



Afghanistan

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Guide To Doing Business Questionnaire: Member Firms Outside the USA

I. The Country At A Glance

A. What languages are spoken?

Afghanistan is a multi-lingual country with Pashto and Dari declared as official languages by the Constitution of Afghanistan, 2004, and both are widely spoken across the country. However, Uzbek, Turkmen, Balochi, Pashai, Nuristani, Hazara, and other languages are spoken in some provinces.

B. What is the exchange rate for the U.S. dollar, the Euro?

Approximately:

United States Dollar - AFN. 66.58 (Buying) and AFN. 66.78 (Selling)

Euro - AFN. 70.97 (Buying) and AFN. 71.51 (Selling)

C. Describe your country's geography, proximity to other countries and climate.

Location

Afghanistan is the seventh largest landlocked country situated in Southern Asia, north and west of Pakistan, east of Iran. The Hindu Kush Mountains that run northeast to southwest divide the Northern provinces from the rest of the country.

Geographic Coordinates

33 00 N, 65 00 E

Map References

Southern Asia

Area

Total: 652,626 sq km

Land: 652,626 sq km

Water: 0 sq km

Country comparison to the world: 41

Area - Comparative

Almost six times the size of Virginia; slightly smaller than Texas

Land Boundaries

Total: 5,987 km

border countries (6): Pakistan (2,670 km), Tajikistan (1,357 km), Iran (921 km), Turkmenistan (804 km), Uzbekistan (144 km) and China (91 km).

Longest River: Helmand River

Largest Inland Body of Water: Salma Dam, Kajaki Dam, Dahla Dam, Naghlu Dam, Band-e-Amir, Qargha



Coastline: 0 km (landlocked), hence no maritime claims.

Climate: Arid to semiarid; cold winters and hot summers

Terrain: Mostly rugged mountains; plains in north and southwest

Elevation

Mean elevation: 1,884 m

Elevation extremes: lowest point: Amu Darya 258 m.

Highest point: Noshaq 7,492 m. Highest peaks are found in the northern Wakhan Corridor.

D. Are there cultural influences or prohibitions on the way business is conducted?

Though culture influences the conduct of business in Afghanistan, however there are no readily identifiable cultural prohibitions in this respect.

E. Are there religious influences or prohibitions on the way business is conducted?

Pursuant to Article 03 of the Constitution of Afghanistan 2004, all laws shall be brought in conformity with the injunctions of the Islam, and no law shall be enacted which is repugnant to such injunctions. In view of this, all business activity must be in conformity with Islamic law which prohibits, inter alia, dealing in usury (interest).

However, the Commercial Code 1966, Law on Negotiable Instruments 2009, Banking Law 2015, to name a few only, contain numerous provisions which permit charging or paying interest under different titles such as tiktana, tikat-e-pooli, and mafad.

F. Explain your country's infrastructure. Be sure to explain which cities have airports, railroad systems, ports, and public transportation.

Afghanistan has 04 international airports currently, while the plans of constructing a fifth one are under consideration. The Kabul International Airport serves the population of Kabul and the surrounding areas; Mazar-e Sharif International Airport serves the needs of northern Afghanistan; Kandahar International Airport serves the southern parts of the country while Herat International Airport serves the population of western Afghanistan.

There are also about 16 regional domestic airports which are spread over the country. Some of these airports operate under visual flight rules.

Number of registered air carriers: 4

Inventory of registered aircraft operated by air carriers: 20

Annual passenger traffic on registered air carriers: 1,929,907

Annual freight traffic on registered air carriers: 33,102,038 mt-km (2015)

Civil aircraft registration country code prefix

YA (2016)



Airports

43 (2016)

Country comparison to the world: [91](#)

Airports – with paved runways

Total: 25

Over 3,047 m: 4

2,438 to 3,047 m: 4

1,524 to 2,437 m: 14

914 to 1,523 m: 2

Under 914 m: 1 (2013)

Airports – with unpaved runways

Total: 18

2,438 to 3,047 m: 1

1,524 to 2,437 m: 8

914 to 1,523 m: 4

Under 914 m: 5 (2016)

Heliports

11 (2013)

Airplanes

18 (2016)

Government: 6

Private: 12

Total Flights (Hours)

12468

Government: 6498

Private: 5970

Total Flights (thousand KMs)

14855

Government: 4101

Private: 10754

Pipelines

Gas 466 km (2013)

Total Existing Roads (km)

37090

Asphalted Roads: 10768

Sand roofed Roads: 25125

Others: 1091

Railway gauge: 106

Major Highways

- Kabul-Kandahar Highway (A-1)



- Kabul-Jalalabad Road (A-1) which links the national capital to the eastern city of Jalalabad in the Nangarhar Province leading to the Pakistani border at Torkham,
- Kabul-Gardez Highway
- Kabul-Herat Highway
- Kabul-Mazar Highway
- Kabul-Fayz Abad Highway
- Kandahar-Bamyan Highway
- Kandahar-Herat Highway
- Kandahar-Tarin Kot Highway
- Kandahar-Boldak Highway
- Kunduz-Khomri Highway
- Herat-Islam Qala Highway
- Herat-Mazar Highway
- Lashkar Gah-Gereshk Road, and
- Delaram-Zaranj Highway

Waterways

1,200 km; (chiefly Amu Darya, which handles vessels up to 500 DWT) (2011)

Country comparison to the world: 60

Ports and Terminals

River port(s): Khayr Abad, Sher Khan

The communication system

Erected Towers: 6678 (2016)

Total Fixed line and Non-Fixed Line Phones (Line): 357,427

DIGF: 108,460

CDMA: 295,078

GSM Subscribers: 24,154,608

GSM Active Subscribers: 18,791,237

3G Services Subscribers: 1,859,976

Fixed Telephone Lines: 357,427

Telecom Base Stations: 6,319

Mobile Phones (number): 27,287,679

Internet users: 2.69 Million (2015)

Percentage of population: 8.3%

Inbound internet traffic: 15 gbps (2014)

Population Coverage: over 89%

Internet country code: .af

Phone country code: 0093

Investment in US\$: 2,252,686,684.64

TV Channels: 101 (2016) including 3 channels broadcasting from outside Afghanistan.

Channels by Cities:

- Kabul 36
- Herat 18
- Mazar-i-Sharif 11



- Kandahar 9
- Jalalabad 8
- Takhar 7
- Kunduz 6
- Khost 6

Radio Stations: 175 (2011) covering 100% of the population

Following is a list of cities with airports and particulars of each one of them:

City Served	Province	ICAO	IATA	Airport Name	Runway	Elev. (m)
International Airports						
Kabul	Kabul	OAKB	KBL	Hamid Karzai International Airport	11/29: 3511 × 45 m, Concrete	1791
Herat	Herat	OAGR	HEA	Herat International Airport	01/19: 3014 × 45 m, Asphalt	1003
Kandahar	Kandahar	OAKN	KDH	Kandahar International Airport	05/23: 3200 × 55 m, Asphalt	1017
Mazar-e-Sharif	Balkh	OAMS	MZR	Mazar-e-Sharif International Airport	06/24: 2998 × 45 m, Asphalt	392
Major Domestic Airports						
Ghazni	Ghazni	OAGN	GZI	Ghazni Aiport	15/33: 305 x ? m (being expanded)	2183
Jalalabad	Nangahar	OAJL	JAA	Jalalabad Airport	13/31: 1975 × 27 m, Asphalt	561
Kunduz	Kunduz	OAUZ	UND	Kunduz Airport	11/29: 1996 m x 45 m, Asphalt	444
Regional Domestic Airports						



Bamyan	Bamyan	OABN	BIN	Bamyan Airport	07/25: 2200 × ? m, Asphalt	2565
Chaghcharan	Ghor	OACC	CCN	Chaghcharan Aiport	06/24: 2000 × 30 m, Asphalt	2278
Darwaz	Badakhshan	OADZ	DAZ	Darwaz Airport	09/27: 654 × 32 m, Gravel	1533
Farah	Farah	OAFR	FAH	Farah Airport	15/33: 1836 × 34 m, Gravel	674
Fayzabad	Badakhshan	OAFZ	FBD	Fayzabad Airport	18/36: 1844 × 34 m, <u>PSP</u>	1171
Gardez	Paktia	OAGZ	GRG	Gardez Airport	03/21: 1664 x 53, Gravel	2374
Khost	Khost	OAKS	KHT	Khost Airfield	06/24: 1859 × 27 m, Gravel	1151
Khwahan	Badakhshan	OAHN	KWH	Khwahan Airport	??/?: 671 × ? m, Gravel	980
Kiran wa Munjan	Badakhshan	OARZ	KUR	Razer Airport	08/26: 884 × 31 m, Gravel	2520
Lashkar Gah (Bost)	Helmand	OABT	BST	Bost Airport	01/19: 2302 × 30 m, Asphalt	774
Maymana	Faryab	OAMN	MMZ	Maymana Airport	14/32: 2000 × 30 m, Asphalt	838
Nili	Daykundi	OANL	-	Nili Aiport	18/36: 732 × 18 m, Gravel	2233
Sardeh Band	Ghazni	OADS	SBF	Sardeh Band Airport	02/20: 2104 m, Gravel	2125



Qalai Naw	Badghis	O AQN	LQN	Qala-i-Naw Airport	04/22: 1999 × 25 m, Concrete	905
Sheberghan	Jawzan	O ASG	-	Sheberghan Airfield	06L/24R: 2621 × 24, Asphalt 06R/24L: 2115 × 30,	321
Shighnan	Badakhshan	O ASN	SGA	Sheghnan Airport	16/34: 803 × 30 m, Gravel	2042
Taloqan	Takhar	O ATQ	TQN	Taloqan Airport	16/34: 1574 × 35 m, Gravel	816
Tarin Kot	Urozgan	O ATN	TII	Tarin Kot Airport	12/30: 2225 × 27 m, Concrete	1365
Zaranj	Nimruz	O AZJ	ZAJ	Zaranj Airport	16/34: 2500 × 60 m, Gravel	485
	Military Airports					
Bagram	Parwan	O AIX	OAI	Bagram Air Base	03/21: 3602 × 46 m, Concrete	1484
Baraki Barak	Logar	O ASH	OAA	Foward Operating Base Shank	16L/34R: 2002 × 27, Concrete 16R/34L: 610 × 23, Concrete	2016
Girishk	Helmand	O AZI	OAZ	Camp Shorabak (Camp Bastion)	01/19: 3500 × 46 m, Concrete/Asphalt	888
Khost	Khost	O ASL	OLR	<u>Forward Operating Base Salerno</u>	09/27: 1219 × 27 m, Gravel	1168
Lashkar Gah	Helmand	O ADY	DWR	Dwyer Airport	05/23: 2439 × 36 m, Concrete	737



Qalat	Zabul	OAQA	-	Qalat Airport	02/20: 1501 x 34, Gravel	1641
Sharana	Paktika	OASA	OAS	Sharana Airstrip	14/32: 1300 x 19, Asphalt	2266
Shin Dand	Herat	OASD	OAH	Shin Dand Airbase	18/36: 2417 x 28 m, Concrete	1152

Major ports of Afghanistan are as follow:

- Torkham Port
- Shir Khan Port
- Hairatan Port
- Aqina Port
- Spin Boldak Port
- Torghundi Port
- Islam Qala Port
- Ghulam Khan Port
- Landi Kotal Port
- Zarani Port
- Andkhoi Port

G. Describe the public services – i.e. water, electricity, gas. Are they publicly or privately owned?

Hydropower is the primary source of energy in Afghanistan. More than three decades of war and instability have severely damaged the energy infrastructure in the country. As of 2012, approximately 33% of Afghan population had access to electricity and in the capital Kabul, 70% have access to reliable 24hr electricity. Afghanistan generates around 600 megawatts (MW) of electricity mainly from hydropower followed by fossil fuel and solar.

It is estimated by the Da Afghanistan Breshna Shirkat (“DABS”) officials that the country will require almost 3,000 MW of electricity by the year 2020. The Afghan National Development Strategy had identified alternative energy, such as wind and solar energy, as a high value power source to develop. Implementing the ANDS, alternative energy projects were tested in some part of the country. These included wind turbines in Panjshir Province, micro hydro dams in Badakhshan, and family-size biogas digesters throughout the country but were not expanded to other parts of Afghanistan.

Currently, Afghanistan relies heavily on imported electricity to meet the demand. Large parts of Kabul, Mazar-e-Sharif and Pul-e-Khumri have 24-hour power supply thanks to the North East Power System (NEPS), which imports up to 300 MW from Uzbekistan throughout the year, supplemented by up to 300 MW from Tajikistan during the summer. Currently total



installed transmission lines carrying capacity is: 326MW from Uzbekistan, 164 MW from Iran, 433 MW from Tajikistan and 77 MW from Turkmenistan.¹

It is important to note that with a per capita consumption average of 154 kWh, Afghanistan retains one of the lowest rates of access and usage of electricity in the world as compared to South Asia average of 667 kWh per capita per year and the average electricity usage per person world-wide of 3,100 kWh (based on 2012 data).

Although only about 30 percent of Afghanistan's population is connected to the national grid, it is in fact an achievement when observed against 06 percent of connectivity in the year 2002. Afghanistan's power utility DABS has grown its customer base steadily, increasing by an additional 6 percent every year. In 2015, Afghanistan's peak demand was 1,500 MW, and overall consumption was about 5,000 GWh.

Afghanistan benefits from cheap imported power that in 2015 met about 55 percent of Afghanistan's demand, with the remainder supplied from domestic hydropower and thermal plants. The reliability of the grid, particularly in Kabul, has improved significantly over the past few years. Nevertheless, load shedding and outages are still sufficiently common that few have given up their private generators. A large part of the population also owns small solar devices, such as solar lanterns, mainly for lighting and cell phone charging. The NRVA (2013/14) indicates that 46 per-cent of Afghan households own a solar device and 58 percent in rural areas.

Low connectivity to the grid conceals a vast difference between rural and urban access. While over 89 percent of the population in large urban areas like Kabul, Kandahar, Herat, and Mazar-e-Sharif have access to grid electricity, less than 11 percent of the rural population has access to grid-connected power. About 77 percent of the Afghan population lives in rural areas.²

The statistics regarding electricity are as follow:

Population without electricity: 18,999,254

Electrification - total population: 43%

Electrification - urban areas: 83%

Electrification - rural areas: 32% (2012)

Electricity – Production

1 billion kWh (2014 est.)

Country comparison to the world: 153

Electricity – consumption

4.7 billion kWh (2014 est.)

Country comparison to the world: 126

Electricity – Imports

3.7 billion kWh (2014 est.)

Country comparison to the world: 53

¹ <http://www.worldbank.org/en/country/afghanistan/overview>

² <http://www.worldbank.org/en/country/afghanistan/overview>



Electricity – installed generating capacity

600,000 kW (2014 est.)

Country comparison to the world: 135

Electricity – from fossil fuels

35.4% of total installed capacity (2012 est.)

Country comparison to the world: 169

Electricity – from hydroelectric plants

64.4% of total installed capacity (2012 est.)

Country comparison to the world: 33

Regarding water supply, Policy setting and the channeling of resources provided by external donors for water supply investments is the responsibility of at least five Afghan Ministries which are:

- The Ministry of Urban Development and Housing (“MUDH”) which is responsible for urban water supply;
- The Ministry of Rural Rehabilitation and Development (“MRRD”) which is responsible for rural water supply;
- The Ministry of Water and Energy (MoWE”) which is responsible for Water Resource Management;
- The Ministry of Finance (“MoF”) which is responsible for providing funds for water projects; and
- The Ministry of Public Health (“MoPH”) responsible for undertaking programs of training women about the importance of hygiene and clean water in preventing diseases.

Access to an improved water source in Afghanistan is among the lowest in the world. According to National Risk and Vulnerability Survey aka Afghanistan Living Condition Survey conducted by UNDP, only 42% of rural dwellers had access to an improved water source as of 2010. About three quarters of Afghans live in rural areas. In urban areas, an estimated 78% had access to an improved water source.

It is important to note here that access to an ‘improve’ water source does not mean that the water is safe to drink. For example, protected shallow wells in urban areas are often contaminated with bacteria. Piped water supply can also be contaminated. Households without access to an improved source take water from streams and rivers, open wells and unprotected springs, all of which are also often polluted. In rural areas women and girls walk long distances to fetch water.

As far as ownership of these resources, and others, is concerned, kindly note that historically, public services were provided by the State. Even currently, the Constitution of Afghanistan asserts that health, education, higher education and other needs of life should be provided by the State. However, post Taliban regime; attempts are being made to persuade the government permit private investment in areas that are dominated by the state. In this effort, Public-Private Partnership law was passed in 2016 and currently some of the projects are being designed to attract private investment into areas usually controlled by government.

The electricity sector of Afghanistan is currently dominated by two main players: the Ministry of Energy and Water (“MEW”) which has overall responsibility for the sector, and Da’



Afghanistan Breshna Sherkat (“DABS”), the vertically-integrated, public sector state-owned utility, which is engaged in the generation, transmission and distribution of electric power as well as billing and invoicing the end consumers. DABS, established in 2008 as a 100% state-owned corporation, will be the counter party to the power purchase agreement as the power purchaser / off-taker.

As far the gas sector is concerned, gas is owned by the state of Afghanistan and is managed by Afghan Gas Enterprise (“AGE”), a state owned enterprise within the Ministry of Mines and Petroleum (“MOMP”), and subject to the control of MOMP.

Article 2 of the Articles of Incorporation of the Afghan Gas Enterprise (“Afghan Gas AOI”) provides that AGE shall have a legal personality as a for-profit enterprise (state owned enterprise) within the Ministry of Mines.

The objectives of AGE include performance of production and economic matters in accordance with the approved plan for extraction and transmission of gas, enhancement of extraction and transmission capacities, sale of spare parts, machines, and its products to fulfil the requirements of its customers in accordance with contracts, sale of products of AGE etc.

Though Afghanistan owns gas reserves, it is not provided to household for consumption and is only sold in the open market. The statistics show that:

Natural gas – Production

159.6 million cu m (2014 est.)

Country comparison to the world: 79

Natural gas – consumption

159.6 million cu m (2014 est.)

Country comparison to the world: **106**

Natural gas – exports

0 cu m (2013 est.)

Country comparison to the world: 54

Natural gas – imports

0 cu m (2013 est.)

Country comparison to the world: **152**

Natural gas – proved reserves

49.55 billion cu m (1 January 2016 es)

Country comparison to the world: **64**

II. General Considerations

A. Investment policies

1. Does the country generally welcome investment? Are there governmental or private agencies devoted to the promotion of investment?

Yes. Afghanistan Investment Support Agency (“AISA”) was established by the Karzai regime solely for the purpose of attracting and supporting local and international investment. This



step was taken pursuant to Article 10 of the Constitution of Afghanistan 2004 which provides that “the State shall encourage and protect private investments and enterprises based on the market economy and guarantee their protection in accordance with provisions of the law”. However, due to political issues between Dr. Ashraf Ghani, President of Afghanistan, and Dr. Abdullah Abdullah, the Chief Executive of Afghanistan, AISA was merged into the Ministry of Commerce and Industries (“MoCI”) and is scheduled to close its operation at the end of December, 2016.

Currently, Afghanistan Central Business Registry (“ACBR”) at the MoCI has been delegated the functions of AISA and happens to be the government agency responsible for promotion and protection of investment in Afghanistan. ACBR assists companies planning to invest in Afghanistan and/or intending to expand their operations in the country.

1. What is the rate of inflation?

Afghanistan Inflation Rate Forecasts are projected using an autoregressive integrated moving average (ARIMA) model calibrated using expectations of analysts. Normally, the past behavior of Inflation Rate in the country is modeled using vast amounts of previous data and the same is adjusted with the coefficients of the econometric model by taking into account the analyst assessments and future expectations.

In view of the above, the IR is expected as follows:

Afghanistan Prices	Q4/16	Q1/17	Q2/17	Q3/17	2020
Inflation rate	6.69	7.1	6.8	6.1	5.3
Core Inflation Rate	5.1	5.11	5.1	5.11	5.11
Inflation Rate Mom	0.6	0.1	0.1	0.3	0.3
Food Inflation	8.18	8.13	8.12	8.11	8.11
Consumer Price Index Cpi	133	136	124	128	130

3. Explain any sector exceptions, incentives or restrictions on foreign investment?

Afghanistan is deficient in electricity; it would welcome investment in power generation especially in developing coal reserves for such purposes. Other attractive areas of investment include telecom, natural resources, steel, real-estate, construction and electronics.

Afghanistan, with its rich endowment of raw materials and arable land, vast mineral resources, entrepreneurial skills, abundant low-cost labor and huge domestic and foreign market, offers competitive advantage for foreign private investment. Afghanistan offers opportunities and wide scope for investments in import substitution and export oriented agro-based products, electronics and high tech industries. Its sufficiently developed technological and industrial base will be helpful in further fuelling of the industrial expansion of the country.

All sectors and activities are open for foreign investment unless specifically prohibited or restricted for reasons of national security and public safety.

The Private Investment Law as well Public-Private Partnership Law specifically prohibit discrimination against foreign business interests, and all natural or legal persons, foreign or domestic, may invest in all sectors of the economy with certain exceptions.

The prohibited areas are:



- a. Investment in nuclear power/energy,
- b. Gambling,
- c. Production of narcotics or other intoxicants.

In addition to these prohibitions, certain sectors require permission or license from the relevant government entity to invest. These include:

- a. Manufacture/sale of arms, ammunitions and explosives,
- b. Non-banking financial activities,
- c. Insurance,
- d. Investment in natural resources (including forestry),
- e. Investment 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), and
- f. Minting and printing coins and currency

Regarding financial and non-financial incentives; the Minister of Finance in 2013 announced a package of incentives to attract foreign investment into Afghanistan. The goal of the policy was to support investment in different sectors. It was designed to apply to both foreign and domestic investors in the sectors mentioned in the package and to existing and new investors. While it has been approved, as yet it has neither been implemented nor annulled. Investors in industry, construction, export, agriculture and mining are required to contact the MoF for the status of the following incentives which may be available:

- a. Provision of government owned lands free of charge for industrialists who invest at least US\$ 1 million;
- b. The purchase of lands in industrial parks by way of installments over a 10-year period;
- c. 30-year lease on unused government owned lands and factories with first five (5) years of rent being free;
- d. 10-year exemption on all taxes (except those levied by a municipality);
- e. Low-interest loans (subject to the establishment of a fund to provide these);
- f. Exemption of machinery from customs duty and a 1% duty on raw materials; and
- g. Privileged access to government-owned lands in municipal areas.

