

PRIVATE INVESTMENT LAW

Chapter One

GENERAL PROVISIONS

Article 1

Preamble

This Law is enacted based upon the provision of Article Ten of the Constitution of Afghanistan for encouraging, promoting, protecting and securing investments and private businesses established according to the free market economic system and regulating its related affairs.

Article 2

The Purpose of Legislation

The purposes of this Law are to maximize the role of private investment, both domestic and foreign, in the economy, 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 3

Definitions

The terms below shall have the following meanings:

“Capital Assets” shall mean capital assets including, without limitation, equipment and machinery.

“Commission” shall have the meaning set forth in Article 6 of this Law.

“Foreign Investment” shall mean Investment in the form of freely convertible foreign currency or contributions in kind (in each case transferred from outside Afghanistan) that has been provided by a Foreign Person.

“Foreign Investor” shall mean a Foreign Person who has provided Foreign Investment.

“Foreign Loan” shall mean a loan, debenture, bond or other form of debt extended to a Registered Enterprise in freely convertible foreign currency by a Foreign Person for the purpose of enabling the Registered Enterprise to carry on its business in Afghanistan.

“Person” shall mean:

- “Natural Domestic Person” shall mean an individual whose identity is recognized by applicable laws.
- “Legal Domestic Person” shall mean a person that has been constituted or organized in the form of a corporation, partnership, sole proprietorship, limited liability company, joint venture, association, joint stock company, trust or other entity under the applicable law.
- “Natural Foreign Person” shall mean an individual who has the citizenship of other than Afghanistan.
- “Legal Foreign Person” shall mean a person that has been constituted or organized under laws other than the laws of Afghanistan
- “Infrastructure” shall mean any facility or service that is used by and/or provided for the benefit of members of the public (or any section of the public) and shall include, without limitation:
 - Power generation or transmission facilities;
 - Water delivery or treatment facilities;
 - Sewerage or sewage treatment facilities;
 - Waste-treatment or disposal facilities;
 - Airport facilities and facilities in health and education sectors;
 - Telecommunications and broadcasting facilities;
 - Other service or facility that is designated by the relevant authorities as Infrastructure for the purpose of this Law.
- “Investment” shall mean currency and contributions in kind, including, without limitation, licenses, leases, machinery, equipment, and industrial or intellectual property rights, provided for the purpose of acquiring shares of stock or other ownership interests in a Registered Enterprise.
- “Investor” shall mean a Person who has provided an Investment.
- “Natural Resources” shall mean reserves, reservoirs or deposits of whatever nature of oil, gas, gold, silver, coal or any other minerals, hydrocarbons or other resources and whether in their natural state or after any kind of treatment.
- “Office” shall mean the Afghan Investment Support Agency, established pursuant to Article 8(2) of this Law.

- “Registered Enterprise” shall mean a business entity registered pursuant to the procedures set forth in Articles 12.
- “ICSID” shall have the meaning set forth in Article 30.
- “UNCITRAL Rules” shall mean the arbitration rules of the United Nations Commission on International Trade Law.

Article 4

Permitted Investment

- (1) Except as otherwise set forth in Article 5 of this Law, all Foreign or Domestic Persons may make investments in all sectors of the economy.
- (2) A Foreign Person may only make an Investment in Afghanistan through a Foreign Investment in a Registered Enterprise or through reinvestment from an existing Registered Enterprise.

Article 5

Areas Where Investment May Be Prohibited, Restricted or Subject to Special Terms

- (1) Investments in the following areas are prohibited:
 1. development of nuclear power;
 2. establishment of casinos and gambling establishments; and
 3. production of narcotics and intoxicants;

Except for part (2) of the above, the Commission may from time to time add to or otherwise amend and regulate the prohibition of these sectors considering national interest.
- (2) The Commission may from time to time limit the foreign beneficial ownership of business entities operating in certain industries or economic sectors, PROVIDED, HOWEVER, that any such limitation or limitations shall be prospective only and shall not apply to any existing Investment in a Registered Enterprise.

