



Ministry of Mines of Afghanistan

Investors' guide to Afghanistan

Oil Investors' Guide to Afghanistan

Ministry of Mines

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Afghanistan is a fast developing and an emerging market of strategic importance close to some of the largest and fastest-growing markets in the world. Afghanistan is strategically located between the energy-rich republics of Central Asia and the major seaports in South Asia providing a key transit route for Central Asian oil and gas to markets in South Asia as well as other parts of the world. Also, Afghanistan has natural access to markets of neighboring countries including important fast-growing markets such as China, India and Pakistan.

Afghanistan is also remarkably rich in mineral resources. There are currently more than 1,400 identified mineral deposits. These include energy minerals such as oil, gas and coal as well as iron and copper deposits of world quality. Furthermore known precious and semi-precious stones in Afghanistan include emerald, jade, amethyst, alabaster, beryl, lapis lazuli, tourmaline, ruby, quartz, and sapphire. Finally great opportunities for investments exist within the hydrocarbons industry.

Following the national privatization program most of the major state-owned enterprises have been slated for international tender 2006 - 2008 which has made entry into all these sectors easier.

Legal Provisions Generally Applicable to All Businesses

Two general provisions apply to all, or almost all¹, individuals engaged in, or wanting to establish, commercial activities or businesses in Afghanistan; these related to registering a business and obtaining Tax identification Number.

Registering with Afghanistan Central Business Registry (ACBR):

In accordance with the Corporation and Limited Liability Company, Partnership, and Arbitration Laws of January 2007, businesses who want to become legal entities in Afghanistan (corporations, limited liability companies or partnerships), need to register with the newly created Afghanistan Central Business Registry (ACBR) office within the Ministry of Commerce and Industries (MoCI). This one-stop-shop streamlines and combines all business registration functions previously performed by the Commercial Court, the Ministry of Justice (MoJ), the Ministry of Finance (MoF). This service is provided for business persons, their agents, and through the Afghanistan Investment Support Agency (AISA).

Businesses can now register, obtain a Tax Identification Number (TIN), register business specification in the Revenue department of MoF, publish business specification in the Official Gazette, receive one bill to pay fees to the Da Afghanistan Bank branch, and get a referral letter to any licensing agency all in one central location. This process that used to take more than 6-8 days in Kabul and up to 15 days in Jalalabad has been reduced to few hours.

¹ With the exception of 'small merchants' as defined by section 12 of the Commercial Law of Afghanistan (1955).

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Note that corporations and limited liability companies previously registered in Commercial Court using the old process must re-register at the ACBR.

Businesses are referred to ACBR from either the Trader License office located in the Ministry of Commerce and Industry, from AISA, or from any other license departments after they acquire a business license. These entities usually issue a referral letter. There is no cost associated with the referral letter; however, fees will be paid when acquiring a license. AISA usually sends their agent to ACBR to complete the registration for their customers, but Trader License office of MoCI and others are sending the applicants directly to ACBR².

Obtaining Tax Identification Number (TIN):

A TIN is a ten digit number which is issued to all individuals, companies, and organizations that operates in Afghanistan³. It is permanent identification number and does not need to be renewed. The documentation that is required in order to obtain TIN is as follow:

1. Form/license from AISA or the MoCI showing that the investor has registered the investment.
2. Inquiry letter to the TIN Department of the MoF to the Mustofiat saying that it must pay a 1% sukook.
3. Letter from the Mustofiat to the TIN Department confirming that the 1% sukook has been paid.

Note: If the license is a Trading License, then the letter is from MoCI. If it is a producing or industrial license, then the letter is from AISA. The process takes between half a day and two days to complete. It requires two signatures, the last signature being that of the Manager of the TIN Office. TIN is a specified number or a code which is determined only for investors or companies. It is a permanent identification number and does not change each year or have to be renewed but it needs annual revision of date⁴.

²Registering with Afghanistan Central Business Registry applications forms and other details can be obtained from <http://www.acbr.gov.af/>.

³Article 91 of the Income Tax Law.

⁴Information concerning the procedures for obtaining a TIN is provided in our offices and on the MoF official website (www.mof.gov.af/tax).

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Sector Licenses:

Depending on the specific sector in which business engage, they may be required to obtain sector licenses. In particular, all businesses (sole proprietors, partnerships or incorporated entities) with activities in any of the following 22 sectors must obtain sector licenses:

| | |
|---|---------------------------|
| MoCI Trading (Import and export), Transit and Freight Forwarding Activities | Pharmaceutical production |
| Insurance | Transportation |
| Banking | Aviation |
| Foreign Exchange Dealer | Construction |
| University and higher education | Telecommunication |
| Hospital/Clinic | Radio and TV |
| Drugstore/pharmacy | Travel agency |
| Security | Real estate agency |
| Animal clinic | Printing press |
| Film production | Oil pipeline |
| Natural resources: Iron, copper, coal, cement | Hotels and restaurants |

Information on documentation, time frame, costs, and step by step procedure for most of the sector licenses can be found on MoCI⁵ and AISA⁶ websites.

MoCI Business (Trading) Licenses:

The licensing Department of the Ministry of Commerce and Industry administers licenses for conducting trade and transport activities in Afghanistan. The MoCI regards a trader as any entity that engages in import-export operations, regardless of whether they are sole proprietors or companies and whether they are domestic or international businesses. These businesses must obtain a license from the MoCI before they commence their activities.

There are four different types of trading licenses:

- Domestic or foreign individual trader business license;
- Domestic corporation trader license;
- Foreign or foreign-domestic joint venture company trader license; and
- License for establishing an overseas trade and/or transit office.

There is also a transit and freight forwarding company license.

⁵ www.MoCI.gov.af

⁶ www.aisa.org.af

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The procedures for obtaining the five licenses are almost the same; the differences relate to whether the applicant is Afghan or foreign and the nature of the entity being licensed (Company rather than sole proprietorship). The following documents are required for obtaining the license:

- A Valid ID for Afghans (or valid passport and visa in the case of a foreign national);
- Measurement Form from the Business Licensing from the Business Licensing Directorate of the MoCI;
- Identification Form from the Business Licensing Directorate of the MoCI; and
- For Companies; their Articles of Association;

Licensing procedures within the MoCI are detailed in the 2003 Trade Licenses Regulation issued by the Ministry of Commerce and Industry.

AISA Business Registration:

(For all private businesses except: Trading companies registered with MoC and small businesses registered with the Kabul municipality)

By law, AISA registers all private sectors enterprises, whether foreign or local, or joint ventures of any nature between foreigners and locals. With it private businesses – whether local or foreign – define the legal status of their business and obtain tax number with the Ministry of finance. With it they are obliged to pay corporate taxes in line with the Afghanistan Tax Law. Enterprises with initial capital of US\$ 3 million and above require the approval of the High Commission on investment before we can register them. Certain businesses require an additional “Operational License” from their respective ministries. These are in addition to the AISA registration, not in its place. AISA is now able to give clear advice on these additional government licenses. In order to get AISA license following documents are required:

- For an Afghan citizen, an individual investor presents a National ID (Tazkera) passport or other documents that certify the identity of applicant.
- A foreign individual can present a passport as identification but must also provide a background check through the nearest embassy.
- A foreign company (i.e. a company that is incorporated and has operation outside Afghanistan) obtains a corporate background check through nearest embassy.
(Once obtained, a certification from the Economic Department of the Ministry of Foreign Affairs will be sent to AISA which then enables us to register the foreign entity or foreign individual)⁷.

⁷ : The application forms and other details regarding AISA registration and licensing fees is available at www.aisa.org.af

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PRIVATE INVESTMENT LAW

In 2003 the Government of Afghanistan passed the private investment law⁸, Article 2 of which notes that 'The State is committed to maximizing private investment, both domestic and foreign, in the economy. It aims to create a legal regime and administrative structure that will encourage and protect foreign and domestic private Investment in the Afghan economy in order to promote economic development, expand the labor market, increase production and export earnings, promote technology transfer, improve national prosperity and advance the people's standard of living'. Article 4 indicates that "all Foreign or Domestic persons may make investments in all sectors of the economy" unless specifically prohibited⁹.

The Private Investment Law (PIL) establishes the High Commission on Investment¹⁰(the "Commission") to '... be the Government's focal point for policy-making on Investment and the highest administrative authority with respect to the implementation of this Law'. The Law also indicates that 'To assist [the Commission] in carrying out its duties, the commission shall establish the Afghanistan Investment Support Agency (AISA), which is to be named "Office" in this law hereafter, as a limited liability company¹¹.

