

The Hydrocarbons Law

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Chapter One **General Provisions**

Article 1. The Basis and Purpose of Law

This law has been enacted pursuant to the Article 9 of the Constitution of Afghanistan to regulate the affairs related to determining the ownership and control of the State over oil and gas (Hydrocarbons), preservation, utilization, granting concession rights, execution of contracts, exploration activities, development and production of oil and gas.

Article 2. Definition

For the purposes of this Law the following definitions apply herein:

1. “Hydrocarbons”: Liquid Hydrocarbons and Natural Gas
2. “Hydrocarbon Operations”: Any operations related to prospecting, exploration, extraction, production, field separation, storage, transportation, or sale of Hydrocarbons, but not transportation beyond the border exit-point for exports or after delivery into a refinery or a processing plant.
3. “Liquid Hydrocarbons”: crude oil, asphalt and bitumen, regardless of gravity, which are produced at the wellhead in a liquid or solid state at ambient conditions (of temperature and atmospheric pressure), or which are extracted from natural gas by condensation.
4. “Natural Gas”: Any Hydrocarbon which at specified atmospheric conditions of temperature and pressure, is found in a gaseous state and includes Dry Gas, including coal-based methane, Wet Gas and residue gas remaining after the extraction, processing or separation of Liquid Hydrocarbons from wet gas, as well as non-Hydrocarbon gas or gases produced in association with liquid or gaseous Hydrocarbons, and the residue gas remaining after the condensation of liquid Hydrocarbons, excluding condensed or extracted liquid Hydrocarbons.
5. “Register”: The registration of documents, reports and records of oil and gas in accordance with Article 6 of this Law.
6. A person is:
 1. “Domestic natural Person”: a person having Afghan citizenship.

2. "Domestic legal entity": any entity established in the form of a corporation, partnership, sole proprietorship, limited liability company, joint venture, association, private or public joint stock company, trust, or other for-profit entity established in accordance with the law.

3. "Foreign natural person": a person with a citizenship other than that of Afghanistan.

4. "Foreign legal entity": any entity, the legal form of which is specified under foreign laws.

7. "Contract": a written agreement concluded between the State and a contractor for the conduct of oil and gas operation, in accordance with this Law.

8. "Main Contractor/Contractor": Any Person with whom the State has entered into a Contract in accordance with this law.

9. "Exploration Phase": The initial phase of an Exploration and Production Sharing Contract in accordance with this Law.

10. "Development and Production Phase": The second period under an Exploration and Production Sharing Contract during which a Contractor shall be authorized to develop and exploit a Commercial Discovery or Discoveries.

11. "Development Program": A plan for the development and production of a Commercial Discovery as approved by the Ministry of Mines in accordance with this Law and detailed by Hydrocarbon Regulation.

12. "License": A license granted for oil and gas (Hydrocarbons) operations in accordance with the provisions of this Law.

13. "Dry Gas": Hydrocarbons most commonly consisting of only methane.

14. "Wet Gas": Hydrocarbons which beside methane have heavier gases such as ethane, propane, and butane.

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15. “Non-hydrocarbon gases”: Important non-hydrocarbon gases in the oil industries such as carbon dioxide and hydrogen sulfide, also including radium, krypton, argon, helium and nitrogen found in small amounts in the wells together with the hydrocarbon gases and crude oil.

16. “Inter-ministerial Commission”: A commission of ministers established for addressing the hydrocarbon operation issues in accordance with the provisions of Article 4 of this Law.

17. “Contract Evaluation Team”: A team of the experts of the Ministry of Mines for evaluating the Hydrocarbon Operation Contracts.

18. “Proposal”: the document carrying the proposal of the bidder for obtaining the Hydrocarbon Operations.

19. “Sub-contractor”: Contractor who enters into contracts with the Main Contractor for works or services of Hydrocarbon Operations.

Article 3. Ownership to Hydrocarbons

(1) All Hydrocarbons located on or under ground in the territory of Afghanistan shall in accordance with the law be the exclusive property of the State.

(2) A Contractor under an Exploration and Production Sharing Contract or a Service and Production Sharing Contract shall acquire title to a share of extracted Hydrocarbons as set out in such Contract. The residual share of extracted Hydrocarbons shall remain the property of the State, to be disposed of as appropriate. The Contractor may take, sell or export his share of produced Hydrocarbons, in accordance with the conditions laid down in the respective Contract.

(3) In the first and second type of Contracts, the contractor shall have the right of possession and control over his share of oil and gas extracted according to the Contract and can possess, sell and export it.

(4) The Ministry of Mines shall be the competent authority for granting a license for oil and gas operations, provided for in this Law.

(5) In cases where Hydrocarbons are discovered on or under private land, the State may acquire the land in accordance with the law of eminent domain; unless the owner of the private land gets a Hydrocarbon Operation License in accordance with this Law.

Article 4. Inter-ministerial Commission

(1) An Inter-ministerial Commission shall be established for the regulation of affairs related to monitoring, supervision, endorsement and rejection of oil and gas contracts and other relevant issues, with the following composition:

The Minister of Mines, as Chairman
The Minister of Finance, as vice – chairman
The Minister of Foreign Affairs, as member
The Minister of Economy, as member
The Minister of Commerce, as member
The President of National Environmental Protection Agency, as member

(2) The Government may include other members in the composition of the Inter-ministerial Commission, whenever needed.