- (3) The Commission must discuss with appropriate ministries, and approve, with the consent of such ministry or ministries, on a case-by-case basis, investment in certain sectors of the economy (and certain types of Investment). With respect to such investments, the Commission may choose to apply terms that are different from those generally applied to Investments pursuant to this Law, PROVIDED, HOWEVER, that the Ministry of Finance must approve any revenue related incentives that are more generous than those set forth in the Law. The initial list of such restricted sectors is set forth below:
- production and sale of weapons and explosives;
 - non-banking finance activities;
 - insurance activities; and
 - Investments in Natural Resources (including forestry) and Infrastructure (including pipeline construction and operation), but only until special laws, if any, have been promulgated that are applicable to and govern such Investments after which such Investments shall be governed by such special laws, The Commission may from time to time add to or otherwise amend and regulate the list of such sectors.

Chapter Two

ADMINISTRATION AND MONITORING

Article 6

Administrative Structure

- (1) The High Commission on Investment, (hereafter called the “Commission”) shall be constituted the highest governing authority in policy-making on Investment for better implementation of this Law.
- (2) To assist it in carrying out its duties, the Commission shall establish the Office as a limited liability company. The Chief Executive Officer, as the head of the Office, shall be appointed by the President of the Islamic State of Afghanistan based upon the recommendation of the Chairman of the Commission and shall be responsible to the Commission.
- (3) The Commission shall have the authority to appoint a board of director and a supervisory board to monitor the Office in carrying its duties pursuant to part (2) of this article.

Article 7

Composition of the Commission

- (1) The Commission shall be composed of:
 1. The Minister of Commerce,
 2. The Minister of Foreign Affairs,
 3. The Minister of Finance,
 4. The Minister of Economy,
 5. The Minister of Mines and Industries,
 6. The Minister of Agriculture,
 7. The Governor of Da Afghanistan Bank, and,
 8. The Chief Executive Officer of the Office, as a non-voting member and as the secretary.

Further, the Commission is authorized to invite representatives from the private sector to provide consultation and comment to the Commission, when and if desired by the Commission.

- (2) The Minister of Commerce shall serve as Chairman of the Commission. In his absence, a person among the voting members shall be appointed by him to chair the meetings. The Chief Executive Officer of the Office shall serve as Secretary of the Commission.
- (3) If the Commission determines that one of its proposed actions may significantly affect Investment projects or policies in a particular sector which is not represented on the Commission, the relevant Minister(s) shall be invited to participate in the meetings of the Commission that relate to the proposed action.
- (4) The President of the Islamic State of Afghanistan may alter the composition of the Commission.

Article 8

Responsibilities of the Commission

The Commission shall have the following rights and responsibilities:

- (1) To adopt bylaws establishing procedures for conducting its meetings and for making and recording decisions.
- (2) To establish the Office (AISA) for carrying out its duties.
- (3) To monitor the state of Investment in the country and propose to the authorized authorities any modifications to this Law that it deems advisable.
- (4) To propose rules to the Council of Ministers and to instruct the Office to draft such procedures for promulgation by the Commission for the implementation of this Law. .
- (5) To establish a threshold value (the “Threshold Value”) for initial capital.
- (6) To receive advice from the Office for recognizing Registered Enterprises where

Investment is reasonably expected to be greater than or equal to the Threshold Value.

- (7) To authorize the Office to recognize Registered Enterprises where Investment is reasonably expected to be less than the Threshold Value.
- (8) To make decision on cases appealed from decisions by the Office not to recognize a Registered Enterprise by written reasons.

Article 9

Responsibilities of the Office

In order to perform the work assigned it by the Commission, the Office shall have the following responsibilities:

1. To review applications by business entities for recognition as Registered Enterprises to the extent that it is so instructed by the Commission.
2. The Office shall establish procedures, which shall be subject to the approval of the Commission, for the submission, review and registration of applications for Foreign and domestic Investment.
3. To draft and publish rules, if so instructed by the Commission, that shall come into force once approved and published by the Commission.
4. To keep records and monitor Registered Enterprises, so as to ensure compliance with the provisions of this Law.
5. To promote and attract Investment in Afghanistan through wide and multi-facet campaign.
6. To assist Investors in understanding this Law and rules, regulations and procedures related to Investors.
7. To provide necessary facilitation to Investors in applying for and in receiving Certificates of Registration
8. To monitor, supervise and administer the implementation of the provisions of this Law and other related rules, regulations and procedures.

