

د ادارى فساد پر وړاندې د څارنې او
ارزونې



کمیته مستقل مشترک نظارت و ارزیابی

مبارزه با فساد اداری

**INDEPENDENT JOINT ANTI-CORRUPTION
MONITORING AND EVALUATION COMMITTEE**

**UNFINISHED BUSINESS:
THE FOLLOW-UP REPORT ON
KABUL BANK**

Kabul, Afghanistan

October 2, 2014

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Message from the Committee

This report is being written at a time of significant change in Afghanistan. The country has completed a democratic and peaceful transfer of power, international military troops continue to withdraw, foreign aid is being reduced, and Afghans are leading in a number of new areas.

The future of Afghanistan will be greatly determined by the strength of the new government's policies and its ability to effectively implement decisions through the institutions entrusted to do so. However, a number of fundamental challenges await the government, including weak governance, impunity, and economic instability, which must be overcome in order to assure Afghanistan's viability. Many of these challenges permeate the Kabul Bank crisis and the issues that continue to be unresolved.

August 2014 represented the four-year mark since the collapse of the Bank, but there has been insufficient progress in addressing all related concerns. Inevitably, the passage of time and the emergence of new crises have allowed Kabul Bank to move into the background of the country's conscience, but the Bank will never be forgotten so long as Afghans continue to pay the costs of the fraud and to witness other injustices.

A sincere effort is needed to resolve outstanding Kabul Bank issues and the change in government could provide the required political will. To do so would demonstrate the new government's commitment to ending impunity, act as a deterrent, increase recoveries, and address structural weaknesses that permeate public administration.

By issuing this report, the Committee is calling on the Afghan government to prioritize the resolution of Kabul Bank issues, with support from the international community. Such action would send a clear signal that there is reason to believe in the future of Afghanistan under a new government.

Sincerely,

M. Yasin Osmani
MEC Chair

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I. Introduction

The Kabul Bank fraud was perpetrated by Kabul Bank administrators and benefited a number of related parties and politically exposed people

The Kabul Bank fraud was perpetrated by bank administrators and related parties who capitalized on a regulatory vacuum to divert Afghans' savings to their own personal benefit and business ventures. A large portion of the money was ultimately laundered from Afghanistan to international accounts for the benefit of related parties and politically exposed people. Money was also diverted from Kabul Bank through excessive expenses, excessive payments for assets, and legitimate loans that were never repaid.

The Kabul Bank fraud has cost Afghanistan millions of dollars, which continues to be paid on an annual basis

In the end, the Afghan government provided the Bank with an \$825 million lender-of-last-resort instrument funded from its central reserve. This instrument is currently being repaid from Afghanistan's annual budget, with approximately \$67 million, or 1.35 percent of the year's operating budget, allocated for the current fiscal year, with similar payments expected for several years to come.

In addition, Kabul Bank operated at an annual loss of \$7.4 million in 2013 and an accumulated loss of \$46.8 million as of the end of December 2013, all of which will be paid by the Afghan government as a result of its commitment to sell the Bank with a clean balance sheet.

The follow-up report provides an update on recoveries, criminal proceedings, financial regulation and the privatization of New Kabul Bank

This report provides an update on a number of issues since MEC released its *Report of the Public Inquiry into the Kabul Bank Crisis* in November 2012. The issues can be broken down into four main elements, namely: recoveries, criminal proceedings, financial regulation, and the privatization of New Kabul Bank.

Recoveries can be increased if proper measures are prioritized by the Afghan government and international community

Despite some successes, the recovery of money embezzled from Kabul Bank has been slow. The Kabul Bank Receivership continues to face external influence and decisions of the Financial Disputes Resolution Commission have largely been ignored and remain unimplemented. Additionally, the international recovery effort faces a lack of commitment from Afghan institutions and the international community.

Criminal proceedings are unnecessarily delayed and make it unlikely that criminal issues will be resolved

The criminal proceedings also demonstrate a lack of progress. Although the Kabul Bank Special Tribunal returned convictions against those indicted, there are a number of concerns with its proceedings and the judgment. The Court of Appeal has not fared any better, as they

have made an inexplicable order that appears to introduce unnecessary delays and indefinitely defers substantive issues.

Regulation and oversight of the banking and financial sector remains relatively weak and jeopardizes economic stability

Of additional concern is the lack of significant progress recorded in the field of financial and banking regulation and oversight. The International Monetary Fund's Extended Credit Facility Program for Afghanistan included numerous measures aimed at strengthening financial sector oversight, but there has been insufficient progress on a number of important measures related to the Financial Supervision Department of Da Afghanistan Bank and legislation for banking and anti-money laundering.

The privatization of New Kabul Bank has stalled and plans for the government to nationalize the Bank would cost millions of dollars that have not been budgeted for

The privatization of New Kabul Bank has faced challenges and it came to a standstill when the Afghan government contemplated rehabilitation of the Bank. The issue of privatization is now a policy decision that must be taken by the new government.

The Tokyo Mutual Accountability Framework provides high-level commitments related to Kabul Bank and will be renegotiated with the new government

The Tokyo Mutual Accountability Framework was the main outcome of the 2012 Tokyo Conference and was intended to help Afghanistan meet its development and governance goals. These goals include improving the integrity of public financial management and the commercial banking sector, as indicated by the implementation of the Extended Credit Facility Program, Kabul Bank asset recovery, accountability for those responsible for the Kabul Bank crisis, and banking-supervision reforms.

The July 3, 2013 Senior Officials Meeting resulted in relatively weak statements with participants agreeing that continued efforts were needed to “hold complicit parties accountable” and to “secure appropriate criminal convictions” in relation to the Kabul Bank matter. Statements also noted that the Afghan government “is committed to implementing MEC’s recommendations on asset recovery” and “steadfastly committed” to meet the Extended Credit Facility benchmarks. There will be a meeting between the international community and the Afghan government to update the Framework with new commitments and deliverables.

II. Asset Recovery

a.) Debtors and Recoveries

There are a number of individuals and companies who owe millions of dollars to Kabul Bank and most have not paid a fraction of what they owe

Assessments provided by the Kabul Bank Receivership as of 2013 indicate that the total amount of debt owed to Kabul Bank amounted to \$982.6 million, including new debts identified since 2010. As of April 2014, the Receivership reported recoveries of \$175.2

million, including cash recoveries and the proceeds of assets, and \$97.4 million in loan forgiveness or reversals. Of note, customers of Kabul Bank not tied to the loan book fraud account for \$39.5 million, or 22.5 percent of all cash recoveries.

The largest overall debtors to Kabul Bank are the ex-Chairman, Mr. Sherkhan Farnood, who was assessed liability for \$308.3 million, of which only \$67.0 million has been recovered (22 percent); Gas Group, which was assessed liability of \$121.3 million, of which \$48.9 million has been credited (40 percent), mostly due to interest forgiveness; Pamir Airways, which was assessed liability of \$101.1 million and credited with \$662 thousand (0.7 percent); and the ex-Chief Executive Officer, Mr. Khalil Ferozi, who was assessed liability of \$86.8 million, of which \$15.2 million has been credited (17.6 percent).

In addition, there are a number of smaller debtors who have paid none – or a small portion – of the amount they owe, as of April 2014. Among the starkest examples are Mr. Sofi Naser Ahmad who has been assessed liability of \$15.6 million, but has only been credited with \$104,894 (0.7 percent); Mr. Mohammad Tahir Zahir, who was assessed liability of \$22.3 million, but only paid \$1.7 million (7.6 percent); Zakhira Hairatan, who owes \$22.9 million, but has not paid anything (0 percent); Kabul Neft, which was assessed \$21.5 million, but has not paid anything (0 percent); Mr. Abdul Ghafar Dawi, who was assessed \$39.0 million, but has only paid \$498,004 (1.3 percent); and Gulbahar Towers, which was assessed liability of \$16.8 million, but has only paid \$10,000 (0.06 percent).

It should be noted that the amounts credited above include amounts that were paid, discounted by lower interest rates, or forgiven. This includes the Gas Group, which was able to negotiate a \$49 million discount with the Kabul Bank Receivership, and the brother of the former First Vice President who was granted a \$17.5 million discount through a Presidential Decree, under which only one other borrower benefited.

There are a few debtors with smaller liabilities who have repaid all – or a substantial portion – of what they owed.

A number of assets have been sold, many to the Afghan government

The Kabul Bank Receivership has made progress in the sale of assets since November 2012 by selling Dubai properties, which realized \$41 million in recoveries. Other mortgaged villas in the United Arab Emirates have faced challenges due to disputes with mortgage holders who are attempting to sell the properties. The Receivership has also sold the Bakhtar Radio Television Network, land in Bamyan province, a helicopter, and shops in Saray Shahzada.

The Kabul Bank Receivership has made several attempts to tender other assets under its control, with limited success due to a lack of bidders or low bid prices. As a result, the Council of Ministers established a high-level committee led by the Senior Economic Advisor to the President with representatives from the Ministry of Commerce and Industries, the Ministry of Economy, and the Kabul Bank Receivership. The Committee considered having the government purchase assets at market value if the tender offer failed to elicit any bids that meet the minimum requirements. The assets under consideration include the:

- Gulbahar Center Apartments and Istiqlal project to the Ministry of Urban Development;
- Hayratan Oil Storage Complex to the Ministry of Commerce and Industries; and
- Pamir Airways to Ariana Afghan Airlines.

Subsequently, seven Pamir Airways planes were sold to Ariana Afghan Airways for \$24 million, which represents a market-value reduction from their book value of \$100 million, as determined by the Ministry of Transportation and Civil Aviation.

An agreement was also made in February 2013 to sell petroleum reservoirs to the Ministry of Commerce and Industries for \$13 million financed by the Ministry of Finance and with the underlying land transferred from the National Directorate of Security to the Ministry of Commerce and Industries. Istiqlal City is also to be transferred for \$5 million, down from a book value of \$22 million.

Although the transfer of property from the Kabul Bank Receivership to the Afghan government represents a legitimate tactic for recoveries, there are many concerns that result from a lack of transparency in the decision-making process and subsequent transfer. First, having the potential party to the purchase conduct the market valuation calls into question its objectivity and represents a clear conflict of interest. Second, the lack of written agreements setting out the transfer price and payment schedule creates a lack of transparency and diminishes the Receiver's role as an independent entity vis-à-vis the government. Third, the lack of payment by the government entity hampers transparency and accountability. There appears to be no government budgeting for the purchase of these assets and no payment mechanism established. Despite the fact that the funds would eventually cycle back to its central reserve, there needs to be a clear transactional record of the purchase.

The Kabul Bank Receivership still faces challenges in conducting recoveries due to interference and capacity

The Kabul Bank Receivership still appears to face many challenges in executing its mandate. There is a lack of clear delineation between its role as an independent entity and elements of the government, resulting in interference and a lack of autonomy in pursuing recoveries. In addition, the Receivership continues to lack certain technical skills that would facilitate recovery efforts. The engagement of Kroll to conduct forensic audits and provide technical assistance ended on March 31, 2014.

