

**OG# 869**

**Date: 21 December 2005**

## **Private Investment Law**

### **Chapter One**

#### **General Provisions**

##### **Article 1: the basis**

This Law is enacted pursuant to Article Ten of the Constitution of Afghanistan to encourage, support, and protect private investments and enterprises based on the free market economic system, and to regulate the affairs related thereto.

##### **Article 2: Purpose of law**

The purposes of this Law are to promote the role of private investment, both domestic and foreign, in the economy of the country, and to create a legal regime together with an administrative structure that will encourage, support and protect foreign and domestic private Investors in order to promote economic development, expand the labor market, increase production and export earnings, promote technology transfer, improve national prosperity and advance the standard of living.

##### **Article 3:**

##### **[Definitions] of expressions**

The following terms shall have the meanings set forth below:

1. "Capital Assets" means all available capital and assets whether movable or immovable, including, without limitation, equipment and machinery.
2. "Commission" shall have the meaning set forth in Article 6 of this law.
3. "Foreign Investment" means Investment in the form of freely convertible foreign currency or contributions in kind, transferred from outside by a Foreign Person to the country.
4. "Foreign Investor" means a Foreign Person who has provided Foreign Investment in the country.
5. "Foreign Loan" means a loan, debenture, bond or other form of debt extended to an Approved Enterprise in freely convertible foreign currency by a Foreign Person for the purpose of enabling the Enterprise to carry on its business.

6. "Person" shall include the following:
  - "Natural Domestic Person" means an individual whose identity is recognized by applicable law.
  - "Legal Domestic Person" means a person that has been established in the form of a corporation, partnership, sole proprietorship, limited liability company, joint venture, association, joint stock company, trust or other entity under the applicable law.
  - "Natural Foreign Person" means an individual who has the citizenship of [a country] other than Afghanistan.
  - "Legal Foreign Person" means a person whose legal form is specified pursuant to laws other than those of Afghanistan.
7. "Infrastructure" means any equipment, facilities or service that is provided for the benefit of or utilized by the public or any section of the public and shall include, without limitation:
  - Power generation or transmission facilities;
  - Water supply and treatment facilities;
  - Sewerage or sewage treatment facilities;
  - Waste-treatment or disposal facilities;
  - Airport facilities and facilities in the health and education sectors;
  - Telecommunications and broadcasting facilities;
  - Any other service or facility that is designated by the competent authorities as Infrastructure in accordance with the provisions of this Law.
8. "Investment" means currency and contributions in kind, including, without limitation, licenses, leases, machinery, equipment, and industrial or intellectual property rights, paid or provided for the purpose of acquiring shares of stock or [other] ownership interests in an Approved Enterprise.
9. "Natural Resources" means mines or natural deposits of oil, gas, gold, silver, coal or any other minerals, hydrocarbons, or other resources, whether in their natural state or under any kind of treatment.
10. "Approved Enterprise" means a business entity registered pursuant to the procedures set forth in Article 12 of this law.
11. ICSID: means The International Center for Settlement of Investment Disputes referred to in Article 30 of this Law.
12. "UNCITRAL Rules" means the arbitration rules of the United Nations Commission on International Trade Law.
13. "Office" means The Afghan Investment Support Agency, established pursuant to Article 8. (1).2 of this law.

#### **Article 4: Permitted Investment**

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

#### **Article 5: Areas Where Investment May be Prohibited, Restricted or Subject to Special Terms**

- (1) Investments in the following sectors shall be prohibited:
  1. development of nuclear power;
  2. establishment of casinos and similar establishments;
  3. production of narcotics and other intoxicants;Except for section 2 of this paragraph, the Commission may, taking into consideration the national interests, from time to time make changes to these sectors.
- (2) The Commission may from time to time limit the foreign beneficial ownership in certain industries, economic sectors or business entities. Investments present in an Approved Enterprise shall be an exception to this rule.
- (3) The Commission must discuss with relevant ministries and administrations, and approve, with the consent of such ministry or ministries, on a case-by-case basis, investment in certain sectors of the economy and certain types of Investment. With respect to such investments, the Commission may choose to apply terms that are different from those generally applied to Investments pursuant to this Law, PROVIDED, HOWEVER, that the Ministry of Finance approves tax related incentives that are more generous than those set forth in the Law.
- (4) The restricted economic sectors shall include:
  1. Production and sale of weapons, ammunition and explosives;
  2. Non-banking finance activities;
  3. Insurance activities;
4. Investments in Natural Resources (including forestry) and Infrastructure (including telecommunication facilities, pipeline construction and operation), unless investment in such sectors is permitted pursuant to the special [relevant] laws. In the latter case, such investment shall be regulated by such special laws.
- (5) The Commission may from time to time amend the list of investments referenced in this Article.