4. Describe de facto restrictions on investment, if any, such as bureaucratic discretion.

N/A

5. What are the sizes of the different markets?

No data is available and the experts are unable to provide any insights on the size of different markets mostly for the reason that 80% of the Afghan economy is black economy.

6. What types of businesses are conducted in the country?



All types of businesses are conducted in Afghanistan including corporate, banking and finance, manufacturing, services.

B. Diplomatic Relations

1. Explain any established diplomatic relations your country may have.

Afghanistan has established diplomatic relations with all countries of the world except Israel which the Government of Afghanistan has not recognized.

2. Give addresses, and contact information for the embassies or consulates in your country.

US Embassy

Address: Great Massoud Square

City: Kabul

Phone: (00 93) (20) 230-0436

Fax: (00 93) (20) 230-1364

Email: amirism@state.gov

Website: <http://usembassy.state.gov/afghanistan>

UK Embassy

Address: Road 15, Wazir Akbar Khan

City: Kabul

Phone: (0093) (0) 70 102 000

Fax: (93) (0) 70 102 250

Email: britishembassy.kabul@fco.gov.uk

Website: britishembassy.gov.uk/Afghanistan

Embassy of Belgium

Address: Road#15, Street #2 House #40, Wazir Akbar khan

City: Kabul

Phone: +93 (0)20 210 2534

Fax: +93 (0)70 200 135

Email: Kabul@diplobel.org

Website: <http://www.diplomatie.be/kabul>

Embassy of Islamic Republic of Iran

Address: Shirpur Square

City: Kabul

Phone: +93 (0)20 210 1393/4

Consular Section: 202101391-97

Homepage: kabul.mfa.ir

E-mail: iranemb.kbl@mfa.gov.ir

Embassy of Canada

Address: road # 15, House # 256, Wazir Akbar khan

City: Kabul

Phone: +93 (0)70 294 281



Fax: canadakabul@yahoo.com

Embassy of China

Address: Shah Mahmood Watt
City: Kabul
Phone: +93 (0)20 210 2548/9
Email: chinaemb_ae@mfa.gov.cn

Agency of Denmark Embassy

Address: Road#13, Street# 1, House# 36, Wazir Akbar Khan
City: Kabul
Phone: +93 (0)70 280 339
Email: kabul@umweb.dk

Agency of Fenland Embassy

Address: Road#10, Street#1, House # 39, Wazir akbar khan
City: Kabul
Phone: +93 (0)70 284 034
Fax: chancellerie.kabul-amba@diplomatie.fr

Embassy of France

Address: Shirpur Road, Next to UNAMA Office
City: Kabul
Phone: +93(0)799215053 / +93(0)70284032
Email: chancellerie.kabul-amba@diplomatie.fr
Website: Ambafrance-af.org/

Embassy of Germany

Address: Zanbaq Square, Wazir Akbar Khan
City: Kabul
Phone: +93 (0)20 210 1512 / 14 / 15

Embassy of India

Address: Malali Watt, shahr-e-Naw
City: Kabul
Phone: 00873-763095560 SatPhpne
Email: indembkabul@nic.in

Embassy of Indonesia

Address: Malali Watt, Shahr-e-Naw
City: Kabul
Phone: +93 (0)20 220 1066
Cell: +93 (0)70 284 815

Embassy of Italy

Address: Great Massoud Square
City: Kabul
Phone: +93 (0)20 210 3144
Email: ambasciata.kabul@esteri.it



Embassy of Japan

Address: Road# 15, Wazir Akbar Khan
City: Kabul
Phone: +93 (0)79 332 197 (+ 9370224451)
Email: ejafg1@web-sat.com

Embassy of the Republic of Kyrgyzstan

Address: Road # 10, House# 10, Wazir Akbar Khan
City: Kabul
Phone: +93-70284296, +93-70501505
Email: sher60@mail.ru

Embassy of Holland

Address: House# 2&3 street 4, Ansari square, Shahr-e-Naw
City: Kabul
Phone: 00-93-20-2201599
Fax: 00-93-70-286845
Email: 00-93-20-2201601
Website: KAB@minbuza.nl

Embassy of the Republic of Korea

Address: Road# 10, House # 34, Wazir Akbar Khan
City: Kabul
Phone: +93(0) 202 102 481
Fax: +93(0) 202 102 725
Emergency:+937002-0189, 93707356492
E-Mail: kabul@mofa.go.kr

Embassy of Norway

Address: Road # 15, Street # 4, House # 3, Wazir Akbar Khan
City: Kabul
Phone: +93 (020) 2300899
Satellite: +870 762 596 925
Satellite: +870 600 061 156
Website: emb.kabul@mfa.no

Embassy of the Islamic Republic of Pakistan

Address: Kart-e-Parwan,
City: Kabul
Phone: +93 (020) 2202745-46
Fax: +93 (020) 2202871
Emails: parepkabul@mofa.gov.pk / parepkabul@yahoo.com

Embassy of the Russian Federation

Address: Dar-ul-Aman Road, Ayub Khan Mena,
City: Kabul
Telephones: Digital: 2500044, 2500010 (Consular Section)
Fax: +870 762 743 497
Email: rusembafg@yandex.ru
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3. Are there prohibitions or restrictions on certain business dealings with the country?

There are certain restrictions, which vary from industry to industry and the subject matter of the business in question.

4. Explain any travel restrictions to or within the country?

Article 39 of the Constitution of Afghanistan guarantees the fundamental right of freedom of movement by asserting that “every Afghan shall have the right to travel and settle in any part of the country, except in areas forbidden by law. Every Afghan shall have the right to travel outside Afghanistan and return, according to the provisions of the law”. This elucidates that only Afghans enjoy the right of entry into Afghanistan and movement therein.

As far as foreigners are concerned, they can enter Afghanistan if they have sufficient legal documents to warrant their entry into the country provided that their name does not appear on the list of blacklisted individuals. The courts as well the government may declare some individuals, legal or natural, to be on the exit control list.

Once inside Afghanistan, foreigners are not free to move in the country and are warned to leave their place of work or residence without informing their hosts and the relevant authorities including Police or the entity on whose invitation they happen to be in Afghanistan.

For those foreigners who work in Afghanistan, they are required to obtain a work visa and work permit to be able to work in Afghanistan, unless there is a visa abolition agreement in place between Afghanistan and the employee's home country. An application must be submitted to the ACBR. The process takes two weeks and the processing fee is US\$30 and the visa fee for one year US\$650.

Be advised that Afghanistan does not provide visa on arrival to foreign nationals, therefore, those intending to visit Afghanistan must obtain a visa from the Afghan Mission in their country of origin or any other Mission they can have access to.

C. Government

1. Explain your country’s election system and schedule. Is there an anticipated change in the present government?

System of Government

Afghanistan is a democratic, Presidential, and centralized republic. Constitutionally, elections to the Provincial and National Assemblies are held every five (5) years, but due to political instability and problems in the National Unity Government, the current parliament has entered its seventh year.

The executive branch of Afghanistan’s government is headed by the President who heads the Cabinet as well. The legislative branch is bicameral, consisting of a 102-member Senate



(Mashrano Jirga) and 250-member National Assembly (Wolasi Jirga). The judicial branch is comprised of the Supreme Court of Afghanistan, the Appeal Courts and the Primary Courts.

We do not anticipate any change in the present government, although there are voices raised for introducing federal system in Afghanistan and creation a seat of Prime Minister in the system.

Electoral Procedure

Regarding the legal Framework, the constitution of Afghanistan, though enshrining the internationally recognized principles of a “free, universal, secret, and direct” vote for elected institutions, appears to be a flawed document when it comes to many of the details of the electoral process in the country.

According to the constitution, the term of office for the President expires on May 21st of the fifth year in office, and that of the Wolasi Jirga ends on 21st June of the fifth year following their elections. Elections for these bodies must be conducted thirty to sixty days prior to these dates. This was not the case in 2014 as Hamid Karzai, the then President of Afghanistan, remained in office for months over the date mentioned, while the parliament has entered seventh year of their term in the Parliament.

THE LEGAL FRAMEWOK

1. The Constitution of the Islamic Republic of Afghanistan 2004

The Constitution contains provisions relating to elections, including the requirement that elections to be held on specific dates to fill the following offices:

a. The Presidential Elections

The President shall be the head of state of the Islamic Republic of Afghanistan, executing his functions in the executive, legislative and judiciary in compliance with provisions of the Constitution of Afghanistan. The President shall have two Vice-Presidents, first and second. The Presidential candidates shall declare to the nation names of both the VPs. In case of absence, resignation or death of the President, the first Vice-President shall hold the office and act in accordance with the provisions of the Constitution. In the absence of the first Vice-President, the second Vice-President shall hold the office of President and act in accordance with the provisions of this Constitution.

By virtue of Article 61 of the Constitution, the President shall be elected by receiving more than fifty (51%) percent of votes cast by voter through free, general, secret and direct voting. The Presidential term shall expire on 1st of *Jawza* of the fifth year after elections. Elections for the new President shall be held within thirty to sixty days prior to the end of the presidential term.

If in the first round none of the candidates gets more than fifty (51%) percent of the votes, elections for the second round shall be held within two weeks from the date election results are proclaimed, and, in this round, only two candidates who have received the highest number of votes in the first round shall participate. In case one of the presidential candidates dies during the first or second round of voting or after elections, but prior to the declaration of results, re-election shall be held according to provisions of the law.



In light of this Article, it is important for a candidate to receive fifty percent of the total votes casted, in case none of the candidates obtains 50+1% of the total votes casted, the elections will go to the second round. In this round, the candidate with simple majority will become the President.

An individual must have the following traits to be eligible for the post of President of Afghanistan:

- 1) Shall be a citizen of Afghanistan, Muslim, born of Afghan parents and shall not be a citizen of another country;
- 2) Shall not be less than forty (40) years old the day of candidacy;
- 3) Shall not have been convicted of crimes against humanity, a criminal act or deprivation of civil rights by court.

It is also important to highlight here that no individual shall be elected for more than two terms as President or Vice-President.

The above mentioned conditions must be fulfilled by a person who intends to contest for the office of the President of Afghanistan.

b. The Parliament of Afghanistan and Parliamentary Elections

The National Assembly of the Islamic Republic of Afghanistan, as the highest legislative body, shall manifest the will of its people as well as represent the entire nation. Every member of the Assembly, when voting, shall respect the common interests and benefits of the people of Afghanistan (Article 81 of the Constitution of Afghanistan 2004). No individual can be a member of both the houses at the same time (Article 82 of the Constitution).

The National Assembly (Milli Shura) consists of the Mashrano Jirga (or House of Elders, the upper house of the Parliament) and the Wolasi Jirga (or House of People, the lower house of the Parliament).

Members of the House of People shall be elected by the people through free, general, secret and direct balloting. The work period of the House of People shall terminate, after the disclosure of the results of the elections, on the 1st of Saratan (21st June) of the fifth year and the new parliament shall commence work. The elections for members of the House of People shall be held 30-60 days prior to the expiration of the term of the House of People.

The number of the members of the House of People shall be proportionate to the population of each constituency, not exceeding the maximum of two hundred fifty (250) individuals. Electoral constituencies as well as other related issues shall be determined by the Electoral Law. This law shall ensure general and fair representation for all the people of the country, and proportionate to the population of every province, on average, at least two females from each province shall be have membership of the House of People (Article 83 of the Constitution).

As far as members of the Upper House are concerned, they occupy their seats based on the following formula:

1. From amongst each provincial council members, one individual shall be elected by the respective council for a four year term;



2. From amongst district councils of each province, one individual, elected by the respective councils, for a three year term;
3. The remaining one third of the members shall be appointed by the President, for a five year term, from amongst experts and experienced personalities, including two members from amongst the impaired and handicapped, as well as two from nomads.

The President shall appoint fifty (51%) percent of these individuals from amongst women. The individual selected as a member of the House of Elders shall lose membership to the related Council, and, another individual shall be appointed in accordance with the provisions of the law (Article 84 of the Constitution).

Each of the two houses of the National Assembly, at the commencement of their work period, shall elect one member as president for the term of the legislature, and two members as first and second deputies and two members as secretary and assistant secretary for a period of one year. These individuals shall form the administrative teams of the House of People as well as House of Elders. Duties of the administrative teams shall be determined by the Regulations on Internal Duties of each house (Article 87 of the Constitution).

Elections credentials of members of the National Assembly shall be reviewed by the Independent Elections Commission ("IEC") in accordance with the provisions of the law. The individual who becomes a candidate or appointed to the membership of the National Assembly, in addition to the completion of the conditions of the election, shall have the following qualifications:

1. Shall be a citizen of Afghanistan or shall have obtained citizenship of the state of Afghanistan at least ten years prior to candidacy date or appointment;
2. Shall not have been convicted of crimes against humanity, as well as a crime or deprivation from civil rights by a court;
3. Shall have completed twenty-five years of age on candidacy day for the House of People, and thirty-five years on candidacy day or appointment for the House of Elders. (Articles 85 and 86 of the Constitution).

2. The Electoral Law 2016

The Electoral Law governs Presidential, National Assembly, Provincial Council and District Council, Municipality Councils and mayoral elections. It was drafted in early 2004 by international advisors to the Joint Electoral Management Body in consultation with the Office of the President. Prior to the 2005 National Assembly and Provincial Council elections, a number of amendments were made to the Electoral Law, chief among which was the creation of an independent Electoral Complaints Commission (ECC) to respond to allegations of fraud and other misconduct. It's worth mentioning that new Electoral law is now implemented which is enforced through presidential decree with a number of amendments to the previous law in 2016.

3. The Municipal Election Law 2003

The Interim Government of Afghanistan, pursuant to its authority under the Bonn Agreement, issued a Municipal Election Law which provides for the election of municipal councils and mayors under the supervision of an electoral management body drawn from among government ministries. However, shortly thereafter, Afghanistan adopted the Constitution, which among other things, requires that elections be administered by an Independent



Electoral Commission. For this reason, although it remains in force, the Municipal Election Law cannot be implemented in its current form.

4. Presidential Decrees and Orders

The President has issued a number of stand-alone Decrees and Orders to address specific election-related issues. For example some of them are: Presidential Decree No. 39 on the Establishment of the Interim Afghan Electoral Commission of 26 July 2003, which establishes the IEC and appointed its first members. Also defines in very general terms the role of the IEC during the 2004 election; b) Presidential Decree No. 40 on the Establishment of the Joint Electoral Management Body of 26 July 2003, which establishes the JEMB and describes its membership and powers during the 2004 general election; c) Presidential Decree No. 110 on the Basics of Holding Elections During the Transitional Period of 18 February 2004, which describes in detail the role of the Joint Electoral Management Body and its Secretariat in elections held during the Transitional period.

Because of the difficulty in confirming voter registration rolls and determining district boundaries, formal elections for the 407 district councils have not been held to date. Each district boundary is likely to be contentious because it will inevitably separate tribes and clans. Until there are elected district councils, two-thirds of the Meshrano Jirga is selected by the provincial councils for four-year terms. The lower house is mandated to be at least 28% female (68 women), an average of 2 for each of the 34 provinces.

2. Is the present government stable? Briefly explain your country's political history in the last decade.

Among many things that Afghanistan lacks, political stability is probably the most important of all. Currently, the government is shared by Dr. Muhammad Ashraf Ghani in his capacity as the President of Afghanistan and Dr. Abdullah Abdullah as the Chief Executive of Afghanistan. It is important to note that the seat of Chief Executive is not found in the constitution of Afghanistan or other legal instruments. Instead, it was 'created' to put an end to dispute over the winner of elections in 2014.

Both Dr. Ghani and Dr. Abdullah claimed victory, whereas the latter threatened to overthrow the regime and claim power on any cost. He claimed that some elements were involved in electoral fraud. This caused a sense of fear among the Afghan population and the international community, leading to visit by US Foreign Secretary John Kerry to Afghanistan and signature of a document for establishing a National Unity Government accommodating both the parties.

Since then, the political situation has remained in instable and decisions are not taken properly because of the frequent opposition of the parties to the decision taken by the other. This had led to a growing mistrust between the masses most importantly, the youth of the country who form around 60% of the population in Afghanistan. Corruption is on the rise, service delivery by the government is worst, unemployment is on the hike despite the fact that parliament was told by the Ministry of Labor and Social Affairs that almost 25,000 posts remain vacant in the system. The flow of economic migrants to Europe is triggered by the inefficiency of the government and a bleak future that the Afghan youth seems to face.



Everything, however, has not take place in the last two years; Karzai's regime (2001-2014) has sowed the seeds of everything that Afghanistan has to face today. He was a person of patronage who commended an academician earning a good name for the country in the same manner he appreciated a warlord or a criminal. He brought together people from every segment of life and made them have a piece of cake in the system. He was not serious about building the infrastructure or provision of basic rights to the people. Mr. Karzai openly admitted receiving cash from Iran and had unpredictable relations with Pakistan whom he once called a brother and vowed to support in case someone attacked it, but also called it an enemy who wanted to annihilate the Afghan nation.

He asked those in power to "steal" the money and do corruption if they want, but requested them not to take the embezzled money out of Afghanistan and to invest it inside the country.

3. Explain your country's judicial system. Be sure to answer the following questions:

- **Is the judicial system generally perceived to be impartial?**

Contrary to the popular belief, Afghanistan is not a full-fledge Civil Law country. Instead, the legal system of Afghanistan is a mixture of Civil Law and Islamic Law, with added flavors of Common Law and customary practices.

The country has three tier Court System: the Supreme Court of Afghanistan (Stara Mahkama), the Appellate Courts and the Primary Courts. District Courts, having civil and criminal jurisdiction, function in every district, 413 in total, of the 34 provinces of Afghanistan. A High Court is also established in each province of the country to exercise appellate jurisdiction over the lower courts. The Supreme Court is the Apex Court of the land, exercising original, appellate and advisory jurisdiction. It is the Court of the final appeal and therefore the final arbiter of law and the Constitution of Afghanistan.

Despite a judicial system that has excess to the village level of the country, ordinary people prefer to refer their cases customary Jirga (informal arbitration) system or to the courts established by Taliban, for three reasons: (1) the government courts are not impartial and often than not decide cases in favor of the rich and powerful, (2) The judiciary is corrupt to an extent that, at times, the bribe demanded by the judges is more than the value of subject matter of the case, and (3) The courts are not able to get their decrees enforced even in Kabul.

These reasons have persuaded the common people to refer their cases to the primary and appellate courts of Taliban across Afghanistan and in case of grievance, file an appeal in the Supreme Court of Taliban in Quetta with another bench established in Peshawar. This however does not mean that the Taliban courts decide the matters justly and fairly, but at least the corruption in their courts is not open and as widespread as it is in the government courts in addition to the fact that they have the ability to execute their decrees even in Kabul.

- **Must disputes be resolved in the country?**

There is no restriction imposed by law on getting disputes resolved outside Afghanistan. In addition, alternative mechanisms of dispute resolution are recognized by the Afghan Law as



is litigation. Arbitration and Mediation outside Afghanistan is also accepted by the Law and the arbitral award and court decisions are enforceable in Afghanistan.

- **Is there a political method of resolving disputes?**

It depends on the nature of the dispute. There are certain ethnic and tribal disputes that it is deemed preferred to solve through political influence and by involving political figures to the level of the President of Afghanistan. There is a Dispute Resolution Commission, which is mandated to solve disputes between provinces, tribes, ethnic groups and others which issues are not fit for discussion in a court of law but are very important to be solved.

- **Are alternative methods of dispute resolution permitted?**

Afghanistan has adopted Commercial Arbitration Law 2007 ("Arbitration Law") and Commercial Mediation Law 2007 ("Mediation Law"), which legalize these two modes of out-of-court settlement of disputes. In addition to them, Afghanistan Center for Commercial Dispute Resolution ("ACDR") is an independent entity functional within the Afghanistan Chamber of Commerce and Industries ("ACCI") for conducting Alternative Dispute Resolution ("ADR") mechanisms in solving commercial disputes.

- **How long does it take to resolve disputes?**

Normally, each court takes up to three months to dispose of a case, especially if it is a commercial case. Thus, it will take nine months for a case to be resolved by the primary court, appellate court and the Supreme Court. However, if the parties take time in filing appeals or responses for which the law has fixed a time, the case may take up to 18 months.

- **Can foreign judicial decisions be enforced in the country?**

Foreign judgments as well as foreign awards are enforceable in Afghanistan. Article 10 (3) of the Law on Acquiring Rights, 2000 ("Law on Acquiring Rights") provides that the final decision of a foreign court to resolve a dispute between a foreigner and an Afghan national that has been issued in accordance with the principles of Private International Law and verified by the Ministry of Foreign Affairs ("MoFA") is enforceable in Afghanistan. The law is applicable to legal as well as natural persons.

As far as the conflict of laws is concerned, Article 18 to 30 of the Civil Code 1977 ("Civil Code") elaborates the different situation and conditions of the same. The Code in Article 18 asserts that the Foreign Law shall apply where the central administration/head office of a legal person or entity is located in the foreign country. In case, the principal activities of companies, enterprises, partnerships and other persons are carried out in Afghanistan, the law of Afghanistan shall apply.

According to Article 27 of the Civil Code, with respect to obligations arising from contracts, the law of the State wherein parties to the contract reside shall apply. If they do not reside in the same place, the law of the State wherein the contract is completed shall apply, provided that the parties have not agreed regarding the applicable law or it is not clear from the contract that the parties have intended another law to manage the contract concerned. With



respect to contracts concluded on real estate, law of the place where the property is located shall apply.

Article 28 of the Civil Code asserts that “with respect to formal conditions of contracts, provisions of the law of the State wherein the contract is completed shall apply”.

Article 29 declares that “with respect to non-contractual obligations, the provisions of the law of the State wherein events creating the obligations have occurred shall apply”. However, “if the obligation is caused by an event that occurred outside Afghanistan, wherein it is considered illegal, but legal in Afghanistan, the provisions of the first item of this Article shall not apply. Finally, Article 30 provides that “regarding specialized rules and all affairs relating to procedure, the provisions of the law of the State wherein the lawsuit is filed or the procedure has started shall apply”.

Moreover, Articles 34 and 35 of the Civil Code stipulate that the choice of foreign law as the governing law of an agreement is valid, binding and would be given effect by the courts of Afghanistan, in relation to both arbitration, and court proceedings (to the extent that such law is not repugnant to public order or standards of decency in Afghanistan).