(3) The Inter-ministerial Commission shall have the following authorities:

1. To monitor the bidding process and award of the Contract.
2. To evaluate the draft contracts developed by the Ministry of Mines.
3. Making decisions on the signing of contracts by the minister of mines in accordance with this Law.
4. Endorsement of other related issues which would need the approval of the council of ministers.

Chapter Two **Duties and Authorities of the Ministry of Mines**

Article 5. Duties and Authorities

In order to implement the provisions of this Law, the Ministry of Mines shall have the following duties and authorities:

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1. To formulate and implement policies relating to Hydrocarbons and their development, including polices for the promotion of private investment in the field of Hydrocarbon Operations.
2. To propose to the Inter-ministerial Commission for their approval the classification, declassification or reclassification of areas as closed to or prohibited for Hydrocarbon Operations.
3. To monitor any Hydrocarbon Operations conducted by the State administrations or any other agencies and Contractors.
4. To organize proposals for participation of persons in bidding rounds, in accordance with the provisions of this Law..
5. To conclude contracts for oil and gas operations and propose it to the Inter-ministerial Commission for endorsement.
6. To supervise the fulfillment of the terms and conditions of the Contracts for Hydrocarbon Operations and certify the implementation thereof.
7. To terminate Contracts for Hydrocarbon Operations, in accordance with Inter-ministerial Commission resolutions.
8. To stipulate surface rentals and ensure their collection.
9. To determine the initial royalty rate of the Hydrocarbons for starting the bidding process of the first and second type of contracts, and ensure the collection of the royalties fixed as a result of the bidding.
10. To divide the territory of the country into blocks for Hydrocarbon operations for inviting bids accordingly.
11. To register Hydrocarbons Operations.
12. To award or cancel oil and gas operation Licenses and determine the rights and obligations attached thereto, in accordance with the provisions of this Law.
13. To propose Regulations for better implementation of this Law.

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14. To publish integrated reports at least annually concerning State revenues and other direct or indirect economic benefits received from Hydrocarbons Operations in accordance with internationally accepted norms.
15. To require information from contractors and State agencies on their annual financial production achievements including revenues and direct or indirect economic gains from operations related to oil and gas.
16. To use the information referred to in sections 14 and 15 of this Article and to disclose and issue the information on behalf of the State, in accordance with the internationally accepted norms.
17. To disclose and issue the information other than referred to in sections 14 and 15 of this Article in accordance with law or with the written consent of the related contractors.
18. To perform and exercise other duties and authorities in accordance with the provisions of this Law.
19. To make announcements and arrange the bidding process.
20. Issuance of License after the approval of the Contract and submitting the Contract Assignment to the Council of Ministers.
21. To propose amendments to Contracts for Hydrocarbon Operations, if necessary and agreed to by the Contractor, after the endorsement of the Inter-ministerial Commission to the Council of Ministers for approval.
22. To submit the Hydrocarbon Operations Contract for the Council of Ministers approval.
23. To propose the approval of transfer or assignment of Hydrocarbon Operations Contracts to the council of ministers.

Article 6. Hydrocarbons Register

(1) An office shall be established at the Ministry of Mines to register Hydrocarbon Operations. This office shall have the following duties:

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1. A map of Afghanistan, in which the Blocks and Contract Areas, are illustrated as following:
 - a. the areas where Hydrocarbon Operations are being conducted by the government.
 - b. the Hydrocarbon Operations are granted to the Contractor (with specifications of the Contractor)
 - c. The areas are to be tendered out in the future.
 - d. The area is restricted for Hydrocarbon Operations.
2. A list of all concluded Contracts, which shall contain the following information:
 - Personal details of the Contractor, its office address, designated assignees or legal representative.
 - A description of the areas under such Contracts including the Contract Area relinquished.
 - The validity term of such Contracts and of any phases set forth therein, including any extension, renewal and expiration thereof.
 - A description of any significant issues related to the information on the Contracts, Commercial Discoveries and other significant discoveries and decisions connected with the development of Commercial Discoveries or commencement of production.
3. To keep copies of all Contracts for Hydrocarbon Operations, Licenses and their related documents and other necessary instruments of amendment, extension, renewal, termination or expiration of Licenses and Contracts.
4. A list of all areas closed to or prohibited for Hydrocarbon Operations according to provisions of this Law.
5. A list of all pipeline routes and all connected facilities, such as compression or pumping stations, side-tracks and terminals, as well as crossings.
6. Such other information required by the Ministry of Mines.

Article 7. Public access to the Hydrocarbons Register

Subject to the prevailing laws of Afghanistan prohibiting disclosure of State records (public registered documents), the Ministry of Mines, in compliance with the contractual conditions, may, upon request, authorize the public access to the Hydrocarbon Register without any charge and may also authorize the provision of copies of the information entered in the Hydrocarbon Register upon request and payment of a prescribed fee.