The technical assistance provided by Kroll included assistance in the valuation and disposal of assets, assessment of recovery options, and purchase, installation, and training of staff in loan-management software. Despite obtaining software, the Receivership is not using it because it was reportedly not configured for its activities and there was a lack of ongoing support and training.

b.) Cases Adjudicated by the Financial Disputes Resolution Commission

The Financial Disputes Resolution Commission was established under the Banking Law with specific jurisdiction to hear disputes emanating from receivership claims. To date, the Financial Disputes Resolution Commission has dealt with dozens of large and small cases related to Kabul Bank, with the most significant relating to liabilities of major debtors,

including Mr. Dawi, Gas Group, Mr. Habibi, Kabul Neft, and shareholders who received loans for shares and capital injections. Currently, the case related to shareholder loans is under appeal and the case of Mr. Dawi was reportedly referred to the Commercial Court, where there appears to have been no progress for several years.

The lack of awareness of the Financial Disputes Resolution Commission has been problematic for the resolution of Kabul Bank-related issues. The role of the Commission to mediate and to adjudicate financial disputes related to receivership was not well known or acknowledged causing different proceedings to be pursued. The Financial Disputes Resolution Commission contributed to the lack of awareness by not publishing its judgments, which is a legal requirement.

The Financial Disputes Resolution Commission approved the referral of Mr. Dawi's case to the Attorney General's Office

On June 23, 2012, the Financial Disputes Resolution Commission released an order to the Kabul Bank Receivership related to the outstanding debt of Mr. Abdul Ghafar Dawi. The claim from the Kabul Bank Receivership was that Mr. Dawi owed \$37.8 million based on accounting records and written statements from the administrators of Kabul Bank. The amount is supported by a December 2010 letter admitting to receiving loans and an acknowledgement of \$28.2 million for principle and interest, with \$9.5 million remaining in dispute. The Receivership indicated that they had requested payment on several occasions, but did not receive any payments, even for the acknowledged amounts. The Commission found that the evidence established liability and approved the referral of the case to the Attorney General's Office.

The Commission ordered a number of shareholders to repay loans for Kabul Bank shares

The Receivership referred the issue of liability for loans to shareholders for share capital and capital injections on September 2012. Many of the shareholders formally made submissions to the Commission, while other shareholders did not respond.

There were 16 individual shareholders, as of August 31, 2010. The ex-Chairman and ex-Chief Executive Officer had the most shares, with 28.16 percent each. Mr. Mahmood Karzai had the next highest shareholding with 7.41 percent, Mr. Mohammad Tahir Zahir had 6.74 percent, Ms. Farida Farnood had 6.68 percent, and Mr. Zahid Fahim and Mr. Ghulam Farooq Naseeb had 2.96 percent each.

The shares were purchased with loans provided through the Zahir Group account at the Shaheen Exchange. The capital and interest claimed for shareholder loans amounts to \$59 million, plus \$86.4 million for capital injection, for a total of \$145.5 million. The Commission's judgment indicates that the majority of ex-shareholders have officially acknowledged their debt to initially purchase shares, including Mr. Ghulam Daud, who reportedly held shares in the names of his brother, Mr. Tahir Zahir, Mr. Nesar, and Mr. Karzai. However, the shareholders disputed their legal responsibility for repayment of those loans and their liability for capital injections.

Some shareholders presented arguments claiming that they were victims of the bank administration and never had shareholder meetings, but this was rejected because the shareholders have a legal obligation to hire qualified management and oversee their activities. Mr. Karzai argued that his loans were directly with the Shaheen Exchange, but this was also rejected because the Commission found the distinction irrelevant since the Shaheen funds were fraudulently obtained from Kabul Bank and the Banking Law requires all assets belonging to the Bank to be returned.

The Commission decided that the shareholders were required to repay the loans for their shares based on the fact that they had never denied ownership of the shares and because the loans were from funds illegally derived from Kabul Bank. The interest of 15 percent was found to be unjust and illegal, included after the fact, and never accepted by the shareholders, therefore it was to be adjusted to a reasonable amount as determined by the Receivership. The principal owed included \$21.6 million for Mr. Ferozi, \$6.0 million for Mr. Karzai, \$4.23 million for Mr. Zahir, \$2.3 million for Mr. Fahim, \$1.6 million for Mr. Nesar Ahmad, and \$1.4 million for Mr. Naseeb.

The Commission did not have sufficient evidence to demonstrate that the shareholders accepted loans for capital injections. This conclusion was based on the lack of a shareholder meeting approving the capital injection, the absence of a contract, and the lack of an actual transfer of funds. As such, the capital injection did not have to be paid by those who were only shareholders of the Bank, but not administrators. Administrators faced liability under another section of the Banking Law providing for personal liability for bank administrators when credit is granted to related parties without being reported. Therefore, the administrators were required to repay the loans, plus interest.

The Receivership was ordered to report on the implementation of the Commission's decision, but no progress has been registered and the case is being appealed.

The Commission ordered Mr. Ghazanfar to repay \$2 million and the Attorney General's Office was requested to investigate Kabul Neft

The Commission also ruled on the \$2 million that was received by Mr. Ghazanfar from the ex-Chairman of Kabul Bank. Mr. Ghazanfar refused to repay the amount on the grounds that it was received from the ex-Chairman and not from Kabul Bank. The Commission determined – based on the documents and statements of Ghazanfar – that the money was derived from Kabul Bank and needed to be repaid. Regardless, the Commission found that Afghan law and Special Tribunal orders make it clear that the ex-Chairman's assets are receivable by the Receivership. As a result, the Commission ordered that Mr. Ghazanfar return the \$2 million that he received, with interest.

The issue of the \$11.6 million in principal owed by Kabul Neft was referred to the Financial Disputes Resolution Commission on June 16, 2013. At issue was the ownership of the company which the Ministry of Commerce and Industries license indicates was Mr. Muhammad Esmail Ghazanfar, Mr. Ab Husain, Mr. Khaid, and Mr. Kamaluddin. However, the listed individuals denied ownership and subsequent attempts to follow up with the Ministry have not been acknowledged. The Commission found that there was insufficient evidence to make a ruling on the ownership and asked the Attorney General's Office to investigate whether the license was fraudulent.

Loans related to Gulbahar Center are awaiting assessments of ownership and investments

The issue of Mr. Gulbahar Habibi's debt in relation to Gulbahar Towers was sent to the Financial Disputes Resolution Commission on October 14, 2012. The Receivership had assessed Mr. Habibi's debt at \$39.8 million, which was verified by the Kabul Bank forensic audit. Mr. Habibi had accepted \$25.1 million of this debt in a statement dated May 2011 and an agreement made in September 2011, only disputing \$7.8 million, with \$6.9 million attributable to other debtors.

The area of contention related to ownership and investments made in relation to Gulbahar Centre and Gulbahar Towers. The deeds were in the name of Mr. Habibi, but a 50 percent ownership interest was transferred to the ex-Chairman and ex-Chief Executive Officer for investments made to construct buildings. The parties were disputing the terms of the transfer and the value of investments and expenses for construction.

The Commission found that \$7.8 million of loans attributed to Mr. Habibi were not proven, \$7.1 million was repaid, and \$8.2 million was interest that was exempted by a Presidential Decree issued in April 2011. Liability for the remaining \$9.7 million was to be determined based on the Ministry of Urban Development determination of the rights and responsibilities of the parties related to Gulbahar Towers. No progress has been reported as to the implementation of this order.

c.) International Distribution of Kabul Bank Money***Nearly \$1 billion was transferred to 28 countries for the benefit of certain parties***

The Receivership analyzed international money transfers made by Kabul Bank between March 2007 and April 2011 through SWIFT transactions, which excludes cash, checks, and other transactions. Their analysis indicated that \$873 million of licit and illicit funds were sent to 28 countries for the benefit of parties related to the Bank.

The largest of the 28 recipient countries were the United Arab Emirates (\$410.1 million); Latvia (\$130.7 million); and China (\$117.9 million). Other countries receiving between \$30 million to \$70 million include Turkmenistan, the United Kingdom, and Kazakhstan. Countries receiving \$1 million to \$15 million include South Korea, Turkey, Russia, the United States, Switzerland, Uzbekistan, Belarus, Ukraine, Pakistan, Germany, and France. Finally, Hong Kong, Kyrgyzstan, India, Tajikistan, Saudi Arabia, Canada, the Turks and Caicos, Malaysia, Netherlands, Indonesia, and Thailand had a total of \$2.4 million transferred.

The transfers can be further summarized as follows:

- \$53.2 million to related party bank accounts
- \$334.0 million to Shaheen Exchange bank accounts
- \$204.6 million for purchase of oil and gas related products and services from Turkmenistan and Kazakhstan
- \$65.7 million for the purchase of aircraft and expenses by Pamir Airlines
- \$116.4 million sent to China by the Shaheen Exchange
- \$99.0 million spent on general trading, construction materials, tobacco, and other oil and gas-related transfers by various related parties

Transfers related to China made by the Shaheen Exchange went to several general trading and textiles companies, with the largest recipient (\$93 million) appearing to be related to Sherkhan Farnood General Trading LLC. The majority of transfers to Latvia, Turkmenistan, and Kazakhstan relate to purchases of petroleum products from companies operating in Kazakhstan and Turkmenistan. Finally, Latvia received a substantial amount of funds in the accounts of trading companies operating outside the country.

d.) International Recoveries

Mutual legal assistance is required to facilitate recoveries

A critical step in recovering funds distributed abroad hinges on mutual legal assistance requests and the cooperation of external jurisdictions. The Attorney General's Office sent requests for mutual legal assistance to six jurisdictions (United Arab Emirates, France, United Kingdom, India, Switzerland, and Germany), with a more recent request for the United States drafted in October 2013. Unfortunately, the requests have proceeded slowly due to a variety of factors, including technical deficiencies with some requests and the lack of prioritization by receiving countries. An enhanced effort from all parties is required to allow for the freezing and eventual confiscation of Kabul Bank property.

The United States has led some efforts to coordinate international assistance, including the facilitation of a meeting in November 2013. This was followed-up by a letter from the United States in December 2013 to Deputy Minister of Foreign Affairs Ahmadi suggesting the establishment of an Afghan team working with international representatives and experts to pursue Kabul Bank assets through international mechanisms. There has been no indication that this suggestion was ever pursued.

The United Arab Emirates has yet to fulfil Afghanistan's request for mutual legal assistance

Afghanistan and the United Arab Emirates have had an agreement of mutual legal assistance in criminal matters since October 2008. The agreement provides for best efforts in providing documents and records, locating and identifying persons or items, executing requests for searches and seizures, and assisting in the proceedings related to the immobilization and forfeiture of assets.

The Afghan government submitted an urgent request for legal assistance to the United Arab Emirates in May 2012 seeking records, documents, and other information related to Kabul Bank's ex-Chairman and ex-Chief Executive Officer, who were the main perpetrators of the Kabul Bank fraud. It also sought to freeze assets related to specifically mentioned bank accounts in anticipation of a confiscation order.