In addition to the above, Afghanistan is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 in 2005. Therefore, it is obliged to: (a) Recognize and enforce awards made in another contracting state; and (b) Apply the convention to commercial disputes.

As a result, the Afghan law generally respects the will of the parties in relation to the choice of law and dispute resolution, including arbitration as expressed in a written contract in the light of Article 30 of the Private Investment Law.

If a dispute arises regarding a contractor or other agreement entered into between an investor or a registered enterprises on the one hand and the State, on the other, the dispute shall be resolved according to the Afghan Law. However, if a dispute arises between a foreign investor or registered enterprises with foreign equity ownership and the State in regard to a foreign investment, the parties shall endeavor to settle such dispute amicably by mutual discussion/negotiations. Failing such amicable settlement and unless the parties to such dispute otherwise agree, the parties shall submit such dispute to either:

- (i) The International Centre 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; and
- (ii) Or 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.

Pursuant to Article 56 of the Commercial Arbitration Law, foreign arbitral awards are also enforceable in Afghanistan.

- **Can decisions from the country be enforced outside the country?**

The Afghan law does not discuss this instance, but it is normally a matter for the “other” country to decide and see whether the decisions by Afghan courts can be enforced over there.

- **Are there separate tribunals depending upon the subject matter of the case?**



The law permits establishing separate tribunals, for instance, in the case of Kabul Bank corruption case, a separate tribunal was established to look into the matter.

- **Are there different legal systems within the country or its political subdivisions?**

No. The same legal system is being followed across Afghanistan.

- **Can the investor choose to be subject to the country's jurisdiction or not?**

Yes, the investor is at liberty to choose any system and any law for dispute resolution. The option of choosing another law as the governing law and jurisdiction of other courts has been discussed above.

4. Explain your country's legislative system

Afghanistan's parliament is bicameral. The lower house is called Wolasi Jirga (House of the People) and consists of 250 members, while the upper house is Mashrano Jirga (House of the Elders) and consists of 102 members. The lower house is elected by the people of Afghanistan, while the upper house/Senate comprises of members from the provincial councils, the district councils and members selected by the President of Afghanistan. They normally include representatives from Kochis (nomads), women, special persons and technocrats. Currently, however, the system works without district councils, therefore, those members also are elevated from the provincial councils.

Pursuant to Article 94 of the Constitution of Afghanistan, for a bill to be adopted as law, it needs to be passed by both the Houses, and then signed by the President. In case, he does not express consent to a bill and keeps it with him for more than 15 days, it shall be deemed to have been consented to. Otherwise, he can refer it back to the lower house and seek review of the same on reasonable grounds. If his views are adopted by the lower house, well and good, otherwise, the bill is passed by 2/3 majority of the house in which case signature of the President is not required anymore. If approved by the President or passed by 2/3 majority of the lower house, the bill will be sent to the Ministry of Justice ("MoJ") for publication in the Official Gazette of Afghanistan and shall enter into force thereupon.

If one House rejects decisions of the other, a joint commission comprising an equal number of members from both the Houses (Joint Commission) shall be formed to solve the matter. The decision of the Joint Commission, after signature by the President of Afghanistan, shall be enforced. However, if the Joint Commission does not reach to a conclusion, the decision shall be considered rejected. In such a situation, the House of People shall pass it with two-thirds majority in its next session. This decision, without submission to the House of Elders, shall be promulgated once endorsement by the President (Article 100 of the Constitution of Afghanistan).

The legislative procedure has been laid down by Article 95 of the Constitution of Afghanistan to be read with Article 4 of the Regulation on the Procedure for Preparing and Proposing Legislative Documents 2012.

As per these Articles, all three branches of the state, i.e, executive, judicial, and legislature can propose a bill. A proposal for a new law or amendment in a law can originate from any of them



which shall be tabled in the Parliament for debate. Following its approval by both the houses of the National Assembly and subsequent endorsement by the President, the bill shall become a law.

According to Article 3(16) of the Regulation, a bill becomes law after it passes through the following six stages:

1. Drafting by the relevant Ministries or other governmental or non-governmental agencies
2. Scrutiny by the Ministry of Justice (“MoJ”) for consistency with the Constitution, Islamic Law and other laws
3. Sanction/Approval by the Cabinet
4. Adoption by the Parliament
5. Endorsement by the President
6. Publication in the Official Gazette

First Stage: Drafting

Preparing the annual work plan for legislation is the task assigned to the MoJ. Government departments which require a legislative document are required to send a request to the MoJ along with an explanatory statement stating out the need for such legislation, at least three months prior to the end of a legislative year for inclusion in the annual legislation work plan (Article 7 & 8 of the Regulation).

After receiving the request, the MoJ may ask for more explanation regarding the legislation, if needed, otherwise the request will be accepted, forwarded to the Cabinet for approval and in case of approval, the relevant department will initiate the process of preparing the first draft of the legislative document (Article 10 & 11 of the Regulation).

For this purpose, a drafting commission consisting of the officials of the ministry or relevant department as well as necessary experts is established who will undertake the task of draft preparation. In case of involvement of different ministries in a law, a joint commission shall be formed. If deemed necessary, the President of Afghanistan and/or the Cabinet can also form a commission for drafting an important or sensitive law or regulation (Article 14 and 15).

The Drafting Commission is required to consider the provision of Islamic law, Constitution of Afghanistan and other applicable laws of Afghanistan while drafting the legislative documents. It must be ensured that the laws does not suffer from inconsistency. In addition, other applicable legislative documents which might need to be amended, complemented, or abrogated as a result of the entry into force of the new legislation should be considered and mentioned (Article 17 and 18).

Representatives from academic institutions, media and civil society may also be invited to attend discussion of the initial draft of the legislative document. The drafters may also consider observations, suggestions and opinions presented to them. Once complete, they may also send the draft to relevant ministries and departments for review of the same and suggestions, if any (Articles 19 and 20 of the Regulation).



After completion of the initial draft, the same should be sent to the Ministry of Economy and the Ministry of Finance to determine whether its effect is consistent with the current economic policies of the government or otherwise (Article 21 of the Regulation).

Second stage: Scrutiny

Following approval of the Ministry of Economy and Ministry of Finance, the proposing department can send the first draft accompanied by an explanatory statement stating out the need for the document to the MoJ for Scrutiny and evaluation. The MoJ is required to review the draft for compliance with the Constitution, Islamic Law, and the country's obligation under international agreements it is a party to. MoJ is also required to ensure that the standard legal phrases and language are adopted in the draft (Article 37 of the Regulation).

Third Stage: Sanction/Approval of the Cabinet

After the second stage, the draft is handed over to the Legislation Committee of the Cabinet for evaluation and investigation. Following initial scrutiny, it is submitted to the Cabinet for approval (Article 40 of the Regulation). if the intended documents is a regulations, and not a law, it will enter into force following approval of the cabinet and endorsement by the President. It does not require adoption of the parliament.

Fourth Stage: Adoption by the Parliament

According to article 81 of the constitution, national assembly is the highest legislative branch and represents the will of the people of Afghanistan. Article 90 of the constitution stipulates that ratification, modification, or abrogation of laws and or legislative decrees is the authority of the national assembly.

Hence, following approval by the Cabinet, laws, legislative decrees, the national budget and international treaties require ratification and adoption of the National Assembly of Afghanistan to be presented to them by the MoJ and Minister of State for Parliamentary Affairs. These ministries are required to sent the draft law along with explanatory statement setting out the rationale for approval of the same (Article 44 of the Regulation).

The lower house approves may adopt or rejects a bill, but it cannot delay a bill for more than one month. Following approval, the proposed bill is submitted to the house of the elders, who shall decide on the bill within fifteen days.

Fifth Stage: Endorsement of the President

Once approved by the Parliament, the draft legislative document is submitted to the President for endorsement or rejection as he may deem fit. The President has only 15 days to consider and endorse a bill, reject, or refer back to the Parliament along with his reason of doing so. If endorsed by the President, the law is sent to the MoJ for publication in the Official Gazette of Afghanistan. The process to be adopted if the President decides not to endorse a bill is explained above.



Sixth stage: Publication

More often, the law is endorsed by the President and then sent for publication and entry into force of law depends on its publication. Though there are instances when a law enters into force upon endorsement and publication is later in time.

D. Environmental Considerations

1. What is the public/government attitude toward environmental regulation?

By adopting the Afghanistan Environmental Law 2007 (“Environmental Law”), and the Environmental Impact Evaluation Regulations 2007 (“Environmental Impact Evaluation Regulations”); there has been a significant improvement in the country’s environmental awareness and regulation. The promulgation of this Law and Regulation, in addition to the fact that Afghanistan is a party to several international environmental treaties, suggests that the public and the government are becoming more conscious regarding the environmental protection. However, being a developing, poor, post conflict country, the issue of environment and environmental protection is the least the people of Afghanistan worry about.

2. Explain any environmental regulations

The Environmental Law of Afghanistan was designed to provide for the management of issues relating to rehabilitation of the environment, and the conservation and sustainable use of natural resources, living organisms and non-living organisms.

The Environmental Law outlines the responsibilities of the newly created NEPA, which acts as an independent institutional entity, and is responsible for coordinating and monitoring conservation and rehabilitation of the environment, pursuant to Article 3.

In addition to NEPA, the Environment Law has created the Committee for Environmental Coordination tasked to promote the integration and coordination of environmental issues into everyday decisions from the national to the local levels. Membership of the Committee is extremely broad, encompassing all relevant ministries, national institutions, provincial, district and village councils and civil society organizations. The Committee serves a broad policy function, rather than being tasked with specific enforcement actions, but is responsible for making recommendations on a wide variety of environmental issues. The Committee members are appointed by the President on recommendation of the director-general of NEPA.

In addition to the above, the Law created the National Environmental Advisory Council to advise NEPA on financial, regulatory and environmental measures that are of national public importance. This Council meets once a year and members may include governors, chairpersons of provincial, district and village councils, Islamic scholars and tribal elders. The members of the National Environmental Advisory Council are appointed in the same manner as those of the Committee for Environmental Coordination.

Finally, the Environment Law created Subnational Environmental Advisory Councils in each province to make recommendations regarding financial matters and environmental issues that are of local public importance. These councils are designed to function at the provincial,



district and village levels and are to meet every six months, with the governor of each province as the chair. The Councils report their activities to NEPA.

The Environmental Law lists several principles regarding respect for nature, sustainable development and the avoidance of adverse environmental effects in Article 6(1). These principles are applicable against the following:

- a. Any person exploiting natural resources for material gain; and
- b. Any person exercising a public function or any other persons required to create or implement a policy, plan, guideline, procedure or legislation that is likely to affect the management of the natural resources of Afghanistan or the conservation and rehabilitation of its environment.

The Project Sponsor should be aware that Article 8 of the law imposes a general duty of care on any person causing environmental pollution of any kind, however 'the scope of polluting activities shall be specified by legislative procedure' which are yet not in place.

The Environmental Law contains a blanket prohibition on two types of activities. The first is that "no person may undertake an activity or implement a project, plan or policy that is likely to have a significant adverse effect on the environment". The second one suggests that "no ministry or national authority may grant an authorization for the execution or implementation of a project, plan or policy that is likely to have a significant adverse effect on the environment".

Under the Environmental Law, for any activity or implementation of a project, plan or policy that is likely to have a significant effect on the environment, the stipulated procedure for approval of NEPA must be followed. This requires the submission of information to enable NEPA to make a preliminary assessment, or the preparation of an environmental impact assessment or comprehensive mitigation plan in accordance with Articles 14 and 15. The costs incurred in preparing the preliminary assessment, an environmental impact statement, a final record of opinion or a comprehensive mitigation plan is the responsibility of the applicant proposing the project, plan, policy or activity.

On the basis of the preliminary assessment and any required follow-up documentation, such as an environmental impact statement or comprehensive mitigation plan, NEPA can choose to either grant or refuse to grant the permit for the project, plan, policy or activity. A permit may also be withdrawn if the applicant fails to comply with any of the terms and conditions of the permit. Permits will lapse if the applicant fails to implement the project, plan or policy or undertake the activity within three years from the date of issuance. These requirements may be relevant as the Project Sponsor anticipates the construction of new projects.

The Environmental Law also requires that a person should have a valid pollution control license before discharging a 'pollutant' into the environment that causes or is likely to cause a significant adverse effect on the environment or human health. A pollutant is defined as 'any substance, solid, liquid, gas, micro-organism, noise, vibration, heat, radiation, light or other energy, or thing, or combination of them, that has or has the potential to have an adverse effect'.

The granting of a license to emit a pollutant does not affect the requirements for other authorizations necessary to undertake an activity or implement a project. A person who



discharges pollutants is required to ‘take all reasonable measures to ensure that the best practicable environmental option’ is adopted.

NEPA evaluates applications for pollution control licenses and has the authority to either:

- a. Grant a license, with or without conditions, depending on whether the pollutant that is the subject of the license will either not have a significant adverse effect or that the adverse effects have been adequately mitigated; or
- b. Refuse to grant the license and provide written reasons for the refusal to the applicant.
- c. If the necessary information required to make a decision is provided by the applicant, NEPA must either grant or deny the license application within 30 days of submission by the applicant. NEPA also has the authority to amend, revoke or impose new conditions in the pollution control license, and the license is only valid for a period of five years.

Any discharges outside the permitted amounts or outside the parameters of the license must be immediately reported to NEPA, either by the polluter or by any other person that discovers the discharge, and all practicable steps to contain, mitigate and remedy the adverse effects must be taken, to the reasonable satisfaction of NEPA.

The Project Sponsor will be required to obtain pollution control licence or request a waiver from NEPA. In such a case, the Project Sponsor will need to fill out an application for the license, including a description of the “best practicable environmental option,” the types of pollutants that will be emitted by the facility, and any mitigation measures that will be undertaken to minimize their effects. Once the license is granted and any conditions or mitigation measure required are met, the plant will have the necessary environmental clearances to begin operations.

Regulation on Motor Vehicles

Pursuant to this regulation, operating a motor vehicle which emits harmful gases or produces noise in limits exceeding National Environmental Quality Standards (“NEQS”) has been declared illegal. To ensure compliance with the NEQS, Afghanistan National Environmental Protection Authority (“NEPA”) has declared that pollution control devices/catalysts should be installed in motor vehicles or alternatively, specified fuels be used and/or particular maintenance mechanism or tests are conducted to control pollution and protect environment.

In addition to the above Regulation, the Environmental Law and Environmental Impact Evaluation Regulation are regulating matters related to the environment. Laws, such as Public-Private Partnership Law 2016 (“PPP”), The Municipality Law 2000 and others include provision on sustainable development and protection of the environment.

E. Intellectual Property

- **Describe the law for the protection of intellectual property, including trademarks, copyrights, patents and know-how.**

The Intellectual Property Laws are adopted in Afghanistan to protect Copyrights, Patents, Trademarks and Industrial Designs.



Copyrights Law 2016 provides that copyright is a form of protection provided to the authors of original work of authorship, including literary, dramatic, musical, artistic, and other intellectual works, such as software. Though such works is copyrighted from inception, it needs to be registered with the Copyright Office, and thereafter the copyright owner may bring action for infringement, and if successful may be granted such remedies as damages and injunctions. Copyrights are protected for the length of the author's life and fifty years after his death.

Patents are protected under the Patents Law 2016. An invention under this law may be patented if: (a) it is new; (b) involves an inventive feature; and (c) is capable of industrial application.

The Trade Marks Law 2009 protects trademarks in Afghanistan. Pursuant to this law, an application for registration of a trade mark is required to be made in the prescribed manner, and the Trade Marks Registrar may register a mark subject to the requirements under the Law being fulfilled. The proprietor of a registered trademark is entitled to initiate proceedings in case of infringement.

Industrial designs are protected under the Law on Protection of Industrial Designs 2016. The design may consist of three-dimensional features, such as the shape or surface of an article, or of two dimensional features, such as patterns, lines or colors. Such designs need to be registered with the Patent Office at ACBR, and are protected for a period of ten (10) years from the date of registration – the protection being renewable for a further period of (10) ten years. Under such law, claims for infringement may be raised, and the available remedies include damages and injunctions.

In addition to the above, the following laws refer to IP Rights and the manner of their protection:

- (1) Law on Organization and Jurisdiction of Courts (2013);
- (2) Law of Afghanistan Chamber of Commerce and Industries (2012);
- (3) Law on Organization and Jurisdiction of Special Courts (2010);
- (4) Competition Law (2010);
- (5) Seed Law (2009);
- (6) Environment Law (2007);
- (7) Commercial Arbitration Law (2007);
- (8) Commercial Mediation Law (2007);
- (9) Law on Mass Media (2006);
- (10) Private Investment Law (2005);
- (11) Afghanistan Customs Law (2005)
- (12) Law on the Protection of Historical and Cultural Properties (2004)
- (13) Civil Code of the Republic of Afghanistan (1977)
- (14) Law of the State Emblem of the Republic of Afghanistan (1974)
- (15) Press Law (1965)
- (16) Penal Law for Crimes of Civil Servants and Crimes Against Public Welfare and Security (1962)
- (17) Code for the Protection of Antiquities in Afghanistan (1958)
- (18) Law of Commerce (1955)

- **Does the country subscribe to international treaties? Describe.**



Afghanistan is a party to a number of treaties concerning Intellectual Property, including, Universal Copyright Convention 1952, as well as the WTO administered treaty, Agreement on Trade-Related Aspects of Intellectual Property Rights. In other sectors, Afghanistan is a signatory to scores of bilateral and multilateral treaties which include (along with the date:

- (1) Convention Establishing the World Intellectual Property Organization (December 13, 2005);
- (2) IP-related Multilateral Treaties (Entry into force of the Treaty for the Contracting Party);
- (3) Agreement establishing the World Trade Organization (WTO) (July 29, 2016);
- (4) World Trade Organization (WTO) - Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) (1994) (July 29, 2016);
- (5) Agreement on the Importation of Educational, Scientific and Cultural Materials (June 19, 1958);
- (6) Economic Cooperation Organisation Trade Agreement (April 24, 2008);
- (7) Treaty between the Federal Republic of Germany and the Islamic Republic of Afghanistan concerning the Encouragement and Reciprocal Protection of Investments (October 12, 2007); and
- (8) Preferential Trade Agreement between the Republic of India and the Transitional Islamic State of Afghanistan (May 13, 2003).

- **Are there substantive prior approvals by ACBR?**

No, there are no prior approvals needed by ACBR.

- **What are the notarization requirements?**

Documents are required to be attested and notarized by a notary public under the Commercial Procedure Code 1990. If a document has been notarized outside Afghanistan, it must be attested by a competent officer of the Afghanistan mission in that country. This additional requirement is in place because notarized documents of only those countries are recognized in Afghanistan with whom it has a reciprocal arrangement of recognition of notarial acts.

- **Are there regulatory guidelines for licenses?**

Yes. ACBR has issued its policy in 2016 which is under consideration for further improvements due to gaps it contains.

Afghanistan has various laws dealing with the licensing of intellectual property. The Trade Marks Law 2009 and Trade Mark Policy, governs the licensing of trademarks. The Patents Law 2016 governs the licensing of patents, and the Law on Protection of Industrial Designs 2016 governs the licensing of industrial designs, and licensing of copyrights is regulated by the Copyright Law 2016.

- **Are there specific exceptions or requirements relation to a particular product(s)?**

Yes, as per the laws identified above.



- **When are royalties from licenses deemed to be excessive?**

The law or policies have not discussed royalties.

- **Do local antitrust or competition laws apply to licenses?**

They do not apply for licenses.

- **What typical agreements do foreign corporations enter into with their wholly owned subsidiaries?**

Foreign corporations usually enter into licensing agreements and or loan agreements, sale and supply agreements with local subsidiaries.

III. Investment Incentives

A. Explain any export incentives or guarantees. Be sure to answer the following questions:

- **Are there tax incentives for exports?**
- **If so, are they limited to certain types of products?**
- **Is export financing available from government or private sources?**
- **If so, what forms of financing or guarantees are available?**
- **Is there any governmental insurance for exports?**
- **Must a national be a participant in the enterprise in order for the investor to benefit from these incentives?**

Under the “Inventory into Export from Afghanistan Policy 2013” (“EP”) the export of all goods is allowed except those specified in Schedule I to the EP, while exports of goods specified in Schedule II to the EP is subject to the conditions stated therein.

Items specified in Schedule IV of the EP are subject to minimum export price restrictions. EP is available at the official website of the Ministry of Commerce (www.moci.gov.af).

In addition, the commercial banks provide export finance to the exporters on case-to-case basis at pre-shipment and/or post-shipment stage against Firm Export Order/Contract/LCs. The exporter has to show export proceeds equivalent to the loan amount as performance. The tenor of the facility is up to 180 days with a rollover option for further 90 days subject to showing performance equivalent to 117% of the borrowed amount in case of availing rollover option.

This Policy allows the government to designate an area of land to be a Special Economic Zone. Enterprises operating within the zone are able to take advantage of a host of exemptions and incentives which, inter alia, include:

- (a) Tax incentives such as
 - (i) Duty free import of capital goods,
 - (ii) Income tax exemption for a period of ten years,
 - (iii) Dry port facilities; and
 - (iv) Special security arrangements.



In these zones, foreign goods are exempt from import duties. Article 124 of the Customs Law provides that “Duty Free Zones, free warehouses and duty free shops shall be a separate part of the customs territory of the State, in which non-Afghan goods are considered, for purposes of import duty and commercial policy measures, as not being on Afghan customs territory.” In other words, foreign goods in these zones are not charged the customs duties that they would normally be charged. However, these zones are still subject to ACD supervision and control (to ensure their benefits are not abused or misused). Customs can still inspect goods, people, and transports (Articles 126 and 127).

Legally, the Ministry of Finance is responsible for designating duty free zones and duty free shops commonly found in places like airports. The purpose of these duty free zones, often called Special Economic Zones, is to encourage foreign investment and economic activity. Companies can carry out industrial, commercial, and service activity in the duty free zones without incurring the costs of customs duties.

B. Explain any grants, subsidies or funds your country offers foreign investors. Be sure to answer the following questions:

- Are grants and subsidies restricted by the type of activity?
- What is the process for obtaining approval for these grants or subsidies?
- How long does it take to receive approval?
- Can the investor receive loans from the government or governmental agencies?
- Must a national be a participant in the enterprise in order for the investor to receive these grants or subsidies?

Legally speaking, the law of Afghanistan has not discussed subsidies, exemptions, funds and grants for foreign investors in clear terms. However, the income tax law provides that in case of exports of Afghan products from Afghanistan, the exporter will be exempt from tax; which means that even if the exporter is a non-Afghan, she will not have to pay tax. Beyond this, the law does not provide anything concrete.

