



**Islamic Republic of Afghanistan**  
**Ministry of Justice**

**Limited Liability Companies Law**

## **Chapter One**

### **General Provisions**

#### **Article 1 - Basis**

This Law has been enacted pursuant to the Constitution of the Islamic Republic of Afghanistan.

#### **Article 2 - Purpose of the Law**

This Law has been enacted to regulate the affairs related to the creation and activities of limited liability companies incorporated in Afghanistan and to regulate foreign companies with limited liability incorporated outside of Afghanistan that are conducting business activities in Afghanistan.

#### **Article 3 - Scope of Application of the Law**

More specifically all of the provisions of this Law apply to LLCs (as defined below), except those provisions which are stated to apply to Large LLCs only (as defined below). Branches of Foreign Companies (as defined below) are subject to this Law only in respect of Article 4, Article 5 (as applicable), Article 6, Article 9, Article 10, Article 11, Article 12, Article 13, Article 14, Article 15, Article 16, Article 25, Article 101, Article 102, Article 103, Article 104 and Article 105.

#### **Article 4 - License**

No company with limited liability, of whatever nationality, can transact business or advertise as being a company with limited liability in Afghanistan without first obtaining a license from the Central Business Registry located within the Ministry of Commerce and Industries.

#### **Article 5 - Definitions**

For the purposes of this Law, the following terms shall have the meanings set forth below:

1. **Annual General Meeting or AGM** means a meeting of the Shareholders held each year as stipulated in the LLC's Articles of Association;
2. **Annual Report** means the annual report referred to in Article 7;
3. **Articles of Association** means the document regulating the affairs of a LLC, prepared by the Incorporators, according to the provisions of this Law, as amended or restated from time to time;
4. **Articles of Dissolution** means those documents, filed with the CBR, which formalize the cessation of activity of a LLC as specified in Article 95 and Article 96;
5. **Board of Directors** means a group of individuals elected as, or elected to act as, representatives of the LLC to establish corporate management-related policies and to make decisions on major LLC issues;
6. **CBR** means the agency within the Ministry of Commerce and Industries known as the Central Business Registry that registers documents related to LLCs and Foreign Companies;
7. **Chairperson** means a Director elected to serve as chairperson of the Board of Directors according to the provisions in Article 37;

8. **Class of Shares** means a classification of Shares that confers on the holders of such class of Shares the same rights, often stipulating preferred or deferred dividends, specific voting rights, all as set out in the LLCs Articles of Association;
9. **Commercial Court** means the authorized commercial court of Afghanistan;
10. **Committees** means those groups elected by the Board of Directors of a LLC for various purposes, as specified in Article 44;
11. **Conflicting Interest** means that interest as defined in Article 49(3) of this Law;
12. **Date of Incorporation** means the date that the CBR issues the License for a LLC in accordance with Article 21;
13. **Derivative Actions** means any civil proceeding by a Shareholder on behalf of the interests of the LLC as further detailed in Article 47;
14. **Director** means a member of the Board of Directors of a LLC, which includes executive and non-executive directors;
15. **Director's Substantial Conflicting Interest Transaction** means that transaction as defined in Article 49(4);
16. **Disclosure** or **Disclose** means as described in Article 49(6);
17. **Dividend** means a part of a LLC's earnings that are distributed to Shareholders in accordance with the rights determined for each Class of Shares;
18. **Electronic Communication** means any form of communication not directly involving the physical transmission of paper that creates a historical record that may be retained, retrieved, and reviewed by a recipient thereof, and that may be directly reproduced in paper form by such recipient;
19. **Employee** means an Officer or other person employed by a LLC to perform duties for the LLC;
20. **Financial Statements** means income statements, balance sheets, statements of retained earnings, and cash flows prepared in accordance with International Financial Reporting Standards (IFRS);
21. **Fiscal Year** means the year beginning on 1 Jadi through 30 Qaus of the next year on the Persian calendar, and the year beginning on 22 December through 21 December of the next year on the Gregorian calendar;
22. **Foreign Company** means a company with limited liability which is not incorporated in Afghanistan;
23. **General Assembly** means a meeting of Shareholders of a LLC, which includes an AGM and a General Meeting;
24. **General Meeting** means a meeting of the Shareholders held from time to time pursuant to the LLCs Articles of Association not being the AGM;
25. **Incorporators** means the person or persons who found a LLC;

26. **Initial Directors** means those Directors first appointed to the Board of Directors by the Articles of Association or by the Incorporator;
27. **Issued Shares** means the Shares that the LLC has issued to its Shareholders;
28. **Large LLC** includes : (a) a LLC whose tax determination comes under the authority of the "Large Taxpayers Office" of the Afghanistan Revenue Department; or (b) a LLC with 50 or more Shareholders;
29. **License** means a business license issued by the CBR to LLCs and to branches of Foreign Companies conducting business in Afghanistan;
30. **LLC** means a domestic limited liability company that is separate and distinct from its owners, incorporated in Afghanistan and organized under this Law, with capital that is definite and divided into Shares, and with the responsibility of each Shareholder limited to the proportion of his or her Shares. For the avoidance of doubt, for the purposes of this Law the term LLC does not include partnerships, sole proprietorships or branches of Foreign Companies registered in Afghanistan but it does include Afghan state owned corporations;
31. **Notice** means a legal notification or warning that is delivered in a written format or through formal announcement;
32. **Officer** means a high-level management official of a LLC which includes a President and a Vice-President, hired by the Board of Directors of the LLC;
33. **Power of Attorney** means a legal document giving one (1) or more persons the power to act for another person on a joint or individual basis, and which grants legal authority to make decisions about a range of matters, as set out in the Power of Attorney;
34. **Proxy** means an agent legally authorized to act on behalf of another party, and for Shareholders of a LLC, a Shareholder may choose to vote their shares by Proxy by allowing another Shareholder to cast votes on their behalf;
35. **Qualified Shareholders** means a Shareholder as defined in Article 51(2);
36. **Record Date** means the cut-off date established by a LLC in order to determine which Shareholders are eligible to vote, request meetings and receive a dividend or distribution;
37. **Registered Office** means the office of a LLC or branch of a Foreign Company which is registered with the CBR pursuant to Article 25;
38. **Related Person** means a person as defined in Article 49(5);
39. **Reserve Capital** means the legal reserve created pursuant to Article 79 which is not available for distribution to the Shareholders;
40. **Share** means a portion into which a LLC's share capital is divided;
41. **Share Capital** means the total nominal value of all Issued Shares;
42. **Share Certificate** means the physical piece of paper evidencing ownership of Shares in a LLC, and which includes information such as number of Shares owned, date of issue, identification number and signatures;

43. **Shareholder** means the owner of one or more Shares in a LLC, whose shares are registered with the CBR;
44. **Substantial Assets** means those assets defined in Article 49(7);
45. **Trustee** means a person or entity that holds and administers property or assets for the benefit of a third party;
46. **Voting Agreement** means an agreement or plan under which two (2) or more Shareholders pool their voting Shares for a common objective; and
47. **Voting Trust** means an arrangement whereby the Shares of a LLC registered in the names of one (1) or more Shareholders and the voting rights attached thereto, are legally transferred to a Trustee, usually for a specified period of time.

## **Chapter Two**

### **Registration Requirements**

#### **Article 6 - Registration Documents**

1. Written documents specified by this Law and by relevant procedures to be registered with the CBR, must adhere to the following guidelines:
  - (a) be typewritten or printed in black ink;
  - (b) must be legible, and
  - (c) must be prepared in one of the official languages of Afghanistan, being either Dari or Pashto.
2. When required to be submitted to the CBR, the constitutional documents of Foreign Companies may be in a foreign language, provided that they are accompanied by an accurate Dari or Pashto translation.
3. The documents of a LLC shall be prepared by:
  - (a) Officer(s) authorized to execute action on behalf of the LLC;
  - (b) Board of Directors of the LLC;
  - (c) One or more Incorporators of the LLC; or
  - (d) A receiver, trustee, or other court-appointed fiduciary;and in the case of Foreign Companies, by the equivalent to the above in the relevant jurisdiction.

#### **Article 7 - Preparation, Content and Filing of the Annual Report for Large LLCs**

1. For Large LLCs only, an Annual Report shall be prepared by an Officer or Director of the Large LLC, or a person duly authorized by the Board of Directors, and shall be registered with the CBR within twenty-eight (28) days following the expiry of each Fiscal Year of the Large LLC. A copy of the Annual Report shall be made available for inspection by Shareholders at the AGM.

2. The Annual Report must contain the following information, and shall take the form as may be prescribed by the CBR from time to time:
  - (a) A list of Directors (including any other directorships held by a Director and basic information in respect of their primary employment), identifying which Directors are independent non-executive Directors, and a list of Officers;
  - (b) Details of the audit committee;
  - (c) Details of any Director's Substantial Conflicting Interest Transactions notified to the Shareholders pursuant to Article 51(6) along with details of the Conflicting Interest in respect of such transaction;
  - (d) Details of the Registered Office;
  - (e) The primary business activities carried out by the Large LLC;
  - (f) The Date of Incorporation;
  - (g) The Share Capital, the number of Issued Shares and the nominal value of each Issued Share;
  - (h) Aggregate amount (if any) unpaid on those Shares, whether on account of their nominal value or by way of premium;
  - (i) Full legal names of all Shareholders;
  - (j) The names of all persons who have a direct or indirect beneficial ownership stake in the LLC representing 5% or more;
  - (k) For each Class of Shares, the Annual Return shall set out:
    - (i) The prescribed particulars of the rights attached to the Shares;
    - (ii) Total number of Shares of that class; and
    - (iii) The nominal value of each Share of that class.
3. Failure to file an Annual Report may result in penalties for the Large LLC in such amounts as the CBR may prescribe from time to time.