The United Arab Emirates Ministry of Justice initially returned the document on the grounds that it was sent without the signature and stamp of higher judicial authorities of the Afghan government. This was followed by Afghan officials with an additional request in July 2013, a detailed request in September 2013, and a subsequent letter in October 2013.

MEC brought this lack of progress to the attention of the United Arab Emirates Ambassador to Afghanistan in meetings held in March and June 2013. Subsequent attempts to coordinate met with no response from the United Arab Emirates.

The lack of cooperation was also brought by MEC members to the Organization for Economic Cooperation and Development (OECD) in December 2013. MEC requested that the OECD add the United Arab Emirates to a list of countries that do not enforce anti-money laundering laws. The OECD's Secretary-General forwarded the request to the Financial Action Task Force, which focuses on high-risk and non-cooperative jurisdictions. In April 2014, the Financial Action Task Force President committed to bring MEC's concerns to the attention of the Asia/Pacific Group and the Middle East and North Africa Financial Action Task Force for them to consider during the next compliance evaluations for Afghanistan and the United Arab Emirates.

The mutual legal assistance request to the United Kingdom has not identified any assets related to Kabul Bank

Requests were made to the United Kingdom in 2012 and again in 2013 seeking assistance in collecting documents and information on money transfers and bank records, and the confiscation and freezing of assets, in relation to the ex-Chairman, the ex-Chief Executive Officer, and other perpetrators. However, the requests appear to be missing appendices with vital information related to the perpetrators, banking institutions, and accounts. The request, originally sent in Dari, also indicated that it would be translated into English and submitted, but this does not appear to have been completed.

A further request was apparently made in September 2013, which was communicated by the Afghan Embassy in the United Kingdom. In response, the United Kingdom indicated that there is no indication of any moveable or immovable assets of the persons accused in the Kabul Bank case in the United Kingdom, and that all cooperation must be negotiated between the two countries as there is no treaty governing such issues.

The mutual legal assistance request to Switzerland requires translation, but this is not being undertaken

The request for legal cooperation from Switzerland was made on September 17, 2012. The Swiss responded in October 2012, indicating that the request was brought to the attention of the relevant Swiss authorities and that Afghan officials would be informed of any further progress. The Afghan authorities sent a detailed follow-up request in September 2013 in Dari, indicating that the request was to be translated into French. The translation of the request into French was also requested by the Swiss, but it does not appear to have been done and the request has not proceeded.

Germany's request for specific banking details regarding transferred money has not been satisfied by the Attorney General's Office

In September 2013, the Attorney General's Office sought Germany's assistance in recovering \$5 million of Kabul Bank money that was apparently transferred through the Commerce Bank in two transactions on August 30, 2010. The request did not adhere to the standard for legal assistance requests and did not provide specific details regarding the SWIFT transaction that would allow the Germans to effectively trace the money. German officials have requested additional details, but have not received them.

India has not sufficiently responded to the mutual legal assistance request from Afghanistan

A request for legal assistance was made to India in September 2012 regarding a transaction of more than \$1 million made for the benefit of Arash Ferozi, but the details regarding other transactions do not appear to have been attached to the request. Again, the request was made in Dari with a promise to send the Hindi translation, but there is no evidence that this was done. The Afghan authorities sent a detailed follow-up request to India in September 2013 in Dari.

France has initiated an investigation into the request, though progress has been slow

A request was made to France, in a letter dated September 17, 2012 seeking assistance in collecting banking information and the confiscation and freezing of assets of the ex-Chairman and ex-Chief Executive Officer, in addition to others. There is no evidence that the request included any appendices or provided the details required to process the request.

The request was transferred by the French Public Prosecutor's Office of Paris to the Financial Unit of the French Court in March 2013. Since then, the investigation has been led by the Central Office for the Suppression of Organized Financial Crime, to which this task was delegated, which will send its report to the investigating magistrate. There was no clear justification provided for the delay in the investigation.

Until recently, requests to the United States have focused on the extradition of the ex-Governor of Da Afghanistan Bank

Afghan authorities have sent numerous requests to the United States since 2011 seeking the extradition of the ex-Governor of Da Afghanistan Bank, but not in relation to any funds that may have been transferred through the United States banking system. The United States made it clear that the ex-Governor was legally in the United States and not subject to extradition.

In October 2013, the Afghan authorities attempted to communicate a request for mutual legal assistance, but the request seems to have stalled at the Afghan Embassy in Washington, D.C. As drafted, the request specifically seeks all records pertaining to banks under United States jurisdiction, including transfers and the identity of account holders. This would allow for the scrutiny of dollar transactions administered by banks outside the United States.

The Attorney General's Office needs to properly follow-up legal assistance requests, while the international community should support Afghanistan more

Initial efforts to recover internationally-laundered Kabul Bank funds have generally been inadequate. When requests for legal assistance have been detailed and specific, they have only been submitted to the international authorities in Dari, despite assurances of translation into the receiving countries official language. In addition, the most important information regarding specific individuals and specific transactions and accounts have not been transmitted. Technical assistance was available from the international community to support criminal asset recovery to assist with further international letters of request and analysis of data provided through mutual legal assistance, but this was never executed due to the lack of engagement by the Attorney General's Office.

III. Criminal Proceedings

a.) Judgment of the Kabul Bank Special Tribunal

The Kabul Bank Special Tribunal convicted all 21 individuals indicted in relation to Kabul Bank, with sentences varying from a fine to 5-years imprisonment

On March 5, 2013, the Special Tribunal of the Supreme Court issued its judgment in the indictment for the Kabul Bank fraud. The Special Tribunal returned convictions against all defendants under various provisions of the Penal Code, and a constitutional provision that allows for rulings to attain justice where there are no applicable provisions of law.

Convictions were registered against the ex-Chairman and the ex-Chief Executive Officer for breach of trust, and both were sentenced to 5 years in prison, with an order to pay back \$530 million and \$278 million, respectively. They are currently being detained by the National Directorate of Security.

The ex-Conservator – and current Chief Executive Officer of New Kabul Bank - was also convicted under the same provision and sentenced to three years in prison. Employees of Da Afghanistan Bank, including the ex-Governor and the ex-Deputy Governor were convicted on other charges.

Members of the Kabul Bank Credit Department were convicted under the constitutional provision that allows judges to apply Hanafi jurisprudence to attain justice if there is no applicable law for the circumstances. The implication that no other law applied is hard to accept as credible, since the individuals were actively involved in executing the fraud.

India has reneged on its commitment to ensure that two Indian nationals appear for the trial

The ex-Head of Audit for Kabul Bank and the ex-Director of the Credit Department are two individuals who were central to the execution of the Kabul Bank fraud. As previously reported, they were released under the recognisance of the Indian Ambassador with a promise that they would be made to return to Kabul when their trial took place. Despite several requests from the Afghan Attorney General's Office, India has never produced the individuals, leading to a clear injustice given their central role in the fraud. Regardless, the two were convicted by the Kabul Bank Special Tribunal in absentia.

Despite convictions, the most relevant articles of the law were ignored

The judgment of the Special Tribunal raises a number of concerns. For example, the lack of convictions for fraud and embezzlement would have allowed the stolen funds to be declared as proceeds of crime under the Anti-Money Laundering Law. These charges were rejected by the court on the grounds that the accused were not public officials as required by the provisions of the law. This finding was made despite the Penal Code's definition of public officials, which includes certified individuals as the Bank's administrators were, and the Anti-Corruption Law definition, which includes banks that deal with the state, as was the case with Kabul Bank. The act of embezzlement would appear to result from hiding state goods (salary deposits). Instead, the Special Tribunal substituted a breach of trust conviction for the ex-

Chairman and ex-Chief Executive Officer, for which they were not charged and did not have an opportunity to submit arguments about.

The proceedings before the Tribunal did not seem to be aimed at fact-finding, and there are reports of high-level interference

MEC recommended in its first Kabul Bank report that the Special Tribunal call for expert evidence to ensure that the facts of the Kabul Bank case were fully explored. It is clear from the proceedings and the judgment, however, that no such evidence was called for or considered, despite having international forensic auditors on stand-by ready to provide testimony. There are also reports that the Tribunal's head judge met a high-level delegation from the government several days before issuing its verdict. Reportedly, the President was interested in ensuring that there were significant penalties for guilty parties, while some high ranking government officials intended to interfere to change the court verdict.

b.) Proceedings at the Court of Appeal

An appeal was made by the Attorney General's Office, though the appeal document was deficient

The Interim Criminal Code for Courts in force at the time required that appeal documents detail the reasons for the appeal and identify errors in the application of the law, the definition of the crimes, the evaluation of facts, and the application of the penalty. However, there appear to be deficiencies with the appeal, as it is limited to a repetition of original accusations without asserting legal errors. The appeal could have benefited from the available international technical assistance, but it was only shared with such advisors after it had already been filed with the Court of Appeal.

The appeal was supplemented with an evidentiary addendum that was filed with the Court

In 2013, the Department for International Development (United Kingdom) provided technical assistance to the Afghan government to support the appeal team in improving the presentation of available evidence and providing ongoing assistance to the Attorney General's Office, the Ministry of Finance, the Financial Disputes Resolution Commission, and the Receivership in the recovery of assets. Specifically, the technical assistance was to draft evidentiary packages that demonstrated large-scale forgery, the involvement of local accounting firms, criminal distribution of millions of dollars, and the identity of witnesses.

The technical assistance team – including representatives from Kroll and the National Crime Agency – compiled an appellate addendum on behalf of the Attorney General's Office. The addendum summarized the findings of the forensic audit to support assertions of forgery, embezzlement, and money laundering. Exhibits included fake company stamps, business licenses issued for proxy borrowers, approval forms signed by Kabul Bank administrators, know-your-customer forms, falsified business plans, financial statements, audit reports, invoices, and bank-transfer statements.

The addendum also included detailed lists of all debtors, loan amounts, agreed repayments, status of repayments, disputed amounts, and signed acknowledgement and repayment letters. Names of individuals from the Kabul Bank Credit Department who could testify about the loan book scheme were also provided.

The Court of Appeal's handling of the appeal raises many procedural questions and is well behind statutory timelines

The Court of Appeal received the Kabul Bank appeal on April 4, 2013. Criminal appeals in Afghanistan are normally directed to the Criminal Appeals Section of the court, but the Kabul Bank case was sent to the Public Division where judges are selected by the Supreme Court. The reason behind this decision is not clear, but purportedly relate to national security and the sensitivity of the case. Upon receiving numerous documents from the Special Tribunal, the panel asked all judges of the Public Division to review the case and provide their thoughts on how to proceed.