Recognizing this gap in the law, different policies were adopted by the Ministry of Finance (“MoF”), The Central Partnership Authority (“CPA”) at the MoF, and AISA/ACBR offering different incentives, but as these were not supported by law, they remained a bone of contention between entities and were misused by government and entities. The MoF has presented a new draft of the Income Tax Law, which includes financial incentives for investors. This is yet to be promulgated.

The Policy for Free Economic Zones included some incentives which were offered to investors who chose the declared Industrial zones for their investment purposes.

C. Explain any national tax incentives for foreign investors. Be sure to answer the following questions:

- Are the incentives restricted by the type of activity?
- Are the incentives restricted by the duration of the activity?
- What is the process of application?



The Income Tax Laws of Afghanistan do not provide any incentives for foreign investors and Afghanistan has not signed Double Taxation Agreement with any country.

D. Explain any regional tax incentives open to foreign investors. Be sure to answer the following questions:

- Are there tax incentives for the investor that exists only in certain regions of the country?

No incentives are available for foreign investors in Afghanistan.

- Does the investor need to receive approval to be eligible for these incentives?

N/A

- Are the incentives restricted by the type of activity?

N/A

- Are the incentives restricted by the duration of the activity?

N/A

- What does the process of application involved?

N/A

IV. Financial Facilities

A. Banking/Financial Facilities

- What kind of financial institutions exist?
- Must the investor maintain a bank account in the country?
- What are the requirements for opening a bank account?
- What are the restrictions, if any, on the investor's use of the account?
- What is the type of financial system in the country?
- How is the banking system structured?

The Da Afghanistan Bank (“DAB”), which is the Central Bank of Afghanistan, has been entrusted with the responsibility of regulating the banking sector and monetary/fiscal policy of the country. The relevant provisions of law which vest powers in the DAB to carry out inspection of banks are contained in the Banking Law of Afghanistan 2015 (“Banking Law”); besides the DAB Law, 2004 (“DAB Law”), DAB Regulations and Circulars and the Corporation and Limited Liability Company Law 2007 (“Companies Law”) regulate the activities concerning the banking and finance sector.

In the light of these laws, there is no requirement for an investor to maintain a bank account in Afghanistan in order to invest in the country. Remittance can be made to the account of the intended recipient of the investment.

Even otherwise, the requirements to open a bank account are not complicated. The identity of the intending account holder is required to be proved and provided evidence of. In case of companies, the constitutional documents and particulars of the president, vice president and



shareholders/directors as reported to the ACBR are sought by the banks. There are no restrictions on the use of a bank account by a holder of a local currency.

As already stated, pursuant to Article 10 of the Constitution, Afghanistan follows the model of market economy and therefore the government and its institutions do not interfere in the demand and supply within the market.

As far as the financial system is concerned, there is no uniform system that Afghanistan follows, but the country uses Afghanistan Financial Management Information System (AFMIS) as part of a \$3.95 million contract to help the government upgrade its accounting system.

Regarding banking sector, kindly note that it is regulated by the DAB pursuant to Article 12 of the Constitution, which provides that the DAB shall be independent and Central Bank of Afghanistan. Currency issuance as well as formulating and implementing the monetary policy of the country shall be, according to the provisions of the law, the authority of the Central Bank. It shall however consult the economic committee of the House of People about printing of money.

Banks structure is dealt with by the Banking Law, which asserts that banks shall be registered as corporations or limited liability companies its. It requires Banks not to change their legal structure or organization without prior written authorization of DAB. Moreover, the Companies Law shall apply to banks provided that whenever there is a difference between the Law on Banking and Companies Law on any matter, including but not limited to matters relating to corporate governance, the provisions of this Law on Banking shall apply (Article 9 of the Banking Law).

Each bank shall have a charter and by-laws that upon approval by the DAB shall take effect and be registered with the central register of banks. Each amendment of the charter and bylaws of a bank shall require the prior written authorization of the DAB (Article 10 of the Banking Law).

- **Is there a stock market?**

No.

- **Can the investor receive bank loans?**

Yes, the investor can receive bank loans.

V. Exchange Controls

A. Business Transactions with Nationals, Residents or Non-Residents

- **How are nationals, residents and non-residents defined?**

Article 03 of the Private Investment law 2005, defines the legal Domestic Person; Legal Foreign Person; Natural Domestic Person and Natural Foreign person in the following manner:

- (i) Legal Domestic Person is a person that has been constituted or recognized in the form of a Corporation, Partnership, Sole Proprietorship, Limited Liability Company, Joint Venture, Association, Joint stock, trust or other entity under the applicable law;



- (ii) Legal Foreign Person: shall mean a person that has been constituted or organized under laws other than the laws of Afghanistan;
- (iii) Natural Domestic Person shall mean an individual whose identity is recognized by applicable laws;
- (iv) Natural Foreign Person shall mean an individual who has the Citizenship of other than Afghanistan.

- **Are there restrictions on conducting business with nationals, residents or non-residents?**

No. There are no restrictions on conducting business with nationals, residents or non-residents.

- **Are there reporting requirements?**

Yes. Transactions are required to be reported to the DAB. There may be also requirements to report under certain circumstances, such as obtaining information regarding acts/omission in contravention of the law or regulations.

- **Can the investor receive loans from nationals, residents or non-residents?**

There are no restrictions on obtaining loans in Afghanistan, however, in the event a foreign currency loan is obtained from abroad, pursuant to DAB instructions, repayment thereof is required to be made after reporting to the DAB in the prescribed manner and the loan is subject to approval by the DAB.

B. Investment Controls

- **Are there restrictions on direct investment in the country?**

There are no restrictions on direct investment in the country, except government approval is required for foreign investment in respect of high explosives, radioactive substances, arms and ammunitions, securities, currency and mint, and consumable alcohol. There is no minimum requirement for the amount of foreign equity investment in any sector.

- **Are there restrictions on indirect investments in the country?**

No, there are no restrictions on indirect investments.

- **Must the investor make declarations regarding the nature of his/her investment?**

Yes.

C. Money Transfer

- **Is there free determination of exchange rates?**
- **Are there restrictions on the transfer of money into or out of the country?**
- **Are there restrictions on the remittance of profits abroad?**
- **Are there reporting requirements?**
- **Can hard currency be taken out of the country?**



The DAB determines the exchange rates for US\$ in Afghanistan. The exchange rates for other currencies may be determined by authorized dealers (banks) and authorized money exchange companies.

As far as the transfer of money and remittance of profits into or out of Afghanistan is concerned, kindly note that after satisfying its legal obligations, such as paying taxes, an approved enterprise can freely transfer out of Afghanistan the equivalent of the aggregate amount of its investment, dividends, or distributions treated as dividends received from the investment, the proceeds of any sale of the approved enterprise, or funds for payment of the principal, interest and fees relating to a foreign loan in foreign currency at the prevailing exchange rate in accordance with the provision of the Income Tax Law (Articles 22, 23, 24 and 26, Private Investment Law). In case of income from compensation of the approved enterprise being acquired by the Government, the foreign investor who possesses more than 25 percent of the share, enjoys the right to freely transfer any such payment out of Afghanistan without the payment of taxes, unless the law provides otherwise (Article 29, Private Investment Law).

All outward remittances are reported by the concerned bank to the DAB. There is a restriction on the amounts of hard currency that may be taken abroad.

VI. Import/Export Regulations

A. Customs Regulations

- **Is the country a member of GATT?**

No. Afghanistan is not a member of GATT; Afghanistan became member of WTO on 29th July, 2016.

- **Is the country a member of the EEC?**

No. Afghanistan is not member of the EEC

- **Is the country a party to a regional free trade agreement?**

Yes, Afghanistan is a member of:

1. Economic Cooperation Organization (ECO), 2007;
2. Central Asia Regional Economic Cooperation (CAREC) 2007;
3. Bilateral Trade and Economic Cooperation Agreements with Russia, 2007;
4. Bilateral Investment Treaty, with Turkey, 2005;
5. Bilateral Investment Treaty, with Iran, 2008;
6. Bilateral Investment Treaty, with Germany, 2007;
7. Pak-Afghanistan Transit Trade Agreement, 2010;
8. Trade and Investment Framework Agreement (TIFA) with the United States, 2004;
9. OIC Agreement, 1981;
10. SAFTA Agreement 2004;

Afghan products enjoy duty free and quota free access under an LDC Market Access Initiative with Canada and a Generalized Preferences Treatment agreement with Japan. Further, Afghan products also enjoy an "Everything But Arms" (EBA) agreement with the European Union.



In addition, as a least-developed country, Afghanistan is eligible for duty-free access to the U.S. market for approximately 5,700 products under the Generalized System of Preferences (GSP) program.

Furthermore, Afghanistan has signed a bilateral Investment Incentive Agreement with the United States to encourage and protect investment activities in Afghanistan through the provision of insurance and investment guarantees under the OPIC program. It has no Free Trade Agreements with any country, although most products originating in Afghanistan can be imported into the U.S. and the E.U. duty free.

- **Does the Customs Department value the goods?**

Article 26 of the Customs Law 2016 (“Customs Law”) provides that the Ministry of Finance, upon the recommendation of the ACD, will publish the customs tariff—a document setting the customs duties for each category of goods.³

Customs duties are different from other forms of taxation in that they are based on the value of the goods rather than on a characteristic of the taxpayer, and are levied on the importer/exporter of the goods. The purchaser/consumer of the goods will indirectly pay for the tax, since the importer/exporter will increase the purchase price to account for such tax.

Hence, yes; the custom department values the goods and charges the percentage determined in the Customs Tariff to the exporter.

- **How are goods cleared through customs?**

Customs duties are easy to implement when goods are transported by air or by water. Usually ports and airports can construct centralized facilities to collect such taxes. This is harder to do for goods transported by land from neighboring states, but checkpoints can also be set up at common border crossings. Countries will generally form a separate agency—a “Customs Department”—not only to collect customs duties, but also to ensure the legality of the items being brought into and taken out of a country.

Article 2 of the Customs Law gives the Ministry of Finance responsibility for collecting customs revenues and for enforcing the Customs Code and any other customs laws. Article 4 states that customs laws are to be implemented uniformly throughout Afghanistan. That means that individuals should encounter the same customs laws regardless of the province. Thus, there should be no legal advantage or disadvantage if a trader transports goods into the country from Herat or Kandahar.

Within the Ministry of Finance, the Afghanistan Customs Department (“ACD”) is the principal border control agency. The ACD is headquartered in Kabul, supervises 14 official border crossings, and has 18 provincial customs houses where goods are inspected and customs duties are paid. The ACD has approximately 1,600 personnel. Chapter 2 of the Customs Law describes the organization and responsibilities of the customs administration. The ACD has enacted several procedures and regulations to supplement and further explain the provisions of the Customs Law. These procedures and regulations are available at http://www.customs.gov.af/customs_codes.php.

³ The rates for each category may be found online at:
<<http://customs.mof.gov.af/Content/files/Afghanistan%20Customs%20Tariff%20%202014%20English.pdf>>.



All importers that bring goods into Afghanistan from another country must clear customs when they enter the country. At designated customs areas at the border, customs controls are performed and customs duties are collected. Customs areas are located where transporters are most likely to enter the country: border crossing points, international airports, duty free zones, and customs warehouses. These designated customs areas are the only places goods may enter the country legally (Article 10). Article 16, however, allows customs controls to be performed at an importer's warehouse in certain circumstances.

Regarding the process, when a commercial transport (like an airplane or truck) enters a customs area, Article 47 of Customs Law requires the driver to submit a manifest with information about the nationality, flag, and crew of the transport, as well as all information necessary to identify the cargo. At this point, the goods are surrendered to the control and supervision of the customs officials for the remainder of their stay in the customs area. When the goods first arrive in the customs area, customs officials have the authority to collect a sample of the product for purposes of verification, although the importer is entitled to witness the removal of the sample (Articles 47 and 73).

The importer bears the cost of transferring the sample to the examination site, unpacking, weighing, and repacking the sample, and any other operations involved in the sampling and examination process.

The transporter's second obligation is to submit a complete customs declaration. If the transporter is unable to complete the customs declaration within one hour of presenting the goods to customs, he may alternatively submit a summary declaration, requiring only a general description of the goods and a total volume and value (Article 61). A complete customs declaration must then be submitted within five days of the summary declaration. Within 48 hours of receipt of the complete customs declaration, customs officials must calculate the tax debt owed (Article 164).

Since different categories of goods are taxed at different rates, customs must identify each category of good present in a shipment and the number of goods in each category in order to accurately calculate the tax debt. The process of sorting through an entire shipment and determining which tax rate applies to each good, however, can be very time-consuming. Mindful of the potentially detrimental impact delays (even of 24-48 hours) could have on commerce and trade, Article 84 allows customs, with the agreement of the transporter, to apply the highest tax rate in the shipment to all of the goods in the shipment. This avoids having to determine the precise number of goods subject to each tax rate, since all goods will be taxed at the same rate. The importer would agree to this if the cost of the higher tax rate is lower than the cost of the delay to his business.

The customs process concludes with the payment of the customs tax debt and the release of the cargo. After release, the goods are considered Afghan goods rather than foreign goods (Article 82). As an alternative to immediate payment of the customs tax debt, customs can allow transporters to post a security deposit guaranteeing future payment, pursuant to Articles 152, 158 and 167 - 171. Customs is authorized to collect a charge (haq ul zahmah) of 0.01 percent (or such other amount determined by the Ministry of Finance) during the period tax payment is postponed (Article 169).

- **Are there applicable tariffs?**

Yes. Applicable Tariffs have been issued in 2013.



B. Exports

- **Are there restrictions on exports?**

Generally speaking, smuggling is defined by Article 184 of the Customs Law in the following terms:

“Carrying out the following activities is deemed to be smuggling and the offender shall be punished in accordance with this law and any other customs legislation:

- (i) Bringing goods into or taking goods out of the country, in violation of the provisions of this Law and other customs legislation, with the intent of avoiding customs control or supervision;
- (ii) Carrying prohibited goods for the purpose of import, export, or storing without permission of the relevant authorities;
- (iii) Selling or purchasing of goods in a transit process without paying customs duties”.

Moreover, the Government of Afghanistan controls the exportation of archaeological relics, antiquities and works of art to preserve the cultural interests of Afghanistan, and to comply with numerous international agreements and conventions governing the trade in – and export and movement of these goods.

The controls apply to all types of exportations, including those made by mail, and either takes the form of:

- (i) An absolute prohibition, which means that you are not allowed to export the goods in any circumstances, or
- (ii) A restriction, where you need to have written permission in order to export the goods, and there may be limitation of exit from certain ports, restricted routing, or storage.

The prohibited goods, as referred to above, are Antiquities and Afghanistan’s archaeological relics, as per the Law on “Preservation of historic and cultural heritage of Afghanistan”, of 20 May 2004.

While restricted items and the licensing authority are:

General Description of Goods and the Regulatory Authority	The purpose of the licensing system
Minerals The Cadaster Department – Ministry of Mining and Petroleum	To regulate the legal extraction of minerals for exportation and to ensure payment of revenue to government.
Scrap Metals The Export Promotion Agency of Afghanistan – MoCI	To facilitate the export of scrap metals, and for statistical reasons.
Used glass, plastics and coal MoCI	To facilitate the export of used glass, plastics and coal, and for statistical reasons.

Other items include:



- (i) Firearms, explosives, daggers
- (ii) Obscene and subversive literature
- (iii) Alcohol - 2 liter exception for personal use for commercial air passengers
- (iv) Recorded VCR tapes and other movies
- (v) Parlour video games or parts thereof
- (vi) Goods in commercial quantities
- (vii) A permit is also required for antiques, carpets, furs and camera film.

- **Are export licenses required?**

Yes. The trade license issued by ACBR/MoCI is basically a license for import and export of goods and cannot therefore be used for investment purposes. Thus, a trade license is required for the export of, inter alia, goods, technology, material and equipment.

- **Are there applicable export duties?**

There are applicable export duties such as custom duty under the Customs Law.

C. Foreign Trade Regulations

- **Are there foreign trade regulations on the import or export of goods involved in the business?**

No.

D. Imports

- **Are import licenses required?**
- **Are there applicable import duties?**
- **Are there applicable import quotas?**
- **Are there applicable import barriers?**

Import of goods into Afghanistan is regulated by the Customs Law and the Imports and Exports Policy, 2013 and the notifications issued thereunder.

The issues with respect to the imports into Afghanistan are regulated under the Imports and Exports Policies. The Ministry of Commerce and industries may prohibit, restrict or otherwise control the import of goods of any specified description, or regulate generally all practices (including trade practices) and procedure connected with the import such goods.

No goods can be imported or exported except in accordance with the conditions of a license to be issued by ACBR under the Import and Export Policies and General Licensing policy of ACBR.

Further to the above, no article or process shall be imported into Afghanistan with the description of being a Halal article or process unless it has been certified as such by an accredited Halal certification body in Afghanistan.

In brief:

Free import

- (i) A reasonable amount of tobacco products for personal use;
- (ii) A reasonable amount of alcoholic products suitable only for personal use;
- (iii) Any amount of perfume;
- (iv) The whole value of accompanied luggage should not exceed \$500;



- (v) Up to AFA 50,000 in local currency can be exported out of the country. Foreign currencies must equal the amount imported and declared. An "Ansari Application Form" is required for amounts over AFA 100,000.

Prohibited Items

- (i) Firearms, explosives, daggers
- (ii) Obscene and subversive literature
- (iii) Alcohol - 2 litre exception for personal use for commercial air passengers
- (iv) Recorded VCR tapes and other movies
- (v) Parlour video games or parts thereof
- (vi) Goods in commercial quantities
- (vii) A permit is also required for antiques, carpets, furs and camera film.

Restricted

- (i) Dogs and other animals being imported into the country will require a rabies inoculation certificate before being granted entry.

E. Manufacturing Requirements

- **Must the product contain ingredients or components, which are found or produced only in the country?**
- **Will the importation of certain component parts be permitted only if they are to be ultimately incorporated in a final product?**

If an item is a prohibited item under the Customs Law or there is a restriction for importing it then, it will have to be sourced locally. Additionally, the government encourages the use of local raw materials or imposes conditions on import of certain items in order to promote growth in certain industries.

F. Product Labelling

- **Are there applicable labelling or packaging requirements (e.g. multi-lingual notices, safety warnings, listing of ingredients, etc.)?**

The product labelling requirements vary, depending upon the nature of the product:

- (1) The Afghanistan Standardization Law, 2016 states that the Afghanistan National Standard Authority may, by notification in the official Gazette, require any article which conforms to a particular Afghanistan standard to be marked with such distinctive mark as may be specified in the notification;
- (2) Drugs must be labelled in accordance with the Regulation on Manufacture and Importation of Medicines and Medical Equipment, 2007;
- (3) Seeds must be labelled in accordance with the Seeds Law, 2006;
- (4) Food products must be labelled in accordance with the requirements specified by Import Policy of Afghanistan and other relevant laws which however is not followed in practice;
- (5) Manufacturers must label packets or containers with the requisite information which may be provided for by consumer protection provision in the Civil Code as well as in the Customs Law and the import policy;

VII. Structures For Doing Business

A. Governmental Participation



- Will the government seek to participate in the ownership or operation of the entity (e.g. depending on the type of activity involved)?
- If so, to what extent?
- What is the investor's potential liability to partners, investors or others?
- Are there restrictions on capitalization?
- What are the investor's tax consequences? (Please refer to the tax sections)

The Government of Afghanistan does not seek to participate in the ownership or operation of an entity. However, please note that pursuant to the Private Investment Law and the Public Private Partnership Law the government and any private entities, if they so desire, may enter into partnership agreements for the purpose(s) of inter alia designing and constructing projects, providing infrastructure, community services and other related services. Such partnerships function as any privately owned business.

Please note that there are no restrictions on capitalization.

B. Joint Ventures

- Are joint ventures permitted?
- If so, what is the registration or incorporation procedure?
- How long do these procedures take?
- What costs and fees are involved?
- Must a national of the country or a related state, (e.g. the EEC) be a participant, manager or director?
- What is the investor's potential liability?
- Are there restrictions on capitalization?
- What are the investor's tax consequences? (Please refer to the tax sections)

Yes, joint ventures are permitted. Under Afghan law and specifically the ACBR Licensing Policy, the entities which form a joint venture may themselves be required to be registered and they also require to register the joint venture agreements with them, under the ACBR Licensing Policy. The same procedure for registration of the companies apply to it (please refer to section on incorporation of companies). However, please note that as per Article 7 of the Competition Law, 2010 “no undertaking or associations of undertakings shall enter into any agreement or, in the case of an association of undertakings, shall make a decision in respect of the production, supply, distribution, acquisition or control of goods or the provision of services which have the object of preventing, restricting or reducing competition.”

According to the Competition Law, the Competition Commission may grant an exemption from Article 7 with respect to certain agreements or practices if a request of exemption has been made to it by a party to such agreement or practice and the agreement is one which substantially contributes to improving production and economic growth and where the benefit of such an agreement is greater than the effect of the reduction in competition.

Please note that a national of the country is not required to be a participant, manager or director. Further, there are no restrictions on capitalization.

C. Limited Liability Companies

- Are limited liability companies permitted?

Yes, limited liability companies are permitted in Afghanistan.



- **If so, how are they registered or incorporated?**

The Companies Law and the Licensing Policy of ACBR, 2016 inter alia, regulates the incorporation, management and operation of companies and branch offices in Afghanistan. Pursuant to the Licensing Policy of ACBR, the requirements that need to be complied with and the information that is required for the purposes of incorporating a limited company in Afghanistan are as follows:

(a) Availability of Name:

Application for confirmation of availability of the proposed name of the company must be made to ACBR. ACBR checks in its database whether the chosen name for the proposed company has already been selected by some other enterprise in Afghanistan. If it has already been used, the investor must choose another name.