The commission is composed of: (1) Minister of Commerce and Industry (Chair); (2) Minister of Finance; (3) Minister of Foreign Affairs; (4) Minister of Agriculture, Irrigation and livestock; (5) Minister of Labor and Economy; (6) Minister of Mines; (7) the Governor of the Central Bank; and (8) the President of AISA, as Secretary with no right to vote.

Equality before Law:

All approved enterprises, domestic and foreign, are treated equally by the law, unless the legislation specifically provides otherwise¹². In other words, once a foreign investor has been granted a license for an investment project, the government extends national treatment to that investment.

Forms of Entities:

Approved enterprises shall be one of the following types¹³:

- Enterprises organized according to Afghan law; or
- Enterprises organized under foreign law, but the approval and registration to trade and invest in Afghanistan has taken place as per Afghan law and regulations.

⁸ The 2003 Private Investment Law was later amended on 6th December 2006.

⁹ Article 5 of 2003 Private Investment Law indicates the prohibited activities.

¹⁰ Article 6(a) of Private Investment Law.

¹¹ Article 6(b) of Private Investment Law.

¹² Article 16 of The Private Investment Law covers equal treatment of foreign and domestic investors.

¹³ Article 10 of The Private Investment Law spells out the type of enterprises the can be formed under Afghan Law.

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The ownership of approved enterprises shall be one of the following forms:

- Private investors having 100% ownership; or
- Joint ownership by the Afghan Government and private investors.

Labor Regulations:

Foreign Workers

The Government's general labor regulations under the Labor Code are described in a separate chapter. The laws and regulations in this chapter relate to the labor provisions in the PIL, i.e. those that apply to foreign workers¹⁴. An approved enterprise shall have the right, direct or indirect, to employ foreign labor and experts. The approved enterprise has the right to enter in service contracts with foreign personnel for business purposes, provided the foreign personnel obey and follow Afghan rules and regulations.

Approved enterprises, domestic or foreign, or those with some foreign investor shareholding, are encouraged to employ Afghans.

The Afghan Labor Laws regarding employment of Afghan nationals are outlined in the Employment chapter.

Documents Required:

- Passport of the worker's home country;
- Afghan Visa from an Afghan Embassy abroad;
- Company License of the company employing the worker; and
- Discretionary: AISA or MOCI confirmation of this license (either AISA license or MoCI license).

The company's contract with the worker is a document which indicates the identity of the company. Where the identity of a company is unclear or company is not well known enough, then the AISA or MoCI license will be required.

Step by step process for acquiring the work permit:

- 1- The individual's passport, contract, visa, and his employing company's license or other documentation, and, if necessary, AISA's or MoCI's confirmation letter are submitted to the Ministry of Labor and reviewed.
- 2- A payment slip to the bank is given to the applicant who is guided to the bank to pay the fees.
- 3- When payment has been made at a bank, the license (or its renewal) is provided.

¹⁴Article 20 of Labor Code.

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- 4- Registration takes place and after the signature of the Deputy Minister is given, the work permit is issued to the foreign worker.

The process takes between half day and three days. It requires three signatures to complete, the final signature being that of the Deputy Minister of Labor and Economy. This permit is issued for one year and requires annual renewal. The renewal process is the same as the initial process.

The foreign employee's tax obligation is the employer's responsibility in accordance with the Income Tax Law.

Investment Restrictions

Investment in some sectors are restricted by the Government of Afghanistan. Article 5 of the Private Investment Law (PIL) specifically prohibits:

- Nuclear energy development;
- Gambling establishment and like places; and
- Narcotics and intoxicants production.

For investment in certain sectors of the economy, the Commission must approve such investments after discussing with and gaining consent from the appropriate Ministries. In such sectors the Commission also has the power to apply terms, either more or less favorable than the terms applied to other investments. However the Ministry of Finance must approve any revenue related incentives that are more generous than would otherwise be applied. The initial list of such sector is:

- Production and sales of arms and explosives;
- Financial activities other than banking;
- Insurance; and
- Investment in natural resources (forestry included) and in infrastructure (including telecommunications, construction and pipelines installations) except when related legislation permits (in this case investment will be regulated as per related special laws).

The Commission is authorized to amend this list of sectors from time to time. In these areas, the Commission is responsible for negotiating with ministers and related administrations regarding the appropriate limits for investment and approving those agreed with other stakeholders. In these investment categories, the Commission may set special conditions on investment¹⁵.

Expropriation, Nationalization and Compensation

The State can expropriate an investment or the assets of a registered enterprise only if it is in the public interest to do so, based on a law permitting such expropriation, and on a non-discriminatory basis¹⁶.

¹⁵ Article 5 of the Private Investment Law.

¹⁶ Article 27 of the Private Investment Law relates to expropriation.

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The State shall provide prompt, adequate and effective compensation in conformity with principles of international law, equivalent to the fair market-value of the expropriated investment or assets immediately before the expropriating action was taken. Such compensation shall include interest at the one-year LIBOR rate (London Interbank Offering Rate) for the period between the date of the expropriation or nationalization and the date of complete payment of the compensation. In the case of an investment made in foreign currency, the compensation shall be made in the currency in which the investment was made at the prevailing rate of exchange¹⁷.

Under Article 29 of the Private Investment Law, if, in an expropriated property, the percent of ownership interest held by foreign investor(s) exceeds 25%, such foreign investor(s) or the registered enterprise, as the case may be, shall have the right to dispute the expropriation or the adequacy or fairness of the compensation offered.

A foreign investor or a registered enterprise of which over 25% of the ownership interest is held by foreign investors may freely transfer any payment from the Government as compensation for expropriation or nationalization out of Afghanistan without the payment of taxes to the extent that such exemption is permitted by the Income Tax Law.

Dispute Resolution and Arbitration

The Private Investment Law states that an investor or a registered enterprise may, In any contract or other agreement, specify the following¹⁸:

- 1- Any arbitration or other dispute resolution procedure;
- 2- That the place of such arbitration maybe outside of Afghanistan;
- 3- That the law of a jurisdiction other than Afghanistan may apply to the resolution of such dispute.

If such a contract or other agreement so provides, any award resulting from such arbitration or other dispute resolution procedure shall be final, and shall be enforceable by the Government of Afghanistan.

If a dispute arises regarding a contract or other agreement entered into between an investor or a registered enterprise on the one hand and the State (or any constituent subdivision, agency or instrumentality thereof) on the other, the dispute shall be resolved according to applicable Afghan law. However if a dispute arises between a foreign investor or a registered enterprise with foreign equity ownership and the State in regard to a foreign investment, the parties shall endeavor to settle such dispute amicably by mutual discussions. Failing such amicable settlement, and unless the parties to such dispute otherwise agree, the parties shall submit such dispute to either:

¹⁷ Compensation is covered in Articles 28 and 29 of the Private Investment Law.

¹⁸ Article 30 of the Private Investment Law sets out the provisions for dispute resolution and arbitration.

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- 1- The International Center for Settlement of Investment Disputes *ICSID” for settlement by arbitration according to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965, as such may have been or may be amended from time to time; or
- 2- If ICSID rules preclude the foreign investor from arbitrating before ICSID or if the Foreign Investor otherwise prefers, to arbitration in accordance with UNCITRAL Rules.

Leasing and Owning Land

Land ownership is addressed in Section 41 of the Constitution of Afghanistan: Foreign individuals are not permitted to own land either directly or indirectly¹⁹.

“Foreign individuals” in Section 41 refers to natural and legal entities, and therefore the restriction on foreign ownership of land appears, in the absence of other legislation on the subject, absolute and applies regardless of the foreign ownership percentage.

Land leasing is addressed in Article 21 of Constitution which allows approved enterprises to have the right lease land, for business purposes, as provided by law, for up to 50 years.

Leasing therefore appears to be the only viable alternative for foreigners to carry out projects requiring long term land possession.

Right to Access Funding Through the Banking System

Registered enterprises have the right to use banking facilities as follows:

- Open bank accounts in foreign currency and receive loans and credits through these banks for investment and production purposes; and
- Open bank accounts in foreign currency outside Afghanistan to purchase machinery, equipment's, raw materials, spare parts services, foreign employees' salaries and for all other payments provided it is in compliance with all legal documentation provisions.

Controls on or Freedoms of Capital, Profit, Dividend, Interest Movements

There are no significant controls on any type of funds transfer – providing that the appropriate taxes have been paid²⁰.

