

UNOFFICIAL TRANSLATION

This English version of the New Investment Law is prepared by Media Department at AISA, Translating the new Changes seen in New Investment Law amended December, 6, 2005 to the previous English Version. It is not an official version of the Law and should be read and used with regard to this limitation. All reasonable efforts have been made to provide an accurate translation of the official published in Dari and Pashto Languages. Where a person requires more certainty than an unofficial translation of the Official Gazettes can provide, that person is advised to seek proper professional advice based on Official Gazettes.

In the Name of Allah, the most Gracious and Merciful

**LAW ON PRIVATE
INVESTMENT IN AFGHANISTAN
(as amended December 6 2005)**

Chapter One

GENERAL PROVISIONS

Article 1

This legislation has been adopted to encourage, Support and protect private investments and enterprises under Afghan constitution, article (10), based on market economy regulations and governing its related affairs.

Article 2

Purpose of Legislation

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 3

Definitions

The following terms are defined to mean:

- (a) Capital Assets: shall mean capital assets including, without limitation, equipment and machinery.
- (b) Commission: shall have the meaning set forth in Article 6 below.

- (c) 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.
- (d) Foreign Investor: shall mean a Foreign Person who has provided Foreign Investment.
- (e) 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 a term of not less than one year for the express purpose of enabling the Registered Enterprise to carry on its business in Afghanistan.
- (f) Person: shall mean:
 - 1. Native Person: Shall mean:
 - 2. In case of natural person: Any person constituted or organized under applicable law.
 - 3. In case of Legal Native Person: Any person whether privately or governmentally owned or controlled, and includes a corporation, partnership, sole proprietorship, limited liability company, joint venture, association, joint stock company, trust or other entity.
 - 4. Foreign Person: shall mean,
 - 5. In the case of a natural Person: an individual possessing the nationality of a country other than Afghanistan and.
 - 6. In the case of a legal Person: an entity organized under the laws of a country other than Afghanistan
- (g) 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
 - 1. Water delivery or treatment facilities.
 - 2. Sewerage or sewage treatment facilities.
 - 3. Waste-treatment or disposal facilities.
 - 4. Airport facilities, facilities in the health sector education facilities
 - 5. Telecommunications facilities, broadcasting facilities
 - 6. Any other service or facility that is designated by the relevant authorities as Infrastructure for the purpose of this Law.
- (h) 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.

- (i) 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, as constituted under applicable law.
- (j) Registered Enterprise: shall mean a business entity registered pursuant to the procedures set forth in Articles 12.
- (k) ICSID: shall have the meaning set forth in Article 30 below.
- (l) UNCITRAL Rules: shall mean the arbitration rules of the United Nations Commission on International Trade Law.
- (m) Office: shall mean the Afghan Investment Support Agency, a limited liability company established pursuant to Article 8(c) below.

Article 4

Investment Generally Permitted

- (a) Except as otherwise set forth in Article 5 below, all Persons, foreign or domestic, may make investments in all sectors of the economy.
- (b) Except as otherwise provided by this Law, 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

- (a) Investment in the following areas is prohibited:
 - development of nuclear power;
 - establishment of casinos, gambling and similar establishments;
 - Production of narcotics and any other intoxicants.

The Commission may from time to time add to or otherwise amend and regulate the list of prohibited sectors.

- (b) The commission may from time to time limit the foreign beneficial ownership of business entities operating in certain industries or economic sectors, as specified by the Commission, provided, however, that any such limitation or limitations shall be

prospective only and shall not apply to any existing Investment in a Registered Enterprise.

- (c) The Commission must discuss with appropriate ministries and institutions, and approve, with the consent of such ministries and institutions, on a case-by-case, 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 fiscal incentives that are more generous than those set forth in the Law.
- (d) The list of restricted sectors is set forth below:
 - 1. production and sale of weapons and explosives;
 - 2. Non banking finance activities.
 - 3. Insurance activities;
 - 4. investment in Natural Resources (including forestry) and infrastructures (including telecommunications, construction and pipeline set up), 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.
- (e) 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

- (a) The High Commission on Investment (the “Commission”) will be the Government’s focal point for policy-making on Investment and the highest administrative authority with respect to the implementation of this Law.
- (b) To assist it 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 company.