(b) Submission of Documents with the ACBR:

Upon confirmation of availability of name, the following documents and prescribed forms are required to be submitted with the ACBR for the purposes of incorporation of a limited Liability company. In case of registration of a Branch office of a foreign company, the following documents are required;

- (1) Application from the parent company for the establishment of its branch office in Afghanistan. This letter should also include details of the President, Vice President and contact person in Afghanistan, type of business and the proposed name for the branch office;
- (2) Articles of Association (accompanied by an accurate Pashto or Dari Translation);
- (3) Business Plan (accompanied by an accurate Pashto or Dari Translation). This should include the number of employees;
- (4) Execution of Board Resolution by the parent company, authorizing establishment of a branch office in Afghanistan;
- (5) Power of Attorney ("PoA") (in case the proposed President, Vice President, and shareholders, or any of them, do not intend or are unable to visit Afghanistan in person for completing the registration process), provided that PoAs must be duly notarized, legalized and consularized by competent authorities;
- (6) Introductory letter from the Afghan Ministry of Foreign Affairs for establishment of a foreign company branch office in Afghanistan;
- (7) Interpol Clearance for the Proposed President and Vice President, from the Afghan Ministry of Interior;
- (8) Lease agreement or any other document evidencing rent payment of the premises, which should be stamped and attested by a property dealer or local councilor is required;
- (9) National Identity cards of the proposed President, Vice-President, and Shareholders, if any, in case of resident and Passports in case of non-resident;
- (10) Six passport-size photographs of the President and Vice-President of the proposed entity;
- (11) Completion of Registration forms (Pro forma to be provided by ACBR);
- (12) Completion of Identification forms (Pro forma to be provided by ACBR/MOCI); and
- (13) Adoption of Articles of Incorporation (Pro forma to be provided by ACBR).

In case of registration of an independent company, the following documents are required:



- (1) Articles of Association (accompanied by an accurate Pashto or Dari Translation);
- (2) Business Plan;
- (3) ID cards/Passports of the proposed President, Vice-President, and Shareholders, if any;
- (4) Power of Attorney (in case the proposed President, Vice President, and shareholders, or any of them, do not intend or are unable to visit Afghanistan in person for completing the registration process), provided that PoAs must be duly notarized, legalized and consularized by competent authorities;
- (5) Six passport-size photographs of the President and Vice-President of the proposed entity.

Upon completion of the above, the following process is to be followed with ACBR for incorporation of a business entity and obtaining the License:

(c) Application Forms

The potential investor is required to fill out the application forms issued by ACBR for the purpose of business registration. The application form includes, inter alia, information on particulars of the promoters as well as the enterprise, including but not limited to, full name, father name, nationality, identity card or passport number, full residential address, type of business, legal status, initial capital, contact person, number of employees local as well as foreigners and address of the company in Afghanistan as well as the form of business. All the documents mentioned above must also be submitted with the application along with lease agreement of the office/premises to be used by the company.

(d) Standard Company Statute

The potential investor is also required to provide a “company statute” similar to an “Articles of Association” based on the standard pro forma to be provided by ACBR.

The standard pro forma which is provided by ACBR must contain the fundamental provisions of a company's constitution and provides for the following:

- (a) Form of business, i.e. LLC, Corporation, Partnership and Sole Proprietorship.
- (b) Address of the company because every company must have a registered office where communications and notices can be addressed and served. A company is required to notify ACBR regarding the address of such office at the time of incorporation;
- (c) The objects clause enumerates the purposes for which the company is established. A company may have a multiple objects clause or an exclusive object clause. These objects limit the extent to which a company can acquire rights and incur obligations.
- (d) The Articles of Incorporation clarifies that, in case of LLC, the liability of the members of the company is limited to the extent of the amount payable on the shares of the company; and
- (e) In case of a company with a share capital, the Articles of Incorporation must also state the amount of share capital with which the company proposes to be registered and the division of the share capital into shares of a fixed amount. The cost of incorporating a company depends on its initial capital and type of business they undertake in Afghanistan.
- (f) The Articles of Incorporation of a Company contain provisions concerning the internal management of the Company. The Articles deal with basic issues, such as issue and transfer of shares, alteration in capital, general meetings, voting rights, appointment of directors, management by the board of directors, dividends, company seal, accounts, audit, winding up and other matters ancillary to the company.

(e) Form of Incorporation



The investor can choose legal status of a company, i.e., corporation or limited liability company (“LLC”) or partnership. Relevant documents should be attached by the potential investor to the application form to support the choice of investor related to the form of business structure. A pro forma issued by ACBR will be provided to the applicant for this purpose as well.

(f) Clearance of the President and Vice President

ACBR checks in its database names of the proposed President, Vice President, and shareholders, if any, to ascertain if they do have any share or financials dues or outstanding liabilities in other companies. In that case, it will deny accepting those individuals as office bearers of the proposed company.

(g) Request for Tax Identification Number

A TIN is a ten digit number which is issued to all individuals, companies and organizations that operate in or generate income from Afghanistan. It is a permanent number issued to the company and does not need to be renewed.

Once an entity is registered with ACBR, the applicant is required to obtain a tax identification number from MoF. The investor has to fill out the TIN Form and apply for the same. This number will be used for registration of the company and all the transactions the company enters into in the future. All forms of tax to be paid by the company will be recorded against the TIN issued.

(h) Publication

ACBR arranges for the publication of a “Public Information Summary” of the information contained in the license application form in one of the newspapers and on its website. The details will also be published in the Official Gazette of Afghanistan. Once a license is issued by ACBR, the incorporation process of the company is complete and it is legal for it to commence business operations in Afghanistan. Any activity without a valid license remains illegal and subject to sanctions provided by the Law.

(i) Term of license

The validity period of MoCI licenses is three (3) years and a license can be renewed only after clearing its tax liability and obtaining a tax clearance certificate from the Afghanistan Revenue Department (“ARD”) at MoF.

Please note that, under Afghanistan law,

- (1) The minimum number of Subscribers to the company is one (in the case of a Sole Proprietorship) and otherwise two;
- (2) The minimum number of shareholders to the company must be at-least two;
- (3) Directors are elected on the basis of proportional representation at a general meeting of the shareholders for three (3) years;
- (4) Unless otherwise decided, the Subscribers to the Company are deemed to be the first directors of the company; and
- (5) It is not required that a director must be a member of the company.

Pursuant to the licensing policy of ACBR, the presence of subscribers, shareholders, owners, president and vice president are required to be appeared before ACBR for registration of their company.



All registration forms and Articles of Incorporation are required to be completed, signed by president, VP, shareholders, owners or in their absence an authorized legal representative entitled to appear before ACBR.

Upon satisfaction of the ACBR with regards to the aforementioned documents submitted for the purposes of the incorporation of the company and payment of the applicable registration and filing fees, a certificate of incorporation, containing the registration number allotted to the company, along with an acknowledgement of filing of the prescribed documents, will be issued by the ACBR to the company.

(j) Approval of the Interpol Department at Ministry of Interior

In order to establish a business entity in Afghanistan, the applicant(s) must undergo a criminal background check. In case of foreign applicant(s), they are required to provide a certificate or other form of documentation issued by their relevant Embassy or Government clearly stating that they have not been involved in any kind of criminal and/or illegal activity and are not currently subject to any investigation or prosecution proceedings.

In case the applicant(s) do not provide the above mentioned certificate, the ACBR will issue an inquiry letter addressed to the Interpol Department of the Ministry of Interior (“MoI”) to check the criminal records of the proposed President, Vice President, shareholder of the projected company.

Afghan applicants will have a criminal background check conducted through the Criminal Background Assessment Department of the Police Head-office at the MoI. This is done as part of the registration process of an entity with ACBR.

The delay in obtaining security clearance was considered a major deterrent for foreign investment and also led to many complaints.

- **How long do these procedures take?**

It generally takes 15 to 30 days to obtain a business license from MoCI subject to provision of all the relevant information to the satisfaction of the Afghan authorities/entities.

Please note that the process of incorporation of a company in Afghanistan generally takes from 15 – 30 working days from the day the requisite documentation for the incorporation of the company is submitted to the ACBR and the relevant fee is paid. However, please note that the said time periods are not fixed and may vary at the discretion of the ACBR.

- **What costs and fees are involved?**

The government fee is calculated on the basis of the initial capital amount of the proposed company and the services and business activities they undertake in Afghanistan. However, the same ranges between USD 600 – 6100.

Pursuant to the Licensing Policy, a registration/licensing, certificate, publication fee is payable to the ACBR.

- **Must a national of the country or a related state be a participant, manager or director?**

No



- Are there restrictions on capitalization?

No

- What are the investor's tax consequences?

(Please refer to sections XII and XIII)

D. Liability Companies, Unlimited

- What are the forms of liability companies?

Corporations and Limited Liability Companies are two forms of limited liability companies in Afghanistan.

- How are these companies registered or incorporated?

Please refer to section C above.

- How long do these procedures take?

Please refer to section C above.

- What costs and fees involved?

Please refer to section C above.

- Must a national of the country be a participant, manager or director?

There is no such requirement.

- Are there restrictions on capitalization?

No

- What are the investor's tax consequences?

(Please refer to sections XII and XIII)

c. Partnerships, General or Limited

- Are partnerships recognized or permitted?

Yes under the Partnership Law, 2007 ("Partnership Law").

- Must a national of the country or related state be a partner?

No. There is no such requirement.

- If so, to what extent?

N/A



- **What costs and fees are involved?**

Please refer to section C above.

- **What is the investor's potential liability?**

In the event of default of partnership on a loan, the creditors can seek repayment from the segregated pool of assets owned by the partnership concerned, as opposed to sharing the assets of the individual partners with other creditors of that individual. When it comes to the assets of the partnership, creditors of the partnership have priority over creditors of individual partners (Article 85 of the Partnership Law).

Whereas if an individual partner has a personal debt that he/she is unable to satisfy with his/her personal assets, then, the creditor may demand the partner's proportion of the profits from the partnership. However, the partner's proportion of the profits is to be distinguished from the partner's ownership interest in the partnership, which is immune from the individual creditor (Article 49 of the Partnership Law).

Note however that if the partnership suffers a loss due to negligence on the part of an individual partner, he/she is solely responsible for that loss. Yet, this is only a default rule, and the partners can agree to jointly pay for the loss (Article 12 of the Partnership Law).

- **What are the investor's tax consequences?**

(Please refer to sections XII and XIII)

F. Partnerships, Undisclosed

- **Do undisclosed partnerships exist?**

No.

- **If so, how are they formed?**

N/A

- **What costs and fees are involved?**

N/A

- **Must a national of the country or a related state be a participant, manager or director?**

No. There are no such requirements.

- **What is the investor's potential liability?**

N/A

- **What are the investor's tax consequences?**



Please refer to sections XII and XIII.

G. Sole Proprietorships

- Can the investor be a sole proprietor?

Yes, an investor can be a sole proprietor.

- How is the sole proprietorship registered or established?

Please refer to section C above.

- How long does this process take?

Please refer to section C above.

- What costs and fees are involved?

Please refer to section C above.

- What is the investor's potential liability?

The sole proprietor is personally liable for all debts.

- Are there restrictions on capitalization?

No.

- What are the investor's tax consequences?

Tax will be paid on the income of the sole proprietorship and shall be computed under the head of 'income from business.

H. Subsidiaries/Branches/Representative Offices

- Can the investor establish a branch, subsidiary or representative office?
- If so, how long does registration or incorporation take?
- What costs and fees are involved? What is the investor's potential liability?
- Must a national of the country be a participant, manager or director?
- Are there restrictions on capitalization?
- What are the investor's tax consequences?
- Are these tax consequences different than those of a local company?

Yes the investor may establish a branch office or a representative office of its foreign company in Afghanistan. In respect of branch offices of foreign companies in Afghanistan, Section 3 of the Licensing Policy is applicable. Please refer to section C above.

I. Trusts and other Fiduciary Entities

- Are trusts or other fiduciary entities recognized?

No

- If so, how are each defined?



N/A

- What are the legal consequences of a transfer of assets to a trust or fiduciary?

N/A

- Can the investor be the grantor, trustee or beneficiary?

N/A

VIII. Requirements For The Establishment Of A Business

A. Alien Business Law

- Is the business subject to any alien business law?
- Are there registrations or reporting requirements?

There is no such law in Afghanistan.

B. Antitrust Laws

- Do the entity's operations comply with anti-trust laws?

N/A

- Are there filing requirements?

N/A

C. Environmental Regulations

- Is the business of the investor subject to environmental regulation?
- If so, are there added costs involved (e.g. audit requirements)?

Yes. Pursuant to Environmental Laws and Regulations as applicable in Afghanistan, no person is allowed to discharge or emit or allow the discharge or emission of any effluent or waste or air pollutant or noise in an amount, concentration or level which is in excess of the National Environmental Quality Standards or, where applicable, the standards established under the relevant law. The Government may levy a pollution charge on any person who contravenes or fails to comply with the afore-said provisions to be calculated at such rate, and collected in accordance with such procedure as may be prescribed.

Furthermore, no proponent of a project shall commence construction or operation unless it has filed with the government agency designated by the relevant Afghanistan National Environmental Protection Authority, where the project is likely to cause an adverse environmental effect an environmental impact assessment, and has obtained from the Government Agency approval in respect thereof.

As far as the costs are concerned, yes there are costs involved, for instance, the costs for environmental impact assessment shall be borne by the investor while the law does not specifically foresee audit requirements of such costs.

D. Government Approvals

- Are government approvals required for the anticipated business?
- If so, how long does this process take?
- What fees are involved?



Yes. The length of the process, costs and fee will vary with the type of approval and the kind of business it is required for.

E. Insurance

- Must the enterprise carry insurance?
- If so, what kind of risks must be insured?
- Is there a state monopoly on insurance?

No.

F. Licenses/Permits

- Are licenses or permits required for the anticipated activity?
- If so, how does the investor apply for and receive the necessary license or permit?
- How long does it take to receive the license or permit?

There may be licenses or permits required depending on the exact nature of the anticipated activity.

Operation Of The Business

A. Advertising

- Are there restrictions on advertising?

Yes. Pursuant to Article 2 of the Companies Law, no person is allowed to take any part in the publication of any advertisement which is indecent; and no person having the ownership, possession or control of any property or public place is allowed to knowingly allow any advertisement which is indecent to be displayed on such property or place, or to be announced there-from.

Furthermore, the content aired on electronic media, we don't have any specific law and regulation for such.

B. Attorneys

- Is it necessary to have local counsel?
- How can local counsel be found?
- How much are attorney's fees?

No. There is no legal requirement for appointment of local counsel.

C. Bookkeeping Requirements

- Must the investor keep local books of accounts?
- In what form must the investor keep accounts (e.g. GAP, in what language, etc.)?

Yes. The investors are required to keep local books of accounts. According to Article 6 (d) of the Tax Administrative Law requires the taxpayer to keep the relevant book and records for the purpose of tax determination.

Article 36 of the Income Tax Law requires that All corporations, limited liability companies, and partnerships are required to keep records whether they have taxable income or not.



Further, Section 1.2.1 of Guide # 8, the Income Tax Law requires the maintenance and preservation of records. All natural or legal persons with taxable income in a taxable year shall keep records of all transactions, of all movable and immovable property (assets) and of all income that will enable you to prepare complete and accurate tax returns.

Moreover, Article 65 of the the Commercial Code of Afghanistan requires that “every trader shall be obliged to keep three books – an inventory book, a ledger, and a journal. In addition to this, he shall be obliged to regularly keep a copy of all outgoing letters and telegrams and the original copy of all incoming telegrams and letters along with all confirmation papers”.

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 cancelled cheques. 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.

Moreover, section 1.2.2 of the same guide provides that, 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:

1. Be reliable and complete;
2. Provide you with the correct information you need to calculate your tax obligations and entitlements;
3. Be supported by source documents to verify the information contained in the records;
4. 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;

Persons carrying on more than one business are required to keep separate records for each business.

In addition to the above requirements for books and records and source documents, corporations and limited liability companies have to keep:

1. The minutes of meetings of the directors;
2. The minutes of meetings of the shareholders;
3. Any record containing details about:
 - a) The ownership of the shares of the capital stock; and
 - b) Any transfer of these shares
4. The general ledger or other books of final entry containing the summaries of the year-to-year transactions;
5. Any special contracts, agreements, or other documents necessary to understand the entries in the general ledger or other books of final entry.

Businesses should also retain related documentation to support their transactions. This is particularly important for businesses engaged in international non-arm’s length transactions (transactions with related parties). These businesses should retain documentation related to



transfer pricing policies and documentation pertaining to any distribution of branch and subsidiary profits.

With regard format and method of accounting is concerned, Article 37 of the Income Tax Law provides that corporations and limited liability companies are required to compute their income using the accrual method of accounting in accordance with accepted accounting principles which recognizes income and expenses when due.

As far as the language of record is concerned, Article 25 (4) of the Tax Administrative Law provides that If books, records and computer-stored information are prepared in a foreign language and requested by the taxation administration, the taxpayer shall, at their own expense provide a translation by a certified translator into one of the official languages.

Kindly note that the above requirements applies to local as well as to foreign companies. Accordingly, branch offices of foreign companies are required under the Income Tax Law to file copies of audited annual accounts with the Ministry of Finance and ACBR.

D. Business Ethics/Codes

- **Are there certain business ethics or codes, which the investor must follow (e.g. GAAP for accountants, etc.)?**

There is no code of ethics for foreign investors. In the banking sector however, manuals are passed which must be followed by all, locals and foreigners.

E. Consumer Protection Laws

- **Are there consumer protection laws, which apply to the investor's operations?**

There is no specific consumer protection law. However, the Civil Code of Afghanistan 1977 ("Civil Code") contains certain general provisions on different aspects of the consumer protection. According this Code, liability arises out of defective products & defective services. Furthermore, false, misleading and deceptive representations and bait advertisement are prohibited.

F. Construction

- **What are the costs of construction?**
- **Are permits required for construction?**
- **How is authorization to construct obtained?**
- **How long does it take to receive authorization?**
- **What fees are involved?**

Permits are required for construction under the relevant law, regulations or bye-laws of the concerned authority.

Costs of construction depend upon the size of construction, the quality of materials used and costs of labor and design.



As far as the procedure for obtaining a construction is concerned, kindly note that the applicant submits a copy of the title deed, the zoning approval, the building design(s), and proof of the employees' qualifications. If the property is inside the Kabul Master Plan, the designs are sent to the Engineering Department and a committee will approve them. Applicant then pays the building permit fee. The municipality sends approval copies to various municipal departments (e.g. the police).

The official fee for obtaining construction permit is the sum of AFN 2,000.

G. Contracts

- **Can the investor freely enter into local contracts?**
- **Can the law of another country govern the contracts?**

Yes. The Private Investment Law permits foreign investors to enter into local contracts.

Parties can choose another country's law to regulate their contract. Article 5 (2) of the Contract Law 2014 permits parties to the contract to choose other country's law or international convention, as the governing law of their agreement.

H. Price Controls

- **Are there applicable price controls?**

Yes. Pursuant to the Anti-Hoarding Law, 2013 as well as the Law of Municipalities, 2000 require that price lists should be delivered to the shops and the rates/prices should be followed by the traders. But it appears the law is not followed.

I. Product Registration

- **Must the entity register its product?**
- **If so, how is registration obtained?**
- **How long does the process take?**
- **Are there fees involved?**

Products are not required to be registered generally however certain laws require companies to register their products, e.g. Drugs (pharmaceuticals) are required to be registered under the Drugs Law, 2008 with the Ministry of Public Health, Government of Afghanistan.

Pursuant to the Medicine Registration Policy 2014, an application for registration of a drug for the manufacture of a drug substance may be made in the prescribed form for imported drugs. A Fee for registration of medicine is required to be paid on the rates under the aforesaid policy. A certificate of registration is valid for five years and may be renewed for periods not exceeding 5 years at a time.

As far as the timeframe for registration of medicine is concerned, kindly note that the registration process of medicine would take 5 working days. The fee for registration of medicine is as follows:

- (a) Pro-forma registration commission 0.075 x total cost charged to (according to the market exchange rate); and
- (b) Registration fee is \$100 for each new item (drug) charged only once.



Reductions or Return on Capital

- **Can capital be repatriated while the corporation is still ongoing?**

Articles 23, 24 and 26 of the Private Investment Law permit a foreign Investor to freely transfer distributions, dividends, profits, and funds received from the Local Enterprise where it has invested at the prevailing exchange rate; subject to paying the taxes that are due. This amount can be transferred in more than one transaction. But in accordance with this provision, the DAB is required to approve such transaction. Accordingly, the government of Afghanistan does not limit the inflow and outflow of funds for remittances of profits, debt service, capital, capital gains, returns on intellectual property or imported inputs, provided that applicable taxes have been paid to the government.

The requirements placed on the outflow of funds pursuant to the Law on Money Laundering and Crime Proceeds 2014 (“Law on Money Laundering”) are procedural, for the purposes of anti-money laundering efforts to the government.

For instance, Clearance requirements have been placed pursuant to this law where it provides that the transfer of any amount of money or securities involving a sum equal to or exceeding One Million AFS (equal to US\$ 20,000) needs to be affected through an authorized Financial or Money transmission service who are obliged by the same law to seek and evaluate supporting documents indicating the source of the funds involved.

The remittance of amount above and beyond One Million AFS or equivalent in cash across the border of Afghanistan into another country must be reported in advance to the Financial Intelligence Unit (“FIU”) of the DAB.

K. Sale of Goods

- **Are there restrictions on the manner, time or place of sale of goods?**

Article 91 of the Law on Commercial Contracts and Selling Property 2014 (“Law on Commercial Contracts and Selling Property”), which is in fact an Act of Sale of Goods, provides that, unless otherwise required by the law, the seller is bound to deliver to the buyer the same goods mentioned in the contract; to the exact place on the exact time agreed upon by the parties.

In case no time frame is defined by the contract, the delivery should be made within a reasonable time, provided that if the subject matter of the contract is in the possession of a trustee or the buyer himself, the date of entering into contract shall be deemed to be the date of delivery of the goods (Article 92 of the Law on Commercial Contracts and Selling Property).

Regarding the place of delivery, the law explains that in case place of delivery is not determined in the contract, and if the goods purchased require transportation to a given location, the seller is obliged to upload the goods to the first available vehicle and hand it over to the buyer in a ready-to-transport condition. If the goods sold do not require transportation, and the buyer is aware of the place where the goods are retained, the seller will be liable to deliver the goods to the buyer from the same place. In case, the seller and buyer both are unaware of the place where goods are retained at the time of contract, the place of business of the seller shall be deemed to be the place of delivery of goods (Article 93 of the Law on Commercial Contracts and Selling Property).



L. Trade Associations

- Are there trade associations the investor can or must join?
- If so, are there fees involved?
- Are there mandatory trade practices?

There are various trade and trader associations in Afghanistan; however membership of such associations is not required under the law. Nonetheless, membership of the sectorial trade unions benefits a trader in many ways. Membership in such unions is for an annual fee which depends on the internal policies of the trade association. Usually, there are platinum memberships, golden membership and ordinary memberships each one carrying different advantages.