Article 8. Hydrocarbons Data Bank

The Ministry of Mines shall be obliged to maintain, in compliance with international standards, a Hydrocarbons data bank containing the following information concerning exploration and production:

- Geophysical and geological information, data or reports, regardless of their form and size.
- Well data including location, name, category, log data, core data and geo-chemical data.
- Production reports

Article 9. Management of the Hydrocarbons Data Bank

The conditions governing the disclosure, reassessment and use of data in the Hydrocarbons data bank, including payable fees and sharing of any proceeds, shall be determined by the Ministry of Mines by Regulation in compliance with the terms of the relevant Contracts for Hydrocarbon Operations.

Article 10. Submitting Information to Provincial Offices

The Ministry of Mines shall send the details of Contracts for Hydrocarbon Operations and Licenses, and any amendment, transfer, approval, revocation or termination thereof, as may be entered in the Hydrocarbons Register, to the provincial offices of the Ministry of Mines in provinces where the area covered by the Contracts for Hydrocarbon Operations or License is situated. The provincial office, thereafter, shall inform the governor of such province of the information received.

Chapter Three **Areas of Operations and Surface Rights**

Article 11. Occupation and Use of State-owned Land

(1) If a Contractor needs to occupy or use the Contract Area owned by the State or subject to State held land rights, right of use or other rights required to such land shall be at the disposal of the Contractor for conducting Hydrocarbon Operations for the duration of the Contract for Hydrocarbon Operations.

(2) The State shall guarantee a suitable right of way and other rights required for oil and gas operations.

Article 12. Occupation and Use of Privately Owned Land

Where a Contractor needs to occupy or use privately owned land covered by the Contract Area to carry out Hydrocarbon Operations, the State may, upon a request by the Contractor and a proposal by the Ministry of Mines, take action in accordance with related laws, to obtain the consent of the owner for the purchase or lease of the area in question for the duration of the Contract for Hydrocarbon Operations. Contractors shall pay market prices for the use or occupation of such land. Any Contractor who occupies land without a permit may be charged with trespass and treated in accordance with the related law.

Article 13. Right of Way

(1) In the event that a Contractor needs a right of way over State or privately owned land for conducting Hydrocarbon Operations, the State may facilitate such rights for the Contractor. In such cases, any compensation to the owner or occupier shall be borne by the Contractor.

(2) After the termination of the Contract for Hydrocarbon Operations the right of way shall be expired.

Article 14. Compensation of Damages to the Aggrieved

(1) If due to surface or sub-surface Hydrocarbon operations, damages are inflicted to properties or legal rights of persons, the contractor shall, taking into consideration the damages done to the surface, agricultural crops, trees, buildings or animals, pay a fair compensation for the damages.

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(2) The amount of compensation shall be determined by agreement between the parties. If any of the parties is not satisfied, the matter shall be investigated by the authorities of the Ministry of Mines and Industries and the amount of compensation shall thus be determined.

(3) If the parties do not agree with the amount decided upon by the Ministry of Mines, the dispute shall be settled by a dispute resolution board, which shall consist of representatives from the Ministries of Justice, Mines, Agriculture, Finance and National Environmental Protection Agency. If the parties do not agree with the decision of the dispute resolution board, the dispute shall be settled through the courts.

Article 15. Restricted Areas

Unless authorized by the Ministry of Mines and Industries, no person shall conduct oil and gas operations within the following areas:

- (1) Any land containing archeological or cultural remains as specified by the related law.
- (2) Any land inside the site or located within one hundred meters of any state owned building or water dams.
- (3) Any land forming part(s) of an airport or a cemetery.
- (4) Any land used or owned by the Ministry of National Defense.
- (5) Any land used for public roads, highways, railways, pipelines or other public utilities.
- (6) Any area declared as disputed area, identified by the Ministry of Mines and Industries.

Any area designated as a prohibited or unauthorized area by a decree from the State.

Article 16. Areas Closed to Hydrocarbon Operations

(1) If national interest (including but not limited to public health and safety, national protection, public order, incompatibility of oil and gas operations with other existing or planned uses of soil, surface or sub-surface, environmental, historical and cultural heritage protection or other natural values, welfare of vulnerable indigenous communities) so requires, the Ministry of Mines and

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Industries may propose to the Inter-ministerial Commission to declare certain area(s) to be closed to some or all Hydrocarbon Operations.

(2) The action referred to in section (1) of this article will not apply to the areas already included in the Contracts for Hydrocarbon Operation, unless the Contractor agrees so.

Article 17. Granting Mineral License in Hydrocarbon Operations Area

Taking into consideration the terms and conditions of the Contract, the State shall have the right to grant to persons licenses pursuant to the provisions of the Minerals Law of Afghanistan, for prospecting and exploration for, and exploitation of mineral substances within the contract area for oil and gas, provided that such new operations shall in no way hinder oil and gas operations. In such events, the Contractor shall afford proper passage for the licensee of mineral rights to the relevant portion of the contract area.

(2) The action referred to in section (1) of this article does not apply to areas already included in the Hydrocarbon Contracts, unless the Contractor agrees so.

Article 18 Discovery of Mineral Substances

If minerals of economic value and capable of being developed are discovered by a Contractor during the course of Hydrocarbon Operations, the Contractor shall report such discovery as well as submit a sample thereof to the Ministry of Mines.

Article 19 Discovery of Historic and Cultural Items

(1) Contractors of Hydrocarbon Operations shall immediately inform the inspection departments of Mines and the Department for Preservation and Repair of Historical Items, Ministry of Information, Culture and Tourism of finding signs and marks or discovery of any item of historical or cultural significance during oil and gas operations.

