the National Bank of Tajikistan.

9. If an Islamic credit institution becomes aware that its owners, in particular, owners of qualifying holding, are no longer competent persons, it must immediately notify the National Bank of Tajikistan of this fact in writing.

### **Article 33. Reorganization of Islamic Credit Institutions**

1. Any reorganization of an Islamic credit institution shall be performed only with the prior approval of the National Bank of Tajikistan.

2. An Islamic credit institution that intends to engage in reorganization shall give at least 30 days prior notice of this fact to the National Bank of Tajikistan, and provide the required information.

3. The National Bank of Tajikistan shall assess the financial and managerial resources and future prospects of the existing and newly established Islamic credit institution, and shall not approve the proposal for reorganization unless the newly established Islamic credit institution satisfies the criteria for licensing. The National Bank of Tajikistan shall not approve a proposed reorganization referred to in the part 1 of this Article unless it is satisfied that the provisions of the antimonopoly legislation are complied with.

## **CHAPTER 5. REGULATION OF ISLAMIC CREDIT INSTITUTION ACTIVITIES**

### **Article 34. General Principles of Islamic Credit Institutions' Activities**

1. Islamic credit institutions shall operate in a sound and prudent manner and in accordance with the provisions of this Law, regulations and licenses issued by the National Bank of Tajikistan.

2. An Islamic credit institution shall implement the following functions:

(1) maintain adequate capital and liquidity;

(2) with a decrease in the value of assets, create a fund of potential losses in accordance with the regulations of the National Bank of Tajikistan;

(3) arrange adequate accounting and other records;

(4) have sufficient reserves for timely fulfillment of obligations and compensation of losses;

- (5) ensure sufficient and effective risk control;
- (6) make adequate provision for:
  - depreciation of assets;
  - discharge of liabilities;
  - losses;
  - provisions for Islamic financing losses pursuant to the regulations of the National Bank of Tajikistan;
- (7) create its own system of risk management and internal control in order to reduce risk in accordance with the regulations of the National Bank of Tajikistan;
- (8) ensure sufficient and effective risk control;
- (9) group assets depending on the risk of loss.

3. Islamic credit institutions shall not establish group structures that hinder effective supervision. The National Bank of Tajikistan shall issue regulations for the affiliates of Islamic credit institutions, in particular, concerning the requirements for transactions between the Islamic credit institution and any affiliates thereof that are not subject to consolidation in the preparation of financial statements.

4 The National Bank of Tajikistan shall apply regulations set in accordance with the requirements of this Chapter for local Islamic credit institutions and branches of foreign Islamic banks.

5. Whenever a chairman of an Islamic credit institution discovers that:

- the capital adequacy ratio in the Islamic credit institution is less than the size required by the National Bank of Tajikistan;
- an Islamic credit institution is likely to become unable to meet its obligations or is about to suspend payment of its obligations, -

he or she must immediately notify the National Bank of Tajikistan of this fact in writing.

### **Article 35. Prudential Regulations**

1. The National Bank of Tajikistan shall have the power to establish the following prudential regulations for Islamic credit institutions:

- (1) minimum authorized capital for newly established Islamic credit institutions;
- (2) maximum amount of non-monetary part of the authorized capital;
- (3) limit on exposure to a single customer or a group of related customers;
- (4) capital adequacy ratio;
- (5) current liquidity ratio;
- (6) foreign exchange, profit rates and other risks;