Regarding trade practices, there are practices which are accepted by almost all the traders, but they cannot be declared mandatory.

Cessation Or Termination Of Business**A. Termination**

- What are the tax consequences of terminating the business?

Pursuant to 109 of the Income Tax Law 2009, all due taxes shall be payable on any income derived by a person prior to cessation/termination of the business which would have been chargeable to tax under the Income Tax Law.

In addition, Article 11 of the Licensing Policy of ACBR requires tax clearance letter issued by the MoF confirming that the applicant has cleared its due tax liability, otherwise termination of the business would not be sanctioned by the law and the taxation liabilities will continue leading to huge amount of fines. In such a case, the office bearers of defaulting company will not be allowed to establish a new business or even an NGO.

- What costs are involved in termination?

Costs involved in termination will vary depending on the type and size of a business. In general, such costs may include legal representative costs; court costs; liquidators' fee; payment to employees on the closure of the business; outstanding taxes; costs incurred for selling assets owned by a business and/or for transferring the same to the creditors of the business and any such relevant costs.

- How long does it take to terminate the business?

The time period involved depends entirely on the size and nature of the business but if all the documents are in place, it shall take up to 20 working days.

- How is the investor's particular form of business treated in termination?

Practically, the form of business does not affect the process of termination. The only difference will be the different entities that an entity will have to report to or obtain clearance/No Objection Certificate ("NOC") from.

- Can the business be terminated without government approval or intervention?



A business can be terminated without the intervention of the government; but it cannot be terminated without its approval unless it is not a registered business or a small business which is not required to be registered at all. The rule is that the government must be notified for business terminations taking place.

Article 103 of the Companies Law provides that Board of Directors may propose the dissolution of a company to the shareholders for their ratification and adoption. The company then files Articles of Dissolution with the ACBR. The Articles shall contain:

- (i) Name of the company;
- (ii) The date on which the dissolution was ratified; and
- (iii) A statement that the proposal to dissolve was duly approved by the shareholders in the manner required by the law and by the Articles of Incorporation.

- **What are the obligations toward creditors, employees and others upon termination?**

The company/owners/shareholders/partners are liable for payment of company loans and outstanding salaries of the employees prior to dissolution of the company. Only after fulfilling its dues and liabilities, the termination of a company will become effective.

As far as the rights of the employees are concerned, kindly note that the companies/partnerships are required to pay all outstanding entitlements and benefits of the employees, including salaries, allowances and supplements (Article 23(2) of the Labor Law). In addition, the Employee shall be entitled to receive compensatory wages for the annual recreational leaves that have not been availed or utilized by the employee (Article 50(2) of the Labor Law).

Regarding liability towards creditors and others, it varies from entity to another based on each one's legal status. The details are as follow:

(a) Partnerships

In the event of default of partnership on a loan, the creditors can seek repayment from the segregated pool of assets owned by the partnership concerned, as opposed to sharing the assets of the individual partners with other creditors of that individual. When it comes to the assets of the partnership, creditors of the partnership have priority over creditors of individual partners (Article 85 of the Partnership Law).

In case the partnership has insufficient assets to pay its debts, the rules will be different for general and special partnerships (Articles 22-24 of the Partnership Law). In a general partnership, all of the partners are general partners thus each partner is individually liable for all debts of the partnership. This means that a general partner must pay off the debt with his/her own personal assets (Articles 86 and 134 of the Partnership Law). In such a situation, the general partner is entitled to seek reimbursement from the other general partners.

In a special partnership however, the general partner(s) will likewise be individually liable for the entire debt of the partnership, but the liability of special partners will be limited to the amount specified in the Partnership Agreement. For all partnerships, if



a partner is insolvent (bankrupt), his/her portion of the debts will be divided proportionately among the remaining partners (Article 48 of the Partnership Law). it is important to highlight that the partners cannot enter an agreement that says they are not individually liable for the debts of the partnership.

Relevant is Article 47 of the Partnership Law which discusses the payment of debts and provides that:

1. where the assets of the Partnership are not sufficient to meet its liabilities, each of the Partners shall be obliged to make contribution proportionate to their shares of losses from their personal properties, for the fulfillment of the debts, unless otherwise agreed to [by the Partners]. Any Agreement by the Partners on their non-liability for the debts of the Partnership shall not be valid.
2. Creditors of the Partnership can claim against any of the Partners in the Partnership in accordance with the provisions of this Law”.

Whereas if an individual partner has a personal debt that he/she is unable to satisfy with his/her personal assets, then, the creditor may demand the partner’s proportion of the profits from the partnership. However, the partner’s proportion of the profits is to be distinguished from the partner’s ownership interest in the partnership, which is immune from the individual creditor (Article 49 of the Partnership Law).

Note however that if the partnership suffers a loss due to negligence on the part of an individual partner, he/she is solely responsible for that loss. Yet, this is only a default rule, and the partners can agree to jointly pay for the loss (Article 12 of the Partnership Law).

(b) Corporation and Limited Liability Companies

When an owner of a company has limited liability, his/her financial liability for the debts of the company is limited to a fixed amount, usually the amount the owner has invested in the company. For a corporation, this value is based on the value of the shares he/she has obtained. For an LLC however this value is based on an agreement between the company and investor(s).

- **What are the tax consequences of termination?**

Please refer to the answer to this question provided above

B. Insolvency/Bankruptcy

- **What is the extent of the investor's liability in the event of insolvency or bankruptcy?**
- **What choices, if any, are available to the investor with regard to the restructuring of the business?**

In case of insolvency of a company, the liability of an investor, as a member of the company, is limited to their shares in or guarantee to the company. The Liabilities of a sole proprietor or partnership are however not limited to any extent.



The company may enter into a compromise or arrangement with its creditors or members for its restructuring which may then be sanctioned by the concerned and competent Commercial Court in Afghanistan.

XI. Labor Legislation, Relation, and Supply

A. Employer/Employee Relations

- **What laws govern employer/employee relations?**

There are several laws and regulations that govern employer-employee relations in Afghanistan. Each of these laws and regulations are enumerated below:

- Labor Law, 2008;
- Civil Servant Law, 2008;
- Regulation on Temporary Job Contract, 2011;
- Regulation on the Employment of Foreign Citizens in Afghanistan, 2005;
- Regulation on Arranging Employee's Overtime 2011 Night Work Regulation, 2000;
- Regulation on additional sick leave, 2000;
- Regulation on additional leave, 2000;
- Regulation on financial liability of employees, 2000;
- Regulation on Work related Dispute Resolution, 2000;
- Regulation of Daily workers wage; 2000;
- Regulation on Workplace Safety Standards and Safety Measures 2000;
- Regulation on Compensation and Health Injury Related to Employment 2000;
- Law on the Travelling and Stay of Foreign Nationals in Afghanistan 2015;
- Civil Code, 1977;
- Regulation on Encouraging Contractual Staff, 2000
- Guideline for obtaining work permit issued by the Ministry of Labor Social Affairs, 2011;
- Notification of Council of Ministers regarding Night Work timing, issued in 2012;
- Shift work timing notification issued by the Ministry of Labor & Social Affairs, in 2014;
- National Technical Assistance ("NTA") Remuneration Policy, 2013.
- The Apprenticeship Regulation, 2000;

- **Are there obligations to train employees?**

Yes. Article 76 of the Labor Law requires the employer to provide on-job trainings to the employees. In addition, the law requires the employer to take steps in building capacity of his/her employees by any means possible.

B. Employment Regulations

- **Must the investor hire nationals of the country?**

There is no obligation of this sort laid down clearly by any law; however, Article 6 of the Regulation on the Employment of Foreign Citizens in Afghanistan provides that in case of availability of both domestic and foreign workers, priority shall be given to domestic workers.

- **Is there a minimum wage?**

The minimum wage rate presently applicable is 5,000 AFS per month for civil servants. While no minimum wage is set for private sector workers, the Labor Law requires private sector



organizations to pay its employees no less than the government workers. Article 62 of the Labor Law 2008 provides as follows:

1. The amount and conditions for payment of wage to different categories of employees shall be determined as follows:
 - i. For state employees and the mixed organization in which the share of the government is more than 50%, it shall be determined by the Ministry of Finance, Ministry of Labor & Social Affairs and the Independent Commission of Administrative Reform and Civil Service.
 - ii. For employees of social organization, it shall be determined in accordance with the charter/Articles of Incorporation/by laws of the relevant organization.
 - iii. For employees of non-governmental administrations and institutions resident in Afghanistan, it shall be determine as agreed to the parties.
2. The Wage level for any category of Employees mentioned in sections 2 & 3 of paragraph (1) of this Article shall not be less than the minimum amount fixed by the State for the State Employees."

- **Is there a maximum number of hours an employee can work each week?**

Yes. Maximum number of permitted working hours per week is set to be 40 for all weeks of a year. Kindly note that the Labor Law 2008 regulates work hours and other matters pertinent to work and employment in Afghanistan. Article 30(2) of the Labor Law provides that working hours are 40 hours per week on average annually. It further states that working hours shall not exceed forty (40) hours a week, on average, during the course of a year ("Normal Working Hours"). However, the Ministry of Labor and Social Affairs ("MoLSA") from time to time issues notifications regarding working hours and timings, which are also published on its website <<http://molsamd.gov.af/en>>. MoLSA notifies the working hours for the month of Ramadan, summer and winter seasons. Currently, the notified timings for 23rd September, 2016 to 20th March, 2017, are: work starts at 8:00 AM and ends at 4:00 PM including one hour break (from 12:00 pm – 01:00 pm), considering 35 hours a week by excluding the daily one hour break.

However, this notification has a proviso which states that working hours for manufacturing enterprises, service providers, agencies that are active continuously (working shift arrangements), publishing agencies, health, education and higher education institutions, keeping in view their specific working conditions, internal rules, regulations and weather conditions are advised to organize their working hours as 35 working hours a week.

Accordingly organizations mentioned in the proviso this notification may set their own work timings in view of their nature of work; weather conditions and internal rules and regulations. However, the working hours should not exceed 35 hours/week for the reason that one hour break every day is not included in the official working hours.

Further, Adult and women employees will be required to work in any establishment 07 hours a day or 35 hours a week including one hour of break in the noon. This requirement is set out in Article 31 of the Labor Law which provides weekly work hours of employees for some categories as per the following ratio:

- | | |
|---|--------------------|
| i. For young workers (between 15 and 18 year of age) | 35 hours per week; |
| ii. For pregnant women | 35 hours per week. |
| iii. For Employees engaged in work underground such as mining and work under conditions that are injurious to their health, | 30 hours per week. |



- **Is there a minimum number of vacation and sick days to be given?**

Yes. An employee is entitled to 50 days 'annual leave' during a year in addition to other forms of 'public leave' and breaks. It is noteworthy that employees are entitled to avail these forms of leave along with their due wages, and other entitlements and allowances. The following explains the nature and duration of paid breaks as well as leaves available under the Afghan Law:

- i. One hour of break during work for performance of prayers and meals (Article 40 of the Labor Law);
- ii. Public holidays at the end of the week (Friday) (Article 41 of the Labor Law);
- iii. Leave on national and religiously important days which amounts to 15 days in total (Article 39 and 41 of the Labor Law);
- iv. Annual leave (recreational leave, sick leave, and necessary or urgent leave) (Article 39 of the Labor Law);
- v. Nursing mother should be provided with a break not less than 30 minutes every three hours in order to breast feed their babies in the children room at the worksite (Article 124 of the Labor Law);
- vi. Other days that is approved and announced by the Islamic Republic of Afghanistan as Public Holidays.

a. Annual Leave

Following are the days of leave available to an employee annually:

- i. Recreational leave 20 days; (Article 48 of the Labor Law)
- ii. Sick leave 20 days; and (Article 52 of the Labor Law)
- iii. Urgent/casual leave 10 days. (Article 51 of the Labor Law)

However, Employees shall be entitled to more than 20 days of recreational leave when they are Below 18 years of age in which case, they are entitled to 25 days of recreational leave; and/or when an employee is engaged in underground or arduous work or work that is injurious to health. He is then entitled to 30 days of recreational leave.

As far as the form of availing leave is concerned, kindly note that employees shall benefit from annual recreational leave in accordance with a schedule (turn/shift) as prepared by the Administration. Article 48 of the Labor Law provides that the recreational leave of an employee may be granted for 20 consecutive days. However, in cases of urgent need of the Administration/entity, such leave may be carried forward to the next year provided that the employee agrees to this arrangement. Also, the employee may be advised to avail 20 days leave in two parts, i.e. 10 days during the first six months of the year and 10 days during the second six months.

Second form of annual leave available to an employee is sick leave pursuant to Article 52 of the Labor Law which provides that an employee shall be entitled to twenty days of sick leave per year with payment of wage, and other entitlements and allowances.

Regarding the procedure for availing the leave, an employee's paid sick leave for up to five (5) days can be granted on the basis of a written notice. However, if sickness exceeds five days, the employee shall be obliged to present a medical certificate in support of his claim of sickness. To be valid and acceptable, the certificate shall be issued by a medical doctor practicing in a registered health center; and where no such practitioner is available; the certification by the Village Council shall be deemed sufficient proof of employee's claim.

Where the employee is covered by medical insurance, the certification by the doctor of the insurance company shall be deemed valid. In case an employee's sick leave exceeds the time period referenced hereinabove, his other leave days may be used instead.



Article 56 of the Labor Law sets out the mechanism for calculating annual sick leave (and urgent leave) of newly hired employees, such leave shall be given in proportion to the duration of their employment as follows:

- i. If an employee is hired during the first half of the calendar year, he/she shall be entitled to use the entire annual leave;
- ii.
- iii. If an employee is hired during the second half of the calendar year, he/she shall be entitled to use half of the annual leave.

In case the illness of an employee stretches beyond twenty (20) days and other leaves are exhausted, additional paid sick leave may be granted to him/her upon presentation of a certificate issued by a governmental or non-governmental health center (Article 53 of the Labor Law). Such additional leave shall be paid in accordance with the following criterion:

- i. Three months of additional leave if the term of employment is one year to five years;
- ii. Six months of additional leave if the term of employment is more than five years and up to ten years;
- iii. One year of additional leave if the term of employment extends beyond ten years.

The third form of annual leave an employee enjoys is urgent leave. Urgent leave not exceeding three days at once, shall be granted upon a notice. Such leave for a longer period shall be granted upon a request by the Employee and approval by the Administration. Employees are entitled to (10) days of urgent leave for marriage; death of father, mother, brother, sister, spouse, child, father in-law, mother in-law, uncle, aunt; or birth of a baby. This last instance might be treated as paternity leave.

Annual leave does not include public holidays and shall be provided when needed and requested by the employee or on a notice provided by him (Article 42 of the Labor Law). It is important to note that in addition to these three forms of annual leave, an employee may be considered entitled to other forms of leave including maternity and hajj leave.

a. Hajj (Pilgrimage) Leave

An employee is entitled to 45 days of paid Hajj leave once during the entire service period in order to perform Hajj or make visits to sacred places. Leave availed in excess of 45 days may be adjusted against available recreational and urgent leave. The employee is obligated to get their Hajj leave certified by the Ministry of Hajj and Religious Affairs ("MoHRA") to be entitled to salary and other allowances (Article 55 of the Labor Law).

b. Maternity Leave

A female Employee shall be entitled to 90 days of paid maternity leave. One third (1/3) of such leave shall be granted before delivery while the remaining (2/3) leave shall be availed post-delivery. However, in case of an abnormal delivery or delivery of twins or more than that, the female employee shall be deemed entitled to an additional leave of fifteen days. To receive her entitlements, the employee shall present a certificate issued by the maternity center/hospital where the delivery took place and was recorded (Article 54 of the Labor Law).

After completion of the maternity leave, the female employee shall report to duty within five days. Otherwise, she shall be declared absent from her job and shall not be entitled to the privileges mentioned above.

A. Hiring and Firing Requirements



- **Must the investor employ a minimum number of people?**

In the Afghan Laws, there is no limit prescribed for the minimum number of people to be employed by an employer/investor.

- **Must the investor employ a minimum number of nationals?**

The law does not prescribe any such restrictions.

- **Must nationals hold certain positions in the company?**

The law does not prescribe any such restrictions.

- **Are there rules to follow in hiring/dismissing personnel (e.g. notice)?**

Yes. This section outlines the various rules prescribed under the labor laws of Afghanistan in relation to hiring or dismissing employees:

a. Hiring

Employers are required under the Constitution 2004 to adopt a non-discriminatory approach, hence, no discrimination is tolerable on the basis of race, gender, religion, colour, ethnicity, ethnic or tribal affiliation, marital status, age, or disability.

The labor Law puts certain condition on the requirement of an employee. Article 13 of the labor Law provides that a person, who can meet the following requirements, may be recruited to work:

- i. The minimum age for work is 18 years for ordinary work;
- ii. 15 years of age for light type of business/work,
- iii. 14 years of age for gaining training in a field of work;
- iv. The candidate for a job must possess and provide educational documents;
- v. He/she must provide a health certificate issued by the relevant department of the Ministry of Public Health (“MoPH”);

The general practice for recruiting employees in Afghanistan is that a position is announced following which a competitive hiring process is followed for hiring the best available cadre/persons. Vacant positions are based on administrative needs and budget constraints of the employer. Employers are required to accept and evaluate applications for employment on a non-discriminatory basis regardless of race, gender, religion, colour, ethnicity, ethnic or tribal affiliation, marital status, age, or disability.

An employer is required to draft job description or terms of reference (“ToR”) before announcing the position. The job description lists the duties and responsibilities of a position. Each employee must receive a written copy of his/her specific job description. A copy of the applicable job description must also be placed in each employee’s personnel file.

Every workman is required to be provided with an order in writing, showing the terms and conditions of his service at the time of his appointment, transfer or promotion. At the time of appointment of an employee, he/she shall be given an appointment letter which expressly outlines the terms and conditions of his/her employment including wages and every worker, at the time of his/her transfer or promotion shall be provided with an order in writing showing the terms and conditions of his/her service including wages.

b. Dismissal



Civil Code of Afghanistan is a general law that provides for grounds of dismissal on the basis of gross misconduct, while Labor Law is a special law which deals with irregularities amounting to violations of the Code of Conduct which may vary from institution to another. The Labor Law does not define gross misconduct; neither has it provided any grounds for immediate dismissal in such cases.

As opposed to the Labor Law, Article 1548 of the Civil Code provides the grounds for immediate dismissal on the ground of gross misconduct, however, it does not provide for what should be done in case of violations of the Code of Conduct.

Article 1548 of the Civil Code describes the following grounds for termination of the employment contract **without prior notice** by the employer:

- i. When the employee has untruly introduced himself or presented false certificates or license;
- ii. When the employee cannot satisfy the employer with his work during the probationary period, provided that the dismissal takes place within three months from the date of his appointment;
- iii. In case of advertent action or default of employee to inflict material damage to the employer provided information to the effect is submitted within 24 hours of occurrence of action to competent agent of law and the acquisition is proved in investigation;
- iv. In case of more than 20 days of absence in a year without reasonable excuse;
- v. In case of non-execution of responsibilities incumbent on the employee by virtue of contract;
- vi. In case of proved disclosure of industrial or commercial secrets of the enterprise by the employee;
- vii. In case of conviction of the employee of offence or misdemeanor in contravention of trustworthiness and morality;
- viii. In case of proof of committing of offence contrary to standards of public decency in the enterprise while performing work; and
- ix. In case of aggression of the employee on the president or one of the members of the board of directors while performing duty, or by reason of work.

Article 23 of the Labor Law provides the following grounds for termination of employment contract **with one month prior notice**:

- i. Agreement by the parties;
- ii. Completion of the term of the contract;
- iii. Retirement;
- iv. Demise;
- v. Disability that hinders the performance of work;
- vi. Cessation of work for more than six months;
- vii. Dissolution of employing organization or reduction in the number of staff;
- viii. Final conviction of the employee for two months;
- ix. Repeated breach of work after application of disciplinary punishment;
- x. Refusal by the Employee to work after a re-assignment to his/her previous duty; and
- xi. An unsatisfactory probationary period.

The grounds for termination of the employment contract which are mentioned in Article 23 of the Labor Law and Article 1548 of the Civil Code, generally apply to both definite/fixed term employment contract as well as indefinite employment contract.

Article 1542 of the Civil Code provides, if the employer and employee entered into a fixed-term contract and the employer terminate the employment contract without any reason; the employer is bound to pay the wage for the entire period of the employment contract.



Article 95 of the Labor Law describes disciplinary penalties in case an employee violates discipline and rules of business, which are not grounds for termination of the employment contract.

Article 95 is the base for application of Article 101 of the Labor Law. Article 101 clearly describes two conditions for termination of an employment contract:

- a. In case of application of disciplinary punishments more than once during a year; and
- b. Absence for 20 consecutive days from the work without good cause.

The five steps/tiers of disciplinary actions taken against an employee in case of commission/omission of an act are as follow:

- i. Advice
- ii. Warning
- iii. Salary deduction
- iv. Transfer to another department
- v. Termination of the employment contract

Accordingly, if an employee violates the code of conduct twice a year, or has remained absent from his work for more than 20 days in a year, his contract shall be terminated, in accordance with Article 101 of the Labor law.

The employer may not bypass any of the above disciplinary measures and all have to be adopted in the order laid down by the law. Also, these five steps, according to Article 96, are to be taken keeping in view the gravity, nature, experience, rank of the employee and the state of affairs when the irregularity was committed by him/her.

In addition the labor law provides that no employer is allowed to terminate group of their employees without prior permission of the MoLSA. This requirement is set out in Article 149 of the Labor Law provides that:

- i. Except as provided otherwise by the law, Government, non-government, mixed or private entities shall not be authorized to dismiss all or a group of their Employees without approval of the Ministry of Labor and Social Affairs; and
- ii. In case of long term work stoppage that results in closing the Administration down, the Administration must inform the Ministry of Labor and Social Affairs of the matter, three months in advance.

c. Termination notice

The employer is required to serve one month prior written termination notice. If the employee did not issue termination notice, he may be given one month salary in lieu of notice if both the parties agree to it.

Article 24 (1) of the Labor Law provides that a contractual employee may annul his/her non-fixed term employment contract by sending a one-month prior written notice to the Administration. Article 24 (2) provides that before the term of contract expires, an employee may annul his/her fixed term employment contract with or without notice when:

- i. The Administration has breached the obligations set forth in the employment contract or has violated the provisions of this Law.
- ii. The employee has had a prolonged and incurable illness, disability or other excuses that will hinder the performance of his/her work.
- iii. The employee or his/her legal representative shall provide a written notice to the Ministry of Labor and Social Affairs concerning the Abrogation of the employment



contract pursuant to paragraphs (1) & (2) of this Article, to avoid any possible disagreement.

