



Office Memorandum

To: Members of the Executive Board

October 23, 2012

From: The Secretary

Subject: **Islamic Republic of Afghanistan—Report on Kabul Bank Asset Recovery**

Attached for the **information** of Executive Directors is a report on Kabul Bank asset recovery which was prepared by the Afghan authorities and published on the website of the Ministry of Finance of the Islamic Republic of Afghanistan (<http://www.mof.gov.af/en/page/3774>). The report is being circulated following a request by Executive Directors to receive regular briefings on this matter.

Questions may be referred to Mr. Ross, MCD (ext. 38973).

This document will shortly be posted on the extranet, a secure website for Executive Directors and member country authorities.

Att: (1)

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FO/DIS/12/202

Report on
Kabul Bank Asset Recovery

Prepared by the Government of the Islamic
Republic of Afghanistan and Da Afghanistan
Bank

September 26, 2012

Introduction:

President Karzai's April 4, 2012 decree gave shareholders and related parties until June 4, 2012 to repay their debts in full or be referred to a special tribunal. Based on the decree, we continued to implement an asset recovery process for each of the beneficiaries (individuals or corporations) identified in the forensic audit report for the amounts specified therein. As of June 4, 2012, cash recoveries from Kabul Bank amounted to US\$128 million (out of US\$ 935 million identified assets as of July 31, 2010). In addition, we have taken over properties with an estimated value of US\$ 44 million in Dubai, and properties with a book value of US\$ 146 million in Afghanistan. Notwithstanding these efforts, no shareholder and related parties had repaid their debts in full by June 4, 2012.

Between June 4 and September 15, 2012 total cash recovery amounted to \$0.91 million, taking the cash recoveries of US\$ 128 million on June 4 to \$128.91 million. Four sales around US\$7 million have been finalized but the amounts have not been physically transferred yet to the receivership pending due legal process which will be finalized soon. However, challenges remain. The overall reasons for the impediment of the recovery process are due to various challenges. It is difficult to find buyers for some of the identified assets under the auction process and of legal documentation on property ownership proves to be an impediment. . Progress has been made on taking over additional properties but no additional properties have been taken over since June 4, 2012.

Activities of the Kabul Bank Receivership:

As of September 15, 2012, of the properties taken over, 11 properties outside Afghanistan with total estimated value of US\$ 41 million and 14 properties and other assets inside Afghanistan with total book value of US\$ 190 million have been placed on the market. Sale of one property inside Afghanistan has been completed and transferred to the receivership.

A major step forward in the resolution of Kabul Bank is the preparation of the liquidation plan by the Kabul Bank Receivership that will provide additional information on assets and actions of Kabul Bank management and shareholders. Moreover, any additional information on misconduct or suspected crimes will be referred to competent authorities. The receiver, jointly with New Kabul Bank, will

complete by 15th October the reconciliation of accounts to prepare New Kabul Bank for sale, as the valuation for fixed assets to be retained by New Kabul bank was completed in August 2012.

Description and update of the institutional process:

As we have stated, we have put in place the following institutional process for asset recovery: (i) the two main architects and high value beneficiaries of the fraud have been referred to the Special Tribunal, (ii) the remaining beneficiaries are being dealt with by the Financial Dispute Resolution Committee (FDRC), and, if warranted – that is, if they fail to settle the amount specified in the forensic audit or if competent authorities decided to initiate a criminal process – would be referred to the Special Tribunal without delay; (iii) only regular borrowers who remain current on their obligations are allowed to continue to repay on their original schedule. This continues to be the process.

As of June 4, 2012, there were two cases before the Special Tribunal (i.e., scheduled to be heard and being heard by) for amounts totaling US\$ 370 million and there were nine cases before the FDRC for amounts totaling US\$ 331 million. No judgments/resolutions had been made as of June 4, 2012. As of September 15, 2012, there were three cases before the Special Tribunal for amounts totaling US\$ 422 million and there were six cases before the FDRC for amounts totaling US\$ 164 million. Between June 4, and September 15, 2012, the following actions have been implemented and the following decisions finalized by the FDRC and the Special Tribunal: (i) two indictments or new cases have been referred to the Special Tribunal while no indictments or new cases have been referred to the FDRC, (ii) preliminary hearings have been held by the Special Tribunal and three of hearings have been held by the FDRC, (iii) three judgments have been made by the FDRC which are ruled in favor of the receivership. The three cases amount to US\$167 million in total. The debtors have 2 weeks each to repay the debts to the receivership. In case of failure the receivership will refer such cases to the special tribunal. Of the three cases receivership will be referring one of the cases to the tribunal early next week (because of the expiry of 2 week notice and lack of cooperation) (iv) no judgment has been made by the Special Tribunal yet but given the complexity of the cases it was expected. We hope to collect some of the funds based on the forthcoming civil and criminal judgments. If the defendants do not agree with the payments ordered by the FDRC, their cases will be referred to the Special Tribunal.