Chapter Three

REGISTERED ENTERPRISES

Article 10

Approved Enterprises

Registration

- (1) An enterprise shall be considered an Approved Enterprise when it is recognized by the Commission or by the Office in accordance with Article 12 of this law. The Office shall be responsible to register the enterprise and keep its records and files.
- (2) Registered Enterprises may be established by either:
 1. Business entities organized under Afghan law, or
 2. Business entities organized under the laws of another nation, but registered to do business in Afghanistan in accordance with the laws of Afghanistan
- (3) Registered Enterprises may have ownership in any of the following forms:
 1. One hundred percent (100%) ownership by Investors, or,
 2. A joint venture between the Government of Afghanistan and other Investors.

Article 11

Applying for Recognition as a Registered Enterprise

- (1) A Person that wishes to register an entity as a Registered Enterprise must submit to the Office an application giving information in substance and form as required by this Law and by rules, regulations and procedures promulgated by the Commission.
- (2) A person may seek recognition as a Registered Enterprise for a business entity that is already in existence or an entity that will be formed.

Article 12

Recognition and Denial of Registered Enterprises

- (1) Within a fixed time period to be specified in rules promulgated by the Commission, the Commission or the Office, as appropriate, shall make a decision regarding the recognition of an entity's application that meets the terms established by this Law and shall inform the applicant.
- (2) An application for registration can only be denied when the entity did not comply with this Law or regulations or rules issued. If the Commission or Office has denied an application, it shall give an explanation in writing for the denial.
- (3) When the applicant corrects the application according to the provisions of part (2) of this article, the applicant may re-apply after correcting the situation that gave rise to the denial.
- (4) If the Commission or Office has not sent the response described in Article 13(1) above within the fixed period described above, the entity shall be deemed recognized.

- (5) If the Commission or Office has recognized an existing entity, the Office shall immediately register such entity as a Registered Enterprise and provide a certificate to the entity evidencing its status as a Registered Enterprise (the “Certificate of Registration”).
- (6) If the Commission or Office has recognized an entity that has not yet been formed, the Office shall register such unformed entity as a Registered Enterprise and provide a Certificate of Registration. Thereafter, the entity must be formed within a fixed time period established in rules promulgated by the Commission.
- (7) An entity shall retain its status as a Registered Enterprise unless its registration is rescinded pursuant to Article 14 below.

Article 14

Reporting Submission

- (1) A Registered Enterprise must immediately notify the Office if there has been a change in its ownership or capital structure, or if an Investor in the Registered Enterprise contributes additional capital.
- (2) A Registered Enterprise shall annually file an update (the “Annual Update”) with the Office. The Annual Update must be submitted to the Office within ninety (90) days of the end of the fiscal year of the Registered Enterprise and shall include an update of the information provided by the Registered Enterprise in its application pursuant to the terms of Article 11 above, along with such other information as the Commission or the Office, as the case may be, deems appropriate.

Article 15

Loss of Registered Enterprise Status

- (1) The Commission or, if so instructed by the Commission, the Office may review and revoke an entity’s recognition as a Registered Enterprise.
- (2) The Status of an Registered Enterprise shall be revoked under the following conditions:
 1. The Registered Enterprise entity is dissolved.
 2. The Registered Enterprise ceases to exist or operate as a viable concern.
 3. The Registered Enterprise violates, in a substantial respect, applicable provisions of this Law.
- (3) A Registered Enterprise shall be informed for its violation before an entity’s status as a Registered Enterprise is revoked, except for violations of Article 12(6) above.
- (4) The Commission or the Office shall give three (3) months extension to the Approved Enterprise to remedy the situation and/or bring itself into compliance with this Law.

Chapter Four

RIGHTS AND RESPONSIBILITIES OF REGISTERED ENTERPRISES AND OF FOREIGN INVESTORS

Article 15

Application of Afghan Law

Unless otherwise specifically provided by this Law or other Afghan laws, all Registered Enterprises, and all investors, whether domestic or foreign, must abide by all applicable laws of Afghanistan.

Article 16

Right to be Free from Discriminatory Governmental Actions

Unless otherwise specifically provided in this Law or other Afghan laws, the provisions of this Law and any other Afghan laws shall be applied equally and fairly to all similarly situated Registered Enterprises, whether they have foreign equity ownership or not, and to all similarly-situated Investors.

Article 17

Income Tax Concessions for Registered Enterprises

- (1) A Registered Enterprise which incurs a net operating loss in any fiscal year may carry this loss forward and apply it as a deduction from its taxable income to the extent permitted in the Income Tax Law.
- (2) A Registered Enterprise shall be entitled to an accelerated deduction for depreciation on Capital Assets to the extent permitted in the Income Tax Law.