- **Does the investor have a continuing obligation towards dismissed employees?**

No, provided the employee has been terminated in accordance with the law and has been paid his/her outstanding dues and any payments he/she was entitled to.

D. Labor Availability

- **Is adequate skilled or unskilled labor available for the anticipated business?**

Depends on the type of work for which labor is required. However, there is a critical shortage of skilled labor in Afghanistan. Decades of war, lack of proper education and training facilities has resulted in scarcity of skilled technicians, qualified managers and educated professionals.

E. Labor Permits

- **Are labor permits required?**

Yes. All domestic and foreign persons should obtain work permit for their employees before recruiting them. Article 13 of the Labor Law provides that foreign employees freshly employed in an organization shall obtain work permit from the MoLSA.

- **If so, how are they obtained?**

In order to apply for a Work Permit, the relevant application form has to be filled in and submitted at Foreign Citizen Work Permit Department of the MoLSA along with the following documents:

- i. Original passport with valid visa;
- ii. Passport size photographs;
- iii. Original License of organization employing the worker plus two colored photocopies of it;
- iv. Employment contract;
- v. Interpol verification letter; and
- vi. Introduction letter from the organization

After submission of the Application form along with these documents, a payment of USD 200 in fees should be paid to the DAB. Once the Work Permit is issued, it is valid for one year and mandates annual renewal.

When expired, the Work Permit must be renewed or cancelled. In case of renewal, the expired Work Permit along with two passport size recent photographs of the employee and license of the organization must be annexed to the application.

A No Objection Certificate (NOC) in Dari or Pashto language issued by former employer must be annexed, if the employee joins another organization. If the Work Permit is lost or damaged, the employee or the entity where the employee works shall make a formal announcement through "Afghan Advertisement Department" and annex cutting of the announcement made to the application.

If an employee is fired or the employee quits the job, the employer must officially inform the Directorate of Work Permit and return the original Work Permit to the Directorate.

Colors of the Work Permits vary based on the nature of work for which they are granted. Blue Card is issued to professionals and is valid for a maximum of five (5) years while Yellow Card is issued to skilled and semi-skilled employees and is valid for a maximum of two (2) years. White Card is issued to Professionals and workers who are to serve for less than Three (3) months.



- **How long does the process take?**

The usual period for obtaining the Work Permit is between 10 to 15 days.

- **What fees are involved?**

The fee for Work Permit is a sum of USD 200.

F. Safety Standards

- **Are there safety codes that must be followed?**

Yes. The Labor Law and Workplace Safety Regulation deal with safety of labor in the workplace and contain provisions regarding health and safety of workers, restrictions on the working hours of adults and special provisions for adolescents and children working factories. According to the law, employers must provide a safe working environment for their employees in order to prevent work accidents, and protect workers against occupational illnesses.

Article 111 of the Labor Law provides that the person in-charge of an entity shall be obliged to give continuous training to Employees about safety, environmental health, fire-fighting, Provision of medical first-aid services and other rules of protection. Employees shall be obliged to observe the rules and standards of work protection and the safety techniques, rules for utilization of equipment as well as protection instructions, and to use individual protective devices while working.

In addition, Article 3 of the Workplace Safety Regulation charges the employer with a responsibility to educate and train its employees through workshops and to ensure their safety, while Article 6 requires that particular attention be given to educating new employees on safety issues.

G. Unions

- **Are unions recognized?**

Yes. As already stated, unions and associations are recognized by the Law and are in existence. The right to association is guaranteed by Article 35 of the Constitution of Afghanistan, imparting on every citizen the right to form associations or unions, subject to any reasonable restrictions imposed by law in the interest of sovereignty or integrity of Afghanistan, public order or morality.

Under Article 147 of the Labor Law, workers as well as employers in any establishment or industry have the right to establish and to join associations of their own choosing, subject to respect of the law.

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

- i. To defend and protect the workers' rights in the field of work, production, livelihood and culture;
- ii. To participate in development, strengthening of the work and production management as well as assistance to consolidate and strengthen labor and production discipline;
- iii. To exercise control so that work-related legislations, work protection rules and standards, safety techniques, housing and living services of workers are compiled with; and
- iv. To participate 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.

- **What are the unions in the investor's business?**

Sectorial unions such as Afghanistan Union of Construction investors and Afghanistan Union of Money Changers exist in Afghanistan. There are others which are not known by the name of unions but associations of the investors in a given sector like carpets, gems, dry fruits and others.

- **What are these unions' political affiliations, if any?**

They are not political affiliated.

- **Is there an obligation on the part of the employer to organize unions?**

No. While Article 147 of the Labor Law gives employers and employees the right to organize their respective unions, the law does not obligate the employers to organize unions either for the employers or the employees.

- **Are there mandatory collective bargaining agreements for the business involved?**

No. The law has not discussed collective bargaining or collective bargaining agents.

XII. Tax on Corporations

A. Allowances

- **What are the major allowances (e.g. capital cost depreciation)? and**
- **What are the major deductible items?**

Pursuant to Article 18(1) of the Income Tax Law deduction of all ordinary and necessary expenses of production, collection, and preservation of income of natural and legal persons shall be allowed in accordance with the provisions of this Law as follows provided that these expenses have been incurred during the tax year or one of three previous years. The following deductions and allowances in respect of the following may be allowed:

- i. Any expense related to the cost of production or trade and business, such as insurance and freight expenses, etc.;
- ii. The cost of supplies, materials, fuel, electricity, water, and other necessary expenses incurred in the production of income, or in a trade or business;
- iii. Wages, salaries, commission, and fees paid for services rendered by employees in trade or business;
- iv. interest paid on loans utilized for business and trade;
- v. Rent paid on property necessary to and used for the purposes of trade or business;
- vi. Cost of repairs and maintenance of properties and equipment necessary to and used for purposes of the business or trade;
- vii. Depreciation of movable and immovable property (except agricultural land) used in trade or business, or held by the producer the laws of Afghanistan; and
- viii. Other expenses of doing business and of holding movable or immovable property for the production of income under relevant legislative documents.

- **What are the major expenses that are excluded from deductibility?**



Pursuant to Article 18(2) of the Income Tax Law, the following major items are excluded from deductibility under the ITO:

- i. Expenses incurred to provide entertainment or advertising that are not connected to economical or commercial activities;
- ii. Dividends, interest, royalties, rent, commissions, wages, salaries, payments which are the subject of Article 72 of this Law, and other similar income from which legal and natural persons are required to withhold and pay tax under the provisions of this Law, but have failed to do so; and
- iii. In the case of a branch in Afghanistan of a non-resident person, any expenses paid or incurred to the non-resident person or any person connected to the non-resident person.

Examples of non-deductible expenditures are:

- iv. Gifts
- v. Illegal expenditures
- vi. Donations
- vii. Income taxes
- viii. Additions to reserves that are not required by law (See Article 19(2)2 of the Income Tax Law)
- ix. Any excessive amount added to a reserve required by law (See Article 19(2)2 and Article 56 of the Income Tax Law)
- x. Cost of goods purchased but used by the owners or employees for personal or household purposes and not sold;
- xi. Cost of goods purchased but subsequently returned to supplier or manufacturer; and
- xii. Cost and expense of providing benefits for the owners, officers, and management which are not necessary for the conduct of business.

B. Calculation of Taxes

• How is the taxable base determined?

According to the principle of taxation given in Article 2 of Income Tax Law all resident natural persons and legal entities (except as otherwise exempt from tax under any treaty or agreement) are subject to tax on domestic as well as foreign income whereas non-resident natural and legal persons are subject to tax on Afghan source income only.

Pursuant to Article 4 of the Income Tax Law, income tax is liable to be paid at the rates prescribed thereunder, by every person who has taxable income for the year. This Article further provides that the corporate tax is payable on taxable income at the rate of 20%. The taxable income is the total of all receipts of the company less those exemptions and deductions allowable under the law and setting off brought forward losses.

Pursuant to Article 5 of the Income Tax Law, taxable income of a person for a tax year is the total income after reduction by the total of any deductible allowances under Article 18 of this Law. The total income of a person for a tax year is the sum of the person's income under each head of income pursuant to the ITL. Such heads of income include salary, income from business, income from property, capital gains and income from other sources. According to Article 4(3) of the Income Tax Law, Afghan source income of individuals whether it is salary/wages or otherwise would be liable to tax in Afghanistan.

Regarding income of natural person, an amount below 5000 AFS is exempt from income tax, while in case of Business Receipt Tax ("BRT"); a quarterly income of less than 750,000 AFS is exempt from payment of BRT. In addition, if an entity pays less than 10,000 AFS as rent of a premises or office, it is exempt from payment of withholding tax on rent.



A. Capital Gains

- What are the federal or national tax rates on capital gains?
- What are the regional or state taxes on capital gains?
- What are the municipal or local taxes on capital gains?

Capital gains from the sale, exchange, or transfer of certain assets is treated as taxable income. Capital gains include the sale of a trade or business (including goodwill), a factory (including equipment, machinery, buildings and land, or any part of such assets), equipment used in the business of transporting persons and property, and shares of stock in corporations or limited liability companies. Capital gains under Article 23 of the tax legislation refer to any gain from the sale, exchange, or transfer of the following assets:

- i. A trade or business, including goodwill;
- ii. A factory including equipment, machinery, buildings and land, or any part of such assets;
- iii. Equipment used in the business of transporting persons and property; and
- iv. Shares of stock in corporations or limited liability companies.

Chargeable capital gains are treated as is taxable income and is subject to 1% tax. A gain from the sale or transfer of movable or immovable property acquired by inheritance is excluded from the provisions of paragraph (1) of this Article.

As far as the method of calculation of Capital Gain is concerned, kindly note that gain (receipts less allowable expenses) arising from capital asset transaction, is divided by number of years of usage of the said asset. The average rate so obtained shall than be applied to the total income of the person (natural or legal) for the year. The rate so calculated shall not be less than 1%.

D. Filing and Payment Requirements

- When must the corporation file its tax return, if any?

Article 3 (6) of the Tax Administrative Law 2015 ("Tax Administrative Law") provides that a Fiscal Year commences on the 1st day of *Jaddi* (Solar Calendar) [21st December] and ends on the last day of *Qaws* (Solar Calendar) [22nd December] the following year or such other period as approved by the taxation administration upon request of the taxpayer.

Article 7 of the same Law provides that a taxpayer is required to file its tax returns in accordance with the tax laws. The Company must file their tax return three months after following the end of Fiscal Year or by the end of *Hoot* of the Solar year [21st March] at the relevant tax office.

Whereas persons, legal or natural, are required to file BRT return, they shall complete a tax return for each quarter of the year and file the return with evidence of the tax paid for the quarter not later than fifteenth day of the next month after each quarter of the year.

To summarize:

- Monthly Filing: Each company should file withholding tax on interest, dividends, royalties, prizes, rewards, lotteries, bonuses, salary, rent, contract and service charges on a monthly basis;
- Quarterly filing: filing and payment of BRT is required on quarterly basis;



- Annual filing: Corporate taxes shall be paid on annual basis.

- **When must the corporation pay its taxes?**

As discussed above, taxes are payable when the tax returns are required to be filed, i.e. monthly, quarterly, annual and in some cases, e.g. theatre, exhibition, show, and the like as soon as they end. In addition, in case of withholding tax on contract, the amount deducted as tax should be filed with the government within 15 days of deduction.

- **Are taxes paid in installments or annually?**

Some taxes are paid on monthly basis, others on quarterly basis and corporate tax is payable on annual basis. However if a company claims that it is unable to pay taxes as per the law at once, it can apply to the relevant authority for allowing payment of tax in installments and is subject to approval of the relevant authorities.

E. Miscellaneous Taxes Due

- **Is there a tax on capital?**

No.

- **Is there a business license tax?**

No.

- **Is there an apprenticeship tax?**

No.

- **Is there a training tax?**

No.

- **Are there other taxes?**

No.

- **What are the filing and payment requirements?**

N/A

F. Registration Duties

- **Are there registration duties due upon the incorporation of a company?**

- **Are there registration duties due upon an increase in capital?**

- **Are there registration duties due upon the transfer of the company's shares?**

- **Are there registration duties due upon a transfer of corporate assets?**

- **Are there any other registration duties due?**

For the registration duty payable on incorporation of a company please refer to the discussion on incorporation of a company above.

There is no fee on the increase on the capital of the company whereas there is 1% registration duty payable on transfer of shares or assets of a company to be paid by the transferor.

Furthermore, under the Commercial Procedure Code of Afghanistan, 1990 a registration duty is payable to the Commercial Court for registration of any instrument which requires to be registered under the said Code. The registration duties vary and are payable at the rate of 01% to 10% of the amount of subject matter concerned.

G. Sales Tax or other Turnover Tax



- **What is the system of sales tax (e.g. V.A.T., cumulative)?**

VAT/Sale tax is levied on only very few items and services such as hotel services and no separate comprehensive regulation exist for VAT/Sale Tax. The Government of Afghanistan is now planning to levy VAT with effect from 2020.

- **Is input tax creditable against output tax?**

N/A

- **What are the tax rates?**

N/A

- **What are the filing and payment requirements?**

N/A

H. **Social Security and Welfare System Contributions**

- **Are social security contributions due?**
- **Are retirement or pension contributions due?**
- **Are unemployment insurance contributions due?**
- **What are the filing and payment requirements for any such contribution?**

Article 134 of the Labor law recognizes different type of social benefits including the following. These allowances should be provided to employees according to financial capacity of the organization:

- i. Food allowance
- ii. Transportation
- iii. Aid in finding shelter
- iv. Medical services
- v. Financial aid at the old age retirement equal to 10 months of wage along with its benefits as per the last salary
- vi. Aid in case of birth of child
- vii. Financial aid for the deceased employee's family for burial ceremony equal to 10 months wage along with its benefits as per the last salary
- viii. Pension for old-age, completion of service duration, illness, disability and other conditions is foreseen in legislative documents.

In addition, Article 75 of the Labor Law states that when the employee is sent on missions, transferred, summoned from, or sent to another place, he/she would be entitled to fare and travels allowance and out of pocket expenses (TA/DA).

Article 114(2) of the Labor Law provides that whenever medical treatment of an employee is not possible in health centers within the country, the administration/entity shall be obliged to send the employee abroad. Furthermore, the administration/entity shall be obliged to pay the round trip fares for the employee and the person accompanying him/her. It is pertinent to mention here that Article 135(2) of the Labor Law also asserts that employees' social security is progressive in nature and is therefore dependent on the growth and development of the national economy. Additionally, an employee is entitled to monthly food allowance as per the prevailing market rate, unless agreed otherwise in the employment contract (Article 61 of the labor Law).



Article 137 of the Labor Law provides that assistance to an employee on account of his/her inability to work shall be provided by the administration temporarily, and until the time when he/she regains capacity to work or becomes entitled to retirement; the assistance shall be equivalent to the monthly wage and other rights that the employee [regularly] received prior to disability.

As far as the retirement fund is concerned, retirement benefits are dealt with under the Labor Law as well as the Retirement Regulations. The Labor Law provides for creation of a social security fund to which either the employer or employees contribute collectively, or the employer contributes individually.

In Article 134 of the Labor Law, one of the social security relevant to retirement is the “financial aid at the retirement equal to 10 months of salary along with its allowances and supplements based on the last month salary”. However, such benefits are limited to employees who have either reach the compulsory age of retirement, which is 65 years OR has worked for a period of 40 years (Article 138).

As regards the Retirement Regulation, the same provides for the creation of a retirement fund, to which employees and the employers should contribute. Although there is a system in place for the collection of retirement contributions and payment of retirement benefits for state employees, however, there is currently no system in place for private entities. Since there is no system in place for the collection and safekeeping of the contributions of employees and employers in the private sector and consequently no funds accumulate, therefore, private entities are not bound to give retirement benefits.

Therefore, retirement benefits under the Retirement Regulation are presently subject to the terms of the employment contract and the internal policies of the respective employer. The MoLSA and particularly the Directorate of Labor Rights is now working on a draft regulation, which would regulate the retirement rights of employees in private organizations once promulgated.

With regard to insurance of unemployment, kindly note that such type of funds are not available in Afghan laws.

I. Special Tax Schemes

- Are there particular tax consequences of doing business in the country?

The tax regime takes the geographical location of the income into consideration. In other words, any income arising out of Afghanistan is taxable in Afghanistan.

J. Tax on Profits

- What are the federal or national income tax rates on profits?
- What are the regional or state tax rates on profits?
- What are the municipal or local tax rates on profits?

The rate of tax imposed on the taxable income of a company is 20% after deduction of all allowable expenses. In addition, the companies are also subject to BRT at the rates of 4%, 5% and 10% applying on gross receipts based on business type as specified in the Income Tax Law. The details are as follow:



A 4% BRT is applicable on imports, payable to the Customs House where and when the customs duty is paid. This BRT is treated as an advance payment of the quarterly BRT assessment.

10% BRT is payable on gross receipts from provision of the following services:

- International passenger airline services
- Telecommunications services, including Internet services
- Hotels providing superior services
- Restaurants providing superior services

The conditions applicable to the above are:

- i. Hotels and restaurants meet the standard and requirements of three star and above;
- ii. Hotels and restaurants have facilities such as air conditioning, telephone service, internet, laundry service, two or more food variety in terms of quality;
- iii. Customers of these hotels and restaurants are people with high income such as foreigners, tourists, merchants and other high-income people.

A 5% BRT is applicable to ordinary hotels, restaurants, clubs and halls (event venues).

K. Tax Treaties

- **Are there any applicable tax treaties?**

No. Afghanistan has not entered into double taxation treaties with any country.

- **Are there any rules against treaty-shopping?**

N/A

L. Territoriality Rules

- **Where is the corporation subject to tax?**

According to Articles 2, 5, 7 and 8 of the Income Tax Law, all resident legal or natural persons shall be subject to income tax on their taxable income from all sources within and outside Afghanistan according to the provisions of this law. Hence, all resident and non-resident individuals are taxable in Afghanistan for Afghan-sourced income (for residents, this also includes foreign income) irrespective of whether they are paid in Afghanistan or outside Afghanistan.

- **Is the corporation subject to tax on its worldwide income?**

A non-resident is only liable to tax in Afghanistan for its income derived from income in Afghanistan. A resident company is liable to tax on all its worldwide income.

M. Treatment of Tax Losses

- **How are corporate tax losses treated?**

Article 42 of the Income Tax Law provides that a corporation or limited liability company incurring a net operating loss in a tax year shall be entitled to deduct the loss from its taxable income of the three succeeding years, deducting one-third of the loss each year.



Moreover, Article 47 of the Income Tax Law and Article 17 of the Private Investment Law provide that a registered entity incurring a net operating loss in a tax year based on legal and accounting records may, carry forward this loss as a deduction from taxable income in each subsequent year until the loss is fully set off. The loss incurred by such approved enterprises shall be calculated in accordance with Article 42 of this Law. Depreciation and expenditure which relate to a period covered by a tax exemption or to a period before an enterprise first became an approved enterprise shall not be allowable in the calculation of a net operating loss.

Under certain conditions, a taxpayer may recover a portion of a loss from the sale or transfer of a capital asset used in trade or business. To do so, he must have income which is subject to taxation under Article 4 of the Income Tax Law, in the year in which the loss occurred. If he has such income, he may deduct the amount of the loss, along with other allowable deductions, in computing his taxable income. If he has no income for the year which is taxable under Article 4, he cannot deduct the loss.

Article 27 of the income tax law provides “losses from the sale or exchange of capital assets used in trade or business shall be deductible from the taxable income of the taxpayer in the tax year in which the sale or exchange took place, provided that a gain from such sale or exchange would have been taxable”.

Kindly note that when an individual suffers loss from sale of immovable property not used in trade or business, he cannot deduct this loss even though he has taxable income in the same year when this sale took place.

Moreover, Article 28 provides that when a person suffers loss from sale or exchange of shares of stock, the person cannot deduct such loss from taxable income, except from that portion, if any, which is the gain from sale or exchange of shares of stock realized in the same year.

N. Wealth Tax

- **Is there an applicable wealth tax?**

No.

O. Withholding Taxes

- **What are the rates of withholding tax on dividends?**

The rate of withholding tax on dividends is 20%.

- **What are the rates of withholding tax on royalties?**

20%.

- **What are the rates of withholding tax on interest?**

20%.

- **What are the rates of withholding tax on profits realized by a foreign corporation?**

20%.

XIII. Tax on Individuals

A. Allowances

- **What are the major allowances?**

Please refer to our response XII section “A”.



B. Calculation of Taxes

- **How is the taxable base determined?**

Taxable income is calculated as revenue for the year from all sources after deduction of admissible expenses under Article 18 of the Income Tax Law. Income of natural persons below 5,000 AFS, rent of below 10,000 AFS, and quarterly income of sole proprietor less than 750,000 AFS is exempt from payment of tax and hence can be treated as base for calculating tax.

C. Capital Gains Tax

- **Are capital gains taxable?**

Yes. Capital gains from the sale, exchange, or transfer of certain assets is taxable income. Capital gains include the sale of a trade or business (including goodwill), a factory (including equipment, machinery, buildings and land, or any part of such assets), equipment used in the business of transporting persons and property, and shares of stock in corporations or limited liability companies (Article 23 of the Income Tax Law).

D. Filing and Payment Requirements

- **When must the individual file a tax return, if any?**

Tax filing requirements in Afghanistan are not based on the nature of the investor, hence, the tax filing liability explained above for companies and other legal persons equally apply to individual investors and natural person.

- **When must the individual pay his/her taxes?**

The time for filing tax returns and payment of tax is the same, as filing return on self-declaration and evaluation model is followed by payment of tax to the government and only then the liability of an entity or individual is deemed to have been fulfilled.

E. Inheritance and Gift Tax

- **Does the individuals' presence in the country subject him/her to inheritance or gift tax?**
- **What kinds of assets are subject to tax?**
- **What are the tax rates?**
- **Are allowances available?**
- **What are the payment and filing requirements?**

The value of an asset acquired as gift, bequest, devise, finance lease or inheritance is excluded from income and hence is not taxable, but the income from such asset is declared by the Income Tax Law as taxable income and hence is subject to income tax.

F. Miscellaneous Taxes Due

- **What are the miscellaneous taxes to which the individual may be subject?**

Capital Value Tax is payable on the capital value of immovable property by those acquiring assets including capital or shares in a company.