- (7) use of the equity of Islamic credit institutions to purchase shares of other legal entities;
  - (8) limits on the size of Islamic credit facilities or Islamic financing facilities or guarantees provided by Islamic credit institutions to their shareholders (participants);
2. The National Bank of Tajikistan may set prudential regulations and procedures to be applied by Islamic credit institutions and in the process of supervision in accordance with the international standards, best practices, their normative and legal acts.
  3. The National Bank of Tajikistan shall set requirements defined in accordance with the provisions of this Chapter applied to Islamic credit institutions and their affiliates based on a comprehensive consolidated supervision.
  4. The National Bank of Tajikistan may set other prudential regulations applied in international practice in regulating Islamic banking activities.
  5. The National Bank of Tajikistan may set requirements regarding the Islamic financing rates, maturities and other terms applicable to Islamic credit facility or Islamic financing facility and attracting funds (including deposits, holdings and shares) or off-balance-sheet liabilities.
  6. The National Bank of Tajikistan may set different requirements regarding risk management and procedures of calculation by types of Islamic credit institutions.
  7. The decision of the National Bank of Tajikistan to change regulations and procedure of calculation shall take effect not earlier than three months after its approval of such changes.
  8. An Islamic credit institution shall pursue its internal policy following minimal and maximal risks, risk management rules, investment and credit policies, as well as other prudential requirements regulating capital, assets, off-balance-sheet accounts and reserves.
  9. An Islamic credit institution shall develop and implement internal policy of controlling prudential regulations in the following areas:
    - (1) liquid resources in relation to the total assets and liabilities or change in their value (including guarantees and collateral received), provided that the Islamic credit institution shall be entitled to deposit part of its liquid assets with the National Bank of Tajikistan;
    - (2) maximum aggregate amount of all or certain credits and investments;
    - (3) classification and evaluation of assets, provisions to be made on the basis of such classification and evaluation, and the time when earnings on non-performing Islamic financing facilities may no longer be accounted for as income except as received in cash;
    - (4) conditions concerning acceptance of Islamic deposits, Islamic savings and extension of Islamic credit facility or Islamic financing facility, including terms and profit rates;
    - (5) prohibitions, restrictions or conditions concerning:
      - types of Islamic credits, investments and liabilities, matching as to maturity and profit rates in respect of assets and liabilities;
      - exposure:
      - in foreign currency, precious metals and stones;

- stocks and other transferrable securities;
- forward contracts, swap agreements, futures, options, and other derivatives relating to currencies, stocks, Sukuk, precious metals and stones, and financing rates, when the risk is not hedged and exceeds the sets ratios.

### **Article 36. Risk of Large Exposures**

1. No Islamic credit institution shall grant Islamic credit facilities to another legal entities or individuals, if:

(a) the aggregate outstanding principal amount of Islamic credit exposures of an Islamic credit institution to a given person exceeds twenty percent of the regulatory capital of that Islamic credit institution; or

(b) the aggregate outstanding principal amount of large credit exposures of an Islamic credit institution exceeds the threefold of the regulatory capital of that Islamic credit institution.

2. The provisions of Part 1 of this Article shall not apply to the:

(a) transactions with, or guaranteed by, the Government of the Republic of Tajikistan; or

(b) transactions between the Islamic credit institutions with another credit institution or Islamic credit institution with a maturity of one year or less.

3. For the purposes of applying this Article it shall be established that a person in this Article shall be deemed to include another person, with whom such person is connected, directly or indirectly, in such a way that:

(a) the financial soundness of one of them may affect the financial soundness of the other or others; or

(b) there are factors that may affect the financial soundness of some or all of them; or

(c) if (depending on their relationship) financial sustainability of the other person is in fact responsible for the payment of Islamic financing facilities to the Islamic credit institutions.

### **Article 37. Islamic Credit Issued to Related Persons**

1. An Islamic credit institution must not extend Islamic financing facility to related persons, if:

(a) an Islamic credit facility and its conditions were not approved by the Supervisory Board or, in respect of a branch of a foreign Islamic bank, by the branch manager.

(b) a profit rate for the Islamic credit facility is below the current market profit rates for such Islamic credits;

(c) a Islamic credit facility when extended to an executive of the Islamic credit institution (including any credits extended by one or more subsidiaries of the Islamic credit institution), exceeds thirty percent of the annual income of that person;

(d) a term of the Islamic credit facility, its design and quality of collateral significantly differ from the existing Islamic credit facilities;

(e) an aggregate amount of all Islamic credit facilities extended to related persons exceeds ten percent of the regulatory capital of the Islamic credit institution.

2. The Supervisory Board or, in respect of a branch of a foreign Islamic bank, the branch manager may only approve the Islamic credit facility and its conditions if they satisfy the following:

(1) Islamic credit facility meets the standards of credit-worthiness required of other applicant customers;

(2) terms of the Islamic credit facility are not less favorable to the Islamic credit institution than those offered to others;

(3) that the grant of the Islamic credit facility will serve the best interest of the Islamic credit institution; and

4) in the case of a Supervisory Board, that the Islamic credit facility has been approved by the votes or not less than two-thirds of all the other members of the Supervisory Board of the Islamic credit institution at a duly constituted meeting of the full Supervisory Board and the approval has been recorded in the minutes of that meeting.