¹⁹Article 41 of the Constitutions of Afghanistan.

²⁰ Funds transfer is addressed in Article 22 of the Private Investment Law.

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A foreign investor has the right to freely transfer funds equal to the total investment capital in any currency at the current present market rate, provided all tax dues are satisfied. A registered enterprise is authorized to transfer the whole sum at once or at different times.

A foreign registered enterprise must notify the Central Bank (or such other entity designated by the Law) or such a transfer. The Central Bank or the other entity, as the case may be, shall reduce the amount of such foreign investor's registered foreign investment by the amount that has been transferred.

Regarding transfer of profits, a foreign investor can freely transfer the investment profit or the distributions treated as share profit under tax law, provided that tax obligations have been satisfied.

For the transfer of loan repayments and associated interest payments, it is lawful for a registered foreign investor to transfer funds related to principal loan, interests and fees in foreign currency at the current exchange rate, provided that the loan was processed as per existing rules and regulations in Afghanistan.

Regarding the transfer of proceeds from the sale of a registered enterprise, foreign investors that follow the rule of law have the right to sell or put of all or part of their ownership to domestic or foreign person or to the Government of Afghanistan, without permission of the government or any other related office, provided the law is not violated and all financial and legal requirement are met and satisfied. Foreign investors also have the right to transfer sale proceeds of the enterprise freely out of Afghanistan in the currency invested.

Other Standard Rights and Obligations

There are no provisions in PIL or in other laws concerning intellectual property rights or competition policy, although drafting of the former has commenced. Since Afghanistan is in the process of joining the World Trade Organization (WTO), in the future it will have to have such laws if it is to realize this goal.

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Hydrocarbons Law

The Hydrocarbons Law is the primary vehicle to regulate all affairs pertaining to the exploitation, utilization, commercialization, and ownership of hydrocarbons in Afghanistan. The Law designates the Ministry of Mines (MoM) and the Inter-Ministerial Commission (IMC) as the two main governmental bodies in charge of the hydrocarbon space as detailed in Chapters 1 & 2. In addition, the Hydrocarbons Law addresses all issues related to areas of operation and surface area rights, types of contracts for hydrocarbon operations, use of pipelines, and government revenues associated with hydrocarbon use. Under Article 5 of the Hydrocarbons Law, the MoM drafted the Hydrocarbons Regulations in January of 2009 to assist with law implementation.

In August of 2010, the Ministry of Mines has drafted amendments to the current Hydrocarbons Law that are scheduled to pass the Inter-Ministerial Commission in early 2011. The most notable amendment to the 2009 law addresses the ability to use an alternative hydrocarbon contract type.

Environmental Law:

The Environmental Act, signed by President Karzai in late 2005 and promulgated later in 2007, was designed to: clarify rules and responsibilities for the newly created National Environmental Protection Agency (NEPA) as well as other environmental players; set frameworks with integrated pollution control, water resource, and biodiversity management; establish foundations for environmental research and education; and defining procedures for compliance and enforcement. Under the Environmental Law, NEPA has been designated functions and powers that render it the leading body to regulate, coordinate, monitor and enforce Afghanistan's environmental laws.

Of particular note:

- The draft Forestry Law and Protected Area Regulations have been submitted to the Ministry of Justice for review and processing.
- A Forestry and Rangeland management policy has been developed.
- The Water Law has been approved by the Cabinet and is with the Parliament for ratification.
- The Rangeland Law is under development.

The New Commercial Law

To achieve its goal of establishing and implementing a legal and regulatory framework capable of ensuring the efficient and equitable operation of a market economy, the Ministry of Commerce and Industry has drafted a total of 10 new commercial laws. The first four laws listed below have been

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implemented by Presidential decree and have been passed by Parliament. The MoJ's Legislation Department has begun reviewing the remaining six laws.

Corporations and Limited Liability Companies Law

The Corporations and Limited Liability Companies Law (CLLCL) provides Afghanistan with the legal rules for the organization of business enterprises in Afghanistan. The law defines two types of enterprises²¹:

- "Corporation": a business company whose capital is definite and divided into shares, with the share and responsibility of each shareholder limited to the proportion of his share; and
- "Limited Liability company"; "Limited" is a business company whose capital is not divided into shares with the responsibility of each shareholder limited to the amount of capital agreed to [by such shareholder] in the company.

The Law sets the registration requirements for corporations by indicating the documents that may be registered in a Central Registry, which include a Business License²², the Articles of Incorporation²³ and Annual Reports²⁴.

The Central Registry would be under the authority of the MoCI and absolve to a number of functions originally performed by the Commercial Court, chiefly the authority where new companies are registered.

The Corporation under this law has a two-tier Board of Directors including a Board of Supervisors that oversees the Board of Directors and can inspect the Corporation's books and records. The new Law provides for duties and standards of the Board of Directors including the duty to disclose a conflict of interest regarding transaction effected by the corporation.

Corporations must hold Annual Meetings where Directors are elected and other business is transacted. Before such meetings, the Corporation must deliver the financial statement to all Shareholders and the financial statement, including the balance sheets, must comply with international accounting standards.

The law also provides more transparent rights and protections of shareholders such as the ability to inspect the books and records of the corporation and lawsuits by a shareholder in the right of a corporation against a Director or Officer for failure to perform, or other violation of his duties in management of the Corporation. The law sets the rules for when a corporation may pay dividends and how much of a reserve fund is necessary.

The law also defines a limited liability company that are for 2 to 50 shareholders and whose shares are not to be sold on a public stock exchange.

²¹ Article 4, CLLCL

²² Article 2, CLLCL

²³ Article 5, CLLCL

²⁴ Article 7, CLLCL

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These new provisions will enhance the ability of a corporation to attract investment.

Partnership Law:

According to the new Partnership Law (PL), a partnership is created by two or more persons who file and register their partnership agreement²⁵. When a partnership is created, it has a legal personality and can execute transactions, sign contracts and own property. The Law defines two types of partnerships; 'General Partnership' and 'Special Partnership'²⁶.

A key distinctive factor of a partnership (in contrast to a corporation) is that there is no limit of liability for general partners. In other words, if the partnership cannot timely meet its financial obligations the general partner(s) is/are responsible for paying off the partnership's creditors. However, partners can limit their liability to a fixed amount if they enter into a Special Partnership as described in the Law. Special Partnerships must have a General Partner as a member and Special Partners may not interfere in the administrative matters of the General Partnership.

Partners can limit the ability of a general partner to participate in the management of a partnership but they cannot limit a partner's access to information about the management of the partnership. Partners have a duty not to compete with the partnership or to use the partnership assets as their own. A partnership agreement may vary certain provisions in the law. It can provide for continuity after the death or withdrawal of a partner and the division of profits and losses among the partners.

A partnership may dissolve for many reasons such as death, bankruptcy, or withdrawal of a partner, the realization of the objective of the partnership or upon the order of the court. Upon dissolution, the partnership must follow liquidation procedures to protect creditors and partnership assets.

The Law's purposes include ensuring all partners have access to financial information and ensuring transparency to third parties of its legal structure and current operations so they can better assess the risks of doing business with the partnership.

Arbitration Law

The Arbitration Law establishes nationally and internationally applicable transparency procedures for a binding arbitration tribunal to resolve business disputes that cannot be amicably settled. Parties will be able to choose their own panel of arbitrators. These procedures will be available to Afghan and foreign businesses (and individuals) alike. The Law permits anyone with an unsatisfied arbitration award to sue to enforce it in Afghanistan's commercial court.

Mediation Law

²⁵Article 2, Partnership Law.

²⁶Article 21 and 22, Partnership Law.

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This Mediation Law offers both Afghan and foreign businesses an alternative to court litigation or binding arbitration for resolving their disputes. Mediation generally offers the benefits of speed and lower cost compared to arbitration or court proceedings but since it is not binding the parties must voluntarily honor the settlement for it to be effective. Once Mediation has commenced, the running of any statutory limitation period is stopped during the Mediation. The Mediator has no authority to impose a settlement on the parties. (By way of contrast in binding arbitration, the arbitrator can impose a decision on the arbitrating parties.) However, should the parties agree to a settlement, the settlement becomes binding and enforceable as with any other commercial agreement.

Contracts Law

The Contracts Law regulates and protects the rights of parties to agreements. The law includes essential elements of the contract, formation and remedies. The law also includes specific elements for sales contracts, gifts, carriage contracts, warehousing and employment and labor contracts.