## **Chapter Two**

### **Administration and Monitoring**

#### **Article 6: organizational Structure**

- (1) The Commission [The High Commission on Investment] shall be regarded as the highest governmental authority for developing Investment policies of the country and the administrative organ for [ensuring] better implementation of this Law.
- (2) To carry out its duties, the Commission may establish AISA, hereinafter called the office, as a limited liability company.  
The Chief Executive Officer shall be appointed by the President on the recommendation of the Chairman of the Commission.  
The Chief executive Officer, as the head of the Office, shall be responsible to the Commission.
- (3) The Commission may, for fulfillment of the Office duties, appoint a Board of Directors and a Supervisory Board.

#### **Article 7: Composition of the Commission**

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

The Commission shall be authorized to invite, as needed, representatives from the private sector to provide consultation.

- (2) The Minister of Commerce shall serve as Chairman of the Commission. In his absence, a person among the voting members, appointed by him, shall chair the meetings.
- (3) If the Commission determines that one of the proposed projects or investment policy relates to a Ministry or administration which is not represented on the Commission, the relevant Minister or head of the relevant agency shall be invited to participate and provide consultations in the [relevant] meeting of the Commission.

(4) The Head of the State may, when necessary, alter the composition of the Commission.

### **Article 8: Responsibilities and authorities of the Commission**

(1) The Commission shall have the following responsibilities and powers:

1. To adopt Procedures for conducting meetings of the Commission and for making and recording decisions during its first meeting;
2. To establish the Office (AISA) for carrying out the relevant administrative duties;
3. To monitor the general climate of Investment in the country and to propose to the competent authorities any modifications to this Law in order to improve the relevant affairs;
4. to propose, to the cabinet of ministers, the enactment of Regulations, and to approve Rules and Procedures for better implementation of this Law;
5. To establish the initial threshold value for capital;
6. To recognize Approved Enterprises where Investment is greater than or equal to the Threshold Value after receiving advice from the Office;
7. To authorize the Office to Recognize Approved Enterprises where Investment is less than the Threshold Value; [and]
8. To decide over the complaints filed by an Enterprise, the request for investment of which has been rejected by the Office upon provision of written reasons.

### **Article 9: Responsibilities of the Office**

(1) In order to perform the assigned administrative affairs, the Office shall have the following duties:

1. To review applications as instructed by the Commission;
2. To formulate procedures for the review and registration of applications for Foreign and Domestic Investment, and to present it to the Commission for approval;
3. To propose and draft the relevant rules and procedures and forward them to the Commission for approval, and to publish such rules and procedures;
4. To keep records related to Approved Enterprises and monitor them so as to ensure compliance with the provisions of this Law;
5. To promote and attract investors for investing in Afghanistan through launching wide and comprehensive campaigns;
6. To assist investors in better understanding this Law and any relevant regulations, rules and procedures;
7. To provide necessary facilitation in order to provide licenses for domestic and foreign Investors; [and]
8. To monitor and supervise the implementation of the provisions of this Law and other related legislative documents, rules and procedures.

## **Chapter Three**

### **Approved Enterprises**

#### **Article 10: Registration**

- (1) An enterprise shall be deemed approved when it is accepted by the Commission or the Office in accordance with article 12 of this law. The office shall be obliged to keep and maintain records of approved enterprises.
- (2) Approved Enterprises may operate either as:
  - 1- Business entities organized under Afghan law, [or]
  - 2- Business entities organized under the laws of another nation, but registered and approved to do business in Afghanistan in accordance with the laws of Afghanistan.
- (3) Approved Enterprises may have ownership in any of the following forms:
  - 1- One hundred percent (100%) ownership by Investors.
  - 2- A joint venture between the Government of Afghanistan and private Investors.