Under the law, the Court of Appeal must confine its review to the points of the decision to which the appeal makes reference, but the Court may hear the witnesses and experts that have already appeared and collect new documents where the previous proceeding was not sufficient for making a sound decision. The Court has had five to seven hearings, with some defendants being unrepresented. The Court heard from defendants individually and provided an opportunity for statements to be made, but has not heard any of the expert evidence that is necessary to resolve the issues of criminal liability.

c.) Court of Appeal Order

The Court of Appeal made an order for the clarification of liabilities

Voluminous amounts of documents have been filed with the Court of Appeal, but the Court indicated that they still needed more. As a result, an order was issued on November 26, 2013 assigning the prosecutor to collaborate with the Receivership to clarify the accounts of all Kabul Bank's shareholders and borrowers in their presence. Disputes are to be sent to the Financial Disputes Resolution Commission to determine the issue and highlight the main legal points to be addressed by the Court, at which time the Court would make a decision.

The order calls for the duplication of efforts made several years ago, with little prospect of advancing recoveries or the criminal process

The order from the Court of Appeal repeats steps already taken to resolve the issue of liability, ignores the available evidence, and focuses on civil recoveries without dealing with the criminal matters that are supposed to be the subject of the appeal.

Furthermore, the order essentially asks for efforts that have already been made, thereby introducing months of delay. Shortly after the Kabul Bank fraud was publicly exposed in 2010, several key shareholders signed agreements to repay the amounts they owed. At this time, the Kabul Bank Receivership was able to compile a detailed accounting of liability based on the Kabul Bank database, loan files, and assistance from an international forensic audit firm. Several contentious meetings were held with shareholders and beneficiaries that ultimately resulted in legally-binding agreements being signed with most debtors. At this time, many shareholders disputed their liability for shareholder loans and the case was referred to

the Financial Disputes Resolution Commission, as discussed earlier in this report. Further efforts were made by the Attorney General's Office to identify additional debtors outside of Afghanistan and to have them summoned to Afghanistan, apparently to no avail.

Implementation of the order appears to have stalled

The potential for delay has become a reality as neither the Attorney General's Office nor the Receivership appears to have undertaken concrete steps to implement the Court's order. The Attorney General's Office attempted to call all beneficiaries to a meeting, but only two people responded and nothing further has been done. It is evident that officials in the Attorney General's Office believe that the political environment made it difficult to implement the order and expect that nothing will be done until the new government is in place. On the other hand, the Kabul Bank Receivership indicates that they have not received the order officially and will not take action until they do.

d.) Further Criminal Investigations

There is a need for proper criminal investigation of a number of individuals relating to Kabul Bank, but no investigation is currently underway

MEC's first Kabul Bank report recommended that the Attorney General's Office consider initiating investigations into other individuals, with the outcome documented in writing based on a clear rationale. Potential suspects include a number of shareholders, related parties, loan beneficiaries, government officials who registered fake companies, and accounting firms that forged business plans and financial statements.

The expansion of criminal investigations was also ordered by the Special Tribunal in March 2013, which indicated that 29 individuals were identified for investigation for their potential involvement in Kabul Bank-related crimes. Unfortunately, the Attorney General's Office has not undertaken any further investigations, which perpetuates the perception of impunity and preferential treatment.

IV. Financial and Banking Sector Regulation

a.) Risks Associated with Weak Financial Sector Governance and Oversight

Issues associated with Kabul Bank permeate other Afghan banks and weak oversight creates risks to the financial sector

Weak financial and banking sector regulation poses a serious threat to the economic stability of Afghanistan. Many of the issues that allowed the Kabul Bank crisis to happen still exist today. Prudential audits conducted by the World Bank identified many of the same problems of related-party lending and undercapitalization at other banks. The risk associated with weak financial and banking regulation has led to some banks in Afghanistan to lose their United States dollar correspondent-banking relationship.

Afghanistan's lack of progress on anti-money laundering leads to risks for the economy and the financial sector

The Asia/Pacific Group, in conjunction with the Financial Action Task Force and the other regional anti-money laundering bodies, constitutes an affiliated global network to combat money laundering. Afghanistan is currently a member of the Asia/Pacific Group on Money Laundering, which assesses member compliance with global anti-money laundering standards. Members commit to the implementation and enforcement of international standards against money laundering.

In February 2014, the Financial Action Task Force downgraded Afghanistan for failure to address its anti-money laundering deficiencies. The Task Force was specifically recommending that Afghanistan adequately criminalize money laundering, implement an adequate oversight program for all financial sectors, establish and implement adequate procedures for confiscating money-laundering assets, establish a fully functional and operational financial-intelligence unit, and establish effective controls for cross-border cash transactions.

If Afghanistan could not meet the indicators including finalizing Anti-Money Laundering Law and Anti-Terrorism Law on due time, Afghanistan will be included in black list of Task Force. This would have weakened Afghanistan's banking sector, as Financial Action Task Force members could have applied financial countermeasures, such as rejecting correspondent-account relationship requests. Downgrading was narrowly avoided as Afghanistan finally passed a new Anti-Money Laundering Law in June 2014, but the Financial Action Task Force has not assessed it as of yet and additional regulations are required. Another assessment of Afghanistan's progress will take place at the October 2014 Task Force meetings, which could result in adverse consequences for Afghanistan.

b.) Extended Credit Facility Program for Afghanistan

The International Monetary Fund's Extended Credit Facility Program sets out a roadmap for financial reform and resolution of outstanding Kabul Bank issues

The International Monetary Fund's Executive Board approved a three-year \$130 million Extended Credit Facility arrangement for Afghanistan on November 14, 2011, building on an earlier program in place from 2006 – 2010. The objective of the Extended Credit Facility for 2011 – 2014 is to safeguard the financial sector, improve economic governance, and raise domestic revenue collection.

The program includes a number of structural benchmarks related to the development of a strategy to build capacity and improve responses to economic crime, a privatization plan for New Kabul Bank, a new banking law with stronger provisions on corporate governance, a new anti-money laundering law, increased capacity of the financial intelligence unit, expanded money service provider registration, a strategy for banks without sufficient paid-up capital, a restructuring of the Financial Supervision Department, establishment of an Economic Crimes Task Force, and a memorandum of understanding regarding information sharing between relevant regulatory and law enforcement agencies.

Reviews of the program were to be undertaken regularly, but have not taken place as planned

The first review of the Extended Credit Facility was conducted on June 29, 2012, with further reviews scheduled for December 2012, March 2013, September 2013, March 2014, none of which occurred. The International Monetary Fund reported that performance in the June 2012 review was not in line with the targets due to unanticipated shocks that hit the economy, an inadequate policy response, and delays caused by opposition to some reforms and capacity constraints.

Discussions on the second review of the program were not concluded because key quantitative targets were missed, the implementation of some structural benchmarks was delayed, and revenue targets for 2013 were not agreed on. A January 2013 mission reached agreement on the second and third Extended Credit Facility arrangement reviews, but performance in early 2013 was significantly weaker than planned and not all prior actions were implemented, so completion of the reviews was not recommended.

c.) Status of Current Reform Efforts

The International Monetary Fund published a Staff Report on the status of the Extended Credit Facility Program

A staff report was developed in May 2014 to provide an overview of the current assessment of the program. The report indicates that important targets under the revised informal framework were missed in 2013, especially as related to budget revenue and delays in structural reform.

International Monetary Fund directors indicated that they looked forward to the implementation of the strategic plan for strengthening financial sector supervision, the implementation of banking sector laws, a strengthened anti-money laundering regime, a stronger banking system, and stronger efforts to recover Kabul Bank assets and to privatize New Kabul Bank.

Despite delays in program reviews, staff and the authorities agreed on a set of informal quantitative targets and policy actions for 2014 and proposed holding the next review in accordance with the consultation cycle. This could position the program to be renegotiated with the new government, if it has stronger political will for meeting the program objectives.

The government has taken initial steps in prioritizing and planning for responding to economic crime

The National Priority Program 5 – Law and Justice for All - provides a national economic-crimes strategy, including the establishment of a senior level interagency Economic Crimes Task Force to implement the strategy and to coordinate responses to challenges presented by economic crime. A road map setting out Afghanistan's economic governance framework was endorsed by the Cabinet in February 2013 and the government announced the establishment of the Task Force under the chairmanship of the Minister of Economy in early 2014, but the Secretariat was never funded and the Committee has never met.

The government has developed a number of legislative instruments, including the *Banking Law*, the *Da Afghanistan Bank Law*, and the *Anti-Money Laundering Law*, to address cooperation; bankruptcy proceedings; caps on money crossing borders; exposure limits; standards for reporting international money transactions; deposit insurance; regulation of

financing political parties; and improvements to the definition of who is qualified to administer a bank.

Anti-money laundering legislation has been recently enacted

The draft Anti-Money Laundering Law was in development for months with technical assistance provided by the International Monetary Fund. One of the major stumbling blocks was the status of the financial intelligence unit and whether it should fall directly under the Ministry of Finance or Da Afghanistan Bank and its ability to cooperate with its international counterparts.

MEC reviewed the draft Anti-Money Laundering Law and proposed that some articles be expanded to avoid ambiguity and some amendments be made to enhance the level of cooperation amongst national agencies, to enhance customer due diligence and record keeping, and to provide an adequate basis for the use of special investigative techniques.

The draft law was approved by the Council of Ministers and submitted to the National Assembly in May 2014, which passed it in June 2014. The new law allows for the confiscation of money and assets, and applies preventive measures for the financial sector. It also establishes powers and responsibilities for competent authorities and sets the basic framework for international cooperation in the fight against money laundering.

A revised Banking Law has not progressed through the National Assembly despite being submitted over a year ago

The Council of Ministers approved a new banking law on January 28, 2013 and submitted it to the National Assembly in February 2013, where it remains pending. The law was assigned to the Budget and Finance Committee and is listed as under discussion with a sub-committee.

The banking law has various aspects dealing with corporate governance, capital, large exposures, and related parties, but needs some amendments, which it is hoped will be incorporated while the law is discussed by the parliament.

Despite some progress, the Financial Supervision Department still lacks capacity to fulfill its mandate for regulating and supervising banking activities

The Financial Supervision Department's five-year strategic plan was approved in June 2013 and it has begun to make the institutional arrangements to start implementation. The Department developed a new organizational structure with increased staff and recruitment is underway to fill new positions with higher salaries to attract more qualified staff. The Financial Supervision Department still includes staff who have little relevant education or practical experience. The Department also suffers from a lack of sufficient space, with employees scattered among various offices.

Da Afghanistan Bank has indicated that they have begun implementing a program for supervisory capacity particularly focused on fraud detection, financial analysis, and monitoring bank-information systems. It has committed to strengthen off-site surveillance (including automation of supervisory reporting) and on-site examination. A Supervisory Enforcement Committee will continue its regular reviews of bank compliance with supervisory

orders, though it was noted that enforcement letters could be followed-up more consistently. Finally, the central bank committed to strengthen its policies to protect staff from civil damages when conducting their duties in good faith.

The Financial Transactions and Reports Analysis Center of Afghanistan (FINTRACA) is still operating under its optimal level

Despite concerns previously raised by MEC, FINTRACA still takes a passive role in the monitoring and oversight of suspicious transactions and large cash transfers. The continued absence of an integrated electronic database – despite attempts to find funding for one – relegates the unit to conducting little analysis, and being informed of transactions that require scrutiny well after they take place. Additionally, FINTRACA’s staff lacks proper training and formal technical assistance.