#### **Article 8 - Signing of Documents by a LLC**

A person executing a document on behalf of a LLC shall sign it and state beneath or opposite his signature his name and the capacity in which he signs. Any signature may be a facsimile.

#### **Article 9 - Preparation of Special Forms**

If required pursuant to any provision of this Law, the CBR may prescribe a document to be in a special form.

#### **Article 10 - Payment of Fee**

A document delivered to the CBR for registration shall be registered when the applicable filing fee is paid, in accordance with this Law.

**Article 11 - Electronic Registration**

The CBR may accept the electronic registration of any information permitted by this Law and may prescribe the methods of execution, recording, reproduction, and certification of electronically-filed information.

**Chapter Three  
Issuance of License and Payment of Fees**

**Article 12 - Issuance of License**

Every LLC and Foreign Company conducting business in Afghanistan must have a current License issued by the CBR.

**Article 13 - The License**

The License will be in the form prescribed by the CBR and may include the following:

- (a) The full legal name of the LLC or branch of the Foreign Company;
- (b) The date of incorporation of the LLC or, in the case of the branch of the Foreign Company, the date of its registration with the CBR;
- (c) The activities of the LLC or branch of the Foreign Company in Afghanistan; and
- (d) The Registered Office.

**Article 14 - Requirements to conduct business in Afghanistan**

LLCs and branches of Foreign Companies shall be deemed to be duly licensed to transact business in Afghanistan if the following terms are met:

1. They have a current License;
2. They have paid all fees, fines, penalties, and interest in accordance with the provisions of this Law;
3. In the case of Large LLCs only, they have filed Annual Reports with the CBR in accordance with this Law; and
4. They have not been dissolved or otherwise withdrawn their activities from Afghanistan.

**Article 15 - Fees to be Collected**

The CBR shall collect the registration fees imposed by this Law (or imposed by regulations issued under this Law) and transfer the money to the appropriate income account of the Government of the Islamic Republic of Afghanistan and assure the relevant authority that the fee has been paid.

**Article 16 - Effective Date of Documents Filed with CBR**

1. Any certificate issued by the CBR is effective at the time such certificate is issued by the CBR.
2. Any document filed with the CBR shall be effective when accepted and filed by the CBR unless otherwise provided for in this Law.

## **Chapter Four**

### **Procedures for Establishment of a LLC**

#### **Article 17 - Establishment of a LLC**

A LLC may be established for any lawful business in accordance with this Law and the relevant Articles of Association, and shall be a business organization whose capital is definite and divided into Shares, with the responsibility of each Shareholder limited to the value of his or her Shares.

#### **Article 18 - Duration of a LLC**

Unless its Articles of Association provide otherwise, a LLC shall have a perpetual duration.

#### **Article 19 - Incorporators**

1. One or more persons may act as Incorporators by signing and filing the Articles of Association with the CBR.
2. According to the provisions of this Law, the Incorporators of a LLC may make decisions without holding meetings if the action taken is evidenced by a written resolution signed by each Incorporator.

#### **Article 20 - Articles of Association**

1. The Articles of Association shall include the following:
  - (a) The name of the LLC;
  - (b) Its Registered Office;
  - (c) The Share Capital;
  - (d) The number of Issued Shares, the nominal value of each Issued Share and the Classes of Shares of the LLC; and
  - (e) The duration of the LLC, which duration will be assumed to be infinite unless otherwise limited in the Articles of Association.
2. The Articles of Association may include the following:
  - (a) The purpose for which the LLC was organized;
  - (b) Any provision defining the priority right of Shareholders to: (a) acquire unissued Shares of the LLC or (b) acquire Shares to be transferred by another Shareholder;
  - (c) Provisions limiting the liability of Directors; and
  - (d) Any provision otherwise required which is not contrary to the provisions of this Law.



#### **Article 21 - Signing the Articles of Association**

Corporate existence begins for a LLC when the Articles of Association are signed by the Incorporators or by a person to whom the power to sign has been delegated by agreement, the Articles of Association have been registered with CBR and the CBR has issued the License.

#### **Article 22 - Pre-Incorporation Activities**

All persons acting on behalf of the LLC prior to its incorporation shall be liable for all liabilities created while so acting.

#### **Article 23 - Activities of the Board of Directors at Incorporation**

The Board of Directors may start their activities from (and inclusive) of the Date of Incorporation, and may hold their meetings inside or outside of Afghanistan according to the provisions of this Law.

### **Chapter Five**

#### **Name and Registered Office**

#### **Article 24 - LLC Name**

1. A LLC incorporated in Afghanistan shall contain after its name the word, "*Limited*" or the abbreviation "*Ltd*".
2. The Incorporators may not select the following names for their LLC:
  - (a) A name that is prohibited for a LLC, according to CBR procedure;
  - (b) A name that has been selected and registered with the CBR for another LLC; and
  - (c) A name for which a trademark has been registered in Afghanistan unless a letter of non-objection addressed to CBR from the owner of the trademark has been issued.

#### **Article 25 - Maintaining a Registered Office**

Each LLC and branch of a Foreign Company in Afghanistan shall have a business office that has been registered with the CBR referred to as its Registered Office. Notice or demands that are permitted by law to be served on a LLC, or on the branch of the Foreign Company, may be served on its Registered Office.

### **Chapter Six**

#### **Issuance of Shares of a LLC**

#### **Article 26 - Issuance of Shares**

Issuance of new Shares requires the approval of the Shareholders and is subject to the application of the pre-emption rights set out in Article 85. New Shares may be issued for consideration consisting of any tangible or intangible property or benefit to the LLC, including cash or commitment for services that have been performed or contracts for services to be performed.

#### **Article 27 - Receiving Consideration for Shares**

1. If the Board of Directors determines, in good faith, that the consideration received or to be received for the Shares to be issued is adequate, then such determination is conclusive and final regarding the adequacy of consideration as far as the Shares are validly issued and fully paid.
2. When the LLC has received full payment for the Shares, the Shares issued are fully paid.

#### **Article 28 - Offer of Shares**

A LLC may not issue its Shares to the public. At such time that rules are established by the CBR and/or other competent authorities relating to the creation and regulation of public LLCs in Afghanistan and the offering of Shares to the public in Afghanistan, such public LLCs will be subject to this Law as if they are Large LLCs (in addition to such other rules and regulations established specifically for public LLCs).

#### **Article 29 - Prohibition of Subsidiary Holding Shares**

A LLC may be a Shareholder in another LLC, however a direct or indirect subsidiary of a LLC cannot be a Shareholder of that LLC. Any allotment or transfer of Shares in a LLC to such direct or indirect subsidiary shall be void.

## **Chapter Seven LLC Board of Directors**

#### **Article 30 - Board of Directors**

1. A LLC shall have a Board of Directors, which according to the Articles of Association, shall direct and regulate the affairs of the LLC.
2. The Board of Directors shall have full power to represent the LLC, delegate powers to such representatives that it chooses and execute any legal document, subject to any limitations set forth in this Law and the Articles of Association.

#### **Article 31 - Selection Requirements for Members of the Board of Directors**

1. A person may be selected as a member of the Board of Directors if he/she possesses the following qualifications:
  - (a) Natural person who is eighteen (18) years of age or older; and
  - (b) Has never been deprived of civil rights by a court order.
2. The Board of Directors must be comprised of one (1) or more members, except that the Board of Directors of a Large LLC must be comprised of three (3) or more members. The minimum and maximum number of members and other relevant conditions shall be stipulated in the Articles of Association.

#### **Article 32 - Appointment of Members to the Board of Directors**

1. Directors shall be elected by a simple majority vote of the Shareholders at a General Assembly and by such other means as may be set out in of the Articles of Association.
2. The Articles of Association may authorize Shareholders to fix or change the number of Directors.

#### **Article 33 - Term of Directors**

1. The term of the Initial Directors of a LLC shall expire at the first General Assembly, at which meeting the Shareholders may re-elect the Directors and/or appoint new Directors.
2. The term of the Directors shall be the length of time determined by the Shareholders, but which shall not exceed a three (3) year term. Such Directors may be re-elected for further terms.
3. Despite the expiration of a Director's term, and subject to such Director not resigning, he/she shall continue to serve until a qualified successor is elected, or until there is a decrease in the number of Directors.

#### **Article 34 - Resignation of a Director**

Without prejudice to any breach of contract or employment claim that a LLC may have against a Director, a Director may resign at any time by delivering written notice to the LLC at its Registered office addressed to the Board of Directors. A resignation is effective on the date of service of the notice on the LLC or such later date specified in the notice.