(2) Fossils and other items included in the list of items of historic and cultural significance are also part of historical or cultural items.

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(3) No Contractor of oil and gas operations shall remove the items mentioned under sections (1 and 2) of this Article. However, the contractor may keep them in safe custody on behalf of the State until they are transported by the relevant State authorities.

(4) If the items mentioned in section (3) of this Article are not transported by the relevant State authorities within (60) days of the date of notice, their subsequent direct expenses of keeping and safeguarding shall be borne by the relevant State authority.

Article 20 Main principle for Hydrocarbon Operations

(1) Hydrocarbon Operations shall be conducted in accordance with the provisions of this Law on the basis of a Contract for Hydrocarbon Operations.

(2) The terms and conditions of Contracts for Hydrocarbon Operations shall be developed in accordance with the provisions of this Law and the Hydrocarbons Regulations.

(3) Contracts for Hydrocarbon Operations shall be implemented subsequent to the approval of the Council of Ministers.

Article 21 Contracts Evaluation Team

(1) The evaluation team for Hydrocarbon Operation Contracts shall be consisting of representatives of Ministry of Mines; elected as per the request of Cadastre or related department and selected by the minister of mines, and representatives from the related ministries.

(2) The Contracts Evaluation Team shall have the following authorities:

1. Opening the Proposals,
2. Evaluation and assessment of the proposals from the bidders,
3. Announcement of the preferred bidder,

Chapter Four **Types of Contract for Hydrocarbon Operations**

Article 22. Types of Contract

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The Contracts for Hydrocarbon Operations shall be concluded as one of the following:

1. Exploration and Production Sharing Contracts (first type contract)
2. Service and Production Sharing Contracts, (second type contract)
3. Contracts for Geological/Geophysical/Geochemical Services,(third type contract)
4. Contracts for Pipeline Operations (forth type contract)

Article 23. Exploration and Production Sharing Contracts

Under an Exploration and Production Sharing Contract, the Contractor shall be granted the exclusive right to explore for Hydrocarbons and, in the event of a Commercial Discovery, to develop and produce Hydrocarbons, in accordance with the provisions of this Law and be entitled to the specified share from the products.

Article 24. Service and Production Sharing Contracts

Under a Service and Production Sharing Contract, the Contractor shall be granted the exclusive right of operation to upgrade and rehabilitate Hydrocarbon production facilities including well servicing operations, providing services and Hydrocarbon production in accordance with the provisions of this Law, and be entitled to the specified share from the products.

Article 25. Contracts for Geological/Geophysical/Geochemical Services

The third type Contract grants the right to conduct geological/ geophysical/geochemical services in an identified area in accordance with the provisions of this Law and the contract; provided that the identified area is not within the Contract Area of the first and second type contracts.

Article 26. Contracts for Pipeline Operations

Contracts for Pipeline Operation grants the right to construct pipelines and associated facilities (e.g. pumping stations, storage tanks or valves) and carry out the storage and transportation operation of Hydrocarbons. The terms and conditions related to the construction and operation of such pipelines

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and related facilities, including design, route selection and safety requirements, shall be set forth in the forth type Contract and the Hydrocarbon Regulations.

Article 27 Engaging Sub-Contractors

In order to carry out Hydrocarbon Operations efficiently, in accordance with the provisions of this Law, the Contractor may take into service independent subcontractors to perform special operations or provide services; provided, however, the Contractor shall provide copies of all such sub-contracts to the Ministry of Mines and the Ministry of Finance.

Article 28 Contract Bidding

- (1) All Hydrocarbon Operation Contracts shall be awarded through public tenders.
- (2) Bidding can be done for an exploration Contract covering one or more than one blocks or part(s) of one or more than one blocks or services for a specific oil and gas project.
- (3) Bidding terms and fees payable by bidders for participation shall be determined by the Ministry of Mines.
- (4) Provided that there is a tie between two bidders after evaluation of their bids, the Hydrocarbon Operation Contract shall be granted to the one with an Afghan partner.

Article 29. Requiring Documents

The Inter-ministerial Commission may require any papers or documents, through the Ministry of Mines and Industries, which establish the expertise and technical and economic capability of the contractor.

Article 30 Qualifications for Contracting

A contract may be entered into when the contractor would have good reputation, be in good legal and financial standing, and demonstrates a proven ability to contribute the necessary capital, machinery, equipment, tools and technical expertise for the better performance of the terms and conditions of the Contract.

Article 31 Eligibility for Hydrocarbon Operation Licence

(1) The following persons may obtain a license for oil and gas operations:

- 1- Any person who has completed the age of eighteen and is a citizen of Afghanistan;
- 2- Any foreign person who has completed the age of eighteen and has the legal right to reside in Afghanistan.
- 3- A legal entity established in accordance with the provisions of Law or formed as a secondary legal entity.
- 4- Foreign legal entity established according to foreign law or is a secondary legal entity or resides in Afghanistan in accordance with related laws and has the right to invest and do business in Afghanistan.