Agency Law

The Agency Law regulates and protects the rights of agency relationships where a principal authorizes another person in the place of himself (the agent) in an ascertained, permitted transaction. This creates a contractual relationship and allows the agent to act as though he were the principal in many situations. The law defines the types and scope of the agent relationship and the duties of care of an agent. The law describes the obligations of the principal and the termination of the agency relationship.

Trademarks Law

The Trademark Law regulates trademarks by allowing the owner of the mark to register his/her trademark to identify his/her goods or services. The Law specifies under what conditions the trademark will be protected, such as it must be distinctive and not misleading or deceptive. The law will also have enforcement provisions against counterfeiters who use similar distinctive signs to market inferior or different products or services.

Copyright Law

The copyright law will provide legal protection to the owner of the rights in an original work he/she has created such as a literary, musical, artistic or scientific work. The law defines the various economic and moral rights of the owner, including the rights of reproduction. The law will provide the terms for the

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limits of the protection, how the works may be exploited and enforcement provisions for infringement of the copyright.

Registration of Foreign Patents Law

This law provides for the registration of patents that have previously been registered in another country. The patent must be registered in Afghanistan within two years of having been granted a patent in the original country. This will allow companies to import and manufacture goods while protecting the original patents on those goods. After registering the patent, the registrant must "operationalize the patent", by using or producing the patent in Afghanistan within a certain period of time.

Standards Law

The Standards Law provides for an Afghan National Standards Authority (ANSA) that will set standards for products, processes or services in order to protect consumers and the environment. ANSA will also harmonize Afghan standards with international standards so there are no technical barriers to trade. ANSA will have authority to enforce this law and laboratories to inspect goods.

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Money, Banking and Finance

Overview:

The banking system in Afghanistan has developed in recent years, but still has some way to go. The Central Bank of Afghanistan (the Da Afghanistan Bank, or DAB), has the responsibility for licensing and regulating banks and non-bank financial institutions, such as insurance companies. It also has responsibility for managing the money supply, currency in circulation and indirectly the inflation and exchange rates.

Following the establishment of a DAB office in every province, an automated payment system was developed which enabled international funds to be transferred electronically using SWIFT. This allowed for electronic funds to be transferred through the DAB branch network. An inter-bank clearing system was then set up to facilitate payment between banks. Government salaries can now be disbursed and tax revenues can be collected in all 34 provinces.

While the payments system was being addressed, the commercial banking sector was also being developed. A mechanism was put in place for licensing domestic banks and local branches of foreign banks. There are now fourteen different licensed banking institutions in Afghanistan. As of 2006, the Government had decided to close, merge or privatize all but one state owned bank.

Currency:

The local currency is the Afghani. The exchange rate has remained stable due to foreign currency interventions. The nominal value of the currency is 1USD = 45 Afs.

Exchange Control:

There are no restrictions on converting or transferring funds associated with any investment into international currencies at the legal market clearing rate. There is no limitation on the inflow or outflow of funds are procedural, for the purposes of anti-money laundering. Any transfer abroad that equals or exceeds AFN 1 million (\$20,000) must be carried out via a bank or licensed foreign exchange dealer and is reported to the central bank²⁷.

There are large, informal foreign exchanges markets in major cities and provinces where major currencies can be exchanged.

²⁷ The transport of more than AFN 1 million or equivalent in cash across the border of Afghanistan into another country must be reported in advance to the Financial Intelligence Unit of the Da Afghanistan Bank.

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Da Afghanistan Bank (DAB):

DAB is the central bank of Afghanistan. Some of the objectives and basic tasks of DAB as set out in the Da Afghanistan Bank Law include:

- Achieve and maintain domestic price stability;
- Foster the liquidity, solvency and proper functioning of a stable market based financial system, and promote a safe, sound and efficient national payment system;
- Support the general economic policies of the Government of Afghanistan, and contribute to sustainable economic growth; and
- License or register and regulate and supervise banks, foreign exchange dealers, money service providers, payment system operators, securities service providers, securities transfer system operators and such others as shall be submitted to its oversight by or pursuant to the law²⁸.

DAB enjoys autonomous regulator powers authority, including those to pass regulations between DAB and banks and their respective customers²⁹.

DAB is managed by its Governor. The Supreme Council is DAB's highest policy and decision making body and is made up of the Governor (Chairman of the Supreme Council); and five other members. All members of the Supreme Council shall be appointed by the President of Afghanistan with the advice and consent of the Parliament of Afghanistan.

The controller General is responsible for the internal control and audit of the operations of DAB.

The Executive Board of Da Afghanistan Bank includes the Governor, the First Deputy Governor, the Controller General, and "such Deputy Governors as the Supreme Council shall appoint from candidates proposed for appointment by the Governor"³⁰. The Governor, with the advice and assistance of the other members of the Executive Board, shall be responsible for all matters concerning the administration and operations of the Da Afghanistan Bank that are not specifically assigned by [this] law to the Supreme Council or to the Controller General³¹.

Banking Services in Afghanistan

Commercial banks in Afghanistan offer the following banking services:

- International Funds Transfer via SWIFT (Society for World Wide Interbank Funds Transfer)
- Domestic funds transfer within Afghanistan
- Savings and current account
- Foreign exchange transaction
- Credit products in local and in foreign currencies
- Letters of credit and other trade services

²⁸Law of Da Afghanistan Bank, Chapter 1, Article 3.

²⁹Ibid., Chapter 1, Article 4.

³⁰Ibid., Chapter 2, Article 20.

³¹Ibid., Chapter 2, Article 18.

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- Cheque collection services
- Bank guarantees
- Sale and purchase of currencies
- Safe deposit box facility
- Online Banking
- Islamic Banking

International Funds Transfers - Via SWIFT have been available through the Central Bank since July 2003. Banks are currently offering International Funds Transfers, some using their own facilities and others using those of the Central Bank.

Domestic Funds Transfers – are available to the commercial banks in Kabul through the Afghanistan Clearing and Settlement System (ACSS) and to all of the provinces in Afghanistan through DAB's Afghanistan Funds Transfer System (AFTS). Payments to and from other banks and DAB branches throughout Afghanistan are executed on a daily basis.

Savings and Current Accounts – can be opened at all the commercial banks in Afghanistan. Terms and Conditions may vary from one bank to another. Current accounts can be opened in Afghani or U.S. Dollars in most commercial banks in Afghanistan.

Credit Products – the banks now offer credit products including agricultural, project, receivable and micro-credit financing. Terms and Conditions are negotiated on a case by case basis. For further information, contact should be made directly with the commercial banks.

Letters of Credit and other Trade Services – the issuance of Letters of Credit for trade transactions with the Government of Afghanistan is arranged through the Central Bank. Terms and Conditions are basically the same among the banks.

Insurance

The insurance sector is in its infancy in Afghanistan. An Insurance Commission was appointed in mid-2006 and has a licensing procedure for foreign and domestic investors in the sector. As of October 2007 two companies had been licensed: SISI Insurance which is Lebanese owned and Day Insurance from Iran.

Capital Markets and Equity Funding

There are no stock or bond markets in Afghanistan. Afghan Finance Company provides leasing services.

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Banking and Finance – Legislative Reform

The DAB is leading reform and modernization of a number of key laws aimed at facilitating and safeguarding commercial and financial transactions, and creating the legal basis for a more active relationship between banks and investors. These include drafting of:

- Negotiable Instruments Law;
- Mortgage Law;
- Secured Transactions Law;
- Leasing Law (not yet available for public review).

Negotiable Instruments Law

Da Afghanistan Bank has drafted a new Law of Negotiable Instruments which will allow Afghans to follow accepted international practice for negotiating, transferring and circulating negotiable instruments. The Law defines how negotiable instruments are created, transferred among different parties and cashed. The Law will help to move Afghanistan from a cash-based economy to a paper-based economy and to electronic commerce.

Mortgage and Secured Transactions Laws

Da Afghanistan Bank has also drafted two additional laws aimed at offering greater certainty as the basis for issuing credit to businesses and individuals. The laws apply to the use of both movable assets and immovable property as collateral in secured lending. The Secured Transaction Law would create an internet-based Central Registry, where notice of all secured transactions will be recorded.