#### **Article 35 - Dismissal of a Director**

The Shareholders may, by simple majority vote at a General Assembly, remove one or more Directors (including a Director who is the Chairperson) with or without cause at any time, without prejudice to any breach of contract or employment claim that a Director may have against the LLC.

#### **Article 36 - Non-executive Directors**

1. A Large LLC must have at least one independent non-executive director if the Board of Directors comprises of up to five Directors and at least two independent non-executive directors if the Board of Directors comprises of six or more Directors.
2. A Director is non-executive independent Director if there are no relationships or circumstances likely to affect, or could appear to affect, his or her judgement, including if the Director:
  - (a) has been an employee of the LLC or the LLC's related group of companies within the last five years;
  - (b) has, or has had within the last three years, a material business relationship with the LLC either directly, or as a partner, shareholder, director or senior employee of a body that has such a relationship with the LLC;
  - (c) has received or receives additional remuneration from the LLC apart from a director's fee, participates in the LLC's share option or a performance related pay scheme, or is a member of the LLC's pension scheme;
  - (d) has close family ties with any of the LLC's advisers, directors or senior employees;
  - (e) holds cross-directorships or has significant links with other directors through involvement in other companies or bodies;
  - (f) represents a significant shareholder; or
  - (g) has served on the Board of Directors for more than nine years from the date of their first election.

#### **Article 37 - Election of a Chairperson**

The Incorporators and thereafter the Shareholders shall elect from among the Directors a Chairperson of the Board, unless the Articles of Association prescribe a different method for such election. The Chairperson shall chair meetings of the Board of Directors and Shareholders. If the Chairperson is not available to chair a meeting then he or she may designate another Director to be chairperson of the meeting and in the absence of such delegation, the Board of Directors shall decide on the chairperson of the meeting.

**Article 38 - Vacancy on the Board of Directors**

1. Unless the Articles of Association provide otherwise, if a vacancy occurs on the Board of Directors, the Board of Directors may fill the vacancies, the term of which shall be the unexpired portion of the term of such vacant position.
2. Unless the Articles of Association provide otherwise, if a vacancy occurs at a specific later date (by reason of resignation effective at a later date or otherwise) the vacancy may be filled by the Board of Directors before the vacancy occurs, but the new Director may not take office until the vacancy occurs.

**Article 39 - Power of the Board of Directors**

Subject to any limitations in this Law and the Articles of Association, the Board of Directors are entitled to execute and sign any legal document and to represent the LLC in all legal transactions.

**Article 40 - Meetings of the Board of Directors**

1. The Board of Directors may hold meetings in any location.
2. Unless the Articles of Association provide otherwise, the Board of Directors may permit any or all of the Directors to participate in a meeting by any means of communication by which all Directors participating may simultaneously hear each other, including through the use of telephone or video conference. A Director participating in a meeting by these alternative means is deemed to be present in person at the meeting and the meeting will be deemed to take place where the majority of the Directors are present or, if there is no such place, the place where the chairperson of the meeting is located.

**Article 41 - Actions Taken Without Meeting**

1. Unless the Articles of Association provide otherwise, resolutions required to be passed at a Board of Directors meeting shall be valid when taken without a meeting if the resolution is in writing and signed by all members of the Board of Directors.
2. The resolutions of the Board of Directors mentioned in Article 41(1) above shall be filed with the LLC's records.

**Article 42 - Notice of Meeting**

1. Unless the Articles of Association provide otherwise, Notice of the date, time, and place of a meeting of the Board of Directors shall be given to the Directors no fewer than two (2) clear business days prior to such meeting.
2. A Director may waive any Notice before or after the date and time stated in the Notice and required by Article 42(1) above if such waiver is in compliance with the Articles of Association. The waiver must be in writing, signed by the Director entitled to the Notice, and filed with the LLC's records.

3. A Director's attendance at or participation in a meeting acts as a waiver of any required Notice to him or her unless the Director, at the beginning of the meeting (or promptly upon his arrival) objects to holding the meeting and does not thereafter vote on any proposal at the meeting.

#### **Article 43 - Quorum and Decisions by Meetings**

1. A quorum for a meeting of the Board of Directors is constituted by a majority of the total number of Directors being present at the meeting, unless the Articles of Association specify a different quorum requirement. If there is only one Director then the quorum requirement is one Director.
2. Unless the Articles of Association provide otherwise, decisions shall be taken by a majority of the Directors present and if there is an equality of votes, the chairperson of the meeting shall have a second or casting vote, subject to him or her not being restricted from voting pursuant to Article 49.

#### **Article 44 - Committees**

1. Unless the Articles of Association provide otherwise, the Board of Directors may create one or more Committees to perform relevant duties, and may appoint members of the Board of Directors to serve on such Committees, and may delegate authority to such Committees to act on behalf of the Board of Directors. Each Committee may have one or more members who serve for a period determined by the Board of Directors.
2. The provisions of this Law that govern the Board of Directors also applies to Committees and their members.
3. A Committee may not do any of the following:
  - (a) Perform the functions and exercise powers provided to Shareholders;
  - (b) Appoint any person to fill a vacancy on the Board of Directors or on any Committee;
  - (c) Amend the Articles of Association; and
  - (d) Approve a plan of merger or dissolution of the LLC, unless such act has been pre-approved by the Shareholders.

#### **Article 45 - Audit Committee**

1. The Board of Directors of a Large LLC must establish an audit committee which includes each of its independent non-executive directors. The Board of Directors should satisfy itself that at least one member of the audit committee has recent and relevant financial experience. The audit committee as a whole shall have competence relevant to the sector in which the Large LLC operates.
2. The main role and responsibilities of the audit committee should be set out in written terms of reference and should include:
  - (a) to monitor the integrity of the Financial Statements of the Large LLC and any formal announcements relating to the Large LLC's financial performance, reviewing significant financial reporting judgements contained in them;

- (b) to review the Large LLC's internal financial controls and, unless expressly addressed by a separate board risk committee composed of independent non-executive directors, or by the Board of Directors itself, to review the Large LLC's internal control and risk management systems;
  - (c) to monitor and review the effectiveness of the Large LLC's internal audit function;
  - (d) to make recommendations to the Board of Directors, for it to put to the Shareholders for their approval in General Assembly in relation to the appointment, re-appointment and removal of the external auditor and to approve the remuneration and terms of engagement of the external auditor;
  - (e) to review and monitor the external auditor's independence and objectivity and the effectiveness of the audit process, taking into consideration relevant professional and regulatory requirements;
  - (f) to develop and implement policy on the engagement of the external auditor to supply non-audit services, taking into account relevant ethical guidance regarding the provision of non-audit services by the external audit firm; and to report to the Board of Directors, identifying any matters in respect of which it considers that action or improvement is needed and making recommendations as to the steps to be taken; and
  - (g) to report to the Board of Directors on how it has discharged its responsibilities.
3. The terms of reference of the audit committee, including its role and the authority delegated to it by the Board of Directors, should be made available by the Large LLC at its Registered Office.
4. Where requested by the Board of Directors, the audit committee should provide advice on whether the annual Financial Statements, taken as a whole, is fair, balanced and understandable and provides the information necessary for Shareholders to assess the Large LLC's position and performance, business model and strategy.
5. The audit committee should review arrangements by which Employees of the Large LLC may, in confidence, raise concerns about possible improprieties in matters of financial reporting or other matters. The audit committee's objective should be to ensure that arrangements are in place for the proportionate and independent investigation of such matters and for appropriate follow-up action.

#### **Article 46 - Responsibilities of the Directors**

1. A Director shall have the following duties:
- (a) To act in accordance with the LLC's Articles of Association and to only exercise powers for the purposes for which they are conferred;
  - (b) To act in a way he or she considers, in good faith, would most likely promote the success of the LLC for the benefit of its Shareholders as a whole, and in doing so, have regard, amongst other matters, to:
    - (i) The likely consequences of any decision in the long term;
    - (ii) The interests of the Employees;

- (iii) The need to foster the LLC's business relationships with suppliers, customers, and others;
  - (iv) The impact of the LLC's operations on the community and the environment;
  - (v) The desirability of the LLC maintaining a reputation for high standards of business conduct;
  - (vi) The need to act fairly as between Shareholders of the LLC; and
  - (vii) The need to exercise independent judgment.
2. In discharging the duties mentioned in Article 46(1) above, a Director is entitled to rely on information, opinions, reports, or statements, including Financial Statements and other financial data, from the following sources:
- (a) One or more Employees;
  - (b) Legal counsel, accountants, bankers, or other persons who are professional and who possess expertise in the subject matter in question; and
  - (c) A committee which merits confidence, even if it is not a Committee appointed by the Board of Directors.
3. If a Director does not perform his or her duties in accordance with Article 46(1) and (2) above, he or she may be held responsible for any resulting loss to the LLC and its Shareholders by reason of such breach in his or her duties.