(2) The following persons shall not have the right to obtain a Contract for Hydrocarbon Operations:

1. High ranking State officials mentioned in article no. 151 of the constitution, members of the National Assembly, judges, prosecutors, officials of the Ministries of Mines, National Defense, Interior Affairs, Foreign Affairs, General Department of National Security, working in above rank three.
2. Any person with no legal capacity.
3. Any person declared bankrupt.
4. A person convicted by a conclusive judgment of the authorized court for financial, economical or administrative crimes, for a period of more than two years of imprisonment.
5. A person whose operation license has been prematurely revoked, terminated or withdrawn.

(3) In order to obtain a license for oil and gas operations and to provide the related information to the competent authorities, any foreign nationals referred to in section (1) of this Article shall be obliged to establish and maintain a permanent representative office in Afghanistan or to appoint their authorized agent resident in Afghanistan.

Article 32. Blocks

Pursuant to the provisions of this Law, the territory of Afghanistan or parts thereof shall be divided into blocks by the Ministry of Mines, using a grid system. The grid system shall be described in the Hydrocarbon Regulations.

Article 33. Area Designation

The Contract Area shall be designated and specified in terms of one or more than one block or parts thereof in the Contract, in accordance with the geographical coordinates of the area or region.

Article 34. Relinquishment of Exploration Contract Area

Exploration contractors may, upon written notice, relinquish during the exploration phase, a part or parts of the area included in the contract, in accordance with the relevant procedures. Part or parts of the contract area where a commercial discovery has been made shall be exempted from this.

Article 35. Term of Contract

The term of an exploration contract shall be divided into two phases: an Exploration –Production phase and a Development- Production phase, as following:

1. Exploration phase shall not exceed 10 years unless there has been a discovery of Hydrocarbon in the contract area and additional time is considered necessary for completion of the operation and assessment of the discovery. In this case, the term of the contract may be extended.
2. Where no commercial discovery is made during the exploration phase, the contract shall be terminated.
3. Wherever a commercial discovery is made, its relevant development – production phase shall not exceed 25 years from the date the discovery was made.

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4. In the event that a contractor has fulfilled all his obligations completely during the specified period, the contractor may, taking into consideration the provisions of this law, ask for an extension of the development – production phase for another 10 years.
5. The term of a Service Contract shall not exceed 25 years.

Article 36. Contract Termination

The conditions for the contract termination (by the State or contractor), the period therefore and the effects of such termination shall be stipulated in the text of the contract. In case of termination, the contractor shall be obliged to perform the contractor obligations, which have not been fulfilled prior to termination.

Article 37. Undertaking Activities in the Contract Areas

- (1) The contractor may undertake the following activities in the areas of Exploration and Products Sharing and Service and Production Sharing Contracts:
 1. To construct temporary or permanent residential houses, install engineering plants, construct roads and conduct other activities in accordance with this law, to facilitate Hydrocarbon Operations.
 2. To use water for daily consumption and for oil and gas operations, in accordance with this law.
 3. To construct, maintain and operate airports, roads, bridges, communication systems and conveniences, in accordance with the provisions of this law.
 4. To construct water pipes, make watercourses, ponds, dams and reservoirs, lay drains and sewers and construct sewage disposal plants, in accordance with this law.
 5. Subject to the approval of the Ministry of Mines and Industries, provide other necessary facilities outside the contract area for carrying out oil and gas operations.
- (2) The areas mentioned in Article 15 of this law shall be exempted from the provision of section (1) of this Article.

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(3) Contractors shall be obliged to compensate any losses inflicted as a result of the operations referred to in section (1) of this Article on any privately owned or occupied land.

(4) Prior to the commencement of activities mentioned in 1-4 (1) of this article, the Ministry of Mines shall obtain approval of the related authorities.

Article 38. Transfer and Storage

The Contractor may transport through transportation means owned by the State or private sector, the contractor's share of the oil and gas to the points of sale or points of export from the country, or store it within or outside the Contract Area.

Article 39. Employment of Experts

- (1) When needed, the contractor may directly or indirectly employ foreign and domestic personnel. Priority shall be given to the Afghan nationals with equivalent qualifications and experience.
- (2) The related State administrations shall be obliged to provide necessary facilities for foreign staff of contractors and their foreign sub-contractors to obtain work permits.

Article 40. Obligations of Contractors

The contractor shall undertake the following obligations:

- 1- To carry out specific works in the contract area.
- 2- To prepare and present annually a complete work program and budget for oil and gas operations.
- 3- To prepare quarterly reports on accounting records, account statements, samples and data concerning oil and gas operations to the Ministry of Mines and Industries.

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- 4- To keep and maintain documents and records of current accounting and costs of oil and gas operations during the term of the contract, in accordance with the standard accounting methods practiced in the oil and gas industry.
- 5- To report immediately on any discovery of oil and gas, in accordance with the contract, and supply a sample thereof to the Ministry of Mines and Industries.
- 6- In the event of a commercial discovery of oil and gas, to delimit the area involved and make endeavors for its development and production.
- 7- To produce oil and gas at the appropriate rate of production compatible with the nature and extent of the oil and gas reservoir discovered.
- 8- To conduct oil and gas operations expeditiously and efficiently in accordance with generally accepted best practices in the petroleum industry, and to supply equipment, storage facilities and install them, in compliance with international standards.
- 9- To take all measures to observe the laws and regulations of health, work safety, human rights, use of water, environmental protection and safeguarding the affected communities.
- 10- To investigate, review and evaluate issues related to the impacts of the contractual oil and gas operations on the environment and the socio-economic conditions of individuals.
- 11- To make available for inspection and control by representatives of the State's Department of oil and gas operations affairs, records of accounts, reports and account statements.
- 12- The contractor shall be obliged to provide technology, capital, equipment, machinery, and other necessary requirements at the contract area on his own expenses for oil and gas operations. In the absence of a commercial discovery, the expenses of the contractor shall not be compensated by the Ministry of Mines and Industries.
- 13- The contractor has to undertake all probable dangers arising from oil and gas operations, and indemnify any losses inflicted, in accordance with this law.
- 14- To provide a financial security to guarantee its compliance with the obligations to the State in accordance with the Contract for Hydrocarbon Operations.