3. Afterwards, the Islamic credit institution shall promptly report to the audit committee, for its monitoring, on every Islamic credit facility extended to related persons. The reports shall contain the following:

- the names and addresses of related persons;
- the amount of Islamic credit facility extended to the related persons.

4. If an Islamic credit institution extends an Islamic credit facility to a related person in violation of the provisions of part 1 of this Article, such Islamic credit facility must be immediately cancelled and any money paid under it returned to the Islamic credit institution. Members of the Supervisory Board or a manager of a branch of a foreign Islamic bank, as the case may be, shall bear personal responsibility, several and joint, for payment of the principal amount and returns thereof, and other charges on any Islamic credit facility extended with their knowledge and consent in violation of part 1 of this Article.

### **Article 38. Foreign Currency Exposure**

Through its regulations, the National Bank of Tajikistan may set the maximum foreign currency exposure and the calculation procedure for Islamic credit institutions to carry on Islamic foreign currency transactions.

### **Article 39. Investment Restrictions**

1. An Islamic credit institution shall not, without the National Bank of Tajikistan's written prior approval, invest in stocks, equity-linked commercial papers and notes, and any other securities in the amount that exceeds ten percent of the Islamic credit institution's regulatory capital. To the extent that such investment exceeds ten percent of the regulatory capital, the Islamic credit

institution shall be obliged to sell such securities provided that no losses occur within a short period of time (one month at the latest), and, in any case, within two years of their acquisition.

2. At the request of the Islamic credit institution, the term to dispose of such securities may be extended by the National Bank of Tajikistan for an additional one year.

3. An Islamic credit institution shall not, without a prior written approval of the National Bank of Tajikistan, possess shares of another credit institution except for the shares acquired by the Islamic credit institution as a result of an Islamic financing transaction. In the case where the National Bank of Tajikistan does not allow the Islamic credit institution to keep such shares, the Islamic credit institution shall dispose of the shares in the shortest possible time (within one month) without incurring a loss, and, in any case, within two years of their acquisition.

4. An Islamic credit institution shall not own property and/or real estate except for:

- a real estate required for its activity and social needs of its employees, including the provision of housing; or
- in so far as it is necessary for them to carry out their Islamic banking and financing activities, subject to any conditions that may be imposed by the National Bank of Tajikistan.

5. Otherwise, an Islamic credit institution must sell any property passed into its ownership at the soonest possible time (not later than three months), provided that it does not have to suffer losses, and in any case not later than two years after its acquisition.

6. An Islamic credit institution may lease any idle part of the real estate in its ownership provided that this does not hinder activities of the Islamic credit institution.

7. An Islamic credit institution shall not acquire stocks of a foreign company (non-resident) without obtaining a prior written approval of the National Bank of Tajikistan, except when the Islamic credit institution acquired such stocks as a result of an Islamic banking transactions.

#### **Article 40. Operating Regime of Islamic Credit Institutions**

1. Every Islamic credit institution must provide services to clients during the office hours approved by the National Bank of Tajikistan.

2. In the event that circumstances require, in order to ensure sustainability of the banking system and to protect the interests of customers, the National Bank of Tajikistan may instruct an Islamic credit institution to suspend its operations. In such event, that Islamic credit institution may resume operations only at the decision of the National Bank of Tajikistan.

#### **Article 41. Suspicious Transactions**

1. An Islamic credit institution must, at all times, take precautionary measures to prevent itself from being used, intentionally or unintentionally, for criminal activities. An Islamic credit institution must immediately notify the authorized body dealing with counteracting the legalization (laundering) of income received through criminal way and through financing terrorism about any suspicious transactions and operations of their clients (including any attempts to perform suspicious transactions and operations) or in the prescribed manner.

2. Any disclosure of information by an Islamic credit institution in accordance with part 1 of this Article shall not be considered as a violation of bank secrecy, and the Islamic credit institution shall not be responsible for this action.

#### **Article 42. Restriction on Transactions in Shares**

1. No Islamic credit institution may, on security of or through other obligations of its shares, extend any credit, advance, provide a guarantee or other security.

2. An Islamic credit institution may purchase its own shares in accordance with the regulations of the National Bank of Tajikistan.

#### **Article 43. Dormant Accounts**

1. A bank account shall be considered dormant when its holder had not shown any interest in it for the last ten years, except saving accounts of individuals, and the amount deposited in that account shall be stored in compliance with the rules provided in this Article.