Article 18

Import-Export Duty and Other Tax Concessions for Registered Enterprises

A Registered Enterprise shall be exempted from export duties on products that it manufactures or assembles in Afghanistan to the extent permitted in the Customs Code. An export license shall be required for such exports but such license shall be granted automatically upon submission of such documentation as is required by law.

Article 19

Access to Banking

- (1) A Registered Enterprise shall have the right to use banking facilities in Afghanistan as follows:
 1. To open accounts in foreign currency and to use these banks, among others, to receive loans and credit in foreign currency from outside Afghanistan to advance its legitimate business.
 2. To open bank accounts in foreign currency outside of Afghanistan for the purpose of purchasing equipment and machinery, raw materials, spare parts, feedstock and for services used by the Registered Enterprise in conducting its operations, and for payment of salaries and benefits to expatriate employees, and for all other purposes of the Registered Enterprise that are not contrary to Afghan laws.

Article 20

Labor and Employment

- (1) A Registered Enterprise shall have the right, directly or indirectly, to employ foreign managerial and expert personnel of any nationality notwithstanding any provision to the contrary in Afghan laws. .
- (2) A Registered Enterprise shall have the right to enter into service contracts with foreign Persons in order to conduct its business activities. In this case, the work permits for such foreign personnel shall be granted according to the laws applicable in Afghanistan.
- (3) Registered Enterprises, domestic or foreign, in which Foreign Investors have equity ownership, are encouraged to hire Afghan personnel whenever possible in order to further their technical development.

Article 21

Land Use by Registered Enterprises

A Registered Enterprise shall have the right to lease land in order to carry its operations and shall not be barred from leasing real property for terms up to fifty (50) years, in accordance with Afghan law.

Chapter Five

TRANSFER OF CAPITAL AND PROFITS ASSOCIATED WITH FOREIGN INVESTMENT

Article 22

Transfer of Foreign Investment Capital

- (1) A Foreign Investor shall be permitted to freely transfer out of Afghanistan without unreasonable delay distributions received from a Registered Enterprise in whatever foreign currency the Foreign Investor chooses, at the prevailing exchange rate for that currency.
- (2) A Foreign Registered Enterprise may transfer pursuant to this provision funds in an aggregate amount equal to the amount of such Foreign Investor's registered Foreign Investment, and it may take place in one or more transactions
- (3) A Foreign Registered Enterprise must notify the Central Bank (or such other entity designated by the Law) of such transfer. The Central Bank or 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.

Article 23

Transfer of Profits Associated with Foreign Investment

A Foreign Investor shall be permitted to freely transfer outside of Afghanistan without unreasonable delay dividends, or distributions treated as dividends under the Income Tax Law, received from a Registered Enterprise in whatever foreign currency the Foreign Investor chooses after satisfying his(her) financial obligations, at the prevailing exchange rate for that currency.

Article 24

Transfer of Principal and Other Payments of Foreign Loans

A Registered Enterprise shall be permitted to freely transfer out of Afghanistan funds for payment of principal, interest and fees relating to a Foreign Loan to such Registered Enterprise in the currency of the Foreign Loan after satisfying his(her) financial obligations at the prevailing exchange rate..

Chapter Six

SALE OF REGISTERED ENTERPRISES; TRANSFER OF PROCEEDS

Article 25

Sale of Registered Enterprises

- (1) Foreign Investors shall have the right to sell or transfer all or a part of its ownership interest in a Registered Enterprise to any Person or to the Government of Afghanistan without the permission of the Commission or the Office only if the seller has not violated any limitations on Investment established pursuant to Afghan law.
- (2) The Commission shall have the right to void any sale made in violation of this provision.
- (3) The Investor shall notify the Office of any sale or transfer of an ownership interest in a Registered Enterprise and the purchaser shall be recorded as a Foreign Investor or domestic Investor as the case may be.

Article 26

Transfer of Proceeds from the Sale of Registered Enterprises

A Foreign Investor shall have the right to transfer out of Afghanistan the proceeds of any such sale in the currency of the Investment at the prevailing exchange rate after satisfying his (her) legal and financial obligations.

Chapter Seven

EXPROPRIATION

Article 27

Expropriation

The State can expropriate an Investment or the assets of a Registered Enterprise only for the purpose of public interest, based on a law permitting such expropriation, and on a non-discriminatory basis.