Article 41. State Actions to Hear Complaints

The State may take necessary action in accordance with the law regarding any claims made by third parties (natural or legal persons) in respect of any injury, damage or loss caused by an act or omission of the Contractor, its subcontractors, legal agents, employees or representatives in the course of conducting the Hydrocarbon Operations.

Article 42. Operation Conditions of Hydrocarbons Industries

The operations of hydrocarbons industries shall be conducted under the following conditions in accordance with the provisions of this Law and the Environmental Protection Law:

1. To avoid any pollution or damages to flora, fauna, and birds and endeavors for protection of environment in accordance with the standards of the hydrocarbon industries.
2. To ensure that conducting oil and gas operations does not cause any harm to the health, welfare, and well being of the contractors' personnel and other people.
3. Hydrocarbon Operations are conducted expeditiously and efficiently in accordance with international best practices in the oil and gas industry, and equipment and facilities are supplied and installed in compliance with international standards.
4. International norms relating to labor, social protection and human rights are respected and that no forced labor or harmful child labor is used in connection with Hydrocarbon Operations.

Article 43. Area Clean Up

Upon the termination of the contract, the contractor shall remove any facility or equipment which has ceased to be used, and shall render the area safe.

Article 44. Employment of Labour

Unofficial English Translation -

(1) The contractor shall employ and train Afghan nationals for the operations of his/her oil and gas project.

(2) Employing foreign labor is allowed only on temporary basis and in exceptional cases.

Article 45. Procurement of Domestic Goods and Services

If Afghan goods and services are similar and equivalent in quality, quantity, and price to imported foreign goods and services, the contractor shall be obliged to purchase and procure the Afghan goods and services.

Article 46. Appointing Agents or Representatives

Where the contractor is not resident in Afghanistan or their head office is located abroad, the contractor shall be obliged to appoint a resident legal agent or representative with legal address.

Article 47. Supply of Oil and Gas to the State

When the State needs oil and gas to meet its internal consumption requirements, contractors shall be obliged to provide and supply to the State such quantities as are required, in addition to the quantity which the state is entitled to as a proportion of the volume of the contractors production, for a fair market value mutually accepted.

Article 48. Assignments

Unless approved by the council of ministers and authorized by the Ministry of Mines, the contractor shall not assign, transfer, or pledge, the rights or any part thereof granted under the Contract to any other person. This article shall not apply to the sub-contracts mentioned in articles 25 and 26 of this Law.

Article 49. Matters Enclosed in the Proposed Development Program

Unofficial English Translation -

(1) In the event that a Commercial Discovery is made under an Exploration and Production Sharing Contract, or prior to commencement of a Service and Production Sharing Contract, the Contractor shall submit to the Ministry of Mines for approval a Development Program.

(2) Development Programs from the Contractors shall contain the following:

1. Environmental protection and management plans in connection with the development plan of commercial discovery.
2. Commencement and decommissioning working plan for oil and gas operations, environment impact assessment including the description of the ecosystem before commencement of the development–production phase, including the indigenous flora, fauna, fowls, soil, air quality, surface and underground water, and landscape aesthetics.
3. The effect of oil and gas operations on local populations.
4. The environmental management plan including measures for environmental protection, mitigation or eradication of pollution and compensation of damages to affected people.
- 5- The decommissioning and abandonment plan to restore the environment affected by the oil and gas operation in order to rehabilitate it to its natural state.
- 6- A development budget
- 7- A commencement and working plan, including a risk management plan, for Hydrocarbon Operations.
- 8- An environmental impact assessment including a description of the ecosystem, including the local flora, fauna, soil, air quality, surface and underground water, and landscape aesthetics, before commencement of the relevant Development and Production Phase and the effects that the proposed development plan might have on the ecosystem.

Article 50. Compliance with the Established Orders

Unofficial English Translation -

Contractors shall prepare a risk management plan and comply with measures and directions established by the Ministry of Mines to prevent any damage and remove any hazards that the Hydrocarbon Operations may cause to affected communities, Contractor's personnel and the environment.

Article 51. Health and Safety Plan

Contractors shall develop, publish, and apply a health and safety plan including an emergency action plan.

Article 52. Reporting Accidents

(1) Contractors shall report any serious accident that occurs or any imminent hazard during the Hydrocarbon Operations as soon as possible to the Ministry of Mines and the relevant local State authorities.

(2) In the event of disasters or imminent dangers, the Ministry of Mines shall take appropriate measures to remove them.

(3) In the event of disasters or imminent dangers, the Contractor shall take every measure possible in accordance with Contractor's risk management plan to mitigate or avoid such danger or disaster.