2. On the first business day of the following calendar year, the Islamic credit institution shall send by registered post a notice to the holder of the dormant account at the holder's last known address, and publish in at least two newspapers of the Republic of Tajikistan the name of the dormant account holder. If the dormant account holder cannot be located in one month after such notice and publication, the Islamic credit institution shall close the dormant account and transfer the amount to a special account opened with the National Bank of Tajikistan for keeping.

3. The National Bank of Tajikistan shall invest the special account funds in government securities, or other securities if Government securities are not available. During the next twenty years any owner, who, to the satisfaction of the National Bank of Tajikistan furnishes proof of ownership, shall be entitled to receive such amounts in the National Bank of Tajikistan. After the expiration of such period, unclaimed amount of such an account shall be transferred by the National Bank of Tajikistan to the Ministry of Finance of the Republic of Tajikistan for deposit in the State Treasury.

#### **Article 44. Record Keeping**

1. An Islamic credit institution shall keep on file for at least five years the following documents on each transaction:

- customer identification records;
- the application and all contract documents pertaining to the transaction (including credit and guarantee agreements) and decisions of Islamic credit institutions when approving the transactions;
- records of contracts with counterparties (including creditors, debtors, and guarantors), and any other documentary evidence, on which the Islamic credit institution relied upon when approving the transaction;
- opening bank accounts;
- such other documents as defined by the regulations of the National Bank of Tajikistan.

2. Records shall be kept in written form. An Islamic credit institution may retain records, books, statements, documents, correspondence (letters), cables, notices, and other documents

relating to its financial activities in reduced form (microfilm, electronic data storage, etc.) instead of the original for the period established in the law, to the extent that adequate data recovery system and procedures are in place. Such reduced copies shall have the effect of the original.

3. The National Bank of Tajikistan may adopt regulations on the record keeping system.

#### **Article 45. Payment System**

1. An Islamic credit institution may establish cooperative clearing system for the transfer of funds, other instruments and settlements at the approval of the National Bank of Tajikistan.

2. The National Bank of Tajikistan may establish rules and procedures to govern such a system, including settlement forms through its regulations.

3. In the absence of a cooperative clearing system, an Islamic credit institution shall carry on interbank settlements in accordance with the agreement between the parties, or based on international practice.

### **CHAPTER 6. ACCOUNTING AND FINANCIAL STATEMENTS**

#### **Article 46. Financial Year**

The financial year of every Islamic credit institution shall begin on January 1 and end on December 31. For a branch of a foreign Islamic bank, the financial year may differ and follow the financial year of its holding company.

#### **Article 47. Submission of Reports**

1. For the purpose of regulation and supervision of Islamic credit institutions, the National Bank of Tajikistan shall determine rules of recording, register, types, procedures of preparation, and terms for the financial statements.

2. Islamic credit institutions (except for Islamic micro credit institutions and micro lending funds) shall be obliged to furnish the National Bank of Tajikistan with the following information, along with the financial statements:

- assets and liabilities;
- observance of the prudential regulations;
- accounts and financial indicators;
- separate and consolidated statistical reports;
- such other information that may be requested by the National Bank of Tajikistan.

3. The National Bank of Tajikistan may request reports from any of the subsidiaries or affiliates of an Islamic credit institution for the consolidated supervision.

#### **Article 48. Principles for Accounting and Preparation of Financial Statements**

1. An Islamic credit institution must observe the rules and the accounting system, including of the daily income and expenses.

2. An Islamic credit institution shall prepare its financial statements comprising the balance sheet, the profit and loss statement, report on cash flows, and statement of changes in the capital account, in conformity with the International Financial Reporting Standards and other requirements set by the National Bank of Tajikistan.

3. Financial statements shall reflect the real financial position of the Islamic credit institution and its branches, as well as the information on the internal control system, including the report of the Supervisory Board of the Islamic credit institution.

#### **Article 49. Annual Financial Statements**

1. An Islamic credit institution shall prepare financial statements, and in the event of one or more subsidiaries it shall also prepare consolidated financial statements.

2. The National Bank of Tajikistan may specify other affiliates of the Islamic credit institutions, including companies that are controlled by that company, which controls the Islamic credit institution, to which consolidated financial statements shall be submitted.

3. Branches of foreign Islamic banks shall prepare and directly submit accounts and financial statements for their yearly transactions to the National Bank of Tajikistan.

4. An Islamic credit institution shall submit a copy of its audited consolidated financial reports to the National Bank of Tajikistan within four months after the end of the financial year at the latest.