Article 7

Composition of the Commission

- (a) The Commission shall be composed of:
 - 1. The Minister of Commerce,
 - 2. The Minister of Finance,
 - 3. The Minister of Foreign Affairs,

4. The Minister of Economy,
5. The Minister of Mines and Industries,
6. The Minister of Agriculture, Animal husbandry and Food,
7. The President of Da Afghanistan Bank,
8. The Chief Executive Officer of the Office as a non-voting member, and
9. Two representatives from the private sector as non-voting members, which representatives will be appointed annually by the Chamber of Commerce of Afghanistan for one-year terms.

(b) The Minister of Commerce shall serve as Chairman of the Commission. If the Minister of Commerce is unavailable, then he whom the chairman chooses among those members, who deserve the right to vote, shall serve as Chairman in his stead.

(c) 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.

(d) The Head of State may alter the composition of the Commission.

Article 8

Responsibilities of the Commission

- (a) At its first meeting, the Commission shall adopt, by majority vote, bylaws establishing procedures for conducting its meetings and for making and recording decisions.
- (b) The Commission shall monitor the state of Investment in the country and shall propose to any modifications to this Law that it deems advisable.
- (c) The Commission shall establish the Office (AISA) for carrying out its administrative duties.
- (d) The Commission shall have authority to issue rules for the implementation of this Law and may instruct the Office to draft such rules for review and promulgation by the Commission. These rules may include, if necessary, provisions designed to create additional incentives for Investment in particular economic sectors or regions of Afghanistan whose development is of particular importance. Notwithstanding the foregoing, the Commission may not provide more attractive fiscal incentives than those provided here without the consent of the Ministry of Finance.
- (e) The Commission shall initially establish a threshold value (the "Threshold Value"). The Commission shall have the sole authority, after receiving advice from the Office, to recognize Registered Enterprises where Investment is reasonably expected to be greater than or equal to the Threshold Value. The Office shall have the authority to recognize Registered Enterprises where Investment is reasonably expected to be less than the Threshold Value, subject to Article 5 above. The Commission may, at its option, set up a procedure to hear appeals from decisions by the Office not to recognize a Registered

Enterprise.

- (f) The Commission shall have the sole authority to recognize Registered Enterprises in all other cases where, according to this Law, decisions to approve must be made by the Commission.

Article 9

- (a) The office shall review and register applications to the extent that it is so instructed by the commission.
- (b) The office shall establish a procedure, which shall be subject to the approval of the commission for the submission review and registration of application for domestic and foreign investment.
- (c) The office shall draft appropriate rule and procedures, which shall be submitted to the commission for approval and published.
- (d) The office shall keep records and monitor Registered Enterprises so as to ensure compliance with the provision of this law.
- (e) The office shall promote Afghanistan as an attractive place for investment.
- (f) The office shall assist investors in understanding and complying with provisions of the relevant law, rule and procedure.
- (g) The office shall facilitate for prospective foreign investors the process of procuring the various permits, approvals and authorizations necessary to implement the activities of a registered enterprise.
- (h) The office shall control and monitor provision of this law and any legal documents such as related rules and procedures.

Chapter Three

REGISTERED ENTERPRISES

Article 10

Registered Enterprises

- (a) Pursuant to the terms of this Law, the Commission or the Office, as appropriate, shall recognize business entities as Registered Enterprises upon receipt of an application in accordance with Article 12 below and in accordance with the provisions of Article 13 below. Records of all Investment in such Registered Enterprise shall be kept.
- (b) Registered Enterprises may be either:
 - (i) Business entities organized under Afghan law.

- (ii) Business entities organized under the laws of another nation, but registered to do Business in Afghanistan in accordance with the laws of Afghanistan.
- (c) Registered Enterprises may have ownership in any of the following forms:
 - (i) One hundred percent (100%) ownership by Investors.
 - (ii) A joint venture between the Government of Afghanistan and other Investors.