Article 53. Compliance with Laws relating to Employment

When employing foreign or domestic staff, Contractors shall be obliged to take into consideration the enforced laws of the country.

Article 54. The Department of Environment

The Environmental Protection Department of Ministry of Mines, established pursuant to article 10 of the Minerals Law, shall, in cooperation with the National Environmental Protection Agency, have the following duties and responsibilities:

- 1- To provide advice for the protection of Environment.

- 2- To carry out technical study and evaluation of environmental protection, environmental management plans, decommissioning and assignment of work.
- 3- Monitoring the compliance of a contractor with matters relating to environmental protection, in accordance with the provisions of the relevant laws and regulations and the contents of the contract.
- 4- To ensure compliance with the Hydrocarbons Regulations during the course of Hydrocarbons Operation for the environmental protection.

Article 55. Unitization

Where an accumulation of Hydrocarbons extends into several Contract Areas, the relevant Contractors may decide to jointly conduct Hydrocarbon Operations over the extent of the field as a single unit. The agreement governing the joint operations shall be subject to approval by the Ministry of Mines. Should the parties fail to reach an agreement within a specified time limit, the Ministry of Mines shall decide upon the matter.

Article 56. Contracts for Geological/Geophysical/Geochemical Services (third type contracts)

- (1) The State may enter into Contracts for Geological/Geophysical/Geochemical Services to acquire information on which to base its Hydrocarbon exploration policy.
- (2) A third type Contract grants the right to conduct geological, geophysical and geochemical surveys, tests and studies in an identified area; provided that the identified area is not within the first and second type Contract Area.
- (3) A Contractor under the third type Contract shall report to the Ministry of Mines on the progress, and provide the Ministry the results and data from such surveys, tests, or studies in accordance with the Hydrocarbon Regulations.

Article 57 Ownership of Data

Unofficial English Translation -

All data obtained pursuant to any third type Contracts shall be the property of the State. The terms and conditions for the exercise of rights in respect of related data shall be established in the respective Contract and by the Hydrocarbon Regulations. The Contractor shall inform the Ministry of Mines whenever rights regarding geological/geophysical/geochemical data are exercised.

Article 58 Records and Reporting

Data and information acquired during the course of Hydrocarbon Operations may be freely exported by Contractors provided that the Ministry of Mines may require that an original, or in the case of a core, rock, fluid or other physical sample, a usable portion of the original, of all data and information, both physical and electronic, be kept in Afghanistan.

Chapter Five **Pipeline**

Article 59 Conditions for Constructing and Operating Pipelines

(1) Construction and operation of pipelines, pumping stations, storage tanks or valves, and transportation of Hydrocarbons shall take place on the basis of a Contract for Pipeline Operations, and issuance of a related License. The terms and conditions related to the construction and operation of such pipelines and related facilities, including design, route selection and safety requirements, shall be set forth in the Contract for Pipeline Operations and the Hydrocarbon Regulations.

(2) A separate Contract for Pipeline Operations and License will not be required for the construction and operation of pipelines, and associated facilities by Contractors under the first and second type Contracts; provided the terms and conditions for the construction and operation of such pipelines and related facilities, including design specifications, route selection, required rights of way, safety requirements, and all other relevant information, shall be specified in the Development Program and approved by the Ministry of Mines in accordance with provisions of this Law.

Article 60. Access to Transportation Infrastructure

Unofficial English Translation -

The Contractor shall be entitled to transport, through transportation means owned by third parties or the State, its share of the Hydrocarbons to the points of sale or points of export from the country, or store such Hydrocarbons within or outside the Contract Area.

Article 61. Transportation Terms and Tariffs

(1) The transportation tariffs for the use of the Pipeline shall be determined by the Ministry of Mines.

(2) Should the State or a Contractor need to transfer their additional oil and gas through a pipeline owned by a Person according to the provisions of this Law and the relevant Regulations, they shall request the consent of the pipeline owner. In the absence of an agreement with the owner, the Ministry of Mines, taking into consideration any contractual obligations of the pipeline owner, shall make an appropriate determination concerning the use of the pipeline.

Chapter Six **Income Tax on Oil and Gas**

Article 62. Accounts

Contractors shall maintain their related accounts in accordance with the International Accounting Standards (IAS).

Article 63. Payment of Taxes

(1) Contractors shall be required to pay their income taxes, levies and customs duties in accordance with the provisions of applicable laws.

(2) In order to protect contractors, the Ministry of Mines and Industries may consider financial assurances on the stability of taxes, levies, and charges, in accordance with the provisions of enforced laws of Afghanistan, in coordination with the Ministry of Finance.

Article 64. Royalties

Unofficial English Translation -

(1) Contractors shall be required to pay the royalties upon the production of Liquid Hydrocarbons and Natural Gas in accordance with the Hydrocarbon Regulations and as set out in the applicable first and second type Contracts.

(2) The royalty rate for the quantities of Liquid Hydrocarbons and Natural Gas, after deducting the amounts consumed in the conduct of production operations, shall be determined by the Inter-ministerial Commission as per the proposal of the Ministry of Mines.

Article 65 Surface Rental Fees

(1) Contractors shall pay surface rentals for the land used by them to the owner or occupier of the contract area.