#### **Article 47 - Derivative Actions**

1. A Derivative Action may be brought by a Shareholder or a group of Shareholders representing 5% or more of the Share Capital on behalf of the LLC against one or more of its Directors in the event of failure to perform or other violation of the Directors' duties in the management of the LLC.
2. A Shareholder or group of Shareholders may not commence a Derivative Action unless each of them was a Shareholder at the time of the act or omission that is the subject of the complaint, and only if they fairly represent the interests of the LLC. Derivative Actions may not be commenced more than four (4) years from the time the cause of the action occurred.
3. Prior to commencing a Derivative Action, the claimant Shareholders must first make a written demand on the LLC, requesting that it take appropriate action. The LLC shall respond within ninety (90) days following such a request by either commencing the requested action or by rejecting the request.
4. This Article 47 shall not limit any liability otherwise imposed by law upon any Director. The liability of any Director shall be to:
- (a) The LLC, even if the claim is brought as a Derivative Action; and
  - (b) The Shareholders bringing the Derivative Action, provided that such Shareholders are harmed or treated with unfair prejudice.

Without prejudice to other applicable laws, the court shall have broad discretion to impose such remedies it sees fit, which may include, but is not limited to, payment of damages, fines, disqualification, injunctive relief, disgorgement and imprisonment.

#### **Article 48 - Unlawful Distribution of LLCs Assets**

Directors who engage in distribution of the LLC's assets in violation of Article 78, or the Articles of Association, shall be personally liable. Directors held liable hereunder shall demand reimbursement from each Shareholder for the amount the Shareholder accepted, if such Shareholder knew or ought reasonably to have known, that the distribution was unlawful.

#### **Article 49 - Conflicting Interest**

1. If a member of the Board of Directors has a Conflicting Interest, he or she must promptly Disclose the matter to the Board of Directors and he or she may not vote on any resolution of the Board of Directors relating to such Conflicting Interest, however he or she may count in the quorum at the meeting and may vote on the resolution if there are no Directors of the LLC without a Conflicting Interest. Such notice shall:
  - (a) constitute full Disclosure; and
  - (b) be recorded in the minutes of the meeting of the Board of Directors where the Disclosure was made, or if received by Notice, retained with the LLC's records and recorded in the minutes of the next meeting of the Board of Directors. If the Disclosure made under this Article 49(1) proves to be or becomes inaccurate or incomplete, a further Disclosure must be made. Failure to make any Disclosures under this paragraph will make the Director liable and the court shall, without prejudice to any other laws, have broad discretion to impose such remedies which it thinks fit, and which may include but may not be limited to: payment of damages, fines, disqualification, injunctive relief and disgorgement.
2. If the LLC is a Large LLC and the Conflicting Interest relates to a Director's Substantial Conflicting Interest Transaction then the Chairperson must promptly notify the Shareholders of the Conflicting Interest and the Director's Substantial Conflicting Interest Transaction. A Director's Substantial Conflicting Interest Transaction may only take place in accordance with Article 51.
3. Conflicting Interest with respect to a LLC means the direct or indirect interest of a Director of a LLC in a transaction effected or proposed to be effected by the LLC (or a subsidiary of a LLC or any other company in which the LLC has a controlling interest) where the Director, at the time of commitment, or his Related Person, is a party to the transaction or has a beneficial financial interest in the transaction.
4. A Director's Substantial Conflicting Interest Transaction with respect to a LLC means a transaction effected or proposed to be effected by a LLC (or a subsidiary of the LLC or any other company in which the LLC has a controlling interest) with respect to which a Director of the LLC or his Related Person has a Conflicting Interest and which relates to Substantial Assets.
5. A Related Person of a Director is:
  - (a) In respect of natural persons, the spouse, parent, brother, sister, child, cousin, uncle, aunt, grandchild, grandmother, grandfather, sibling (or spouse of any thereof) of a Director, or an individual having the same home as the Director, or a trust, estate, incompetent, conservatee, or minor of which the Director is a fiduciary; and



- (b) In respect of legal persons, any company in which the Director may have a direct interest.
6. Disclosure and Disclose, for the purposes of this Article 49, means disclosure by the Director who has a Conflicting Interest either at a meeting of the Board of Directors or by written Notice to the Board of Directors, where the existence and nature of the disclosure relates to him or her, and he discloses all material facts in relation to the Conflicting Interest that the Director knows of or which he should have known of, having made a reasonable inquiry concerning the subject matter. Material facts includes details of relevant asset(s), any valuations of such assets, the nature of any financial benefits obtained, the manner in which the Director is Conflicted and details of any persons receiving financial benefit from the Conflicting Interest.
7. Substantial Assets, for the purposes of this Article 49, means an asset whose value is equal to or exceeds:
- (a) 5% of the LLC's asset value (by reference to the LLC's net assets as shown in the LLC's most recent accounts) and is more than 100,000 Afghani; or
- (b) 2,000,000 Afghani.

The CBR may from time to time increase or reduce the percentages and monetary amounts specified in this Article 49 and in Article 51(3).

#### **Article 50 - Judicial Action**

1. Subject to the provisions of Article 47 (derivative actions), a Director's Substantial Conflicting Interest Transaction may be enjoined by the court or set aside, or give rise to an award of damages against one or more of the Directors or other sanctions prescribed by the court in a Derivative Action by the Shareholders, if such transaction has not been authorized by the Shareholders as per the provisions of Article 51(1).
2. A Shareholder may apply to the court in accordance with Article 47 for an order on the ground that the LLC's affairs are being or have been conducted in a manner that is unfairly prejudicial to the interests of the Shareholders generally or of some of the Shareholders (including at least themselves). Such an application may relate to a Director's Substantial Conflicting Interest Transaction (whether or not it has been approved by Shareholders) or any other actual or proposed act or omission of the LLC (including an act or omission on its behalf).
3. If the court is satisfied that an application under paragraph two (2) of this Article 50 is well founded, it may make such order as it thinks fit for giving relief (which relief may include payment of damages, fines, disqualification, injunctive relief, disgorgement and imprisonment) in respect of the matters complained of which may include but is not limited to:
- (a) Holding the Director who has a Conflicting Interest in a Director's Substantial Conflicting Interest Transaction liable and accountable to the LLC for any profits he or she has made from such a transaction; and/or
- (b) Holding the Directors who approved or acquiesced in the acts or omissions which are the subject of the application under paragraph two (2) of this Article 50 (including Director's Substantial Conflicting Interest Transactions) liable; and/or
- (c) Rescission of a transaction (including a Director's Substantial Conflicting Interest Transaction).

4. The right of a Shareholder set out in paragraphs two (2) and three (3) is not limited to a Director's Substantial Conflicting Interest Transaction.

#### **Article 51 - Shareholder's Approval and Subsequent Notification**

1. A LLC may not enter into a Director's Substantial Conflicting Interest Transaction unless the arrangement has, after Disclosure, been approved by a resolution of the Board of Directors or it is entered into subject to such approval being obtained. In addition a Large LLC may not enter into a Director's Substantial Conflicting Interest Transaction unless the arrangement has been approved by a resolution of the Shareholders or it is entered into subject to such approval being obtained. Shareholder's approval regarding a Director's Substantial Conflicting Interest Transaction is effective for the purposes of this Article 51(1) if approved by a majority vote of all Qualified Shareholders after Disclosure. In the event that the circumstances of the Director's Substantial Conflicting Interest Transaction is such that the LLC does not have any Qualified Shareholders, the Director's Substantial Conflicting Interest Transaction may be approved by a majority vote of all Shareholders after Disclosure.
2. Qualified Shareholders means the holder of any Shares, except Shares owned by the Director with the Conflicting Interest, in respect of the Director's Substantial Conflicting Interest Transaction.
3. If (i) the Director's Substantial Conflicting Interest Transaction requires the approval of the Shareholders because the LLC is a Large LLC, and (ii) the value of the Substantial Assets exceeds 10% of the LLC's asset value (by reference to the LLC's net assets as shown in the LLC's most recent accounts), then at least 14 days before the notice convening the General Assembly of the Large LLC to authorise the Director's Substantial Conflicting Interest Transaction, the Large LLC must lodge the following documents with the CBR:
  - (a) A proposed notice of meeting setting out the text of the proposed resolution for approving the Director's Substantial Conflicting Interest Transaction;
  - (b) A proposed explanatory statement satisfying paragraph four (4) of this Article 51; and
  - (c) Any other document that is proposed to accompany the notice convening the meeting and that relates to the proposed resolution for approving the Director's Substantial Conflicting Interest Transaction.
4. The proposed explanatory statement lodged under paragraph three (3) of this Article 51 must be in writing and set out in relation to the proposed resolution for approving the Director's Substantial Conflicting Interest Transaction:
  - (a) the Director and/or Related Persons to whom the proposed resolution would permit financial benefits to be given;
  - (b) the nature of the financial benefits;
  - (c) in relation to each Director of the LLC:
    - (i) if the Director wanted to make a recommendation to Shareholders about the proposed resolution, the recommendation and his or her reasons for it; or
    - (ii) if not, why not; or
    - (iii) if the Director was not available to consider the proposed resolution, why not;

- (d) in relation to each such Director:
    - (i) whether the Director had an interest in the outcome of the proposed resolution; and
    - (ii) if so, what it was;
  - (e) all other information that:
    - (i) is reasonably required by the Shareholders in order to decide whether or not it is in the Large LLC's interests to pass the proposed resolution; and
    - (ii) is known to the Large LLC or to any of its Directors.
5. Within 14 days after a Large LLCs lodges documents under paragraph three (3) of this Article 51, CBR may give to the LLC written comments on those documents (other than comments about whether the proposed resolution is in the LLC's best interests.) If CBR provides any comments to the LLC, these comments must be sent, along with the notice of the General Assembly and the explanatory statement to which they relate, to the Shareholders.
6. Despite the approval of the Director's Substantial Conflicting Interest Transaction as per the provision of this Article 51, the Chairperson must, immediately following the execution of the Director's Substantial Conflicting Interest Transaction, issue a Notice to the Shareholders, which must include the following:
- (a) Details of the Substantial Conflicting Interest Transaction;
  - (b) The date on which the Director's Substantial Conflicting Interest Transaction was executed;
  - (c) The details of the Conflicting Interest that relates to the Director's Substantial Conflicting Interest Transaction; and
  - (d) The date on which the Qualified Shareholders approved the Director's Substantial Conflicting Interest Transaction.