5. A foreign Islamic bank with one or more branches in the Republic of Tajikistan shall submit a copy of the audited consolidated financial statement to the National Bank of Tajikistan within six months after the end of its financial year at the latest.

#### **Article 50. Publication of Financial Statements**

1. An Islamic credit institution shall publish in at least two national newspapers its audited financial statements, including audited consolidated financial statements, not later than one month after receiving the auditors' opinion.

2. An Islamic credit institution, in the central office and in its branches, shall display the audited financial statements and the list of members of the Supervisory Board in a prominent location.

### **CHAPTER 7. AUDIT**

#### **Article 51. Audit**

1. The National Bank of Tajikistan shall determine and publish the list of audit firms with a license, qualification and substantial experience in the audit of credit institutions that can audit Islamic credit institutions in the Republic of Tajikistan.

2. An Islamic credit institution shall appoint an audit firm only from the above list published under part 1 of this Article.

3. Provisions of the Law of the Republic of Tajikistan “On Licensing Certain Types of Activities” shall not apply to foreign audit firms included in the National Bank of Tajikistan’s list of audit firms.

4. Provisions of the Law of the Republic of Tajikistan “On Audit” shall apply to audit firms carrying out audit of Islamic credit institutions in the Republic of Tajikistan based on the provisions of this Law.

5. An audit firm mentioned in the list, or its members, shall not be an owner, an executive, an employee, or a representative of an Islamic credit institution. An auditor shall not have interest in the Islamic credit institution, except in terms of holding an Islamic deposit and Islamic savings in the Islamic credit institution.

6. Should the auditor have any such interest in the course of the audit, the services of the auditor shall be terminated and the Islamic credit institution shall appoint another audit firm.

7. An audit firm shall not provide services to the Islamic credit institution that are linked to the internal control functions of the Islamic credit institution, except for occasional training purposes.

8. No Islamic credit institution may appoint the same auditor continuously for a period of more than three years.

9. In accordance with International Standards on Auditing, the audit firm shall audit an Islamic credit institution on a consolidated basis and shall:

(1) state that the audit firm or any of its members do not hold any interest in the Islamic credit institution and comply with the provision of the part 7 of this Article;

(2) assist the Islamic credit institution in maintaining proper accounting system and procedures;

(3) assist the Islamic credit institution in maintaining proper financial control and risk management systems and procedures;

(4) at the request of the audit committee of the credit institution, attend meetings of the audit committee;

(5) within three months after the end of the financial year, prepare an audit opinion as to whether the financial statements are complete, fair and properly drawn up, and present detailed information to the Supervisory Board of the Islamic credit institution in accordance with the provisions of this Law;

(6) provide the Supervisory Board of the Islamic credit institution and the National Bank of Tajikistan with a report stating the auditors’ opinion on the Islamic financing classification system and provisioning for doubtful assets (including credit facilities) in accordance with the National Bank of Tajikistan requirements indicating weaknesses;

(7) inform each member of the Supervisory Board and the National Bank of Tajikistan on any act of an executive, employee or a representative of an Islamic credit institution, of

which the auditor has become aware that constitutes a violation of the provisions of this Law, or any regulations of the National Bank of Tajikistan;

(8) inform each member of the Supervisory Board of the Islamic credit institution and the National Bank of Tajikistan about any irregularity or deficiency in the administration or operations of the Islamic credit institution.

10. The audit firm in its audit opinion shall state:

- whether any explanation and information requested from the executives, employees or representatives of the Islamic credit institution in the course of the audit were satisfactory;
- the degree of actual adequacy of internal control measures and accounting systems on the part of the Islamic credit institution;
- the method applied by the Islamic credit institution for keeping books, records, reports and inclusion of operations required for the monitoring, internal and external audit;
- adequacy and performance of the executives of the Islamic credit institution;
- deficiencies, comments and recommendations regarding deficiencies, as well as the extent, to which the management applied recommendations and remarks made in previous years; and
- the degree of accuracy of records submitted to the National Bank of Tajikistan, consistency of records, books, accounting systems and regulations with these documents.

11. An Islamic credit institution shall send a copy of the auditor's report and a letter of the audit firm to the National Bank of Tajikistan not later than 30 days after receiving them. An Islamic credit institution, in compliance with the auditor's report, must submit the revised financial statements to the National Bank of Tajikistan.