(2) The rental per hectare of land shall be specified in the Hydrocarbon Regulations.

Article 66 Violations

(1) Where at the time of inspection of a contract that has been entered into, it is found that false or fraudulent information has been presented by the Contractor or information has been withheld by the Contractor, the Ministry of Mines may require the Contractor to provide any necessary information. If the Contractor fails to provide such information or the explanations presented are not satisfactory, and the incorrect information provided or omission to provide information constitutes a material breach of Contract, the Contract may be revoked by the authorities and the State is entitled to compensation for losses incurred as a result of the breach of Contract.

(2) The Ministry of Mines shall publish reasons justifying revocation of the contract and shall send a copy thereof to the contractor. In this case, the rights and privileges granted to the contractor shall be suspended; and the area concerned and securities provided shall be forfeited to the State.

(3) Cases for collection of fines and compensation of losses connected with violations of this law shall be specified in the Regulations.

(4) Whenever the Contractor is not satisfied with the decision to revoke the contract, pay damages or fines as referred to in this law; the matter shall be referred to commercial arbitration or to a competent court.

Unofficial English Translation -

(5) Where a Contractor is in breach of Contract, and such breach may have an impact on the environment or on the safety of the employees or third parties, the Ministry of Mines may order the suspension of Hydrocarbon Operations for a period not exceeding six (6) months.

(6) Breach of the Contract by either party shall entitle the other party to seek remedies for breach of Contract.

(7) Where the Contractor otherwise repeatedly or materially violates the Contract, the Contract may be revoked by the authorities and the State is entitled to compensation for losses incurred as a result of the breach of Contract.

(8) The Ministry of Mines shall be authorized to levy fines for violations of this Law, subject to conditions and levels set out in the Hydrocarbon Regulations.

(9) Penalties for infractions against the Environmental Law shall be determined pursuant to that Law and related Regulations.

Article 67. Transfer of Foreign Exchange

Contractors shall comply with the banking legislation of the country and carry out the following activities in case of payment of taxes, fulfilling financial obligations and other charges of the State:

- (1) To import foreign currency to carry out oil and gas operations.
- (2) To transfer foreign currency outside the country for the payment of debts incurred to finance oil and gas operations and for making payments to suppliers of machinery, equipment and tools required for the oil and gas operations.
- (3) To transfer foreign currency to shareholders abroad for the payment of dividends and other profits accruing from oil and gas operations.
- (4) To transfer foreign currency capital invested in the Hydrocarbon Operations.
- (5) To transfer foreign exchange, assets and proceeds of sale of contractor's assets, or compensation of damages related to any foreign investment.
- (6) To freely purchase Afghan currency or foreign exchange at the open market exchange rate.

Unofficial English Translation -

- (7) To have bank accounts in Afghani or foreign exchange or both in Afghanistan.
- (8) To have bank accounts in foreign currency outside Afghanistan in accordance with the laws and regulations of Da Afghanistan Bank (the central bank of Afghanistan).

Article 68 Expropriation

- (1) The rights of a Contractor under a Contract for Hydrocarbon Operations, the assets of the Contractor and the share of Hydrocarbons to which it is entitled under the Contract, may not be expropriated directly or indirectly except if authorized by a Law and in case of public necessity.
- (2) In case of expropriation, the State shall provide fair compensation in conformity with principles of international law and the payment of such compensation shall be made to the Contractor in freely convertible foreign currency.

Article 69 Prohibition of Bribing the State Officials

No contractor or any other person shall offer or provide directly or indirectly any funds or substance of material and spiritual value as compensation, gratuity, gift or fees, to any State officials of Afghanistan or any third party which is aimed at compelling such officials to award any contract, permit, license, and other related facilities. Any breach of this provision shall cause the revocation of the contract as well as the imposition of specific penalties.

Article 70. Dispute Resolution

- (1) If the Contractor is an Afghan natural Person or an Afghan legal entity, then any dispute between the State and the Contractor shall be settled in the local courts of justice.
- (2) If the Contractor is a foreign Person or legal entity, then the following shall apply:

--Any dispute that arises between the State and the Contractor shall be settled in accordance with the contents of the Contract. If the dispute between the State and the Contractor cannot be resolved, the case shall be brought to the International Center for Settlement of Investment Disputes (ICSID)

Unofficial English Translation -

pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States as of March, 18, 1965.

(3) If the ICSID is not applicable or the Contractor prefers to have the settlement by the United Nations Commission on International Trade Law (UNCITRAL) or any other arbitration or procedure for dispute settlement, agreed to by the Ministry of Mines and the Contractor, the State may agree to refer the dispute to (UNCITRAL) according to the provisions of the UNCITRAL Arbitration Rules (1976).

(4) If the Contract provides for arbitration in accordance with this Article, it may provide that the place for such arbitration shall be outside Afghanistan and that any award resulting from such arbitration shall be final and shall be enforceable upon application of any party to such arbitration to the appropriate courts.

(5) Where the State is a party to an arbitral proceeding under this Article, the Minister of Mines, the Minister of Justice and authorized representative of the Attorney General are empowered to represent the State, either as a claimant or as a defendant, both within Afghanistan and abroad.

Article 71. Effective Date

This Law shall enter into force as of the date of promulgation and shall be published in the Official Gazette.