A memorandum of understanding has been signed among all law enforcement and financial regulation agencies

A memorandum of understanding has recently been signed between FINTRACA, the Ministry of Interior, the Afghanistan Customs Department, the National Directorate of Security, the High Office of Oversight, and the Attorney General’s Office regarding the exchange of information and assistance in the investigation of economic crimes. It provides the authority to exchange information in accordance with the laws on Anti-Money Laundering, Counter Financing of Terrorism, Organization and Powers of the Attorney General’s Office, Customs, Police, and Da Afghanistan Bank.

Specifically it allows FINTRACA to share strategic analytical information identifying risks and threats and to disseminate tactical analysis. It also allows for information to be shared with the Financial Supervision Department related to trends and suspected instances of non-compliance with anti-money laundering supervision, and provides for FINTRACA to be provided information or intelligence related its duties.

Although this is a good step in cooperating and may satisfy the technical requirement of the Extended Credit Facility Program, the memorandum of understanding is deficient in that it does not provide for a regular forum for routine sharing of information and the coordination of the investigation of economic crime and case management.

d.) Technical Assistance for Regulating the Financial Sector

Limited technical assistance has been provided to ensure the capacity and oversight of the financial sector

Currently, the Financial Supervision Department and FINTRACA receive little technical assistance from the international community. In the past, the International Monetary Fund has provided specific technical assistance, including two advisors who left in 2013, and the United States provided technical assistance until the Kabul Bank crisis broke and its advisors were removed.

Most recently, limited technical support had been provided by the International Monetary Fund under a \$1 million Canadian-funded program for the period of July 2012 to March 2014 entitled *Countering the Financing of Terrorism in Afghanistan*. The program trained

FINTRACA and other Afghan officials on how to detect and prevent money laundering and terrorist financing within the formal and informal financial sectors. The technical support also funded International Monetary Fund experts to review and draft procedures for FINTRACA and to develop draft risk-based tools for anti-money laundering supervision.

There is a new World Bank program that would address many of these deficiencies

The World Bank had two projects related to the financial and banking sector since 2009, the *Financial Sector Strengthening Project* and the *Financial Sector Rapid Response Project*. The *Financial Sector Rapid Response Project*, among other things, delivered audits of ten commercial banks that were completed in 2012.

In November 2013, the World Bank approved a grant for Da Afghanistan Bank under its *Financial Sector Rapid Response Project*. The program will run until June 2016 with the objective of assisting Da Afghanistan Bank to develop action plans for improved banking supervision and to establish key building blocks of financial sector infrastructure. The first component of the program will focus on reviewing financial supervision capacity building activities and implement a capacity building plan to strengthen the Financial Supervision Department, review banking regulations, and implement action plans following the commercial bank audits.

The World Bank designed their support as a low-level engagement that can be ramped up at a later date in acknowledgement that strengthening banking supervision is critical but challenging. The program, though approved, requires further discussions with the Financial Supervision Department.

There needs to be a comprehensive approach to addressing financial sector governance and oversight

Current efforts to appropriately govern and oversee the financial sector have met with limited success on the ground. The International Monetary Fund program and Financial Activities Task Force have set out the framework for reform in the area of financial sector oversight and anti-money laundering, but they have been implemented without comprehensive and adequate technical assistance resulting in slow progress in developing the legal framework and overall governance structures required.

Current progress related to a new anti-money laundering law, a new counter-terrorism financing law, the banking law, the memorandum of understanding, and technical assistance from the World Bank are all important efforts, but are meaningless unless the laws are passed and implemented and the capacity of the most important institutions is enhanced.

V. Privatization of New Kabul Bank

a.) New Kabul Bank Operations

New Kabul Bank received its first clean independent audit since splitting from Kabul Bank

The independent audit of New Kabul Bank's financial statements for the period ending December 31, 2013 was conducted by a Kabul-based representative of Grant Thornton and provided the first clean audit for New Kabul Bank since its split from the Kabul Bank Receivership in April 2011.

The old Kabul Bank was hiring external audit firms every year. External auditors received millions of dollars but never disseminated fraud, misuse and bank failures of old Kabul Bank. Instead, the bank's performance was shown legitimate. As a result of the violations of external firms and bank's authorities, it caused Kabul Bank to crisis disaster. The auditors believed that they obtained sufficient evidence to provide a basis for their opinion and concluded that the financial statements give a true and fair view of the Bank's financial position and its financial performance. However, initial concerns were raised due to inconsistencies between financial statements previously provided to the Financial Supervision Department and the reporting of profits from foreign currency exchanges and holdings. The report indicates that foreign currency transactions are converted into Afghanis at exchange rates from the date of transaction, as opposed to when the profit is actually realized, which may present an inaccurate picture.

New Kabul Bank's financial statements indicate that the Bank is currently operating at a loss, has negative equity, and is undercapitalized

New Kabul Bank's financial statements indicate that the Bank operated at a loss of \$7.4 million in 2013, with accumulated losses of \$46.8 million at the end of 2013. The losses are largely attributable to government restrictions on its ability to restructure or lend money until it is privatized. The Bank's net income of \$25.2 million was mostly derived from fees and commissions (\$20.4 million), a majority of which is attributed to salary distribution.

As of December 31, 2013, the Bank had assets of \$379.7 million and liabilities of \$426.4 million, including \$416.0 million in cash deposits. The key measure for managing liquidity risk is the ratio of net liquid assets to deposits from customers, which was 75 percent at the end of 2013.

New Kabul Bank is undercapitalized and does not meet the Banking Law requirements for paid-in capital. The Bank is 100 percent owned by the Ministry of Finance with no share capital having been paid, as was approved by the Da Afghanistan Bank's Supreme Council on March 15, 2011. Any buyer of the Bank will need to inject capital to meet the regulatory requirements.

New Kabul Bank's claim against the Kabul Bank Receivership is still in question

New Kabul Bank is reporting a \$54.7 million claim against the Ministry of Finance for outstanding liabilities attributable to the Kabul Bank Receivership. The claim was based on a special audit conducted by Grant Thornton and has been submitted to the Kabul Bank Receivership for their consideration, but the Receivership has not conducted their own verification. The split is facing further delays because the Receivership does not have a functioning electronic system, which creates an obligation to agree on modified procedures with the auditors before an audit can be undertaken.

New Kabul Bank's key management have never been approved by Da Afghanistan Bank in accordance with the law, nor has Da Afghanistan Bank conducted any supervisory audits

Key management of New Kabul Bank include the Chief Executive Officer, the Deputy Chief Executive Officer, the Chief Financial Officer, and the Chief Operations Officer. Currently, these positions at New Kabul Bank are being filled by individuals appointed by Da Afghanistan Bank without following proper procedures. Although they are former Da Afghanistan Bank employees, they have never been assessed or approved according to the law, which requires the assessment of biographical and financial information of candidates by the Financial Supervision Department.

In addition, the Financial Supervision Department has not carried out any supervisory audits of the Bank since it was created in 2011. Supervisory audits are designed to assess the operations of banks and to identify issues of non-compliance with the banking law and regulations.

The absence of oversight for New Kabul Bank – regardless of its status as a government-owned enterprise – is an alarming deficiency, particularly considering that similarly lax oversight contributed to the environment that allowed Kabul Bank to operate fraudulently.

b.) New Kabul Bank Privatization Plan

Privatization is a requirement of the Extended Credit Facility Program and was approved by the Council of Ministers

The sale of New Kabul Bank is a structural benchmark under the Extended Credit Facility program, which also indicates that the Bank should be wound-down if no suitable buyer was identified by December 2013. Liquidation would include the closure or transfer of all functions except for those related to the administration of government salary deposit accounts.

The privatization of New Kabul Bank was approved by the Council of Ministers in February 2012 and the Ministry of Finance established a Privatization Steering Committee to develop a plan and oversee the process. The Committee was chaired by the Director General of Treasury and its privatization plan was approved by the Council of Ministers on August 27, 2012.

The privatization plan sets out phases governing the operation and sale of New Kabul Bank

The privatization plan states that New Kabul Bank would be handed-over with assets equalling liabilities, no liabilities from the Receivership, in compliance with capital adequacy and liquidity ratios, and with a minimum capital requirement of \$20 million. The plan also indicated that New Kabul Bank would not be able to reduce staffing levels or the number of branches until it was sold.

The bids submitted were to be evaluated by the Steering Committee with technical and pricing information separated and weighed at 70 percent and 30 percent, respectively. The successful bid was to be approved by the Council of Ministers, with the automatic submission of the second successful bidder if the first was rejected. If approved, the final phase for

privatization would be the signing of the contract and Da Afghanistan Bank licensing and due diligence procedures under the Banking Law.

The privatization plan sets out specific criteria and qualifications for bidders

The eligibility criteria for bidders requires documentary evidence of a minimum level of financial and business standing and restricts bidders if they have outstanding loans with the Kabul Bank Receivership or any individual who was a shareholder, senior management or their associates or close family, or a legal entity in which they hold shares.

Potential owners would also be reviewed by Da Afghanistan Bank under the Banking Law after a change of control application is submitted with supporting documents. The criteria require the applicant to be fit and proper, have not engaged in criminal activities, and be capable of managing the bank soundly and prudently. The central bank requires information regarding the source of the funds for the purchase, educational and professional information, financial statements, and a list of relatives. The application may be rejected for a lack of professional qualifications, the inability to contribute capital, or other reasons that indicate a potential serious weakness in the overall financial condition of the applicant.

c.) Results of the Bidding Process

Initial attempts to tender New Kabul Bank did not result in any suitable bidders

The bidding process for New Kabul Bank was advertised in local and international media, and information seminars were held by Da Afghanistan Bank and the Ministry of Finance in Kabul in October 2012 and in Dubai in November 2012. Expressions of interest containing details of the applicants were due on November 27, 2012, together with payment of the tender fee.

Three domestic and two international groups were approved through the expression of interest stage: Ali Akbar Zhawandai Consortium, Forbes and Manhattan, Kru Capital Partners, Afghanistan International Bank, and the Amania Group. However, only one bid was received from the Ali Akbar Zhanwandai Consortium, which was rejected because it was not consistent with the existing banking regulations.

The tender process was reinitiated in late 2013 and a successful bidder identified

The Ministry of Finance reissued a call for registration of expressions of interest for New Kabul Bank on September 3, 2013, based on a Council of Ministers decision after the failure of the first process. Expressions of interest were to be submitted by November 2013 and four organizations had their registrations of expression of interest approved: Constellation Business Group Development (United States); Consortium of Forbes and Manhattan, Stan Bharti and Hannele Bharti (Canada); Kru Capital Partners (United Arab Emirates); and a consortium of Trummelbach LLC and Windhorse Capital Management (United States).

The technical bids of the four companies were assessed and only Kru Capital and Constellation Business Group met the criteria. Bid prices were opened at a press conference with Kru Capital providing the winning bid of \$28.5 million.