#### **Article 52 - Preparation and Delivery of Financial Statements**

1. Not less than fifteen (15) days prior to the AGM of the Shareholders, the LLC shall deliver to all of the Shareholders entitled to attend such meeting, Financial Statements dated as of the last day of the Fiscal Year of the LLC, which shall include the balance sheet dated as of the last day of the Fiscal Year and the profit and loss statement of the LLC for the Fiscal Year. All Financial Statements shall include all operations of the LLC and shall comply with International Financial Reporting Standards (IFRS). The Financial Statements of Large LLCs shall be audited by the Large LLC's external auditor.
2. The Financial Statements, including for Large LLCs only the auditor's report, as well as the LLC's books and records, shall be made available to all Shareholders for investigation at the LLC's Registered Office not less than fifteen (15) days prior to the AGM of the Shareholders.
3. The approved Financial Statements, including for Large LLCs only the auditor's report, shall be filed with the CBR within six (6) months from the end of the LLC's Fiscal Year to which the Financial Statements relate.

**Article 53 - Rights and Privileges**

The Board of Directors may set the compensation of Directors, subject to approval by the Shareholders.

**Article 54 - Maintaining Corporate Records**

The Board of Directors, in addition to keeping required commercial books, must also keep the following records:

1. A Shareholder's registry in which the name, address, and number of owned Shares of each Shareholder are recorded;
2. A register of the Directors in which the name, address, date of appointment and resignation of each Director are recorded;
3. A record of initial payments made for Share Capital and the increases therein;
4. A record of the minutes of meetings of the Shareholders and the Board of Directors; and
5. The Financial Statements, as presented annually to the Shareholders.

**Article 55 - Appointment of Officers**

1. Unless otherwise provided in the Articles of Association, the Board of Directors may appoint Officers and other Employees of the LLC as they think fit.
2. The Officers (and other Employees) shall have the grades, terms, duties, and responsibilities as determined, from time to time, by the Board of Directors.
3. Officers may simultaneously hold more than one office, and may also be members of the Board of Directors.
4. For a Large LLC only, a person may not jointly hold the position of Chairperson and chief executive officer of the LLC.

**Article 56 - Indemnification**

1. Any person who is a party to any action or suit, whether civil, criminal, administrative, or investigative (other than a Derivative Proceeding) by reason of the fact that the person is or was a Director or Officer of the LLC, shall be indemnified by the LLC against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement that are actually and reasonably incurred by such person in connection with such action, suit, or proceeding, if the person acted in good faith, within the limits of their authority and in a manner which is in the best interests of the LLC, and, with respect to any criminal action or proceeding, had no reasonable cause to believe the person's conduct was unlawful.
2. A LLC shall have the power to indemnify any person who is, was, or is threatened to be made a party to any Derivative Proceeding or suit by the LLC by reason of the fact that the person is or was a Director, against expenses (including attorney's fees) incurred by such person in connection with the defence or settlement of such action or suit if the person acted in good faith and in a manner which is in the best interests of the LLC.
3. Expenses (including attorney's fees) incurred by a Director or Officer in defending any civil, criminal, administrative, or investigative action, suit, or proceeding may be paid by the LLC prior to the final disposition of such action, suit, or proceeding, upon receipt of an undertaking by or

on behalf of such Director or Officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the LLC pursuant to this Article 56. Such expenses incurred by such persons may be so paid upon such terms and conditions, if any, as the LLC deems appropriate.

4. The indemnification and advancement of expenses pursuant to this Article 56 shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled to under any charter, agreement, vote of Shareholders, or otherwise. A LLC may purchase insurance on behalf of any Director, Officer, Employee, or agent of the LLC against any liability asserted against, or incurred by, such person or persons acting in those capacities.
5. The advancement of expenses provided for in this Article 56 shall, unless otherwise provided when authorized, continue as to a person who has ceased to be a Director or Officer of the LLC and shall inure to the benefit of their heirs, executors, or administrators.

## **Chapter Eight**

### **Shareholders Meetings**

#### **Article 57 - Meetings of the Shareholders**

1. General Assembly of the Shareholders of the LLC:
  - (a) The AGM shall take place within four (4) months after the end of the LLC's Fiscal Year, or at such other time as is provided for in the LLC's Articles of Association, provided, however, that the AGM shall be convened at least once in each Fiscal Year following the first Fiscal Year of the LLC.
  - (b) A General Meeting of the Shareholders may be held from time to time in order to pass resolutions or when there is a matter that should be discussed before a meeting of Shareholders.
2. The AGM shall be held at the LLC's Registered Office, or at such other place as may be designated by the Board of Directors, either within or outside of Afghanistan. Meetings may be held by means of remote communication as permitted in this Law.
3. Failure to hold an AGM or General Meeting at the time or place stated in the Articles of Association does not affect the validity of any action taken at the AGM or General Meeting by the Shareholders.

#### **Article 58 - Remote Communication**

If authorized by the Articles of Association, or the Board of Directors, and subject to such guidelines and procedures as the Board of Directors may adopt, Shareholders and Proxy holders not physically present at a General Meeting or AGM may, by means of remote communication such as telephonic or video conference, participate in the meeting and be deemed present in person and vote at such meeting.

#### **Article 59 - General Meetings**

1. A LLC shall hold a General Meeting of the Shareholders:
  - (a) If called for by the Board of Directors or the person(s) authorized to do so by the Articles of Association; or

- (b) If a Shareholder or Shareholders controlling at least ten percent (10%) of the capital of the LLC request, in writing, a meeting of the Shareholders. The request must be signed and dated by the requesting Shareholder or Shareholders, and must describe the purposes for which the General Meeting will be held. A LLC's Articles of Association may fix a lower percentage.
2. The only matters to be discussed and voted upon at the General Meeting are such matters as are included in the notice of the meeting (unless all of the Shareholders agree otherwise).
  3. The Record Date for determining qualified Shareholders entitled to demand a General Meeting is as determined by their registration in the LLC's register of Shareholders. Such invitation shall be on the date that it is served on the LLC following signature by the requesting Shareholders.
  4. General Meetings may be held at the place established in the Articles of Association or as determined by the Board of Directors, including participation by remote communication as provided in this Law.

#### **Article 60 - Court-Ordered Meeting**

The Commercial Court may call a meeting of the Shareholders in the following cases:

1. If an AGM was not held in accordance with Article 57; or
2. If a Shareholder made a valid request for a General Meeting pursuant to Article 59 and the General Meeting was not held within three (3) months of the request.

#### **Article 61 - Decisions Without a Meeting**

1. Resolutions required or permitted by provision of this Law to be taken at any meeting of the Shareholders may be taken without a meeting if the resolution is made in writing and signed by the Shareholders entitled to vote on the action as set forth therein.
2. The resolution must be submitted in writing, dated and signed by the Shareholders owning at least the number of Shares required to pass the resolution.
3. If written action is taken by fewer than all of the Shareholders, written notice of the action taken shall be sent promptly to all Shareholders.
4. All written actions as set forth herein shall be delivered to the LLC for incusing in the minutes, or filing with the LLC's records.
5. If not otherwise set, the Record Date for determining Shareholders entitled to take action without a meeting is the date the first Shareholder signs the written resolution.
6. A Shareholder may revoke his consent to a written resolution by delivering a revocation in writing to the LLC prior to receipt by the LLC of written consents sufficient in number to pass the proposed resolution.
7. Any notices and consents required to be delivered under this Article 61 may be delivered via Electronic Communication.

**Article 62 - Notice of a Meeting**

1. The notice of a General Assembly is to be given as provided in the LLC's Articles of Association provided, however, that the LLC shall notify Shareholders of the date, time, and place of each meeting, and the means of remote communication, if any, and include an agenda for the meeting, at least twenty-one (21) days before a General Assembly. The LLC is required to give notice only to those Shareholders entitled to vote at the meeting.
2. If not otherwise set out in the Articles of Association, the Record Date for determining Shareholders entitled to notice of and a vote in a General Assembly is the day before the first notice is delivered to the Shareholders.
3. Unless the LLC's Articles of Associations specify otherwise, if a General Assembly is adjourned to a different time, date, or place, notice need not be given of such new time, date, or place if that information is announced at the meeting prior to adjournment. If a new Record Date for the adjourned meeting is fixed, notice of the adjourned meeting must be given to persons who are Shareholders of record as of the new Record Date.
4. Any Shareholder or Shareholders controlling five percent (5%) or more of the Share Capital of the LLC may add items to the notice or agenda of matters to be discussed at any meeting of the Shareholders.