#### **Article 11: Applying for Registration**

- (1) The application for approval of an enterprise shall be submitted to the Office. The application shall contain the details required by the Commission in accordance with this law, and the relevant Regulations, Rules and Procedures.
- (2) A Person may register an existing enterprise or an enterprise that is in the process of formation.

#### **Article 12: procedures for registration of an enterprise or denial of registration**

- (1) Within a fixed time period, the Commission and the Office, shall make a decision regarding the registration of an entity's application that meets the terms established by this Law, and shall inform the applicant.
- (2) An application for registration can only be denied when it is not submitted in accordance with this Law. [If] the Commission or Office [has denied an application, it] shall give an explanation in writing for the denial.
- (3) When the applicant amends the application according to paragraph (2) of this Article, the applicant may re-apply.
- (4) If the Commission or Office does not send the reply for denial within the fixed period, the entity shall be deemed to be an approved enterprise.

- (5) If the Commission or Office has accepted the registration of an existing entity, it shall immediately register such entity and provide a certificate of registration to the entity evidencing its status as an Approved Enterprise.
- (6) If the Commission or Office has accepted the application for registration of an entity that has not yet been formed, it shall register such entity without delay and provide a certificate of registration to the entity. Thereafter, the entity must establish its legal form within a fixed time period as determined by the Commission.
- (7) An entity shall retain its status as an Approved Enterprise (which is referenced in this Article) unless its registration is rescinded pursuant to Article 14 of this law.

### **Article 13: Reporting**

- (1) An Approved Enterprise must immediately notify the Office if there has been a change in its ownership, capital structure, or contribution of additional capital.
- (2) An Approved Enterprises shall annually file an update with the Office within ninety (90) days of the end of the fiscal year, which shall include the information referred to in Article 11 of this Law, along with such other information as the Commission or the Office deems appropriate.

### **Article 14: Loss of Approved Enterprise Status**

- (1) The Commission may, or if the Commission delegates such right in case of need to the Office, the Office may review and revoke an entity's recognition as an Approved Enterprise.
- (2) The Status of an Approved Enterprise shall be revoked when:
  - 1- The Approved Enterprise entity is dissolved;
  - 2- The Approved Enterprise can not continue to operate; [or]
  - 3- The Approved Enterprise violates the provisions of this Law.
- (3) Except for violations of Article 12(6) of this Law, before an entity's status as an Approved Enterprise is revoked, such Approved Enterprise shall be informed prior to such revocation.
- (4) The Commission or the Office shall grant the Approved Enterprise a period of three (3) months to remedy the violation.

## **Chapter Four**

### **Rights and obligations of Approved Enterprises**

#### **Article 15: Compliance with enforced laws**

Unless otherwise provided by this Law or other legislation, [all] Approved Enterprises, and [all] investors, whether domestic or foreign, must abide by all enforced laws of the country.

#### **Article 16: Right of immunity against Discriminatory Governmental Actions**

Unless otherwise specifically provided in this Law or other enforced legislation, the provisions of this law and any other legislation shall be applied uniformly to all Approved Enterprises with similar objectives [that are similarly situated], whether domestic or foreign.

#### **Article 17: Tax Concessions for Approved Enterprises**

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

#### **Article 18: Customs relief for Approved Enterprises**

An Approved Enterprise shall be exempted from export charges on products that are manufactured or assembled in Afghanistan to the extent permitted in the Customs law, provided that it has obtained an export license.

#### **Article 19: Access to Banking**

An Approved Enterprise shall have the right to use banking facilities in Afghanistan, as follows:

1. To open accounts in foreign currency and to use these banks to receive loans and credit in foreign currency from outside Afghanistan to advance its investment.



2. To open bank accounts in foreign currency outside of Afghanistan for the purpose of purchasing equipment and machinery, raw materials, spare parts, and for services needed by the Approved Enterprise, and for payment of salaries and benefits to expatriate employees, and for all other payments by the Approved Enterprise that are not contrary to the enforced legislative documents [of Afghanistan].