In order to assist our investigations and our efforts to recover assets outside of Afghanistan, we have issued mutual legal assistance (MLA) requests to the United Arab Emirates, the United Kingdom, Switzerland, India and France. The Attorney General's Office (AGO) is planning to issue similar requests to other jurisdictions shortly. While sending the requests, Kroll's findings were attached to the formal request letters. The competent law enforcement authorities have been working with bilateral assistance recently that have provided technical assistance, built capacity and procedures during the preparation of the MLAs AGO has not received heard responses from the above jurisdictions officially however, the UAE has been in correspondence with the AGO unofficially to establish a joint working group in this regard.

Conclusion:

Afghanistan's experience with Kabul Bank asset recovery to date can be described as slow and at times chaotic, but very determined and with notable progress despite enormous challenges. We continue to seek technical assistance in the resolution of Kabul Bank crisis. It is important to remember that prior to August 2010 Afghanistan's legal, regulatory and judicial apparatus had no experience in or capacity to deal with an event of the scope and complexity of the Kabul Bank collapse. In some cases, the institutions, the procedures and the capacity necessary to mount a credible asset recovery effort needed to be built from the ground up.

Despite these challenges, Afghanistan has made significant progress in tracing, identifying and recovering assets owed, as the figures referenced above illustrate.

President Karzai's April 2012 decree on Kabul Bank asset recoveries demonstrates the absolute commitment of the Government at the highest level to secure all the assets owed to the Government and People of Afghanistan, and to punish those that do not accept responsibility for their actions.

None of this, however, suggests that Afghanistan can lessen its efforts to collect what is owed. Quite the contrary, Afghanistan is entering a new and more difficult phase in pursuing asset recoveries, and must redouble its efforts, with the support and assistance of its friends abroad. Easily identifiable assets have already been found and are in the process of being seized, confiscated and liquidated. The next phase of the asset recovery process will see two parallel tracks. First, there are genuinely complex civil legal issues that need to be resolved, such as for example the status of share loans and capital injection loans, before some repayment amounts can be finalized. Also on the civil side, lawsuits need to be brought in the near future against any professional service providers that failed in their legal and

fiduciary duties towards Kabul Bank and the Government. Second, much work still needs to be done to trace assets abroad that may be seized as the proceeds of crime.

Afghanistan has already filed International Legal Assistance Requests (ILARs) with some overseas jurisdictions where assets may have been hidden, and more such requests are forthcoming. Once the results of these inquiries come back, Afghanistan will need to exercise its rights under relevant international conventions to freeze and seize identified assets. Afghanistan's competent authorities including the AGO and other relevant authorities will look at other evidences of crime and take appropriate action against individuals under the law.

Looking forward, the Kabul Bank collapse served as a wake up call as to the importance of curbing economic crime, safeguarding the financial sector, and fostering the rule of law. It has also served as a catalyst for serious reflection and reform efforts. The forthcoming Kabul Bank Inquiry Report, to be issued by the Independent Monitoring and Evaluation Commission (IMEC) will expose to public scrutiny all aspects of the Kabul bank failure and the Government's response thereto, and will also contain recommendations to address identified systemic weaknesses. President Karzai in recent months has issued directives to focus the attention of the Government on curbing both public and private corruption and fostering sound financial and regulatory institutions for sustainable development.

The Government has devised a strategy for combating economic crime and is moving forward to establish a senior level task force to coordinate the Government's efforts against serious economic crime. While there is a long way to go, these actions demonstrate the seriousness of purpose of the Government to learn from and benefit from recent experience.