12. Provision of the apocryphal audit opinion or prepossession of the audit firm to the Islamic credit institution shall be the reason for exclusion of the audit firm from the list of the National Bank of Tajikistan.

## **Article 52. Additional Duties**

1. The National Bank of Tajikistan may impose the following duties on audit firm to:

- submit such additional information in respect of the audit as the NBT considers necessary;
- submit a report, carry out an inspection or implement any procedure specified by the NBT;
- submit a report on the accounting and internal control to the NBT;
- ensure participation of representatives for consideration of the auditor's report of an credit institution at the invitation of the National Bank of Tajikistan;
- submit an opinion on whether adequate measures to prevent legalization of profit acquired through criminal acts or terrorism financing have been adopted by the credit institution and are implemented in accordance with the Law and regulations of the NBT.

2. The National Bank of Tajikistan may request an Islamic credit institution to submit to the National Bank of Tajikistan the Islamic financial standards compliance report from its Committee on Islamic finance products. The National Bank of Tajikistan may request the Committee of the Islamic credit institution to provide additional information related to its Islamic financial standards compliance report.

3. Expenditures related to the implementation of any of these additional obligations shall be borne by the Islamic credit institution.

### **Article 53. Immunities of the Audit Firm**

1. An audit firm shall assess professional and banking confidentiality requirements in an Islamic credit institution.
2. An audit firm shall not be responsible for the disclosure of confidential information to the National Bank of Tajikistan in accordance with this Law.
3. Submission of information stipulated in the paragraphs 7) and 8) of part 9 of the Article 51 of this Law by an audit firm shall not be considered as a breach of confidentiality obligations.

## **CHAPTER 8. CONFIDENTIALITY**

### **Article 54. Banking Confidentiality**

1. Information that became known to the Islamic credit institution while providing services and in relationships with the client or a third party regarding the operations and financial position of the client and disclosure of which may cause material or moral damage to the client shall be confidential and kept confidential.
2. Banking confidentiality covers the following information:
  - information regarding bank accounts, their owners, availability of funds and transactions of clients on these accounts;
  - information regarding money transfers of individuals without opening accounts or their remitters (beneficiaries);
  - on cash and other valuables of the client kept with the Islamic credit institution.
3. An Islamic credit institution is authorized to provide or reveal confidential banking information only to the following persons:
  - (1) to the owner of the bank account and an owner of valuables or their representatives;
  - (2) to the remitters and beneficiaries of money transfers;
  - (3) to the National Bank of Tajikistan, upon request;
  - (4) the Audit Chamber of the Republic of Tajikistan regarding the audit of client of Islamic credit institution on the base of a letter of the Chairman of the Audit Chamber of the Republic of Tajikistan;
  - (5) the courts on the basis of the decision (determination) of the court (judge);
  - (6) bureau of credit histories in accordance with the Law of the Republic of Tajikistan “On Credit Histories”;
  - (7) to the inquiry and preliminary criminal investigation agencies under progress in respect of clients of the Islamic credit institution, if funds in a bank account, cash and valuables of clients kept in the Islamic credit institution shall be subject to seizure, confiscation or levy based on the investigator’s or interrogator’s resolution approved properly to the General Prosecutor of the Republic of Tajikistan, prosecutors of regions, cities and districts;

- (8) agencies of inquiry and preliminary investigation of criminal cases concerning the clients of the Islamic credit institution – on the basis of the decision (determination) of the court (judge) in accordance with the Criminal Procedure Code of the Republic of Tajikistan; or
- (9) the tax agencies regarding tax payments by legal entities subject to inspection on the basis of a letter of the head of the tax agency and when presenting a copy of the tax agency order to carry out an inspection.

These provisions shall remain in effect and survive even when the relationships between the client and the Islamic credit institution have been terminated on various grounds.

5. Confidential banking information shall be disclosed in the case of the client's death to:

- (a) persons indicated by the client in his or her last will; or
- (b) courts, notary offices or foreign consulates;

regarding heritage of property of the deceased client.

6. Any disclosure of the confidential banking information without complying with the provisions of part 3 of this Article shall be strictly prohibited, unless otherwise envisaged in this Law.

7. To ensure safety of property and banking confidentiality, Islamic credit institutions shall be entitled to establish special services, as well as acquire and use weapons and necessary technical means according to the Law of the Republic of Tajikistan "On Weapons".