#### **Article 20: Employment and Labor**

- (1) An Approved Enterprise shall have the right, directly or indirectly, to employ foreign managerial and expert staff, in accordance with the enforced legislative documents. .
- (2) An Approved Enterprise shall have the right to enter into service contracts with foreign Persons in order to conduct its business activities. In such cases work permits shall be granted to such foreign personnel according to the applicable legislative document, provided however that such foreign persons comply with the enforced Afghan laws during their stay in Afghanistan.
- (3) Approved Enterprises, whether domestic or foreign, in which Foreign Investors have equity ownership are encouraged to hire Afghan personnel.

#### **Article 21: Land lease**

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In order to operate, a foreign Approved Enterprise shall have the right to lease immovable property in Afghanistan for a period of up to fifty (50) years, in accordance with law.

## **Chapter Five**

### **Transfer of capital and profits associated with foreign investment**

#### **Article 22: Transfer of Foreign Investment Capital**

- (1) A Foreign Investor in an approved Enterprise shall have the right to freely transfer out of Afghanistan the equivalent of the aggregate amount of its investment in foreign currency at the prevailing exchange rate upon payment of [all] taxes due.
- (2) The transfer referred to in Paragraph (1) of this Article may take place in one or more transactions
- (3) An approved enterprise must notify the Central Bank or such other entity designated by Law with regard to the transfer mentioned in Paragraph (1) of this Article. The Central Bank or the other entity shall reduce the amount of the

principle of the investment by the amount that has been transferred, and shall record as such in the relevant ledgers.

#### **Article 23: Transfer of Profits Associated with Foreign Investment**

A foreign investor shall have the right to freely transfer outside of Afghanistan dividends, or distributions treated as dividends under the Income Tax Law, received from the investment, in foreign currency and at the prevailing exchange rate, upon fulfillment of its tax obligations.

#### **Article 24: Transfer of Principal and Other Payments of Foreign Loans**

An Approved foreign Enterprise shall have the right to freely transfer out of Afghanistan funds for payment of the principal, interest and fees relating to a Foreign Loan [to such Approved Enterprise] in Foreign currency at the prevailing exchange rate after satisfying its tax obligations, provided that such Foreign Loan is provided in accordance with enforced Afghan Laws.

## **Chapter Six**

### **Sale of approved Enterprise and transfer of proceeds**

#### **Article 25: Sale of Approved Enterprises**

- (1) A Foreign investor shall have the right to sell all or a part of its ownership interest to Domestic or Foreign Persons or to the Government of Afghanistan without the permission of the Commission or the Office after the seller has satisfied its debts and its legal and financial obligations, in accordance with the provisions of this Law, provided that the seller of ownership interest does not violate the applicable laws of the country.
- (2) The Commission shall have the right to void any sale made in violation of this law.
- (3) The investor shall notify the Office of any sale or transfer of an ownership interest and in this case, the Office shall record the purchaser as a new Foreign Investor or domestic investor.

## **Article 26: Transfer of Proceeds from the Sale of Approved Enterprises**

A Foreign Investor shall have the right to transfer freely out of Afghanistan the proceeds of any sale of the Approved Enterprise in the currency of the Investment at the prevailing exchange rate after satisfying its tax obligations.

# **Chapter Seven**

## **Expropriation**

### **Article 27: Expropriation**

The State may expropriate an Investment or the assets of an Approved Enterprise only for the purpose of public interest, in accordance with the provisions of enforced laws of the country, and on a non-discriminatory basis.

### **Article 28: Compensation of damages**

The State shall provide prompt compensation in conformity with international law and internationally accepted principles equivalent to the fair market-value of the expropriated Investment or assets [immediately] before the expropriating action referred to in article 27 of this law was taken. Such compensation shall include interest at the one-year LIBOR rate for the period between the date of the expropriation and the date of complete payment of the compensation. In the case of an Investment made in a foreign currency, the compensation shall be made in the currency in which the Investment was made.