There have been concerns that the current bidders may have connections to the old Bank, but no due diligence has been conducted as of yet

There are lingering concerns that past shareholders may be involved in the bidding for New Kabul Bank with various rumors swirling about their connection to past shareholders. The names of the successful bidders were sent to Interpol, which inquired about criminal records, but no other due diligence has been conducted. Da Afghanistan Bank's due diligence is expected to come after a change of control application is submitted and will include a fitness assessment, business plan review, confirmation of capital, verification of assets, and review of audited financial statements, all of which should be done with extensive cooperation of other national and international law enforcement agencies.

The Council of Ministers did not approve the bid and has requested a plan for the rehabilitation of New Kabul Bank bringing the tender to a standstill

The Minister of Finance presented the successful bidder for New Kabul Bank to the Council of Ministers who did not approve the sale due to the belief that the bank's real value was not reflected. The Chief Executive Officer of New Kabul Bank was directed to develop a plan in cooperation with the Ministry of Finance for the rehabilitation and continuation of the bank's activities and present it to the Economic Committee of the Council of Ministers. A draft proposal was sent to Da Afghanistan Bank and it is reported that over \$100 million would be required to capitalize the Bank, in addition to approximately \$100 million in Receivership liability and accumulated losses.

VI. Conclusion

Kabul Bank continues to be a litmus test for a variety of structural issues that affect Afghanistan's prospects for future development. Undue influence and interference, weak governance, corruption, and the impunity of the powerful continue to be significant factors holding back the reconciliation of Kabul Bank and Afghan development goals. The case has come to stand as a symbol of self-interest and betrayal that continues to resonate with Afghans.

A new government willing to pursue actively and fearlessly the resolution of the outstanding recoveries and criminal charges will send a strong message to the people of Afghanistan, the international community, and other potential offenders that it is not business as usual and that crime and corruption will be actively pursued and prosecuted.

The commitment of a new government to completing and implementing regulatory reforms currently at different stages of development is essential to the economic stability of Afghanistan. The failure to expedite efforts maintains an environment that allows banks and bank administrators to conduct risky operations that put the whole financial sector at risk.

Notably, the international community has a role to play in assisting the new government in seeing through recoveries, prosecution, and regulatory reform. The international community itself has developed a strong risk aversion when it comes to providing technical assistance for financial oversight in Afghanistan. A new government that demonstrates sincerity and

political will in resolving the Kabul Bank fraud would be a positive development that could make technical assistance more acceptable.

ACKU

Annex I: Status of Liabilities and Recoveries

LIABILITY AND RECOVERIES FOR MAIN KABUL BANK DEBTORS AS ASSESSED BY KABUL BANK RECEIVERSHIP			
DEBTOR	ASSESSED LIABILITY	RECOVERED	OUTSTANDING LIABILITY *
Sherkhan Farnood	\$308,334,303.30	\$67,006,132.99	\$241,328,170.31
Gas Group	\$121,232,314	\$48,697,145.20 (discount) \$245,461.12 (paid)	\$72,289,707.68
Pamir Airways	\$101,120,716.75	\$662,053.77 (cash)	\$100,458,662.98
Khalil Ferozi	\$86,781,787.72	\$15,236,602.38	\$71,545,185.34
Abdul Hussain Fahim	\$40,764,015.65	\$18,874,447.08 (paid) \$17,481,109.92 (discount)	\$4,408,458.65
Gulbahar Habibi	\$39,760,110.59	\$7,143,299 (paid) \$8,210,262.11 (discount) \$6,858,827.73 (other beneficiaries)	\$17,547,721.75
Abdul Ghafar Dawi	\$37,765,609.57	\$498,003.09 (paid)	\$37,267,606.48
Zakhira Hairatan	\$22,958,643	\$15,000,000 (paid)	\$7,958,643
Mahmood Karzai	\$22,193,500.55	\$7,390,446.78 (Dubai property sold) \$4,735,370.24 (paid) \$1,303,147.20 (discount)	\$8,764,536.33
Kabul Neft Co.	\$21,459,199.43	Nil	\$21,459,199.43
Gulbahar Towers	\$16,832,217	\$5,000,000	\$11,832,217
Mohammad Tahir Zahir	\$16,273,043.21	\$1,349,382.97 (discount) \$1,490,000.00 (paid) \$135,000 (liquidated)	\$13,298,660.24
Corporative Headwall	\$15,167,861.65	\$11,351,222.88 (paid) \$3,816,638.77 (discount)	Nil
Sofi Nesar Ahmad	\$14,082,996.48	\$204,894 (liquidated)	\$13,878,102.48
Ghullam Dawood Naseeb	\$8,593,328.96	\$3,053,828.98 (paid) \$1,920,550.96 (discount)	\$3,618,949.02
Shukrullah Shukran	\$3,080,938.07	\$549,775 (discounted)	\$2,531,163.07
Hayutullah Kokcha	\$1,799,713.00	Nil	\$1,799,713.00
Ariana Steel	\$1,529,059	\$874,641.31 (paid) \$144,731.36 (discount)	\$509,686.33

Najibullah Payenda	\$1,429,774.36	\$1,429,774.36	Nil
* Some liability will be reduced according to the Financial Disputes Resolution Commission's rulings that reduces interest payable on shareholder loans.			

Annex II: Status of Assets Under Kabul Bank Receivership

ASSETS TIED TO THE LOAN BOOK SCHEME		
ASSET	ASSESSED VALUE	STATUS
11 Dubai Villas	\$43,651,225	Sold for \$41 million
Business Bay Towers in Dubai	\$44,055,660	Liabilities were greater than asset value
Gulbahar Center (108 shops and 34 apartments) in Kabul	\$22,059,566	Sent to auction with no bidders
Gulbahar Towers apartments in Kabul	\$20,832,217	Ownership under dispute
Pamir Airways	\$88,291,140	7 Airplanes sold for \$24 million
Oil storage complex with 50 vehicles	\$30,672,001	Purchased by Ministry of Commerce for \$13 million
ASSETS UNRELATED TO THE LOAN BOOK SCHEME		
ASSET	ASSESSED VALUE	STATUS
Bakhtar Television Network	\$1,832,537	Sold for \$377,439
41 connex containers for construction workers in Dosti City	\$369,057	Only received offers below target price
Helicopter in Kabul	\$4,364,379	Sold for \$499,999 or \$579,998
Toyota Land Cruiser at Kabul Airport	\$126,969	Not sold
Shahr-e-Naw land in Kabul	\$4,515,277	Ownership under dispute
Land behind MOI in Shahr-e-Naw	\$3,500,000	Ownership under dispute
5 shops in Saria Shahzada Kabul	Not stated	To be auctioned
Property in Bamyan province	\$200,000	Sold for \$91,111
40 vehicles in Kabul and provinces	Not stated	Sold for \$42,778

Annex III: Convictions Registered by the Kabul Bank Special Tribunal

CHARGES AND DISPOSITION FOR KABUL BANK ACCUSED			
ACCUSED	INDICTMENT	CONVICTION	SENTENCE
Sherkhan Farnood	PC 158, 268, 273, 285, 310 AML 3, 36, 49 BL 25, 34	PC 6, 466	5 years
Khalil Ferozi	PC 158, 268, 273, 285, 310 AML 3, 8, 9, 36, 49 BL 25, 34, 40	PC 6, 466	5 years
Ram Chadran	PC 39, 158, 268, 273, 285, 310, 381	ICPC 47 (absentia) Constitution 130	4 years
Raja Gopal Krishman	PC 39, 158, 268, 273, 285, 310, 381	ICPC 47 (absentia) Constitution 130	4 years
Esmatullah Beg	PC 39, 158, 268, 273, 285, 310, 381	ICPC 47 (absentia) Constitution 130	4 years
Eng Mohammad Afzal Habib	PC 158, 285, 310, 381	Constitution 130	4 years
Abdul Basir Frogh	PC 158, 285, 310, 385 AML 8, 9 BL 25, 40, 41	Constitution 130	4 years
Amahullah Hameed	PC 158, 285, 310, 381	ICPC 47 (absentia) Constitution 130	4 years
Masood Khan Mosa Ghazi	PC 39, 158, 268, 273, 285, 381	PC 6, 466	3 years
Tariq Miran	PC 285	Constitution 130	2 years
Aminullah Khairandesh	PC 285	Constitution 130	2 years
Kamal Nasir Koroor	PC 285	Constitution 130	2 years
Mahboob Shah Frootan	PC 285	Constitution 130	2 years
Abdul Fitrat	PC 39, 158, 268, 273, 285, 381	PC 285, 381 ICPC 47 (absentia)	2 years
Muhibullah Safi	PC 39, 158, 268, 273, 285, 381	PC 6, 156, 285, 381	1 year
Mohammad Qaseem Rahimi	PC 285, 381	PC 285, 381	6 months
Mustafa Masoodi	PC 285, 381	PC 156, 285, 381	24,000 AFN fine
Shair Aqa Halim	PC 285, 381	PC 156(6), 285, 381	-
Zafarullah Faqiri	PC 285, 381	PC 156(6), 285, 381	-
Bismillah	PC 285	PC 156(6), 285, 381	-
Arif Salik	PC 285	PC 156(6), 285, 381	-

Annex IV: Abridged Legal Provisions

LAW	ARTICLE	PROVISION
AML (Anti-Money Laundering Law)	3	<p>Money Laundering Offence A person commits the offence of money laundering if the person:</p> <p>(a) Conceals, disguises, converts, transfers, removes from or brings into Afghanistan funds and property, knowing or having reason to believe that it is derived directly or indirectly from acts or omissions: (i) in Afghanistan which constitute an offence against any law of Afghanistan; or (ii) outside Afghanistan which constituted an offence in the place where they occurred and which, had they occurred in Afghanistan, would have constituted an offence against the law of Afghanistan; or</p> <p>(b) acquires, possesses or uses funds and property knowing or having reason to believe that it is derived directly or indirectly from those acts or omissions; or</p> <p>(c) enters into or participates in an arrangement or transaction knowing or having reason to believe that it facilitates the acquisition, retention, use or control of funds and property derived directly or indirectly from those acts or omissions by or on behalf of another person.</p> <p>(2) Concealing or disguising funds and property includes concealing or disguising its nature, source, location, disposition, movement or ownership or any rights to it.</p> <p>(3) Knowledge or belief as an element of the offences in subsection 1 may be inferred from objective factual circumstances.</p>
	8	<p>Prohibition of anonymous accounts or similar products Reporting entities shall not keep anonymous accounts, or accounts in obviously fictitious names.</p>
	9	<p>Identification of customers Reporting entities shall identify and verify the identity of their customers in the following circumstances when:</p> <ol style="list-style-type: none"> a. carrying out transactions equal to or exceeding 1,000,000 Afghani; b. . . . c. there is a suspicion of money laundering or financing of terrorism; or d. The reporting entity has doubts about the veracity or adequacy of previously obtained customer identification data. e. establishing business relations with any person, <p>2) A natural person's identity shall be verified by the presentation of an original national identity card or passport . . .</p> <p>3) A legal person shall be identified by the production of its current certificate of registration, license, or articles of association . . . In addition, a legal person shall provide documentation regarding its owners and the ownership structure, and the reporting entity shall take reasonable measures to verify the identity of the actual owners.</p>
	36	<p>Disposal of confiscated funds and property</p> <p>1) Confiscated funds and property and proceeds shall accrue to the State . . .</p> <p>2) In cases where confiscation is ordered under a judgment by default, the confiscated funds and property shall accrue to the State However, if the court . . . acquits the person prosecuted, it shall order restitution to the value of the confiscated funds . . . unless it is established that such funds and property is the proceeds of crime.</p>
	49	<p>Aggravating circumstances When the offence is perpetrated by a member of a criminal organization or by a corporate entity owned or controlled by such organization the penalty shall be;</p> <ol style="list-style-type: none"> 1. in the case of a natural persons shall not be less than five years and not more than 14 years and a fine of not less than 500,000 and not more than two million Afghani, 2. in case of a corporate entities, a fine of not less than two million and not more than 10 million Afghani. 3. the penal law on the aggravating circumstances shall be applicable on this law.