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TAX GUIDE

The taxation chapter covers the following topics:

- 1- Personal Income Tax (PIT)
- 2- Corporate Income Tax (CIT)
- 3- Wage withholding Tax
- 4- Sole Proprietor
- 5- Withholding Tax on Rental Services
- 6- Business Receipts Tax (BRT)
- 7- Fix Taxes on Small Businesses
- 8- Large Taxpayer Office (LTO)
- 9- Tax Identification Number (TIN)
- 10- Confidentiality
- 11- Requirements for Books & Records
- 12- Method of Accounting
- 13- Taxation Year
- 14- Availability of Records
- 15- Refunds
- 16- Objections and Appeals
- 17- Enforcement Provisions
- 18- Late Payment charges
- 19- Electronic Funds Transfer
- 20- Customer Duties
- 21- Tax Administration Reform
- 22- Tax Reform
- 23- Corporate Tax Reform
- 24- Additional Information

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Personal Income Tax (PIT):

Resident natural persons are taxed on income from all sources worldwide, including but not limited to wages, salaries, rents, certain types of partnership income, royalties, etc. Non-residents are taxed on all income with its source in Afghanistan. The annual tax rates are as follows (Article 4):

| Income more than | Income not more than | Tax |
|------------------|----------------------|-----|
| 5001 | 12,500Afs | 2% |
| Above 12, 501Afs | 100,000 Afs | 10% |
| Above 100,001 | To any amount | 20% |

Two aspects of personal income tax may impact on business owners. They are wage withholding and personal income tax for sole proprietors.

Corporate Income Tax (CIT):

Corporate income tax is a flat tax of 20% (Article 4) of net taxable income. Net taxable income is computed by deducting all ordinary and necessary business expenses from gross income (Chapter II). Corporate rates apply to legal entities such as corporations, limited liability companies, and other legal entities. The annual tax return is due and payable by the end of Jawza (3rd month) of the next fiscal year.

Wage Withholding Tax: (Article 58)

Employers with two or more employees are required to withhold tax from their employees' salaries and wages based on the above rates. There is a monthly exemption of 5000 Afs per person. Salaries and wages include: regular pay, overtime pay, cash allowances (e.g. food, transportation) and non-cash payments. These rates are pro-rated based on the frequency of payment (monthly, weekly, etc.)

Wage/salary earners with only one employer and no other sources of income are not required to file an annual tax declaration. A wage earner who has more than one employer or additional sources of income must file an annual income tax declaration.

The employer is required to remit to the State the amount withheld no later than 10 days (Article 60) after the end of the month in which the amounts were withheld. The remittance is made directly to a branch of Da Afghanistan Bank using the appropriate form.

There are annual reporting requirements for employers both to the employee and to the Ministry of Finance (Article 61)

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For more information regarding the wage withholding tax, please refer to Guide 05, Wage Withholding Tax (available online at www.mof.gov.af/tax), or visit the Taxpayer Assistance Team at the Ministry of Finance in Kabul.

Sole Proprietors:

Self-employed individuals must file a tax declaration, and are allowed to deduct all ordinary and necessary business expenses to compute net taxable income.

Tax at the 10% and 20% rates is then computed on net taxable income above 150,000 and 1,200,000 Afghanis per year, respectively. This is the same 12,500Afs monthly tax-free threshold given to wage earners.

The annual tax return for a sole proprietor is due and payable by the end of Jawza (3rd month) of the next fiscal year.

Withholding Tax on Rental Services :(Article 59)

This is a pre-payment of landlords' income tax. Legal entity tenants and natural person tenants conducting business at the rented property, and paying rent between 10,000 and 100,000 Afghanis per month are required to withhold the tax (and are liable for the tax) at the time the rent is paid. The tax withheld is 10% of the rent payment. Where a rent is more than 100,000 Afghanis, the tax will be 15%.

The landlord is responsible for reporting rental income on his annual income tax declaration and paying tax annually at appropriate rates depending on entity type (legal person or natural person). Ordinary and necessary expenses of maintaining a rental property are allowable as deductions against rental income. Tax withheld and paid by the tenant is allowed as a credit when the annual tax declaration is filed. Landlords are responsible for providing their tenants with accurate copies of their rental or lease agreements as well as their Taxpayer Identification Number (TIN)

Taxes are generally due on a monthly basis. However, if the rental agreement specifies a different rental payment schedule (e.g. bi-monthly, quarterly etc.) the tax withholding and payment should follow the rental schedule. The payment is made at Da Afghanistan Bank no later than the 15th day following the end of the solar month in which the rent payment is due.

For more information regarding the rental withholding tax, please refer to Guide 01, Withholding Tax on Rental Services. This guide is available online at www.mof.gov.af/tax, or visit the Taxpayer Assistance Team at the Ministry of Finance in Kabul.

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Business Receipts Tax (BRT) (Chapter 10):

A 2% business receipts tax is imposed on gross receipts of all types of income of corporations and limited liability companies, except for rents, royalties, commissions, fees, interest, dividends, and similar income, which is taxed at 5%. There is a 10% BRT on gross receipts for businesses with over 100,000 Afghanis income per month is imposed on service providers in the following sectors:

- International passenger airline services
- Telecommunications services, including
- Internet services
- Hotel services
- Restaurant services

This 10% tax is imposed on both legal persons and natural persons operating in the above-mentioned service sectors and is in lieu of the existing 2% business receipts tax that is imposed only on legal persons as described above. The business receipts tax paid is deductible from gross income in arriving at taxable income for income tax purposes (Article 67).

Tax forms and payments are due on a quarterly basis using the solar calendar. Tax payments are made at Da Afghanistan Bank no later than the 15th day following the end of the solar quarter in which the sales were made (Article 93). For more information regarding the business receipts tax please refer to Guide 03 - Business Receipts Tax on Services and Guide 9 – 2% and 5% Business Receipts Tax (available online at www.mof.gov.af/tax) or visit the Taxpayer Assistance Team at the Ministry of Finance in Kabul).

Fixed Taxes on Small Businesses (Chapter 11):

There are fixed taxes in lieu of income tax imposed on shopkeepers and other small businesses that do not keep records. Businesses are classified according to nine criteria, including goods and services offered, volume of business, size of business space, and rents paid. For businesses that have not kept adequate records, the following procedures apply:

1. Taxpayer has maintained purchase documentation only - tax is 3% of annualized purchase amount.
2. Taxpayer has maintained sales documentation only - tax is 2% of annualized sales amount.
3. Taxpayer has maintained no records - Revenue staffs observe one day's sales - tax is 2.5% of annualized sales.
4. Taxpayer has maintained no records and sales process cannot easily be observed - tax is 6% of stock on hand.

Tax assessed according to these criteria/procedures is in effect for three years Chapter 11 also contains other fixed taxes such as:

- Fixed tax on imports and exports
- Fixed tax on persons who transport goods or passengers for business purposes

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- Fixed tax of government contractors without a business license
- Fixed tax on exhibitions
- Fixed tax on grain and processing mills, cane and seed oil machinery
- Fixed tax of physicians

Other Fees:

The Ministry of Finance administers two fees that are not contained in the Income Tax Law 2005. One is the Airport Departure Fee of 500Afs for international departures and 50Afs for domestic departures. The second is the Road Toll Fee. On certain highways all vehicles are required to display a valid decal to show the toll has been paid. Monthly, quarterly and annual decals are available and differ in price based on three vehicle types – passenger, light commercial or heavy commercial.

| | Monthly (AFS) | Quarterly (AFS) | Annually (AFS) |
|-------------------------|---------------|-----------------|----------------|
| Passenger | 200 | 500 | 1500 |
| Light Commercial | 1000 | 2500 | 7500 |
| Heavy Commercial | 3000 | 7500 | 24000 |

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Large Taxpayer Office (LTO):

The Large Taxpayer Office will serve as a one-stop office for a select number of taxpayers. It will accomplish this by managing all tax types and responsibilities for large taxpayers. Criteria for inclusion in this program are based on annual turnover, risk to Ministry revenues, specialized industry type, amount of capital investment etc. As a whole, those taxpayers included in the program will account for a large percentage of government revenues collected by the Afghanistan Revenue Department and, as such, are a very important part of the future of the country. Being included in this program will mean many benefits for the taxpayer. The ratio of Revenue Department employees to taxpayer will be much higher than for the average taxpayer, allowing for better service and increased levels of communication. Communication will be multi-lingual (Dari, Pashto, and English) and will utilize a range of media (telephone, e-mail, personal visits). Inclusion in the Large Taxpayer Program will also allow for personalized information and education programs for the business or business sectors, as well as focused seminars and speaker programs aimed at concerns that the taxpayer's employees may have. Taxpayers can expect responsiveness, courtesy, and professionalism in their dealings with LTO employees. This type of quality in service will allow the taxpayer access to the information he/she needs for full compliance with the tax laws. The Large Taxpayer Office is located at the Ministry of Finance in Kabul and will cover all large taxpayers nationwide. Annual income tax returns and guides for LTO taxpayers are available online at www.mof.gov.af/tax and at the Large Taxpayer Office.