### **Article 29: transferring the amounts of compensation for damages and the right of appeal to the court**

- (1) A Foreign Investor that holds over twenty five percent (25%) of the ownership interest in an approved Enterprise may freely transfer any payment as compensation for expropriation out of Afghanistan without the payment of taxes, unless the law provides otherwise.
- (2) If in an expropriated property the percent of ownership interest held by Foreign Investors exceeds twenty five percent, such Foreign Investor shall have the right to dispute the fairness of the expropriation before the court, in accordance with the provision of article 28 of this law.

## Chapter Eight

### Dispute resolution

#### Article 30: Dispute Resolution

- (1) Disputes shall be resolved according to the provisions of this Law.
- (2) An Investor or an Approved Enterprise may, in any contract or other agreement with a third party, specify:
  - 1- Any arbitration or other dispute resolution procedure agreed to,
  - 2- That the place of such arbitration may be outside of Afghanistan,
  - 3- That the law of a jurisdiction other than Afghanistan may apply to the resolution of such dispute
- (3) Any award resulting from such arbitration or other dispute resolution procedure shall be final [and binding] provided that such contract or other agreement provides otherwise [sec]. Such an award shall be enforceable by the Government upon application by any party to such arbitration or other procedure.
- (4) Except as otherwise provided in paragraph (5) below, if a dispute arises with regard to an Investment, investor or enterprise pursuant to a contract or other agreement entered into between an Investor or an Approved Enterprise on one hand and an administration or organization of the State on the other, in accordance with the provision of article 29 (2) of this law, such dispute shall be resolved in accordance with applicable Afghan law.
- (5) If a dispute arises pursuant to a contract or other agreement entered into between a Foreign Investor or an Approved Enterprise with foreign equity ownership on one hand and an administration or organization of the State on the other with regard to a Foreign Investment, or a if a claim is filed under Chapter 7 of this Law, the parties shall endeavor to settle such disagreement amicably by mutual discussions.

Failing such amicable settlement, and unless the parties to such dispute otherwise agree, the parties shall submit such dispute to:

1. The International Centre for Settlement of Investment Disputes (“ICSID”) for settlement, pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States of March 18, 1965;
  2. Arbitration in accordance with UNCITRAL Rules if ICSID rules preclude [the Foreign Investor from] arbitrating before ICSID. The Government, in such cases, consents to the submission of any such dispute to ICSID for settlement by arbitration in accordance with Article 25(1) of the Convention.
- (6) An Approved Enterprise of which over twenty five percent (25%) of the ownership interest is owned by a Foreign Investor, the entrepreneur [of the Enterprise] shall be treated as a national of a state other than Afghanistan, and the

disputes mentioned in paragraph 4 of this article shall be submitted to ICSID for settlement in accordance with article 25(1) of the convention.

If more than 25 % of the ownership interest is owned by the state, the disputes mentioned in paragraph 4 of this article may be submitted to ICSID for settlement in accordance with article 25(3) of the convention, upon agreement by the State.

## **Chapter Nine**

### **Miscellaneous**

#### **Article 31: preference**

If a provision of this law shall contravene a provision or provisions of other laws governing Investment, the provisions of this law shall prevail.

#### **Article 32: Transitional provisions**

- (1) An entity that is approved prior to the enforcement of this law shall benefit from tax concessions provided in the Law on Domestic and Foreign Private Investment in Afghanistan (Official Gazette number (803), dated 1381, in accordance with Article 115 of The Income Tax Law.
- (2) An entity that is registered as an Approved Enterprise under the Law on Domestic and Foreign Private Investment in Afghanistan (Official Gazette number (803), dated 1381, is required to re-register with the Office within six (6) months from the date of execution of this Law or such longer period as may be established by the Commission.
- (3) An entity which is re-registered pursuant to paragraph 2 of this Article shall be counted [deemed] as an approved enterprise and shall be subject to the provisions of this law.
- (4) An entity that does not re-register pursuant to paragraph (2) of this article shall be ineligible to avail itself of any of the privileges accorded under this Law.

#### **Article 33: Date of Execution**

This Law shall be effective upon signature [promulgation by the Head of State] and shall be published in the Official Gazette and upon the execution of this Law, the Law on Domestic and Foreign Private Investment in Afghanistan (Official Gazette number( 803), dated 1381, shall become null and void.