Article 11

Applying for Recognition as a Registered Enterprise

- (a) 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 promulgated by the Commission or by procedures issued by the Office and approved by the Commission
- (b) 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.
- (c) Deleted

Article 12

Recognition of Registered Enterprises

- (a) Within a fixed time period to be specified in rules promulgated by the Commission, the Commission or the Office, as appropriate, shall recognize as a Registered Enterprise any existing entity that meets the requirements for a Registered Enterprise established by this Law and has had an application submitted to the Office in accordance with the terms of this Law, unless
- (b) the application that was submitted for the entity did not comply with this Law or regulations or rules issued hereunder, or (ii) recognizing the entity as a Registered Enterprise would violate the terms of this Law or regulations or rules issued hereunder or any other law of Afghanistan, or (iii) approval has been denied in accordance with Article 5(c) above or regulations or rules issued thereunder.

If the Commission or Office has denied an application, it shall give an explanation in writing for the denial.

- (c) The applicant shall be permitted to re-apply after correcting the situation that gave rise to the denial pursuant to article 12 (b).
- (d) If the Commission or Office has not sent the response within the fixed period described

above, the entity shall be deemed recognized.

- (e) 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”).
- (f) 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.
- (g) An entity shall retain its status as a Registered Enterprise unless its registration is rescinded pursuant to Article 14 below.

Article 13

Continuing Reporting Requirements for Registered Enterprises

- (a) Extraordinary Reporting: 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.
- (b) Annual Reporting: Registered Enterprises 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 12 above, along with such other information as the Commission or the Office, as the case may be, deems appropriate.

Article 14

Loss of Registered Enterprise Status

- (a) The Commission or, if so instructed by the Commission, the Office may review and revoke an entity’s recognition as a Registered Enterprise.
- (b) Registered status shall only be revoked if (i) the entity is dissolved or otherwise ceases to exist or operate as a viable concern or (ii) the entity violates, in a substantial respect, applicable provisions of this Law.
- (c) Except for violations of Article 12(f) above, before an entity’s status as a Registered Enterprise is revoked,
- (d) Such Registered Enterprise will be informed of the violation and given three (3) months 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

Tax Concessions for Registered Enterprises

- (a) 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.
- (b) 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 Tax Concessions for Registered Enterprises

- (a) A Registered Enterprise shall be exempted from export duties and export taxes on products that it manufactures or assembles in Afghanistan to the extent permitted in the Customs Law. 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.
- (b) Deleted

Article 19

Access to Banking

- (a) A Registered Enterprise shall have the right to use banking facilities in Afghanistan: including the right to open accounts in foreign currency and to use these banks to receive

loans and credit in foreign currency from outside Afghanistan to advance its legitimate business.

- (b) A Registered Enterprise shall have the right to maintain 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

- (a) Notwithstanding any provision to the contrary in Afghan laws, a Registered Enterprise shall have the right, directly or indirectly, to employ foreign managerial and expert personnel of any nationality

- (a) A Registered Enterprise shall have the right to enter into service contracts with foreign Persons in order to conduct its business activities. The Registered Enterprise shall have the right to obtain work permits for such managerial and expert personnel, PROVIDED THAT employees of Registered Enterprises, regardless of nationality, shall be subject to and shall comply with the laws applicable in Afghanistan while present in Afghanistan.

- (b) Foreign Investors and Registered Enterprises 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

Notwithstanding any law or regulation in Afghanistan to the contrary, a Registered Enterprise shall not be barred by law from leasing real property for terms of up to fifty (50) years.

Chapter Five

TRANSFER OF CAPITAL AND PROFITS ASSOCIATED WITH FOREIGN INVESTMENT

Article 22

Transfer of Foreign Investment Capital

- (a) Notwithstanding any currency restrictions in Afghanistan to the contrary, a Foreign Investor shall be permitted to freely transfer out of Afghanistan without unreasonable

delay distributions received from a Registered Enterprise, to the extent that such distribution is treated as a distribution of capital under the Income Tax Law, in whatever foreign currency the Foreign Investor chooses, at the prevailing exchange rate for that currency, in an aggregate amount equal to the amount of such Foreign Investor's registered Foreign Investment.

- (b) The transfer of these funds may take place in one or more transactions as accorded in article 22 (a). PROVIDED.
- (c) Except as otherwise provided by law, each time a Foreign Investor transfers out of Afghanistan funds pursuant to Article 22(a) above, it must notify the Central Bank (or such other entity as the Law may designate to keep records of Foreign Investment in Afghanistan) whereupon, 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, at the prevailing exchange rate for that currency.