Article 28

Compensation for Expropriation

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 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 a foreign currency, the compensation shall be made in the currency in which the Investment was made at the prevailing rate of exchange.

Article 29

Transfer of Compensation for Expropriation & Appeal

- (1) If in an expropriated property the percent of ownership interest held by Foreign Investor(s) exceeds over twenty five percent (25%), such Foreign Investor(s) or Registered Enterprise, as the case may be, shall have the right to dispute the expropriation or the adequacy or fairness of the compensation therefore pursuant to the provisions of Article 29 below.
- (2) A Foreign Investor or a Registered Enterprise of which over twenty five percent (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.

Chapter Eight

DISPUTE RESOLUTION

Article 30

Dispute Resolution

- (1) Disputes shall be resolved according to the provisions of this Law.
- (2) An Investor or a Registered Enterprise may, in any contract or other agreement, specify the following:
 1. Any arbitration or other dispute resolution procedure,
 2. That the place of such arbitration may be outside of Afghanistan,
 3. That the law of a jurisdiction other than Afghanistan may apply to the resolution of such dispute
- (3) If such 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 upon application of any party to such arbitration or procedure.
- (4) Except as otherwise provided in section 5 of this Article 29, if a dispute arises pursuant to 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, with regard to an Investment, or if an Investor or Registered Enterprise has a claim under Chapter 7 of this Law, the dispute shall be resolved according to applicable Afghan law.
- (5) If a dispute arises pursuant to a contract or other agreement entered into between a

Foreign Investor or a Registered Enterprise with foreign equity ownership and the State or any constituent subdivision, agency or instrumentality thereof in regard to a Foreign Investment, or if a Foreign Investor or Registered Enterprise has a claim under Chapter 7 of this Law, 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 either (i) to the International Centre for Settlement of Investment Disputes (“ICSID”) for settlement by arbitration pursuant 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 (the “Convention”) or (ii) 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.

The Government, by operation of this Article 29(5), consents to the submission of any such dispute to ICSID for settlement by arbitration in accordance with Article 25(1) of the Convention. For the purpose of Article 25(2)(b) of the Convention, a Registered Enterprise incorporated under Afghan laws or otherwise registered to do business in Afghanistan of which over twenty five percent (25%) of the ownership interest is owned by a Foreign Investor shall be treated as a national of a state other than Afghanistan. For the purpose of Article 25(3) of the Convention, if one of the disputing parties is a constituent subdivision, agency or instrumentality of the State, the Government, by operation of this Article 29(5), gives its consent to the submission of such dispute to ICSID for settlement by arbitration and no further consent of the State is required for the submission of such dispute to ICSID.

Chapter Nine

MISCELLANEOUS

Article 31

Preference

In case of any discrepancy between provisions of this Law and any provisions of existing laws relating to or affecting private Investment, the provisions of this Law shall prevail.

Article 32

Transition

- (1) Pursuant to the provisions of Article 31 below, except to the extent specifically otherwise provided in the Income Tax Law, the Law on Domestic and Foreign Private Investment in Afghanistan (Official Gazette number 803, dated 20 Sunbulla 1382 (20 September 2002)) (“the Prior Investment Law”) will become null and void upon execution of this Law.
- (2) To comply with this Law, an entity that is registered as an Approved Enterprise under the Prior Investment Law is required to re-register with the Office in accordance with

Articles 12 and 13 above, and such rules as are issued by the Commission and made publicly available, within six (6) months from the date of execution of this Law or such longer period as may be established in rules issued by the Commission.

- (3) Except to the extent specifically otherwise provided in the Income Tax Law, upon such re-registration each investor and each Approved Enterprise, in its new capacity as a Registered Enterprise, will be fully subject to, and may avail itself of, the provisions of this Law. Any investor or Approved Enterprise which fails to re-register in accordance with Article 30(2) above shall be ineligible to avail itself of any of the rights or privileges accorded under this Law.

Article 33

Execution; Abrogation of Previous Legislation

This Law shall be effective upon its execution by the President of the Islamic State of Afghanistan and shall be published in the Official Gazette and upon the execution of this Law, the Law on Domestic and Foreign Private Investment in Afghanistan (Official Gazette number 803, dated 20 Sunballa 1382) shall become null and void.

<Signatures>