Tax Identification Number (TIN):

In order to make tax administration more efficient and to ensure proper crediting of taxes paid to taxpayer accounts, the Ministry of Finance has implemented a unique taxpayer identification number program. All individual persons, companies, and organizations which are, according to the Income Tax Law and Customs Law, required to pay taxes or customs duties, including social, non-profit and welfare organizations which are withholding taxes from the salaries of employees or from rental payments are required to get a Taxpayer Identification Number (Article 91). The Income Tax Law 2005 provides for additional taxes and penalties where a person fails to apply for a TIN without reasonable cause (Article 110).

Taxpayer Identification Numbers can be obtained in Kabul at the Ministry of Finance or at the Mustufiat offices in Mazar-e Sharif, Kandahar, Jalalabad, Herat, and Kunduz. For more information regarding requirements for the TIN, how to apply, or to receive forms, visit the TIN Offices mentioned previously or call 0799303 602. TIN applications are also available online at www.mof.gov.af/tax

Note: Most businesses have a licensing or registration requirement with other government agencies. For import/ export businesses, please contact the Department of Licensing at the Ministry of Commerce in Kabul. For investments, please contact the Afghan Investment Support Agency (AISA), located opposite the Ministry of Foreign Affairs in Kabul. Their telephone numbers are +93 (0) 20 2103404 or +93 (0) 70 288 304. The web address for AISA is: www.aisa.org.af.

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Confidentiality:

All information contained in the tax returns or gathered by the Afghanistan Revenue Department through examination of books and records of the taxpayer, or a third party associated with the taxpayer, is confidential. It may not be disclosed to anyone outside the Ministry of Finance unless authorized by law. The Income Tax Law provides for significant fines (up to 225,000 Afghanis) or imprisonment (up to 3 years), or both, where a taxation officer discloses confidential information or misuses their position in any unauthorized way for the purpose of direct or indirect benefit.

Requirement for Books & Records:

The Income Tax Law requires the maintenance and preservation of business records (Article 36). All natural or legal persons with taxable income in a taxable year shall keep records of all transaction, of all movable and immovable property and of all income that will enable you to prepare complete and accurate tax returns. Records include ledgers, journals, vouchers, financial statements and accounts, and income tax records. They are to be supported by source documents. Records normally summarize the information contained in the source documents. The source documents include sales invoices, purchase receipts, contracts, guarantees, bank deposit slips and cheques etc. They also include cash register slips and credit card receipts, purchase orders, work orders, import and export documents, delivery slips, e-mails and general correspondence in support of the transaction. As a general rule, the Afghanistan Revenue Department does not specify the books and records you need to keep. You may choose a system of record keeping that is suited to the purpose and nature of your business. These records must clearly reflect your income and expenditure. Your records must be:

- Reliable and complete;
- Provide you with the correct information you need to calculate your tax obligations and entitlements;
- Be supported by source documents to verify the information contained in the records;
- Include other documents such as appointment books, logbooks, income tax returns, business receipts tax returns, rent withholding tax returns, wage withholding tax returns, certain accountants' working papers, that assist in determining your obligations and entitlements;

Note: Persons carrying on more than one business are required to keep separate records for each business. Businesses should also retain related documentation to support their transactions. This is particularly important for businesses engaged in international non-arm's length transactions. These businesses should retain documentation related to transfer pricing policies and documentation pertaining to any distribution of branch and subsidiary profits.

Corporations and limited liability companies shall compute their income using the accrual method of accounting which recognizes income and expenses when due (Article 37)

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Method of Accounting:

Corporations and limited liability companies shall compute their income using the accrual method of accounting which recognizes income and expenses when due (Article 37)

Taxation Year:

The taxable year is the solar year which starts from the first day of Hamal (March 21) and ends on the last day of Hoot (20 March) (Article 3) A legal person (but not a natural person) wishing to use a different taxation year may apply in writing to the Ministry of Finance setting out the reasons for the requested change. The Ministry of Finance may approve such an application but only where the application is justifiable. The Ministry will inform the legal person of this in writing, setting out the commencement date of the change and expected tax payment dates which will be determined by the Ministry. The Ministry decision will ensure that neither the taxpayer nor the Government of Afghanistan obtains an unduly favourable tax position as compared with payments by other taxpayers.

Availability of Records:

In order to confirm that a tax liability or refund has been properly established, or to estimate the income of a person, Ministry of Finance officers are entitled to have access to the business premises and to the inspection, examination and copying of books of account, papers, records etc. held by the person or by third parties (Article 96). Third parties may include business associates, customers, suppliers, financial institutions, other government departments etc.

Refunds:

If the Ministry of Finance finds, upon examination of a return, refund claim, overpayment claim or court judgment that the tax paid is in excess of the amount due, the Revenue Department official in charge of the taxpayer's file will contact the Customs Department to confirm that the taxpayer does not have any outstanding liability for customs duties. The official will also investigate if any other taxes remain unpaid. Any overpayment will be first applied against unpaid taxes or customs duties and the excess refunded or held in credit for the taxpayer (Article 95).

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Objection & Appeals:

Article 94 of the Income Tax Law 2005 provides a formal administrative dispute resolution process for any person who is dissatisfied with an income tax assessment.

This process can involve three steps. First, a person may request an amendment to their income tax assessment. Second, if a person is dissatisfied with the decision on their request for an amendment, they may lodge an objection which is reviewed by an independent review panel. Third, and finally, a person who is dissatisfied with the decision of the review panel may appeal to a court of competent jurisdiction. More detailed information concerning the objections and appeal process can be obtained from the Taxpayer Assistance Team at the Ministry of Finance or by visiting the tax information website at: www.mof.gov.af/tax.

The website contains the appropriate objection/appeal forms, the tax law, the tax manual and Guide 11 – Disputing the Amount of Income Tax Payable in an Income Tax Assessment.

Enforcement Provisions (Chapter 14 & 16):

Taxes are collected to enable the Government to provide essential services such as education, health, infrastructure and security to the residents of Afghanistan. Therefore, if everyone pays their fair share, better services can be provided to the residents of Afghanistan. Taxpayers who ignore their tax obligations such as not registering, failing to submit tax returns or failing to pay their tax liabilities are actually defrauding their country and fellow residents/ citizens.

The Afghanistan Revenue Department is obligated by law to determine and collect from each taxpayer only the correct amount of tax that is due to the Government. The Afghanistan Revenue Department offices and staff are representatives of the Minister of Finance and in that capacity must ensure that the tax laws are administered correctly and fairly so that no one is favoured or prejudiced above the rest. The Income Tax Law 2005 has been updated to provide the Ministry of Finance with all of the enforcement powers necessary to collect the taxes that are rightfully due.

- Assessments – the Ministry of Finance may amend tax assessments (or tax shown on tax returns) to correct intentional or inadvertent errors. The Ministry may also raise an assessment for tax based on estimated income where no return has been filed.
- Property actions – The Ministry of Finance may place restrictions on the sale of movable and immovable property, place liens or encumbrances on property or seize property for the purpose of sale. These actions may be taken upon approval of the courts.
- Director & shareholder liability – The Ministry may under certain conditions collect the tax debt of the company from its directors, certain shareholders and third parties that have received assets from the debtor company.
- Collection from third parties – The Ministry has the power to issue an order (sometimes known as a garnishee order) to collect amounts owed to the tax debtor by third parties. These third parties could include customers, financial institutions, employers, tenants etc.