**Article 63 - Method of Invitation**

1. Without limiting the manner by which notice may otherwise be given to the Shareholders, any notice to Shareholders given by the LLC as provided in this Law and/or in the Articles of Association, shall be effective if given by a form of Electronic Communication (including electronic mail) consented to by the Shareholder to whom the notice is given. Any such consent shall be revocable by the Shareholder by written notice to the LLC. Any such consent shall be deemed revoked if the LLC is unable to deliver by Electronic Communication two (2) consecutive notices.
2. The Board of Directors may decide whether the written agreement referred to in Article 63(1) above has been received by Electronic Communication.
3. Notice given pursuant to Article 63(1) above shall deemed given if:
  - (a) By facsimile telecommunication, when directed to a number at which the Shareholder has consented to receive notice;
  - (b) By electronic mail (email), when directed to an electronic email address at which the Shareholder has consented to receive notice;
  - (c) By a posting on an electronic network together with separate notice to the Shareholder of such specific posting, upon the later of (i) such posting, and (ii) the giving of such separate notice; or
  - (d) By any other form of Electronic Communication, when consented to by the Shareholder.
4. An affidavit of an Officer of the LLC that the notice has been given by a form of Electronic Communication shall be conclusive evidence of the facts stated therein.

**Article 64 - Notice of Invitation to Shareholders with Same Address**

Without limiting the manner by which notice may otherwise be effectively given to Shareholders, any notice to Shareholders given by the LLC shall be effective if given by a single written notice to Shareholders who share an address if consented to by the Shareholders at the address to whom such notice is given. Any such consent shall be revocable by the Shareholder by written notice to the LLC.

**Article 65 - Waiver of Notice**

A Shareholder may waive any required notice before or after the date and time stated in the notice. The waiver must be in writing, signed by the Shareholder entitled to the notice and delivered to the LLC for inclusion in the minutes or filing with the LLC's records. A Shareholder's attendance at a meeting, whether such attendance be in person or otherwise, waives objection to lack of notice or defective notice of the meeting unless the Shareholder, at the beginning of the meeting, objects to holding the meeting or transacting business at the meeting.

**Article 66 - Shareholders Eligible to Receive Notice**

The Articles of Association of the LLC may set or provide for the manner of setting the Record Date in order to determine the Shareholders entitled to notice of a meeting of the Shareholders, to demand a General Meeting, to vote, or to take any other action.

**Article 67 - Conduct of Meeting of the Shareholders**

1. If a quorum is present, the chairperson of the meeting shall preside over the Shareholders and shall, unless the Articles of Association provide otherwise, determine the order of business, consistent with the agenda, and shall have the authority to establish rules for the conduct of the meeting.
2. At a General Assembly of the Shareholders, a list is to be made of all Shareholders or their representatives who are present, including their documents, papers, and respective Share ownership. The list shall be signed by the chairperson of the meeting and together with other papers and records with respect to the meeting, shall be kept by the LLC in its records.
3. A copy of the decisions taken at a General Assembly, together with voting and other information relating to such meetings, shall be prepared and kept by the LLC.

**Article 68 - Shareholders List**

1. After setting a Record Date for a meeting, the LLC shall prepare a written list of the names of all the Shareholders who are entitled to notice of the meeting, which shall include the address of and number of Shares held by each Shareholder. The Shareholder's list must be available for inspection by any Shareholder for any purpose related to the meeting, beginning two (2) business days after notice of the meeting and continuing through the meeting.
2. If the meeting is held solely by means of remote communication, the list shall also be open to examination by any Shareholder on a reasonably accessible electronic network and the information required to access such list shall be provided with the notice of the meeting.
3. Refusal or failure to prepare or make available the Shareholder's list does not affect the validity of the action taken at the meeting.



**Article 69 - Voting Rights of Shareholders**

1. Except as provided in paragraph two (2) of this Article 69, or unless the Articles of Association provide otherwise, each Share is entitled to one (1) vote.
2. Redeemable Shares are not entitled to vote after notice of redemption is notified to the holders and a sum sufficient to redeem the Shares has been deposited with a bank or other financial institution under an irrevocable obligation to pay such redemption price.

**Article 70 - Participation in Voting**

1. A Shareholder may vote his Shares in person or by Proxy.
2. A Shareholder may appoint a person to vote, or otherwise act for the Shareholder as a Proxy by signing an appointment form, or by an Electronic Communication. A LLC is entitled to accept the Proxy's vote or other action as that of the Shareholder making the appointment. An Electronic Communication must contain, or be accompanied by, information proving that the Shareholder authorized the Electronic Communication. An appointment of a Proxy is effective when a signed appointment form or an Electronic Communication of the appointment is received by the LLC. An appointment may be valid for the period stated in the appointment form or the Electronic Communication.
3. The death or incapacity of a Shareholder appointing a Proxy does not affect the right of the LLC to accept the Proxy's authority until the LLC has knowledge of such death or incapacity.

**Article 71 - Effectiveness of Documents**

1. If the names signed on a vote, consent, waiver, or Proxy appointment corresponds to the name of a Shareholder, the LLC is entitled to give it effect. If the name of the person taking such actions does not match the LLC's Shareholder records, the LLC is entitled to accept a vote, consent, waiver, or Proxy appointment from such person as if it was an act of the Shareholder if:
  - (a) The Shareholder is a legal person and the document is signed by an Officer or proper agent of such legal person;
  - (b) The name signed is one of the following:
    - (i) An administrator, executor, guardian, or conservator representing the Shareholder and, if the LLC so requests, presents evidence of fiduciary authority acceptable to the LLC with respect to the vote, consent, waiver, or Proxy appointment;
    - (ii) A receiver or Trustee in bankruptcy of the Shareholder; or
    - (iii) The person to whom a Power of Attorney has been given by the Shareholder.
  - (c) Two or more co-owners are the Shareholder, or fiduciaries, and at least one (1) of the co-owners or fiduciaries signs such document or takes such action.
2. The LLC is entitled to reject a vote, consent, waiver, or Proxy appointment if the Board of Directors has reasonable doubt about the validity of the signature thereon, or about the signatory's authority to sign for the Shareholder. In such case, the LLC is not liable in damages to the Shareholder for the consequences of the acceptance or rejection.

**Article 72 - Quorum and Voting**

1. A quorum for a meeting of the Shareholders is as prescribed in the Articles of Association, and if not so prescribed therein, as provided for under this Law, provided that the Articles of Association may not specify a quorum less than one-fourth (1/4) of the number of Shares entitled to vote on any matter or take any action at the meeting.
2. If a LLC's Articles of Association do not specify the quorum for a General Assembly or the voting majority required to pass a resolution of the Shareholders :
  - (a) A majority of Shares entitled to vote, present in person or by Proxy, shall constitute a quorum at a General Assembly;
  - (b) The affirmative vote of a majority of the Shares present in person or by Proxy at the meeting and entitled to vote, shall pass a resolution of the Shareholders; and
  - (c) Where Shareholders are divided into specific Classes of Shares, when separate votes of each Class of Share is required, a majority of the Shares of such Class of Shares, present in person or by Proxy, shall constitute a quorum entitled to take action with respect to voting on that matter, and the affirmative vote of the majority of Shares of such Class of Shares present in person or by Proxy at the meeting shall be the act of such Class of Shares.
3. If a quorum is not present, the meeting of the Shareholders shall be adjourned until such other time, date, and location as set by the Board of Directors and announced prior to adjournment. Notice for such subsequent meeting shall be provided to all Shareholders (unless otherwise required by this Law), only if the time, date, and location of the next meeting are not announced prior to the adjournment.
4. Once a Share is represented for any purpose at a meeting it is deemed present for quorum purposes for the remainder of the meeting, and qualifies to form part of the quorum and vote at any adjournment of the meeting, unless a new Record Date is set for the adjourned meeting.

**Article 73 - Appointing Inspectors**

1. LLCs may appoint one (1) or more persons to act as inspectors and administrators of the voting procedures and the votes at a General Assembly, with their duties determined by the Board of Directors.
2. Inspectors and administrators shall make a written report to the Board of Directors.

**Article 74 - Keeping Documents and Records**

1. Any records maintained by a LLC in the regular course of its business, including its share ledger, register of directors, books of account and minute books, may be kept on or by means of or be in the form of any information storage device or method, provided that the records are clear, in legible form and usable.
2. A LLC shall make available such documents and records at its Registered Office upon the request of any person entitled to inspect them, in accordance with this Law. Such records and documents shall be admissible in evidence and accepted for all purposes, to the same extent as an original paper record of the same information would have been, provided the paper form accurately portrays the record.

