

The Law of Islamic Republic of Afghanistan

Draft Law on Geographical Indications

Chapter One
General Provisions

<u>Article NO</u>	<u>Topic</u>	<u>Page</u>
Article 1:	Basis -----	
Article 2:	Objective -----	
Article 3:	Terms -----	

Chapter Two
Registrar and Register of Geographical Indications

<u>Article NO</u>	<u>Topic</u>	<u>Page</u>
Article 4:	Registrar -----	
Article 5:	Register of Geographical Indications -----	
Article 6:	Public Access -----	

Chapter Three
Applications for Registration of Geographical Indications

<u>Article NO</u>	<u>Topic</u>	<u>Page</u>
Article 7:	Applicant -----	
Article 8:	Application -----	
Article 9:	Documentation -----	
Article 10:	Formal Examination -----	
Article 11:	Eligibility for Protection as a Geographical Indication -----	
Article 12:	Preliminary Determination -----	
Article 13:	Publication -----	
Article 14:	Statement of Objection -----	
Article 15:	Response -----	
Article 16:	Hearing -----	
Article 17:	Final Determination -----	
Article 18:	Registration -----	
Article 19:	Amendment of Register -----	

Article 20:	Termination of Registration -----
Article 21:	Appeals -----

Chapter Four
Protected Geographical Indications

<u>Article NO</u>	<u>Topic</u>	<u>Page</u>
Article 22:	Legal Protection -----	
Article 23:	Restrictions Relating to Protected Geographical Indications -----	
Article 24:	Limitations on Restrictions -----	

Chapter Five
Penalties

<u>Article NO</u>	<u>Topic</u>	<u>Page</u>
Article 26:	Injunctive Remedies -----	
Article 27:	Indemnification -----	
Article 28:	Damages -----	
Article 30:	Date of Enforcement -----	

Chapter Six
Miscellaneous Rules

<u>Article NO</u>	<u>Topic</u>	<u>Page</u>
Article 29:	Enactment of Regulations -----	
Article 30:	Date of Enforcement -----	

Geographical Indications Law

Chapter One General Provisions

Article 1. Basis

This Law is enacted under Article 11, 13, and 47 of the Constitution of the Islamic Republic of Afghanistan.

Article 2. Objective

The objective of this Law is to regulate and protect the rights and duties related to geographical indications.

Article 3. Terms

Terms in this Law shall have the following meanings:

- 1- Registrar: Is an office which the registration of Geographical Indication take place in.
- 2- Register: The Registration of Geographical Indication affairs take place at the Registration office.
- 3- Geographical Indication: An indication which identifies a good as originating in the territory, region or locality where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin;
- 4- Protected Geographical Indication: A geographical indication entered on the Register;
- 5- Responsible Authority: The association, enterprise, public institution, governmental body or other certifying authority that, in accordance with specified standards, monitors and exercises control over the use in trade of a geographical indication by others;

- 6- Use: Use in any way, including use as part of, or in connection with, any transaction, purchase, sale, offer for sale, gift, exchange, import, export, or advertisement, as well as on any goods, container, wrapping, or label, or on any document relating to the foregoing;
- 7- Trade: Any trade, business, industry, profession, occupation, activity of commerce, or undertaking relating to the supply or acquisition of goods or services.

Chapter Two

Registrar and Register of Geographical Indications

Article 4. Registrar

- (1) There shall be a Registrar of Geographical Indications within the Ministry of Commerce and Industries which will operate within the Intellectual Property Office.
- (2) A document bearing the Registrar's official seal, and purporting to be signed or issued by the Registrar or his designee, shall, in the absence of proof to the contrary, be deemed to be signed or issued by or under the direction of the Registrar.

Article 5. Register of Geographical Indications

- (1) The Registrar shall establish and maintain a Register of Geographical Indications in accordance with this Law.
- (2) The Register shall be kept in such form as the Registrar considers appropriate, and may be kept in electronic form.

Article 6. Public Access

- (1) Any person may have access to the Register at no charge for the purpose of inspection during any working day, at such times as the Registrar shall determine.
- (2) The Registrar shall, on application and payment of the prescribed fee, furnish to any person a copy, or a certified copy, of any particulars on the Register.
- (3) A certified copy of particulars on the Register, signed by the Registrar and sealed with the Registrar's seal, shall be received in evidence for all purposes as conclusive evidence that the particulars shown on the certified copy of Geographical Indication have been duly registered.

Chapter Three

Applications for Registration of Geographical Indications

Article 7. Applicant

The owner of the right or legal representative for a proposed geographical indication may submit an application to the Registrar for the inclusion of such in the Register.