LAW	ARTICLE	PROVISION
BL (Banking Law)	25	<p>Management Board</p> <p>1. The Management Board of a bank shall be responsible for the management and execution of the bank's activities.</p> <p>3. A person shall not become a member of the Management Board of a bank, or shall . . . be relieved of his membership of the Management Board of the bank, in the event that he is or becomes ineligible pursuant to Article 27.</p>
	34	<p>Prohibited Activities</p> <p>No bank shall engage in . . . business activities except for activities that are authorized by Article 33. . . .</p>
	40	<p>Bank credit to related persons</p> <p>1. No bank may extend credit to a related person: 1) if the credit and its financial terms and conditions have not been approved by its Management Board or its Board of Supervisors; or 2) if the credit is granted to an administrator of the bank and the credit would cause the aggregate amount of credit disbursed by the bank to that person and outstanding to exceed the equivalent of 25 percent of the annual remuneration of that person, or if the credit would cause the aggregate amount of credits disbursed to all related persons and outstanding to exceed or increase the amount by which such aggregate exceeds the unimpaired capital and reserves of the bank . . . or 3) if the credit is granted on terms and conditions that are less favourable to the bank than the terms and conditions that are offered by the bank to the public</p> <p>2. Every credit provided by a bank to a related person shall be promptly reported to the Audit Committee of the bank. If credit has been provided by a bank to a related person in violation of the provisions of paragraph 1, such credit must be immediately repaid, and the members of the Management Board and the Supervisory Board shall be personally liable, jointly and severally, for payment of principal of, and interest and other charges on, credit granted in violation of paragraph 1 with their knowledge and without their objection.</p> <p>3. For the purposes of this Article, a related person means: 1) any administrator of the bank; 2) any person who is related to an administrator of the bank by marriage, blood or kinship up to the second degree, or who is the adopted child or foster child of an administrator of the bank; and 3) any person who alone or in concert with one or more others or through one or more others has a qualifying holding in the bank, and any enterprise in which any such person or the bank or any administrator of the bank has alone or in concert with one or more others or through one or more others a qualifying holding, and any administrator of such person or enterprise.</p>
	41	<p>Prevention of banking services in support of crime</p> <p>1. No bank shall maintain accounts on its books or provide services to or for the benefit of undisclosed persons.</p> <p>2. Each bank shall register the identity of each one of its clients who maintains an account with the bank or otherwise uses the bank for activities Each bank shall require each such client to provide adequate information to the bank about the identity of any other person who is a beneficiary of such account . . . and shall register the identity of each such other person. Banks shall maintain proof of the identity of the persons so registered.</p> <p>3. No bank shall maintain an account on its books or provide services to or for the benefit of a person, and each bank shall report to Da Afghanistan Bank any request or instruction to maintain such account or to provide such services, if there are substantiated reasons to suspect that such person engages in transactions connected with money laundering, terrorism or another criminal activity. . .</p>
Constitution of Afghanistan	130	<p>The Judiciary</p> <p>In cases under consideration, the courts shall apply provisions of this Constitution as well as other laws. If there is no provision in the Constitution or other laws about a case, the courts shall, in pursuance of Hanafi jurisprudence, and, within the limits set by this Constitution, rule in a way that attains justice in the best manner.</p>
ICPC (Interim Criminal Procedure Code)	47	<p>Trial in Absence of the Summoned Accused</p> <p>1. When the notification indicated in article 42 has been delivered to the accused and he does not appear, the judge appoints a defence counsel for him.</p>

LAW	ARTICLE	PROVISION
PC (Penal Code)	6	<p>Compensation for Losses</p> <p>1) If a person, who is punished in accordance with the provisions of this law, has acquired a good through crime he shall be adjudged to return the good, and if the good should not be available, to return the same or its price to its owner.</p>
	39	<p>Principle Offender and Accomplice</p> <p>A person is regarded an accomplice in the following instances:</p> <ol style="list-style-type: none"> 1. When he instigates a person to commit one of the acts comprising the crime and the crime takes place as a result of this instigation. 2. When he enters in to an agreement with another Person to commit a crime and the crime takes place as a result of this agreement. 3. When he knowingly assists the principal offender in any way with respect to equipment, facilities or supplementary works for committing the crime and the crime takes place as a result of this assistance.
	156	<p>Plurality of Crime and its Effect on Punishment</p> <p>If several crimes result from commitment of several acts and these crimes are so related to one another as not be separable and a single objective should be responsible for bringing them together, the court shall order the anticipated punishment of each crime but stipulate the enforcement of only the heaviest punishment. . . .</p>
	158	<p>Plurality of Crime and its Effect on Punishment</p> <p>If a person commits several crimes and these crimes are not related to one another and prior to the issuance of verdict with respect to any of them there should be no unity no objective to bring the said crimes together, the court shall order the anticipated punishment of each crime and the punishments shall be enforced on him one after another, provided that the total period of imprisonment should not exceed twenty years.</p>
	268	<p>Embezzlement and Treachery</p> <p>(1) Any official of public services, to whom the goods of State or persons have been given in the line of his duty, and he embezzles it or hides it shall be sentenced to long imprisonment</p> <p>(2) If the crime is committed by a person . . . assigned to preserve embezzled or hidden goods, the person committing it shall be sentenced to long imprisonment.</p>
	273	<p>Embezzlement and Treachery</p> <p>(1) The criminal, in addition to the punishments fixed in this chapter, shall also be ordered to return the goods and to pay a cash fine equivalent to the embezzled goods or whatever he has taken into his possession from the State property.</p>
	285	<p>Encroachment of Officials of Public Services from the Limits of Lawful Authority</p> <p>(1) If the official of public services, making use of his official authority, deliberately and without legal grounds stops the implementation of provisions of laws, regulations, verdict and decision of the court, or orders issued by competent authorities of the government . . . the official shall be sentenced in the light of circumstances to short imprisonment of not less than three months of cash fine of not less than three thousand and not more than twelve thousand Afghanis.</p> <p>(2) If as a result of stoppage mentioned in the above paragraph the execution of State plans are delayed or interrupted or a loss is inflicted upon public property, the offender shall be sentenced in the light of circumstances to long or medium imprisonment.</p>

LAW	ARTICLE	PROVISION
PC (Penal Code)	310	<p>Forgery (1) (2) A person who makes one of the following items with the aim of forgery or, being aware of their forgery, uses them or brings them into Afghanistan, shall be sentenced in the light of circumstances to medium imprisonment: a. . . . b. Seal, stamp or the symbol of one of the officials of public services. e. Financial papers of bank whose issuance is permissible</p>
	381	<p>False Information and Abstention from Disclosing the Truth (1) A person who has been legally charged with the duty of informing as official of public services of a matter and intentionally abstains from doing so . . . shall be sentenced to medium imprisonment, not exceeding two years, or shall be fined an amount not exceeding twenty four thousand Afghanis. (2) Any official of public services, charged with the duty of discovering crimes and arresting offenders of crime, who neglects to report the crimes made known to him shall be punished in accordance with the provisions specified in the previous paragraph . . .</p>
	385	<p>False Testimony The following persons shall be sentenced to the anticipated punishment of false testimony: 1. A person who compels a witness through coercion, seduction, or any other means to present false testimony even-though his intended aim is not fulfilled. 2. A person who as a result of a promise, gift or deceit, abstains from presenting testimony</p>
	466	<p>Breach of Trust (1) A person who has movable goods of another under custody and misuses the goods for his own or someone else's benefit or acquires possession of the goods contrary to provisions of law and contrary to the purposes for which the goods were given to him, shall be sentenced . . . to medium imprisonment or shall be adjudged to pay an amount not less than twelve thousand Afghanis and not exceeding sixty thousand Afghanis. (2) The following persons who, by virtue of occupation or job, become trustee of someone else's goods, committing the crimes specified under paragraph 1 of this Article shall be sentenced to medium imprisonment not exceeding two years: a. . . . b. Attorney, broker, or money-changer. c. Government official, contractor, or employee. d. . . .</p>

Annex IV: Sources

Individuals and Organizations

Attorney General's Office (Afghanistan)
ex-Counsel to Da Afghanistan Bank Defendants
Court of Appeal (Afghanistan)
Da Afghanistan Bank
Department for International Development (United Kingdom)
Department of Justice (United States)
Department of the Treasury (United States)
Embassy of Canada
ex-Chief Executive Officer of Kabul Bank
ex-Governor of Da Afghanistan Bank
Financial Disputes Resolution Commission
Financial Transactions and Reports Analysis Center of Afghanistan
Foreign and Commonwealth Office (United Kingdom)
French Embassy in Afghanistan
German Embassy in Afghanistan
High Office of Oversight
International Monetary Fund
Interpol, Ministry of the Interior (Afghanistan)
Kabul Bank Receivership
Kabul Bank Special Tribunal
Kroll
Ministry of Finance (Afghanistan)
Ministry of Foreign Affairs (Afghanistan)
National Crime Agency (formerly Serious Organized Crime Agency) (United Kingdom)
New Kabul Bank
Switzerland Embassy in Afghanistan
United Arab Emirates Embassy for Afghanistan
World Bank

Reports and Documents

Action Plan to re-Privatize New Kabul Bank, Cabinet Submission, August 27, 2012.

Afghanistan's Banking Sector: The Central Bank's Capacity to Regulate Commercial Banks Remains Weak, Special Inspector General for Afghanistan Reconstruction, January 2014.

Agreement between the Islamic Republic of Afghanistan and Kabul Bank for the Commercial Bank Services for Payroll Distribution to Government Employee Accounts, March 21, 2007.

Agreement between the Islamic Republic of Afghanistan and the State of the United Arab Emirates on Mutual Legal Assistance in Criminal Matters, October 19, 2008.

Anti-Corruption Law (Afghanistan).