8. Arrest of funds on bank accounts or cash and other valuables stored in Islamic credit institutions shall be carried out on the basis of the decision (determination) of the court (judge), order of the bailiff connected with the enforcement document.

9. In the event of seizure of funds kept in an Islamic credit institution, the Islamic credit institution shall immediately terminate transactions with the seized funds.

10. In the event of the seizure of other valuables kept in an Islamic credit institution, the Islamic credit institution shall freeze any withdrawal of money by the owners.

#### **Article 55. Protecting Banking Confidentiality by Employees of Islamic Credit Institutions and Third Parties**

1. Executives and current or former employees of an Islamic credit institution shall be prohibited from disclosing confidential banking information to third persons, divulge or enabling its analysis, except as provided under this Law.

2. This restriction shall also apply to the employees and inspectors of the National Bank of Tajikistan and persons appointed by the National Bank of Tajikistan for the inspection in accordance with Article 58 of this Law, as well as to those who inspect such reports and information directly or indirectly by virtue of their profession, position or occupation.

#### **Article 56. Exceptions**

Provisions of Articles 54 and 55 of this Law shall not apply in the following cases:

- (1) performance of duties assigned to the audit firm according to this Law and the Law of the Republic of Tajikistan “On the National Bank of Tajikistan”;
- (2) provision of information and documents requested by the National Bank of Tajikistan in connection with its duties under this Law and the Law of the Republic of Tajikistan “On the National Bank of Tajikistan”;
- (3) actions taken and performance of duties imposed by the legislation of the Republic of Tajikistan and regulations of the National Bank of Tajikistan to counter money laundering and terrorism financing;
- (4) issuance of a certificate or statement of the reasons to decline payment of checks based on the request of rightful holder;
- (5) provision of information regarding the customer’s indebtedness in order to assess sustainability of collection rate, bad cherubs and in respect of other transactions deemed necessary by the National Bank of Tajikistan to ensure soundness of the banking system;
- (6) disclosure by an Islamic credit institution of all or some information on the customers’ transactions to prove its claims in a judicial dispute;
- (7) information provided by the National Bank of Tajikistan to other supervisory authorities under the Law of the Republic of Tajikistan “On the National Bank of Tajikistan”.

#### **Article 57. Protecting Information Provided by Islamic Credit Institutions**

1. Any information collected from an Islamic credit institution regarding its individual customer, customer transactions or other particulars pertinent to its relationships with customers shall be considered confidential and may be disclosed only with the consent of the Islamic credit institution or as prescribed under this Law.
2. The National Bank of Tajikistan shall restrict access to such individual information to specifically authorized persons.
3. The National Bank of Tajikistan may publish, in its entirety or in part, information subject to disclosure provided to it by the Islamic credit institutions.
4. The National Bank of Tajikistan shall not disclose particulars of the operations of an Islamic credit institution other than as may be contained in the financial statements approved by the Supervisory Board of the Islamic credit institution, unless there is consent from the Islamic credit institution.

### **CHAPTER 9. SUPERVISION AND INSPECTION**

#### **Article 58. Supervision and Inspection**

1. The National Bank of Tajikistan shall supervise Islamic credit institutions on a consolidated basis as follows:

- review statements, records, comments, clarifications, proof and information provided by the Islamic credit institution in accordance with this Law;
- request that the Islamic credit institutions and their subsidiaries and affiliates provide and pass any additional information, statements, records, comments, clarifications or proof in writing;
- request information on the financial position, sources of funds, reputation of direct and indirect shareholders of an Islamic credit institution and a person, who applied to acquire ten or more percent of the shares of the Islamic credit institution;
- carry out inspection of an Islamic credit institution, subsidiaries and affiliates to be made by one or more employees of it or by persons appointed for this purpose by the National Bank of Tajikistan.

2. Such inspection shall review operation of the Islamic credit institution to assess its financial standing, as well as the extent to which the Islamic credit institution complies with the provisions of this Law, the Law of the Republic of Tajikistan “On the National Bank of Tajikistan”, regulations of the National Bank of Tajikistan.

3. The National Bank of Tajikistan shall examine all Islamic credit institutions at least once in every year, except that the representative offices shall be inspected at least once every two years.

4. Any persons assigned to carry out inspections under this Article shall be subject to confidentiality requirements. Executives, employees and representatives of the Islamic credit institution or its subsidiary and its affiliates shall ensure and facilitate access for these persons to all office premises, including cash department, depository and strong rooms, books, accounts, records, including electronic records.