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- Departure prevention order – This is an order to the appropriate authorities to restrict or prevent an individual (including an assessed director, shareholder or third party) who has unpaid taxes of more than 20,000 Afghanis from leaving the country.
- Temporary business closure – Where a person fails to file a tax return, fails to pay tax liabilities on the due date or fails to withhold (rent, wages, dividends etc.) and pay tax, that person may be the subject of an order to close the business until the taxes are paid.
- Non-issuance of licenses – When persons have not paid the taxes due, the Ministry of Finance may inform other government ministries, agencies and departments which have the authority to issue licenses, not to renew those licenses. Other ministries and government agencies are to issue licenses only when they have such documents from the Ministry of Finance to indicate that the business as fulfilled their tax obligations. The law also provides for the imposition of additional taxes, penalties, fines and/or imprisonment. These sanctions may be imposed under several circumstances including:
 - Failure to maintain and to provide access to books and records (Article 106)
 - Failure to file a tax return (Article 107)
 - Failure to withhold tax as required – rent, dividends, interest, royalties, wages, salaries, commissions etc. (Article 108)
 - Failure to pay the taxes due (Article 109)
 - Failure to apply for a Tax Identification Number (TIN) (Article 110)
 - Evasion of income tax (Article 103)
 - Offenses committed by taxation officers pertaining to disclosure of confidential information and misuse of their position. (Article 111)

Late Payment Charge:

Where a taxpayer has failed to pay their tax liability by the due date, the person is subject to additional income tax of 0.10 per cent of the tax due, per day (Article 105).

Electronic Funds Transfer:

It is now possible to pay your taxes by way of electronic funds transfer. The process is simple and should make compliance easier, especially for those businesses and organizations with accounting and payment offices outside of Afghanistan.

For additional information on electronic funds transfers please refer to Guide 6 – Paying Your Tax by Electronic Funds Transfer at “www.mof.gov.af/tax”. You may also visit the Afghanistan Revenue Department, Taxpayer Assistance Team at the Ministry of Finance in Kabul.

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Custom Duties:

Import and export businesses, as well as those businesses that must import goods and materials for use in the business should contact the appropriate customs house regarding their customs affairs.

Tax Administration Reform:

In order to promote voluntary compliance with Afghanistan's tax laws, the Ministry of Finance is working to reform the Revenue Department and other Ministry offices in order to create a more efficient and effective tax administration. The new organization will be more service-oriented, realizing that education and information are the foundations for compliance. At the same time, the organization will be developing modern enforcement programs along international standards that will help ensure a fair tax system. Above all, the Ministry is working to eliminate corruption and establish a transparent administration that effectively uses budgeted funds. This is a long term commitment, and the resulting organization will do much to create a better business climate in Afghanistan.

Tax Reform:

At present there are many small or specialty taxes existing in Afghanistan in addition to those mentioned above. The Ministry of Finance is working to reform the tax laws to simplify current laws and eliminate inefficient or burdensome taxes. This process will be a major focus of the Ministry in the current year and future years.

Corporate Tax Reform:

The government is committed to making Afghanistan an attractive environment for investors. Part of the initiative is the intent to reform corporate taxation so that it is consistent with international standards and best practice. Amendments to the Income Tax Law have been made to provide incentives to business that are registered under the investment laws. These provisions are for accelerated depreciation (over four years for buildings and two years for other assets) and the ability to carry losses forward indefinitely.

Other corporate tax reform measures which have been implemented include:

- Taxing branches of foreign companies on the same basis as subsidiaries of foreign companies.
- Tax incentives for extractive industries.
- Extending the 20% withholding on dividends to include withholding for interest, royalties and other similar payments.
- Deductions allowed on the basis of attribution of actual expenses between the branch and the non-resident person.
- Ensuring arm's length pricing between associated entities
- Implementing general anti-avoidance rules to address tax avoidance practices.
- Quarantining foreign losses against foreign income.
- Allowing legal persons to apply for a fiscal year that is other than the Solar Year.

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For additional information:

Tax forms and guides are available from the Ministry of Finance, Revenue Department, Taxpayer Assistance Team. For more information or assistance visit the Revenue Department, Taxpayer Assistance Team, visit the “Tax Information Page” at www.mof.gov.af/tax or call 0752015016 or 0702005433.

Note 1:The “Tax Information Page” website also contains public announcements, a copy of the Income Tax Law, various public rulings, forms, instructions for completing forms, guides, archived documents, Questions & Answers regarding the wage withholding tax, etc.

Note 2:The “Tax Information Page” website also contains an “**Income Tax Manual**” issued under the authority granted to the Ministry of Finance by Article 113(2) of the Income Tax Law. The purpose of the manual is to provide additional guidance to the Afghanistan Revenue Department and taxpayers regarding the application of the Income Tax Law of 2005. In this manual, each Article of the law is given separately, followed immediately by the regulations, and often examples where appropriate, pertaining to that Article.

Tax Guide:

The above information has been provided by the Ministry of Finance of the Afghan government and is the latest available at time of printing. The legislation of Afghanistan is still in flux and changes may occur. We hence advise the investor to consult either the Ministry of Finance (www.mof.gov.af) directly or the Investor Support Department of AISA for updates.

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EMPLOYMENT

This chapter covers the following topics:

- 1- Right to work and employment contracts
- 2- Work hours, overtime and leave
- 3- Wages
- 4- Health and safety
- 5- Union and workers' rights
- 6- Gender and cultural issues in the workplace

The 2006 Labor code was developed and approved under Articles (48, 50) of the constitution of the Islamic republic of Afghanistan and to comply with conventions and Letter of Agreement of the International Labor Organization and Afghanistan.

The Code, in general, is the guarantor of the rights, privileges, obligations and responsibilities of organizations and employees. All categories of workers are subject to the provisions of the labor code.

Right to Work and Employment contracts

The nationals of the Islamic Republic of Afghanistan have the right to work in return for wages or salaries. The right to paid work and fair remuneration is ensured by the legislative documents from the Ministry of the Economy and Labor with the cooperation of social organizations. Workers and personnel are entitled to rest, leave, health insurance, occupational safety, free vocational training, building level of skills, membership in trade unions and worker organizations, participation in the management of offices and production and the right to enjoy social security.

A person who fulfills the following conditions can be employed in a company:

- Having obtained an Afghan identity card (Tazkera);
- Having attained full 18 years of age;
- Having obtained a vocational certificate with the agreement of the Ministry of Labor (service personnel are exempted from the requirement to have a vocational certificate);³²
- Submission of high school graduation certificate for employees.

³² Article 16, Labor Code

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A person under the age of 18 may be employed in certain circumstances:

- Having attained 15 years of age a young person may be employed in light industry³³; or
- Having attained 14 years of age a young person may be engaged as a trainee³⁴.

Employment is by way of a contract. The contracting parties determine a probation person period. The probation period cannot be more than three months. During the probation period either party can abrogate the contract with or without prior notice. If the contract is not abrogated prior to termination of the probation period, then the contract will come into force with the previous period and conditions contained therein.

The essential instances for the abrogation of the labor contract are:

- Agreement of both parties;
- Retirement;
- Death;
- Disability and incapability that will hinder performance of the job;
- Long cessation of work (More than six months);
- Dissolution of the office;
- Final conviction to sentences that ban continuation of work, unless the court has allowed the employee to continue working;
- Repeated breach of work rules after disciplinary warnings.
- An employer can, subject to the agreement of the unions, annul a labor contract in the following cases:
 - Dissolution of the company;
 - Redundancy;
 - Long cessation of work (more than six months);
 - When the assigned work is not carried out properly due to the low skill level;
 - Explicit and repeated breach of disciplinary rules;
 - Refusal to work in another place when the office site is moved;
 - If the worker refuses his reassignment to his previous job.

In the event of dismissal of a worker the company must pay the worker as follows:

- If the duration of work is between one year and five, two months of wages with other supplementary rights;
- If the duration of work is between 5 years to 10, four months of the complete salaries;

³³ Article 17 of the Labor Code States "People who are hired in the light industries, they should complete 15 years of age".

³⁴ Part of Article 4 of Labor Code states "People who are 14 years old can be hired as trainees to be trained in vocational skills".

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- If the duration of work is more than 10 years, six months of the complete salaries. This refers to the employment period.

Work Hours, Overtime and Leave

The ordinary work period cannot, on average be more than 8 hours during a 24 hour period. The working on Thursdays cannot be more than five hours. In the event of work during the night, the shift shall be one hour less. Night means 11 consecutive hours starting from 8p.m. until 7 a.m., arranged by the internal rules of the office. During work at night, service and administration workers will be paid (15%) production workers will be paid (25%) more than their normal wages. It is not permissible to require (ask) a worker to work for two successive shifts.