Anti-Money Laundering and Proceeds of Crime Law (Afghanistan).

Application in Change of Control Form, Da Afghanistan Bank.

Asia/Pacific Group on Money Laundering Annual Report 2012 – 2013, September 12, 2013.

Asset Tracing Report – Kabul Bank, Da Afghanistan Bank, November 22, 2012.

Banking Law (Afghanistan).

Biographical and Financial Report for Bank Administrators Form, Da Afghanistan Bank.

Change in Control Application Form Document Checklist, Da Afghanistan Bank.

Co-Chair's Statement, Tokyo Mutual Accountability Framework Senior Officials Meeting Kabul, Afghanistan, July 3, 2013.

Control Regulation, Da Afghanistan Bank.

Council of Ministers approval for the transfer of petroleum reservoirs to the Ministry of Commerce, February 12, 2013.

Criminal Procedure Code 2014 (Afghanistan).

Da Afghanistan Bank regulation regarding qualifying holdings, February 2005.

Decision document for the purchase of petroleum reservoirs by the Ministry of Commerce, January 27, 2013.

Draft Terms of Reference for support to the Receiver of Kabul Bank in recovery efforts following information delivered from the forensic audit of Kabul Bank, November 17, 2011.

Dubai International Financial Centre company search, www.difc.ae/kru-capital-partners-limited, accessed May 11, 2014.

Evidentiary package prepared by Kroll for submission to the Kabul Bank prosecutors and the Court of Appeal, undated.

Financial Disputes Resolution Commission written judgment regarding liability of Kabul Bank shareholders for loans to purchase shares, issued on June 1, 2013.

Financial Disputes Resolution Commission written judgment regarding liability of Kabul Neft, issued on February 2, 2014.

Financial Disputes Resolution Commission written judgment regarding the liability of Gulbahar, December 18, 2012.

Financial Disputes Resolution Commission written judgment regarding Mr. Dawi's case, June 23, 2012.

Government of the Islamic Republic of Afghanistan National Budget for 1393 (2014/15).

Interim Criminal Procedure Code for Courts, 2004 (Afghanistan).

International Development Association Project Paper on a Proposed Additional Grant in the Amount of SDR 4.4 million and Restructuring to the Islamic Republic of Afghanistan for the Financial Sector Rapid Response Project, World Bank, November 2013.

International Monetary Fund Program Note for Afghanistan, April 2, 2013.

Islamic Republic of Afghanistan 2014 Article IV Consultation – Staff Report; Press Release; and Statement by the Executive Director for the Islamic Republic of Afghanistan, International Monetary Fund, May 2014.

Judicial Order of the Kabul Bank Special Tribunal ordering the transfer of moveable and immoveable properties to the Kabul Bank Receivership inside or outside of the country, 2014.

Kabul Bank asset list, Kabul Bank Receivership, April 2014.

Kabul Bank Receivership Loan Recovery Report, April 2014.

Letter from Dr. S. Ken Yamashita, Director of Program Coordination, United States Embassy in Afghanistan, to Deputy Minister Ahmadi, Ministry of Foreign Affairs, regarding designation of an asset recovery team, December 11, 2013.

Letter from the Kabul Bank Receivership to Da Afghanistan Bank legal team regarding Mr. Abdul Ghafar Dawi's file, June 24, 2012.

Letter from the Ambassador of the United Arab Emirates to the Chair of the Independent Joint Anti-Corruption Monitoring and Evaluation Committee, responding to the Chair's letter of March 11, 2013 regarding mutual legal assistance request, March 12, 2013.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Justice (France) requesting mutual legal assistance to obtain information and freeze assets of Kabul Bank perpetrators, number 5064, dated September 17, 2012.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Foreign Affairs (Afghanistan) regarding the summoning of Kabul Bank debtors, number 110/80, dated June 5, 2013.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Foreign Affairs (Afghanistan) regarding the extradition of the ex-Governor of Da Afghanistan Bank, number 122/86 and 119/83, dated August 23, 2013.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Foreign Affairs (Afghanistan) regarding further information for the authorities of the United Kingdom, France, Switzerland, India and the United Arab Emirates regarding Kabul Bank asset recovery, number 323/213, dated September 25, 2013.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Justice (France) regarding further information supporting the request for legal assistance, number 322/213, dated September 25, 2013.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Justice (Switzerland) regarding further information supporting the request for legal assistance, number 319/213, dated September 25, 2013.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Interior (India) regarding further information supporting the request for legal assistance, number 321/213, dated September 25, 2013.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Justice (United Arab Emirates) regarding further information supporting the request for legal assistance, number 320/213, dated September 24, 2013.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Justice (Germany) regarding legal assistance to trace specific financial transactions, number 302/198, dated September 22, 2013.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Interior (India) regarding legal assistance to trace specific financial transactions, number 5065, dated September 17, 2013.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Foreign Affairs (Afghanistan) following up on the legal assistance request from the United Arab Emirates, number 1930/40, dated June 4, 2012.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Foreign Affairs (Afghanistan) seeking to communicate the Kabul Bank Special Tribunal judgment to the ex-Governor of Da Afghanistan Bank, number 38/22, dated May 11, 2014.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Foreign Affairs (Afghanistan) following up on the Attorney General's Office's request to the Ministry to identify the assets of Kabul Bank accused abroad, numbers 1118/88 and 117/87, dated May 2013.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Foreign Affairs (Afghanistan) seeking to verify the assets of the ex-Governor of Da Afghanistan Bank in the United States, number 196/49, dated June 16, 2012.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Foreign Affairs (Afghanistan) seeking to verify the assets of the ex-Chairman and ex-Chief executive Officer of Kabul Bank in the United States, numbers 195/48 and 194/47, dated June 12, 2012.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Foreign Affairs (Afghanistan) seeking to summon Indian nationals for trial in the Kabul Bank case, numbers 239/82 and 237/80, dated July 3, 2012.

Letter from the Attorney General's Office (Afghanistan) to the Ministry of Foreign Affairs (Afghanistan) seeking to summon Indian nationals for trial in the Kabul Bank case, number 1906/1905, dated June 4, 2011.

Letter from the Attorney General's Office (Afghanistan) to the United Kingdom requesting mutual legal assistance to obtain information and freeze assets of Kabul Bank perpetrators, number 5063, dated September 17, 2012.

Letter from the Attorney General's Office (Afghanistan) to the United Kingdom regarding further information supporting the request for legal assistance, number 318/213, dated September 25, 2013.

Letter from the Chair of the Independent Joint Anti-Corruption Monitoring and Evaluation Committee to the Ambassador of the United Arab Emirates to Afghanistan regarding mutual legal assistance request, March 11, 2013.

Letter from the Chair of the Independent Joint Anti-Corruption Monitoring and Evaluation Committee to the Ambassador of the United Arab Emirates to Afghanistan responding to the Ambassador's letter of March 12, 2013 regarding mutual legal assistance request, April 1, 2013.

Letter from the Financial Action Task Force President to Ms. Eva Joly, Member of the Independent Joint Anti-Corruption Monitoring and Evaluation Committee regarding Kabul Bank, April 7, 2014.

Letter from the Independent Joint Anti-Corruption Monitoring and Evaluation Committee to the international community and the Government of Afghanistan regarding progress on the implementation of Tokyo Mutual Accountability Framework hard-deliverables, June 2013.

Letter from the Ministry of Foreign Affairs (Afghanistan) to the Attorney General's Office (Afghanistan) regarding the Swiss response to a request for mutual legal assistance, number 1498, dated November 3, 2012.

Letter from the Ministry of Foreign Affairs (Afghanistan) to the Attorney General's Office (Afghanistan) regarding the response of the United States of America to Afghanistan's request to extradite the ex-Governor of Da Afghanistan Bank, number 181, dated April 21, 2014.

Letter from the Ministry of Foreign Affairs Law and Treaties Department regarding information as to legal cooperation between countries related to Kabul Bank, February 2014.

Letter from the President of Gulbahar Investment to the Chief Executive Officer of Kabul Bank regarding title to Gulbahar Towers, dated September 21, 2010.

Letter from the Secretary-General of the Organisation for Economic Co-Operation and Development to Ms. Eva Joly, Member of the Independent Joint Anti-Corruption Monitoring and Evaluation Committee regarding Kabul Bank, March 27, 2014.

Memorandum of Understanding between the Financial Tracing and Analysis Center of Afghanistan, Financial Supervision Department of Da Afghanistan Bank, Afghan Customs Department, Anti-Narcotics Division of the Ministry of Interior, Sensitive Investigation Unit of the Ministry of Interior, Major Crimes Task Force of the Ministry of Interior, the National Directorate for Security, the High Office of Oversight, and the Attorney General's Office regarding the exchange of information.

Memorandum of Understanding with the Government of Afghanistan for Technical Cooperation between the Government of the United Kingdom of Great Britain and Northern Ireland acting through the Department for International Development and the Government of the Islamic Republic of Afghanistan acting through the Ministry of Finance, 2011, amended in 2012.

Memorandum of Understanding with the Government of the Islamic Republic of Afghanistan for Non-Budget Support Financial Aid between the Government of the United Kingdom of Great Britain and Northern Ireland acting through the Department for International Development and the Government of the Islamic Republic of Afghanistan, 2011.

New Kabul Bank Financial Statements and Auditors' Report for the year ended December 31, 2013, prepared by Grant Thornton.

New Kabul Bank privatization notice regarding approved expression of interest, Ministry of Finance, undated.

Penal Code 1976 (Afghanistan).

Report for the Attorney General's Office in Relation to the Appeal Addendum, Final Report, prepared by Kroll for Da Afghanistan Bank, September 10, 2013.

Report of the Public Inquiry into the Kabul Bank Crisis, Independent Joint Anti-Corruption Monitoring and Evaluation Committee, November 15, 2012.

Report on Kabul Bank Asset Recovery Prepared by the Government of the Islamic Republic of Afghanistan and Da Afghanistan Bank, December 21, 2012.

Report on Kabul Bank Asset Recovery Prepared by the Government of the Islamic Republic of Afghanistan and Da Afghanistan Bank, September 30, 2013.

Request for Expressions of Interest for Acquisition of Shares in New Kabul Bank.

Request for Legal Assistance from the United Arab Emirates Pursuant to Mutual Legal Assistance Treaty Between the Islamic Republic of Afghanistan and the United Arab Emirates, June 10, 2011.

Request for Mutual Legal Assistance from the Government of the Islamic Republic of Afghanistan to the United States of America, October 7, 2013.

Special Inspector General for Afghanistan Reconstruction Quarterly Report, April 30, 2014.

The Constitution of Afghanistan.

Tokyo Mutual Accountability Framework, July 2012.

Tokyo Mutual Accountability Framework, Senior Official's Meeting Joint Report, July 3, 2013.

Transcript of a Conference Call on Afghanistan Article IV Consultation, International Monetary Fund, May 21, 2014.

Wolesi Jirga Plenary Session Report, Assistance to Legislative Bodies of Afghanistan, May 24, 2014.