5. Any information, including private information of an Islamic credit institution, requested by the inspectors shall be furnished in a timely manner by the Islamic credit institution. Executives of the Islamic credit institution shall provide comprehensive support for the inspection.

6. The National Bank of Tajikistan shall notify the Supervisory Board of the relevant Islamic credit institution of the inspection results.

7. The procedures for the inspection, summarizing and submitting its results shall be prescribed through the regulations of the National Bank of Tajikistan.

8. Tax authorities may inspect an Islamic credit institution regarding tax payment.

9. The Audit Chamber of the Republic of Tajikistan shall make audit of financial and economic activity of the state Islamic credit institutions. Audit inspection of Islamic credit institutions including state Islamic credit institutions by the Audit Chamber of the Republic of Tajikistan shall cover servicing of state budget funds, public funds and government credits.

10. Other government authorities are not authorized to audit activities of an Islamic credit institution. If they wish to do so they shall interact with the Islamic credit institution pursuant to and in accordance with the procedures set in Article 54 of this Law.

## **Article 59. Prompt Remedial Measures and Administrative Penalties**

The National Bank of Tajikistan may take prompt remedial measures and administrative penalties to the Islamic credit institutions in accordance with the Law of the Republic of Tajikistan “On the National Bank of Tajikistan”.

## **CHAPTER 10. FINAL PROVISIONS**

### **Article 60. Dispute Resolution**

1. The Islamic credit institutions may appeal to the Supreme Economic Court of the Republic of Tajikistan against the decisions of the National Bank of Tajikistan within 30 days following the date of receipt of the decisions:

- if its application for a license under this Law is declined by the National Bank of Tajikistan;
- on prompt remedial measures and administrative penalties;

2. An Islamic credit institution may lodge a complaint to the Supreme Economic Court of the Republic of Tajikistan against the National Bank of Tajikistan, provided that the complaint does not result in suspension of the National Bank of Tajikistan’s decision.

### **Article 61. Protecting Interests of Customers**

1. The relationships between an Islamic credit institution and its customers shall be based on the agreement between them, unless otherwise stipulated by the law.

2. Terms and financing or profit rates on Islamic credits, Islamic deposits, Islamic savings, as well as the service fees shall be prescribed clearly by the Islamic credit institution in the contract with its customers.

3. Prior to providing services to a customer, an Islamic credit institution shall inform the customer of the requirements, including fees for services, financing or profit rates and other expenses that may need to be borne by the customer.

4. An Islamic credit institution shall implement transfer of cash funds of customers to the designated bank account not later than the date following the pay order receipt, unless other terms are set by the legislation, contract or payment documents.

5. In the event of a delay or incorrect transfer of funds to the customer’s account or withdrawal of funds, the Islamic credit institution must pay a compensation for each day of delay to the customer on the overdue payment based on the rate prescribed by the National Bank of Tajikistan.

6. Individuals and legal entities shall be free to choose any Islamic credit institution, and may open bank accounts in one or several credit institutions or Islamic credit institutions.

7. An Islamic credit institution shall be obliged to provide, upon request from its customers, information on its license, its operation procedures, as well as its accounting balance, its profit and loss statement, and the audit opinion for the previous year.

8. An Islamic credit institution shall not have the right to unilaterally change the financing or profits rates on Islamic credits, Islamic deposits, Islamic savings, service fees, and terms of contracts entered into with the customers, unless the contract envisages otherwise.

9. An Islamic credit institution shall not have the right to set mandatory conditions to use other services of the Islamic credit institution or its offices when extending an Islamic financing facility or providing a service to a client.

10. A five-year limitation period shall apply to claims of Islamic credit institutions on extended Islamic credit facilities.

#### **Article 62. Final Provisions**

Provisions of the Law of the Republic of Tajikistan “On Joint Stock Companies” and the Law of the Republic of Tajikistan “On Limited Liability Companies” shall apply to Islamic credit institutions in so far as they do not contradict to the provisions of this Law.

#### **Article 63. Responsibility for the Violation of this Law**

Any other individual and legal entity may be brought to responsibility for the violation of this Law in accordance with the legislation of the Republic of Tajikistan.

#### **Article 64. Enactment of this Law**

This Law shall be enacted after its official publication.

Emomali Rahmon  
**President of the Republic of Tajikistan**  
**Dushanbe, July 26, 2014**  
**No.1108**