3. Any Shareholder, in person, or represented by attorney or other agent shall, upon written demand stating the purpose thereof, have the right during the usual hours of business to inspect the LLC's share ledger, register of directors, list of Shareholders and other books and records for any proper purpose, which, for the purposes of a claim by a Shareholder pursuant to Article 47 and/or Article 50 of this Law, shall include such transaction documents relating to such claim as the Shareholder may reasonably require to pursue such a claim, and to make copies or extracts therefrom, subject always to the Shareholder signing any confidentiality undertaking reasonably required by the Directors to safeguard the interests of the LLC.
4. For the purposes of this Article 74, a proper purpose shall mean a purpose reasonably related to such person's interest as a Shareholder of the LLC, which shall include any claims which the Shareholder may wish to bring under Article 47 or Article 50 of this Law. In every instance where an attorney or other agent shall be the person who seeks the right to inspection, the demand shall be accompanied by a Power of Attorney or such other writing, which authorizes the attorney or other agent to so act on behalf of the Shareholder. To the extent made available by the LLC, any Shareholder may receive and/or view such share ledger, Shareholder list, and other books and records on an electronic network as provided, and subject to the restrictions under this Law.
5. Any Director shall have the right to examine the LLC's share ledger, list of its Shareholders, and its other books and records for a purpose reasonably related to the Director's position. The Commercial Court is vested with the jurisdiction to prescribe the inspection by a Director or a Shareholder.

#### **Article 75 - Voting Trusts**

1. One or more Shareholders may create a Voting Trust conferring on a Trustee the right to vote or otherwise act for them by signing an agreement setting out the provisions of the Voting Trust, which may include anything consistent with its purpose, and transferring their Shares to the trustee. When a Voting Trust agreement is signed, the Trustee shall prepare a list of the names and addresses of all owners of beneficial interests in the Voting Trust and deliver copies of the list and agreement to the LLC's Registered Office.
2. A Voting Trust becomes effective on the date the first Shares subject to the Voting Trust are registered in the Trustee's name. A Voting Trust is valid for not more than ten (10) years after its effective date unless extended for a maximum of another ten (10) years. An extension shall be delivered to the LLC's Registered Office.

#### **Article 76 - Voting Agreements**

Two (2) or more Shareholders may enter into an agreement that specifies the manner in which they will vote their Shares.

## **Chapter Nine** **Distribution of Dividends to Shareholders**

#### **Article 77 - Declaration of Dividends**

The Board of Directors may declare and cause the LLC to pay dividends upon Shares of the LLC's Share Capital, subject to the LLC's Articles of Association and the limitations in this Law.

#### **Article 78 - Distribution of Dividends**

1. No distribution of Dividends may be made if:

- (a) The LLC would not be able to pay its obligations or debts as they become due;
  - (b) The LLC's total assets would be less than the sum of its total liabilities; or
  - (c) The LLC's Reserve Capital is less than five percent (5%) of the value of its Share Capital.
2. Distributions made contrary to paragraph one (1) of this Article 78 will be subject to the provisions of Article 48 (unlawful distributions) of this Law.

#### **Article 79 - Reserve Capital**

At least five percent (5%) of the profits of the LLC every Fiscal Year shall be retained as Reserve Capital to compensate for possible losses of the LLC, unless the Articles of Association of the LLC specify a higher percentage. Unless the Shareholders resolve otherwise, no further amount shall be retained as Reserve Capital after such capital reaches at least twenty five percent (25%) of the LLC's Share Capital, provided that the Articles of Association does not stipulate a higher percentage. Where the Reserve Capital reaches the level determined by the Articles of Association or Law, but subsequently decreases due to any reason, profits shall be retained in accordance with this Article 79 in the order specified herein until such loss is recovered.

#### **Article 80 - Payment of Dividends**

Dividends may be paid in cash, in property, or in Shares of the LLC's Share Capital. The payment of any Dividends must occur on such date as was approved in the resolution approving the Dividends, provided always that such date must be within sixty (60) days from the date of such resolution. In the event that the resolution in which the Dividend was approved does not refer to a date of payment of the Dividend, the Dividend must be paid within the sixty (60) day time period from the date of the resolution.

## **Chapter Ten Accounting Records and Auditor**

#### **Article 81 - Shareholders Exercising Control**

The Shareholders shall exercise control over the LLC's accounting records in accordance with the provisions of this Law and the LLC's Articles of Association.

#### **Article 82 - Requirement for Large LLCs to Appoint an Auditor**

Large LLCs must have one (1) or more auditors from among those licensed to operate in Afghanistan appointed by the General Assembly. The General Assembly shall determine their remuneration and term of office. A General Assembly may reappoint auditors provided that the whole term of office shall not exceed five (5) consecutive years. The auditor who has exceeded five (5) consecutive years shall only be eligible for reappointment after a two (2) year interval. The General Assembly may at any time remove them without prejudice to their right to compensation if the removal is made at an improper time or without acceptable justification.

## **Chapter Eleven**

### **Material Change to LLC**

#### **Article 83 - Amendment of Articles of Association**

1. The CBR may from time to time prescribe model Articles of Association that the Shareholders of a LLC may choose to adopt, in their entirety or in part, with such amendments as the Shareholders deem fit, provided that such amendments are in compliance with this Law.
2. Shareholders may amend or restate in its entirety the Articles of Association of the LLC from time to time provided such amendments are in compliance with the Law. Subject to Article 83(3) below, the Shareholders must vote on any proposed amendment to the Articles of Association which vote will be passed by the required majority set out in the Articles of Association or if no majority is prescribed, by the affirmative vote of seventy-five percent (75%) of the Shares present in person, or by Proxy, at the meeting and entitled to vote.
3. Unless the Articles of Association provide otherwise, a LLC's Board of Directors may make one or more of the following amendments to the Articles of Association without Shareholder approval:
  - (a) To delete the names and addresses of the initial Incorporators;
  - (b) To record any changes to the Registered Office;
  - (c) To record any changes to the Share Capital and number of Issued Shares; and
  - (d) If set out in the Articles of Association, to record any changes to the Directors.
4. The LLC is required to file any amendments to the Articles of Association with the CBR within a period of fourteen (14) days following the date on which the amendment of the Articles of Association was resolved by the LLC.
5. In addition to its other obligations under this Law, a LLC must notify the CBR in respect of any of the following changes, in each case within fourteen (14) days from the effectiveness of such change:
  - (a) LLC's Registered Office;
  - (b) The appointments, termination of appointments, and details of a LLC's Directors; and
  - (c) Changes to the LLC's Share Capital and number of Issued Shares.

#### **Article 84 - Increase in the Share Capital of the LLC**

If the Board of Directors wish to issue new Shares, whether of an existing Class of Shares or a new Class of Shares, the Board of Directors shall submit the matter for approval to the Shareholders in accordance with Article 26. Article 27 and Article 85 of this Law shall apply to all new issues of Shares.

#### **Article 85 - Pre-emptive Rights**

A Shareholder has, at the time of issuance of new Shares, priority of subscription for the new Shares issued pro rata to that Shareholder's shareholding at the time such new Shares are issued. Such priority shall be communicated to each Shareholder in writing and such notice shall include the subscription conditions, duration, date of commencement, and expiry.

### **Article 86 - Resolutions Affecting Certain Classes of Shares**

If the LLC has issued different Classes of Shares, and the General Assembly adopted a resolution to amend the rights of a certain Class of Shares, such resolution will not be valid unless approved by a simple majority of those entitled to vote amongst the Shareholders of that Class of Share at a meeting of that Class of Share convened for this purpose.

### **Article 87 - Right of minority Shareholder's Shares to be acquired on an acquisition**

If a buyer of Shares makes an offer to acquire 50% or more of the Issued Shares of a LLC, the buyer must also make an offer to purchase all of the Issued Shares of the LLC from all Shareholders on the same terms and conditions (including the same price per Share).

### **Article 88 - Major Transactions**

1. A LLC must not enter into a major transaction unless the transaction is:
  - (a) Approved by the Shareholders; or
  - (b) Contingent on approval by the Shareholders.
2. In this section the following definitions apply:
  - (a) Assets includes property of any kind, whether tangible or intangible;
  - (b) Major transaction, in relation to a LLC, means:
    - (i) The acquisition of, or an agreement to acquire, whether contingent or not, assets the value of which is more than half the value of the LLC's assets before the acquisition; or
    - (ii) The disposition of, or an agreement to dispose of, whether contingent or not, assets of the LLC the value of which is more than half the value of the LLC's assets before the disposition; or
    - (iii) A transaction that has or is likely to have the effect of the LLC acquiring rights or interests or incurring obligations or liabilities, including contingent liabilities, the value of which is more than half the value of the LLC's assets before the transaction.
3. Nothing in Article 88(2)(b)(ii) or (iii) of the definition of the term major transaction applies by reason only of the LLC giving, or entering into an agreement to give, a charge secured over assets of the LLC the value of which is more than half the value of the LLC's assets for the purpose of securing the repayment of money or the performance of an obligation.

## **Chapter Twelve Share Certificates**

### **Article 89 - Share Certificates**

1. The Issued Shares of a LLC may be represented by Share Certificates as provided in the LLC's Articles of Association. At minimum, each Share Certificate must state the name of the issuing LLC, the nominal value of each Share, the name of the person to whom it is issued, and the

number and Class of Shares issued, and shall be signed by two (2) Directors or authorized Officers of the LLC.

2. Any or all signatures on the Share Certificate may be by facsimile. If the person who signed a Share Certificate shall have ceased to be a Director or an Officer of the LLC after such Share Certificate is used, the Share Certificate shall remain valid.