Work done outside the ordinary hours of work is considered to be overtime, which is permitted in the following cases subject to the agreement of the worker:

- For essential services for public welfare e.g. assisting the disaster stricken from floods or earthquakes, that cannot be delayed;
- In order to prevent unforeseen production and social accidents (natural ones and removal of their consequences);
- In order to repair and restore pieces of equipment which, when being idle, would lead to stoppage of work of a large number of workers;
- In order to address the effects of unforeseen events which would cause stoppage of social services such as water supply, heating, lighting, canalization, transport and telecommunications;
- For performance of work which had started previously and which would cause material damage if discontinued;
- In order to continue a piece of work which could not be stopped should the worker in the succeeding shift be absent. In such a case the company is obliged to take speedy measures to find replacements for the workers;
- In order to compensate and make up for work stoppages; and
- In order to perform other pieces of work required by the company which are agreed upon by the union and the Ministry of labor

Workers are entitled to the following recreational and leave periods:

- Breaks for performance or prayers and eating;
- Public leave (holiday) at the end of the week (Friday);
- Leave on the days of national and religious leave as described in Appendix 1;
- Annual leave (recreational, sick, and necessary or urgent leave);
- International holidays such as: International solidarity day of workers, Mother's day, the day of protection of the rights of children and other holidays that are set in the conventions that Afghanistan has adhered to or will adhere to; and

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- Paid sick leave up to 20 days³⁵.

Work is allowed during weekend holidays, days of festivities and other public and general holidays, by the agreement of the worker and union³⁶, and with the concurrence of the Ministry of Labor, in the following cases:

- Performance of work in companies engaged in constant (uninterrupted) activities;
- Performance of work related to public services; and
- Performance of work that cannot be delayed, urgent repairs, loading and unloading of consignments, work related to the prevention of unforeseen accidents, removal of consequences of natural accidents and other exceptional cases.

In these cases, the company must grant in addition to the normal overtime wage, 50 percent of the salary of the worker as an incentive.

Workers and personnel are entitled to:

- 20 days' recreational leave with pay every year;
- 10 days' essential (urgent) leave with pay every year;
- 5 days' of leave for marriage, and death in family;
- 20 days' sick leave with pay each year; and
- 45 days' paid leave only once during his entire service period in order to perform haj rites or to make pilgrimages to the sacred places.

Women are entitled to 90 days of maternity paid leave 40 days of which are utilized before the birth of the child and 50 days after. After the completion of the leave period the worker is reassigned to her previous job³⁷.

WAGES

Wages cannot be less than amount fixed by the Government. If there is a cessation of production as the consequence of unpleasant or unforeseen accidents, or due to technical factors of production or to adverse climatic conditions, then the wage of the worker, with the exception of seasonal and daily paid workers, must be paid according to the following schedule:

- In the event of stoppage, the full wage must be paid for up to two months;
- In the event of stoppage from two to four months, 50% of the full wage must be paid;

³⁵ According to Article 55 of Labor Code a worker can have 50 days of leave comprised of 20 days recreational leave, 20 days sick leave and 10 days essential leave

³⁶Article 52 of Labor Code.

³⁷Article 67 of Labor Code.

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- After the expiry of four months, the employer, with the agreement of the National Trade Union, can transfer the worker to another task and if this is not possible, can annul the labor contract and present the worker to the employment service center of the Ministry of Labor.

HEALTH & SAFETY

Employer must provide for good occupational health and safety conditions use safe equipment in order to prevent accidents due to work and production, and protect workers against occupational diseases.

UNIONS AND WORKERS' RIGHTS

Workers have the right to be trade union members. The main functions and activities of trade unions consist of the following:

- The defense and protection of workers' rights in the field of work, production, livelihood and culture;
- Participation in development, strengthening of the work and production management as well as assistance to consolidate and strengthen labor and production discipline;
- Exercising control so that work-related legislative documents, work protection rules and standards, safety techniques and housing and living services of workers are compiled with;
- Participation in the administration of social insurance such as: health insurance, unemployment insurance, pensions, as well as cultural, lighting and sports equipment; and
- Participation in the arrangement and implementation of progressive systems of wages, and incentive regulations, participation in the supervision of the application of the Conventions of the International Labor Organization (ILO) to which Afghanistan has adhered, application of scientific and progressive standards, control over the revision of labor standards.

According to the Labor Code, companies are obliged to bring about favorable conditions for the worker participation in work and production management, to study their proposals and criticisms in a timely manner and to bring the decisions taken to their notice. Companies are also to insure cultural and sport activities of trade unions, unless they are against the provisions of the law. Social security will be put into effect through financial participation of the company, workers and the Government.

Workers and, in some cases, member of their families, and benefit from the following social security provisions: a company must provide the following:

- A residential place to the worker as set forth in Article (14) of the constitution³⁸;
- Use of medical services as set forth in the Article (52) of the constitution³⁹;
- Financial assistance to the worker on his retirement⁴⁰;

³⁸Article 67 of Labor Code.

³⁹Article 189 of the Labor Code.

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- Assistance to the worker when she/he is not capable of working⁴¹;
- Assistance to the worker during the period of pregnancy⁴²;
- Financial assistance to the family of a deceased worker for shrouding and interment⁴³; and
- A retirement pension in the following circumstances: Old age, disease, disability, service period, death of a worker who supports (secures the means of livelihood of) family and other cases as are envisaged and drawn up in special legislative documents.

Financial assistance is provided out of the retirement fund of the company and the pension is out of the retirement treasury fund. Financial assistance to the worker on his retirement should be equivalent to the worker on his retirement should be equivalent to 10 month's salary with food allowance and fare. Financial assistance equal to 10 months' wages, based on the most recent wage, should be paid to the family of a deceased worker.

Male workers may retire when they have reached 65 years of age, and female workers may retire when they have reached 55 years of age⁴⁴. The constant service period of male workers is 40 years, and for female workers it is 37 years in order to be entitled to 100% of retirement wage⁴⁵.

Compulsory retirement for male worker is 70 years of age and for female workers is 60 years of age. It is not permissible to extend the service of a worker who has reached the compulsory retirement age.

As a result of a disability (Infirmity) related to work, or an occupational disease arising from work or occupational disease, as attested to by the Health Commission, the retirement pension will be paid 100% on the basis of the most recent wage of the worker until the end of life.

Depending on old age, service period, illness not connected with work, disability and death not connected with work, the worker's retirement pension is computed and paid as follows:

- If the worker's service period is 10 years or more, the payment made to him/her in the form of a life pension is 40% of his/her most recent monthly salary of his/her main rank or grade, plus a further 2% for a male worker and 2.25% for female worker for each year in excess of 10 years;
- If the worker's service period is between one and five years, a lump sum equivalent to two months' salary for each year of service should be paid, based on the basic grade or rank of the worker. The payment can be either by tranche or in full;

⁴⁰Equivalent to ten month's salary with food allowance.

⁴¹Article 191 of the Labor Code.

⁴²Article 192 of the Labor Code.

⁴³ According to Labor Code, in Afghanistan when a Government servant dies the organization of his/her does financial assistance for shrouding and internet. Financial assistance (benevolent money) equal to 10 months' wages, based on the most recent wage, to the family of the deceased worker for shrouding and interment.

⁴⁴Article 197 of the Labor Code.

⁴⁵Article 193 of the Labor Code.

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- If the worker's service period is between five and 10 years, a lump sum equivalent to three months' salary for each year of service, based on the main grade or rank attained by the worker. The payment can be either by tranche or full.

For a worker who retires at the compulsory retirement age and dies, his dependent survivors will benefit from his pension and rights for 20 years from the time that she/he has been retired. The retirement financial source (fund) is ensured by the worker paying in 3% of his monthly salary and the government and employer paying in 8%. In the mixed and private sectors, the manner of the execution of the pension is covered by other laws.

Gender and Cultural Issues in the Workplace

Since Afghanistan is a Muslim country, there are certain cultural and religious customs which affect the workplace. Afghanistan is still to a great extent a male-dominated society. However, donors are supporting programs aimed at increasing the role and prominence of women in business and as a result more women are entering workforce.

While women are generally permitted to work in a professional capacity, this is more common in Northern provinces and within the major urban center such as Kabul, Mazar-i-Sharif and Herat. In such centers, women also work in manufacturing facilities and factories such as textiles and fertilizer firms, either private or public. It is far more common and accepted for women to run small household business activity as opposed to formally registered companies.

Women are not generally permitted to work the night shift, one exception being in hospitals, where female doctors can work the night shift. For transportation to and from work, it is generally considered safer for women to have transportation provided by the company; it can be difficult for women to come to work on their own, and extremely problematic for women to return home at dusk or later.

It is common for men and women to have segregated dining areas; although if a workforce has been on job together for a long time men and women may eat in the same location. It is also more acceptable and comfortable for women to have supervisors of the same gender. Men can be managers, but it is more common for women to work directly with other women.