Article 24

Transfer of Principal and Proceeds on Foreign Loans

A Registered Enterprise shall be permitted freely to 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 at the prevailing exchange rate, provided that such Foreign Loan is entered into in accordance with all applicable Afghan Laws.

Chapter Six

SALE OF APPROVED ENTITIES; TRANSFER OF PROCEEDS

Article 25

Sale of Approved Entities

- (a) An investor in a Registered Enterprise, after settling his legal and financial obligations, shall have the right to sell or transfer all or a part of its ownership interest in a Registered Enterprise to domestic or foreign Persons or the Afghan Government, in its discretion, without approval of the office, or relevant agencies, PROVIDED THAT the purchaser's Investment in the Registered Enterprise shall not violate any applicable Afghan law.

- (b) The Commission shall have the right to void any sale made in violation of this provision.
- (c) The Office shall be notified 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 Approved Enterprises

After a sale or transfer of an interest in a Registered Enterprise, a Foreign Investor shall, subject to payment of any taxes applicable to such sale or transfer in Afghanistan, be permitted freely to transfer out of Afghanistan immediately, in the currency of the Investment at the prevailing exchange rate, the proceeds of any such sale.

Chapter Seven

EXPROPRIATION

Article 27

Expropriation

The state is authorized to expropriate an Investment or assets of a Registered Enterprise for an overriding public purpose. The decision to expropriate shall be based on a law permitting such expropriation and shall be made on a non-discriminatory basis.

Article 28

Compensation of Loss

- (a) 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 expropriatory 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 Capital, Compensation and Right to Dispute

- (a) 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 in the Income Tax Law.
- (b) Except as otherwise provided by Law, if the State expropriates the assets of a Registered Enterprise of which over [(25%)] of the ownership interest is held by Foreign Investors, such Foreign Investor or Registered Enterprise, as the case may be, shall have the right immediately to dispute the expropriation or the adequacy or fairness of the compensation therefor, pursuant to the provisions of Article 28 above.

Chapter Eight

DISPUTE RESOLUTION

Article 30

Dispute Resolution

- (a) Any raised dispute shall be resolved in reference to provisions of this legislation.
- (b) Except as otherwise provided below, an Investor or a Registered Enterprise may, in any contract or other agreement, specify:
 - I. any arbitration or other dispute resolution procedure,
 - II. that the place of such arbitration may be outside of Afghanistan, and
 - III. that the law of a jurisdiction other than Afghanistan may apply to the resolution of such dispute If such contract or other agreement so provides,
- (c) Any award resulting from such arbitration or other dispute resolution procedure shall be final, and shall be enforceable in accordance with the Arbitration Law upon application of any party to such arbitration or procedure.
- (d) Except as otherwise provided in subsection (e) below, 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 Article 28 (b) of this Law, the dispute shall be resolved according to applicable Afghan law.
- (e) 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”)
 - (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 subsection (a), consents to the submission of any such dispute to ICSID for settlement by arbitration in accordance with Article 25(1) of the Convention.
- (f) 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(c), 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

If anything provided in this legislation is in conflict with the provisions of any other law in relation to investment in Afghanistan, those specified in this law shall be preferred.

Article 32

Transitional Provisions

- (a) An entity which approved prior to execution of this law, as specifically provided in the income-tax law article 115, can avail itself of the concession accorded in “The private

domestic and foreign investment legislation that was published in official Gazette number[803] Dated 1381.

- (b) Any Investor or Approved Enterprise, which is registered as an Approved Enterprise under the domestic and foreign private investment law that was published in official Gazette number [803] Dated 1381, require to re-registered with the office within six (6) month from the date of execution of this law or such longer period as may be established in rules issued by the commission.
- (c) Any Approved Enterprise that is registered in accordance with article 32(b) is considered registered and Approved Enterprise and will be fully subject to this law.
- (d) Any Investor or Approved Enterprise, fails to re-register in accordance with articles 32(b) above, shall be ineligible to avail themselves of the rights and privileges accorded under this law.

(g) [Deleted]

Article 33

Execution and abrogation

Upon its execution by the Head of State, this legislation will be published in the Official Gazette and upon execution of this Law, private foreign and domestic investment legislation that was published in the Official Gazette number [803] will become null and void.

<Signatures>