- **What are the filing and payment requirements?**

Capital Value Tax is required to be paid to and collected by the person responsible for registering the transfer of immovable property under law in respect of which tax is payable at the time of registering the transfer.



G. Real Estate/Habitation Tax

- **Is the individual subject to real estate or habitation tax?**

Pursuant to Article 16 of the Income Tax Law, rent received in money or otherwise from rent or leasing out immovable property used for commercial, industrial and other economic and financial purposes/activity is subject to withholding tax on rent. Therefore, a person making a payment in full or part (including a payment by way of advance) to another on account of rent of immovable property shall deduct tax from the gross amount of rent paid specified in Article 59 of the Income Tax Law. If the immovable property is being used for personal purposes, the individual will not be subject to rent tax.

H. Sales Tax

- **Does the individual pay sales tax?**

Sale tax is not imposed in Afghanistan as yet.

I. Social Security and Welfare System Contributions

- **Are contributions to social security due?**
- **Are contributions to the welfare system due?**
- **If so, what are the payment and filing requirements?**

This system is not enforced in Afghanistan.

J. Stock Option, Profit Sharing and Savings Plans

- **Is there taxation of stock option plans?**

No.

- **Is there taxation of profit sharing plans?**

No.

- **Is there taxation of savings plans?**

No.

K. Taxation of Benefits in Kind

- **What is the rate of taxation on benefits in kind (e.g. automobile, housing and utilities, education, etc.)?**

Tax on benefits is not enforced in Afghanistan.

L. Taxes on Dividends

- **Are dividends taxable regardless of their form?**

Yes. According to Article 46 of the Income Tax Law, every person is required to withhold tax from the gross amount of dividends payable to shareholders/partners/owners. Whenever



such payment is made, the payer is required to withhold tax at the rate of 20% and pay it to the government account.

M. Tax on Income

- What are the federal or national tax rates on income for residents?
- What are the federal or national tax rates on income for non-residents?
- What are the regional or state tax rates on income for residents?
- What are the regional or state tax rates on income for non-residents?
- What are the municipal or local tax rates on income for residents?
- What are the municipal or local tax rates on income for non-residents?

The rate of tax imposed on the taxable income of every person is as follows:

Corporate Tax

All businesses irrespective of the legal status of the organization are subject to 20% tax on income under Article 4(1) of the Income Tax law in Afghanistan.

Personal Tax

According to Article 4 of the Income Tax Law, Afghan source income of individuals whether it is salary/wages or otherwise would be liable to tax in Afghanistan. The tax rates as provided in Article - 4(3) of the Law are as under:-

Tax on Natural Persons	
Tax Brackets	Applicable Tax
01 AFN to 5,000 AFS	Zero (exempt)
5,001 AFS up to 12,500 AFS	2% on the income above 5,000 AFS
12,501 AFS up to 100,000 AFS	10% on the income above 12,500 AFS and a fixed amount of 150 AFS
100,001 AFS and above	20% on the income above 100,000 AFS and a fixed amount of 8,900 AFS

Withholding Tax:

Natural and Legal persons are subject to following withholding taxes:

Type of income	Applicable Rate
Salary	At the rates mentioned in the preceding table
Interest	20%
Dividends	20%
Royalties	20%
Prizes	20%
Rewards	20%
Lotteries	20%
Bonuses	20%
Service charges	20%



Rent	<ol style="list-style-type: none"> 1. 01 AFN to 10,000 AFS is exempt from tax 2. 10,000 AFS up to 100,000 AFS is subject to 10% tax 3. 100,001 AFS and above is subject to 15% tax.
Contractors for Supplies of Goods, Services	<ol style="list-style-type: none"> 1. 2% of the total value of contract from contractors having valid business license; 2. 7% of the total value of contract from contractors not having valid business license

Business Receipt Tax (BRT):

The Business Receipt Tax would be payable on gross receipts of a business irrespective of any profit or loss suffered by the company during the tax year or any previous years. However, the BRT is a deductible expense for determination of taxable income. The tax rates that may likely be applicable in the case of the company are as per Article 64(1) and 66(1) (as amended in 2015) the BRT rate is 4%, 5% and 10% and applied on the gross receipts based on business type as specified in the Income Tax Law. The details are provided above in section XII-J.

Tax on Imports

Article 70 of the Income Tax Law requires persons (having a business license) importing goods into Afghanistan to pay a tax equivalent of 4% of the value of such imports plus the customs paid on those goods, however, such tax is allowed as a credit in the income tax assessment for the year in which it is paid.

Further, Article 64(3) provides for BRT at a rate of 4% (as amended on 16th Nov 2015) on the price of imported goods, however, the same is treated as an advance payment of the BRT.

The taxes mentioned above are unified and apply to every tax payer irrespective of his nationality and residence.

N. Tax Treaties

- **Are there any applicable tax treaties?**

No, Afghanistan has not yet entered into any double taxation treaties with other countries.

- **Are there any rules against treaty-shopping?**

No.

O. Territoriality Rules

- **Where is the individual subject to tax?**
- **Is the individual subject to tax on his/her worldwide income?**

A resident of Afghanistan is subject to tax in Afghanistan for his/her/ worldwide income unless he/she has paid taxes elsewhere in which case tax credit for such taxes paid may be availed by the resident under the Income Tax Law (Article 5(3) of the Income Tax Law).

A non-resident however shall is subject to payment of taxes for income generated from Afghan sources only.

As far as Residential status is concerned, it is determined on the basis of any of the following factors:

- The individual is present in Afghanistan for a period or periods aggregating to 183 days during the tax year;



- The individual is an employee or official of the Government of Afghanistan and has been assigned to perform services abroad at any time during the tax year.
- Entities that have been registered in Afghanistan or their head office is located in Afghanistan during the tax year;

P. Wealth Tax

- Is the individual subject to tax based upon his/her wealth?
- If so, what are the rates?
- Are there any allowances available?
- What are the payment and filing requirements?

Wealth tax is not enforced currently in Afghanistan.

Q. Withholding Tax

- Is salary subject to a withholding tax at the source?

Yes. pursuant to Article 58 of the Income Tax Law, all natural or legal profit and non-profit persons, ministries, state enterprises, municipalities and other State departments employing two or more employees in any month of a year shall be required to withhold taxes as provided in Article 4 of this Law from payment of salaries and wages and pay the amount withheld to the Government account. The rates are detailed above in section XIII-M.

- What is the treatment of residents as compared to non-residents?

The global income of every resident person is subject to tax while only the income from Afghan sources of a non-resident is subject to tax in Afghanistan.

XIV. Tax On Other Legal Bodies

A. Allowances

- What are the major allowances (e.g. capital cost depreciation)?
- What are the major deductible items?
- What are the major expenses that are excluded from deductibility?

Please refer to our responses to Part XII above.

XVI. Immigration Requirements

A. Immigration Controls

- Are there immigration quotas?
- Are vaccinations required?
- Are medical certificates required?
- Are entry permits required?
- If so, must you apply for an entry permit before entering the country?
- Are exit permits required?
- Are re-entry permits required?



Generally, there are no barriers to enter Afghanistan other than the requirement to have a valid visa as discussed below. However the Government does at times and based on circumstances; impose restrictions on certain travelers i.e. travelers from some African countries are required to present medical certificates or proof of vaccination.

No entry, exit, or re-entry permits (other than a visa) are required to be presented for entry into Afghanistan.

B. Immigration Requirements/Formalities

- **Is a residence permit required?**
- **If so, does the investor have to apply for one before entering the country?**
- **What information must be supplied to the immigration authorities?**
- **How long does it take to receive authorization?**

Yes. A residential permit is required which is issued at the Airport by immigration police, hence, no prior application for the same is required. The same permit regulates the stay of a foreigner in Afghanistan.

As far as the information to be supplied is concerned, original passport along with valid visa should be provided to the immigration authority. Then, the immigration authorities will enquire about the purpose of visit, in case the foreigner claims to have been invited by some, the invitation letter, and if he/she is in Afghanistan for work then an employment contract and/or a work permit are required to be produced. The concerned authority will review the documents and if found satisfactory, authorize entry of the foreigner into Afghanistan. As the situation is dependent on the nature of visa, the following discussion is fruitful.

C. Visas

- **Is a visa required for travel or stay in the country?**
- **If so, for how long is the visa valid?**
- **How does the investor apply for a visa?**
- **What documents are required?**
- **How long does it take to receive a visa?**
- **What fees are involved?**

A. Visa Requirements

A visa is required for individuals who are not citizens of Afghanistan but wish to travel to Afghanistan. The general visa policy issued by the Ministry of Interior ("MoI") applies to granting visas to foreigners.

Foreign nationals can only apply for Afghan visas from their country of origin or from their place of legal permanent residence. The relevant Afghan Ambassador / High Commissioner / Head of Mission / Consulate will determine these requests.

The period of stay indicated in a visa should not exceed three months in any case unless specified otherwise. A foreigner can enter Afghanistan at any time within the period of validity of the visa. The period of his stay will begin from the date of his arrival in Afghanistan and is governed by a residential permit issued by the Immigration Police at the time of his registration, and not by his visa.

1. Types and categories of visa



Generally there are the following categories of visas, namely;

- i. Business Visa
- ii. Entry Visa for Work
- iii. Tourist Visa
- iv. Visit Visa
- v. Diplomatic Visa
- vi. Service Visa
- vii. Student Visa
- viii. Upon Arrival Visa
- ix. Crew Visa
- x. Residence Visa
- xi. Exit Visa
- xii. Transit Visa; and
- xiii. Entry Permit Visa.

i. Business Visa

This type of visa is issued to foreign national businessmen. The duration of this type of visa varies between one month to one year issued by the Afghan mission abroad and is granted, in exceptional cases, on arrival at Afghan airports with prior approval of the Ministry of Foreign Affairs ("MoFA"). This type of visa can be extended for one year with multiple entry and exit by the Ministry of Interior. This visa can be obtained within 3 working days and the visa fee is as follows:

- i. US\$ 100 for one month SE,
- ii. US\$ 200 for 3 month ME
- iii. US\$ \$400 for 6 month ME,
- iv. US\$ 800 for one year ME

As far as the documents which are required for obtaining a business visa, kindly note that the following documents are required:

- i. Original passport with at least six months validity period since the date of visa issuance;
- ii. Filling up visa application form;
- iii. Passport size pictures (attached to the application form); and
- iv. Payment slip of the visa fee.

ii. Entry Visa for Work

This type of visa is issued to the foreign technical and managerial personnel for the purpose of imparting technical know-how and skills to the local population national worker as well as to those who are doctor, engineer, expert or specialist, teacher, trainer, pilot, transport workers and foreign technical workers. This type of visa is issued on the basis of invitation from the sponsor by the Afghan mission abroad for three months validity with one month stay at each entry. It can be obtained within 10 working days for a government fee of US\$ 100.

The following documents are required for obtaining such type of visa:

- i. Offer letter/invitation letter or introduction letter from the sponsor or employer, stating the purpose and duration of the trip, sponsorship information and financial guarantee for expenses that you will incur in Afghanistan;
- ii. Filling up the visa application form;
- iii. Passport copy with at least six months validity period since the date of visa issuance;
- iv. Passport size pictures (attached to application form);
- v. Curriculum Vita (CV);



- vi. Educational documents (Degrees & Certificates);
- vii. Business license of the sponsor/employer organization;
- viii. Proof that the foreigner has no past criminal record.
- ix. Health certificate; and
- x. Payment of the processing fee of US\$ 30;

After submission of the above documents with the ACBR at the Ministry of Commerce and Industries, they then will issue a letter to Ministry of Foreign Affairs requesting them to instruct the relevant afghan mission where the applicant is reside to issue a visa to him.

iii. Tourist Visa

This type of visa is issued by the Afghan mission abroad to those foreign nationals who want to travel to Afghanistan. It shall remain valid for one to three months with 30 days duration of each stay. This type of visa can be extended only by the Ministry of Interior with the approval of the Ministry of Broadcasting and Culture for one month. It can be obtained within 3 working days for fee of US\$ 80. The following documents are required for obtaining this type of visa:

- i. Original Passport with at least six months validity period since the date of visa issuance;
- ii. Filling up the visa application form; and
- iii. Passport size pictures (attached to the application form).

iv. Visit Visa

This type of visa is issued to foreign passport holders who would like to visit their friends and relatives in Afghanistan. This type of visa is issued by the Afghan mission abroad for one to three months with a single entry. Only in situation of force majeure can be extended by the Ministry of Interior for a further one month. This type of visa can be obtained within 3 working days and the fee is the sum of US\$ 80. The following documents are required for obtaining this type of visa:

- i. Original Passport with at least six months validity period from the date of visa issuance;
- ii. Filling up the visa application form; and
- iii. Passport size pictures (attached to the application form).

v. Diplomatic Visa

This type of visa is issued to foreign diplomatic passport holders. This type of visa is issued for one month up to twelve months by the Afghan mission abroad or in exceptional circumstances on arrival at the Afghan Airports with prior approval of the Afghan Ministry of Foreign Affairs, without fee or on reciprocal basis. This type of visa can be extended by the Afghan Ministry of Foreign Affairs from one month to three years. This type of visa can be obtained within 3 working days. The following documents are required for obtaining this type of visa:

- i. An introductory letter from the relevant government agency for obtaining this type of visa;
- ii. Original diplomatic passport with at least six months validity period from the date of visa issuance;
- iii. Filling up the visa application form; and
- iv. Passport size pictures (attached to the application form).

vi. Service Visa

This type of visa is issued to UNLP passport holders for duration of one month up to one year by the Afghan mission abroad. In exceptional circumstances, this type of visa is issued on arrival at the Afghan Airports with the approval of the Ministry of Foreign Affairs, without fee unless a fee is charged on reciprocal basis. This type of visa can be obtained within 3 working



days and can be extended for one month up to three years upon the request of the applicant. The following documents are required for obtaining this type of visa:

- i. Original UNLP Passport with at least six months validity period from the date of visa issuance;
- ii. Filling up the visa application form; and
- iii. Passport size pictures (attached to the application form).

vii. Student Visa

This type of visa is issued to those foreign students seeking admission in institution in Afghanistan on the invitation of the relevant academic institution and with approval of the Ministry of Foreign Affairs by the Afghan mission abroad. This type of visa is valid for one to three months with multiple entry and exit. This type of visa can be extended with approval of the relevant institution by the Ministry of Interior for one month up to one year with multiple entry and exit. This type of visa can be obtained within 10 working days. There is no fee for such type of visa. The following documents are required for obtaining this type of visa:

- i. An invitation letter from the University
- ii. Original Passport with at least six months validity period from the date of visa issuance
- iii. Filling up the visa application form; and
- iv. Passport size pictures (attached to the application form).

viii. Upon Arrival Visa

This type of visa is issued to UN and employees of International Organization, news reporter, players and their team management. This type of visa is issued on arrival in Afghanistan by the airport authority on the written approval of the Ministry of Foreign Affairs for one month duration. This is a single entry visa which can be changed at the request of UN and International Organizations to business visa, work visa, crew visa and Residence visa on the written approval of the Ministry of Foreign Affairs. This visa can be obtained within an hour and the fee is the sum of US\$ 200. The following documents are required for this type of visa:

- i. Original Passport with at least six months validity period from the date of visa issuance;
- ii. Filling up the visa application form; and
- iii. Passport size pictures (attached to the application form).

ix. Crew Visa

This type of visa is issued to foreign pilot, engineer, steward and air technician. This type of visa is issued for duration of six months with multiple entry and exit by the Ministry of Foreign Affairs or airport authority. This type of visa can be extended on the request of relevant company through Afghanistan Civil Aviation Authority by the Ministry of Interior for one month to one year. The fee for this type of visa is the sum of \$600. This type of visa can be obtained within 3 working days. The following documents are required:

- i. Original Passport with at least six months validity period from the date of visa issuance;
- ii. Filling up the visa application form; and
- iii. Passport size pictures (attached to the application form).

x. Residence Visa

This type of visa is issued to foreign nationals. This type of visa is only issued to those who have already obtained service visa, business visa, work visa, student visa and crew visa for one year with an option of three time entry into Afghanistan, by the Ministry of Interior. This visa can be obtained within 10 working days and the fee is the sum of \$400. The following documents are required:

- i. Original Passport with at least six months validity period from the date of visa issuance;
- ii. Copy of the previous service or business or work visa;



- iii. Filling up the visa application form; and
- iv. Passport size pictures (attached to the application form).

xi. Exit Visa

This type of visa is issued only for six days by the Interior and Foreign Affairs Ministries and can only be extended in situations of force majeure. The fee for this type of visa is the sum of US\$ 50 and can be obtained within 2 working days. The following documents are required:

- i. Original Passport with at least six months validity period from the date of visa issuance;
- ii. Filling up the visa application form; and
- iii. Passport size pictures (attached to the application form).

xii. Transit Visa; and

This type of visa is issued to those foreign nationals who wish to travel to any third country via Afghanistan. This type of visa is valid for one month with an option of up to 3 days stay for air passengers at each entry and 6 days stay for those who travel by land at each entry. It can be extended for 6 days by the Ministry of Interior in force majeure situations only. A Transit visa is not required by the travelers not leaving the airport and stay for a short while. This type of visa can be obtained within 3 working days and the fee is the sum of \$80. The following documents are required for obtaining this type of visa:

- i. Original Passport with at least six months validity period from the date of visa issuance;
- ii. Filling up the visa application form; and
- iii. Passport size pictures (attached to the application form).

xiii. Entry Permit Visa

This type of permit is issued to foreign nationals of Afghan origin who has dual nationality and desire to travel to Afghanistan on the passport of foreign country. This visa can be obtained within 3 working days without any fee. The following documents are required:

- i. Original Passport;
- ii. *Tazkira* (Afghan National Identity Card);
- iii. Filling up the permit application form; and
- iv. Passport size pictures (attached to the application form).

Foreign investors and traders from large companies and enterprises are eligible for three (3) year multiple entry and exit visa on the discretion of Afghan political mission abroad.

Further, businessmen and investors from the USA, Europe, Australia, Central Asia, and Arabic Countries with substantial investment in Afghanistan can be granted a one-year multiple entry and exit visa.

In addition, businessmen and investors from the neighboring countries are given visa on reciprocal basis or based on agreement of reciprocal recognition.

XVII. Expatriate Employees

A. Cost of Living and Immigration

- How does the cost of living compare to that in the investor's home country?
- What is the rate of inflation?

No formula is available for ascertaining the cost of living. Inflation in Afghanistan is currently assessed at 6.68% and is foreseen to reach a 7 during 2017.

B. Drivers' Licenses



- **Must the investor obtain a driver's license for that country?**
- **How does the investor obtain a driver's license?**
- **What fees are involved?**
- **Is an examination, either practical or written, required?**

Yes. According to Article 12 of the Traffic Law, it is mandatory to obtain a driver's license in order to drive in Afghanistan.

The procedure for obtaining a driving license is that an applicant needs to submit an application in the prescribed form along with photocopies of the applicant's home country driver's license. The applicant needs to submit the application in person along with 08 passport size photographs and needs to take his/her passport with him/her when submitting the application.

According to Article 13 of the Traffic Law, candidates have to pass through a series of tests. Following medical examination and successfully passing theoretical and practical written tests, which include road signs test and meeting other criteria, the driving license is issued by traffic administration.

As far as the examination are concerned, kindly note that both practical and written will be conducted and after successfully passing through both, the applicant will be issued a driving license.

The Fees will vary depending on the type of license the person wants to obtain.

C. Education

- **What types of schools are available for the investor's family?**
- **What fees are involved?**
- **What is required for enrollment?**
- **Can the investor or company receive a tax benefit?**

In Afghanistan, there are both private and public schools in which the investor's children can enroll in. The fee will depend on the institution that the child seeks to attend. Most schools have a security deposit, taken at time of admission, in addition to the quarterly or monthly fee. Depending on the grade, in which the child seeks enrollment, the former school's report card is required along with [NIC] Tazkira/passport. In addition to this, there is normally an entrance test that is taken to determine which grade is most suited to the child's abilities.

There are no tax benefits for the investor who invests in the education sector. The same tax provision applies to them as well.

D. Housing

- **What type of housing is available for the investor?**
- **Can the investor own property?**
- **Must the investor have housing before entering the country?**
- **Can the investor subsidize housing and receive a tax benefit?**

In Afghanistan, there are no housing restrictions on investors. The investor can get in touch with a real estate agent and specify the area and the type of house (bungalow or apartment) in which he desires to live.

E. Importing Personal Possessions

- **How can the investor import personal belongings?**



- Are import duties payable?
- Are there requirements for clearing the belongings through customs?

The investor may import personal belongings through a courier service, postal service, or pay extra for excess luggage on the plane.

F. Medical Care

- What level of medical care is available?
- Is there national health care?

Adequate basic non-emergency medical care is available in major cities of Afghanistan, but is inadequate in rural areas. Facilities in the cities vary in level and range of services, resources, and hygiene. Private hospitals are generally superior to government hospitals; however, they are also a lot more expensive.

National health care is available in the country, but is limited to certain programs, such as neonatal, child health, HIV, polio, and tuberculosis.

G. Moving Costs

- What costs are involved in moving?
- Can the investor receive any tax allowances?

The costs of moving vary from investor to investor, depending on where the investor moves to and from. The investors cannot receive any tax allowances.

H. Tax Liability

- What is the expatriate's tax liability? (See also Section XIII)
- What are the allowances?
- Are there any applicable tax treaties?

The same tax rates apply to expatriates as well. For more details, please refer to our above response regarding tax regime in Afghanistan. With regard to tax treaties, kindly note that Afghanistan has not signed any Double Taxation Agreement with any other country.

I. Work Contracts

- Does the investor need a work contract to work in the country?
- If so, does the contract have to be for a certain duration, for the performance of a specific job or for a specific position?
- Does the contract have to be with a national or resident of the country or related state?

The investor does not need a written contract. The investor is only required to obtain a business license and thereafter can operate the business legally in Afghanistan.

J. Work Permits

- Does the investor need a work permit to work in the country?
- How and where does the investor apply for the permit?
- What documents are required?
- What fees are involved?
- How long does it take to receive the permit?



- **For how long is the permit valid?**

The work permit is required for ordinary employees of the company whereas it is not required for the President and Vice President of a company.

The requirement of work permit for ordinary employees of a company is set out in Article 13 of the Labor Law which provides that a foreign employee who is newly employed in the organization shall obtain work permit from the Ministry of Labor and Social Affairs.

See section XI-E for other details relevant to work/labor permit.