#### **Article 90 - Transfer of Shares**

1. If any Shareholder determines that it wishes to transfer all or part of its Shares to a third party, that transferring Shareholder shall first offer such Shares to all other Shareholders, pro rata to their shareholdings as amongst each other, on the same terms (including the same price per Share). Such offer shall remain open for acceptance for a minimum of fifteen days. If one of the other Shareholders does not agree to purchase all or some of its pro rata allocation of Shares, such Shares shall be offered to such other Shareholders who did agree to purchase their full allocation of Shares, pro rata to the shareholdings of those relevant Shareholders. Such offer shall remain open for acceptance for a minimum of fifteen days. This process will continue until the other Shareholders have agreed to purchase all the transferee's Shares that are subject to the transfer (in which case the transferee's Shares shall be sold to such other Shareholders at the stipulated price per Share within sixty days of such agreement), or it is evident that the non-transferring Shareholders have not agreed to acquire all of the transferring Shareholder's Shares which are subject to the transfer. In the latter case the transferring Shareholder shall have the right for sixty days to transfer the Shares subject to the transfer to the third party, provided that it does so on the same terms (including the same price per Share) as it offered to existing Shareholders.
2. Provided that paragraph one (1) of this Article 90 has been complied with, Shares are transferable to others persons without the consent of the LLC and without the consent of other Shareholders.

#### **Article 91 - Registration of Shares and Validity Thereof**

Shares are transferred to others by endorsement or by other written document, which form may be prescribed by the CBR from time to time. In order for this transfer to be honoured, it must be registered in the Share registration book of the LLC.

#### **Article 92 - Unpaid Shares**

When the consideration payable for Shares of a LLC has not been paid in full, and the assets shall be insufficient to satisfy the claims of its creditors, each holder of, or subscriber for, such Shares shall be bound to pay on each Share held or subscribed for by such holder or subscriber the sum necessary to complete the amount of the unpaid balance of the consideration for which such Shares were issued, or are to be issued, by the LLC.

#### **Article 93 - Unusable Share Certificates**

1. If a Share Certificate is in such a bad condition that its further use is impractical but its contents and distinguishing marks are legible, its owner shall pay the expenses involved and receive a replacement Share Certificate from the LLC.
2. A LLC shall issue a new Share Certificate in place of any existing Share Certificate that has been lost, stolen, or destroyed. The LLC may require the owner of such former and replacement Share Certificate to indemnify the LLC against any claim that may be made against the LLC relating to

such Share Certificate. The LLC may require the owner of the lost, stolen, or destroyed Share Certificate to provide the LLC with a bond sufficient to cover such indemnification obligations.

## **Chapter Thirteen**

### **Dissolution and Liquidation of a LLC**

#### **Article 94 - Dissolution of a LLC**

The Board of Directors may approve the dissolution of the LLC by a majority of votes, and present the proposal, whether conditional or unconditional, at a General Assembly of the Shareholders for adoption and approval.

#### **Article 95 - Registration of Articles of Dissolution**

1. Following dissolution, as provided for in Article 94, the LLC shall deliver to the CBR Articles of Dissolution setting forth the following:
  - (a) The name of the LLC;
  - (b) The date on which dissolution was authorized by the Board of Directors and the Shareholders; and
  - (c) A statement that the proposal to dissolve was duly approved by the Shareholders in the manner required by this Law and the Articles of Association.
2. The LLC shall be dissolved upon the date of the registration of the Articles of Dissolution with the CBR, and the Articles of Dissolution shall be filed no later than ninety (90) days after dissolution.

#### **Article 96 - Non-Issuance of Shares and Demand for Dissolution**

1. A majority of the Incorporators of a LLC that has not yet issued Shares may dissolve the LLC by delivering to the CBR Articles of Dissolution.
2. The Articles of Dissolution must set forth:
  - (a) The name of the LLC;
  - (b) The date of its incorporation;
  - (c) A statement that none of the LLC's Shares have been issued;
  - (d) A statement that no debt of the LLC remains unpaid; and
  - (e) A statement that the majority of the Incorporators authorized the dissolution.

#### **Article 97 - Revocation of Dissolution**

1. The Shareholders of a LLC may revoke a dissolution within five (5) days of the registration of the Articles of Dissolution. Revocation of dissolution must be authorized in the same manner as the dissolution was authorized.
2. Once the revocation of dissolution is authorized, the LLC may formally revoke the dissolution by delivering to the CBR for filing Articles of Revocation of Dissolution that set forth the following:



- (a) The name of the LLC;
  - (b) The announcement date for revoking the dissolution; and
  - (c) The date the revocation of dissolution was authorized by the LLC's Board of Directors and Shareholders, the latter only if Shares have been issued.
3. Once the revocation of dissolution is effective, the LLC may resume its business as if the dissolution had never occurred. Revocation of dissolution is retroactive.

#### **Article 98 - Judicial Dissolution**

1. The Commercial Court may dissolve a LLC in a proceeding in the following circumstances:
  - (a) If the Ministry of Commerce and Industry establishes any of the following:
    - (i) The LLC obtained its License through fraud;
    - (ii) The LLC has exceeded or abused authority conferred upon it by Law; or
    - (iii) The LLC's License has expired and not been renewed for 2 years and the Ministry of Commerce and Industry has reasonable cause to believe that the LLC is not carrying on business or in operation.
  - (b) If one or more Shareholders establishes one of the following:
    - (i) The Directors are deadlocked in the management of the LLC's affairs, the Shareholders are unable to break the deadlock, and irreparable injury to the LLC and its assets is being suffered as a result;
    - (ii) The Directors, or those in control of the LLC, have acted or are acting in a manner that is illegal or fraudulent; or
    - (iii) The Shareholders are deadlocked in voting power and have failed, for a period that includes at least two (2) consecutive General Assemblies, to elect Directors.
2. When a claim is filed against the LLC under this Article, the LLC's dissolution shall be executed under court supervision.
3. If a LLC is insolvent, as defined in Afghanistan's insolvency law in force from time to time, then dissolution and liquidation of the LLC must be in accordance with the procedures set out for liquidation in such insolvency law rather than this Law.

#### **Article 99 - Receivership or Custodianship**

1. In a court proceeding brought to dissolve a LLC in accordance with this Law, a court may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage the business and affairs of the LLC during such dissolution.
2. Court-appointed receivers and custodians must be:
  - (a) a person unaffiliated with the LLC to be dissolved; and
  - (b) a member in good standing of an internationally recognized accountancy body.

The receiver or custodian must receive no benefit from his/her/its position other than reasonable compensation and reimbursement of expenses from the assets of the LLC or proceeds of its sale.

3. The court shall describe the powers and duties of the receiver or custodian in its appointing order, which may be amended from time to time. Among other powers, the receiver may:
  - (a) Dispose of all or any part of the assets of the LLC wherever located, at a public or private sale, if authorized by the court; and
  - (b) Sue and defend in all proper courts.
4. The custodian may exercise all of the powers of the LLC through or in place of the Board of Directors to the extent necessary to manage the affairs of the LLC in the best interest of its Shareholders and creditors.

#### **Article 100 - Decree of Dissolution**

1. If the court determines that one or more grounds for judicial dissolution exist, it may enter a decree dissolving the LLC in accordance with Article 98 of this Law, and specify the announcement date of the dissolution.
2. The court shall deliver a certified copy of the decree of dissolution to the CBR.
3. After entering the decree of dissolution, the court shall direct the winding up and liquidation of the LLC's business and affairs.

### **Chapter Fourteen** **Miscellaneous Provisions**

#### **Article 101 - Re-Registration**

Limited liability companies and corporations incorporated in Afghanistan that were licensed prior to the effective date of this Law, based on the provisions of the Law on Business Corporations and Limited Liability Companies published in Official Gazette 913 dated January 30, 2007, or which obtained business licenses to conduct business in Afghanistan from other authorized commercial agencies, shall upon adoption of this Law, and within a period of one (1) year and six (6) months, re-register with the CBR as LLCs in compliance with this Law. Once re-registered, their legal existence shall continue and they shall be subject to the provisions of this Law. Branches of Foreign Companies registered in Afghanistan that were licensed prior to the effective date of this Law, based on the provisions of the Law on Business Corporations and Limited Liability Companies published in Official Gazette 913 dated January 30, 2007, or which obtained business licenses to conduct business in Afghanistan from other authorized commercial agencies, shall not need to re-register their branch licences with the CBR but their legal existence shall continue and be subject to the provisions of this Law immediately upon adoption of this Law.

#### **Article 102 - Regulations and Internal Rules**

For better implementation of this Law, the Ministry of Commerce and Industries may propose regulations and enact relevant procedures.

**Article 103 - Payment of Tax**

LLCs, branches of Foreign Companies, Foreign Companies and Shareholders referred to in this Law shall pay tax according to the provisions of the applicable laws.

**Article 104 - Registration of Fraudulent Documents**

A person who intentionally signs a fraudulent document and forwards it for registration to the CBR shall be punished according to the provisions of the Penal Code.

**Article 105 - Effective Date**

This Law is effective three (3) months from the date of publication in the Official Gazette. Upon effectiveness of this Law, the Law on Business Corporations and Limited Liability Companies published in Official Gazette 913 dated January 30, 2007, all provisions concerning corporations and limited liability companies in the Commercial Code published in Official Gazette 89 of October 1957 and Civil Code dated January 5, 1977 and any other legal provisions which are contrary to this Law shall be null and void.