Article 8. Application

(1) An application for inclusion in the Register shall include the following information:

- 1- the name of the responsible authority in relation to the indication;
- 2 - the capacity in which the responsible authority is applying for registration;
- 3 - the address of the responsible authority's principal office or place of business in Afghanistan, if any; if the responsible authority has no office or place of business in Afghanistan, the name and address of the responsible authority's agent for service of process in Afghanistan;
- 4 - the indication for which registration as a geographical indication is being sought;
- 5 - the good or class of goods to which the indication applies;
- 6 - the boundaries of the territory, region or locality to which the indication applies and in which the good is identified as originating;
- 7 - the quality, reputation or other characteristic(s) of the good in respect of which the indication is used, which is essentially attributable to the good's geographical origin;
- 8 - an explanation of the link between the quality, reputation or other characteristic(s) identified pursuant to the previous paragraph, and the geographical origin of the good to which the indication applies.

(2) This link may be demonstrated with reference to:

- 1- an established process, method or mode of production which is characteristic of the territory, region or locality indicated;
- 2 - particular equipment or materials consistently used in production, storage, or processing of the good;
- 3 - the quality or nature of the ingredients or raw materials which are habitually used or specifically excluded;

- 4 - particular natural factors, such as soil and climate, which are present in the indicated geographical area and pertinent to the production, preparation and/or processing of the good;
- 5 particular human factors, such as established professional traditions of the producers in a given geographical area, which affect the production, preparation and/or processing of the good;
- 6 the method for obtaining the good; or
- 7 other factors linking the quality, reputation or other characteristic(s) identified with geographical origin.

Article 9. Documentation

An application for registration shall be accompanied by the following:

- (1) documentation of the responsible authority's procedures in place to verify, on an ongoing basis, that the indication for which registration is sought is applied consistently and exclusively to goods that have the specified quality, reputation or other characteristic(s) essentially attributable to geographical origin;
- (2) a map or written description indicating the political, administrative, topographical or other specific boundaries of the territory, region or locality identified, whether literally or implicitly, by the proposed geographical indication;
- (3) specimens of the claimed indication as used in trade;
- (4) a list of producers whom the responsible authority has verified, at the time of the application, as meeting the criteria to use the relevant indication in trade;
- (5) The prescribed application fee, based on an approved structure.

Article 10. Formal Examination

(1) Upon receipt of an application made in accordance with this Chapter, the Registrar shall provide the applicant with a dated, time-stamped receipt, and shall also record the time and date of receipt in the Registrar's records.

(2) Within 20 working days of receiving the application, the Registrar shall examine the application for formal compliance with the requirements of this Chapter, and shall inform the applicant in writing either that the application is deemed complete, or that the application is deficient on specific points.

(3) Where the Registrar has identified formal deficiencies in the application, the applicant shall address those deficiencies within 20 working days of receiving notice of the deficiencies. Failure to cure the deficiencies within that time shall constitute abandonment of the application.

Article 11. Eligibility for Protection as a Geographical Indication

- (1) To be eligible for protection as a geographical indication, a proposed indication must meet the criteria for geographical indications as set out in Article 3 of this Law, as demonstrated by the application and supporting documentation.
- (2) A proposed geographical indication shall not be ineligible for protection solely on the ground that it relates to a geographical origin, or part of a geographical origin, to which another protected geographical indication relates.
- (3) No indication may be registered or protected as a geographical indication if, although literally true as to the territory, region or locality in which the goods originate, it falsely represents to the public that the goods originate in another territory.

Article 12. Preliminary Determination

- (1) Upon the completion of the application under Article 10 of this Law, the Registrar shall undertake a substantive examination of the application and make a preliminary determination as to whether the proposed geographical indication meets the legal requirements for entry on to the Register. The examination shall take into account the requirements of this Law, and in particular the provisions of Article 11.
- (2) The Registrar shall, within 30 working days of confirmation of the completed application, inform the applicant in writing of its preliminary determination and the legal basis there for.

Article 13. Publication

Upon a positive preliminary determination under Article 12(2) of this Law, the Registrar shall, promptly upon notifying the applicant of his decision, cause notice of the preliminary determination to be published in the prescribed manner. Such publication shall include notification as to the time and manner for filing statements of objections to the preliminary determination.

Article 14. Statement of Objection

- (1) Any interested person may file with the Registrar, and serve on the applicant, a written statement of objection to the preliminary determination in the time and manner prescribed.
- (2) A statement of objection may be based only on the grounds indicated in Article 11 of this Law.
- (3) A statement of objection shall set out
 - a) the ground of objection in sufficient detail to enable the responsible authority to reply thereto; and

- b) the address of the objector's principal office or place of business in Afghanistan, if any, and if the objector has no office or place of business in Afghanistan, the name and address of the objector's agent for service of process in Afghanistan.

Article 15. Response

(1) After a statement of objection has been served on the applicant, the responsible authority may file a response to the objection with the Registrar, and serve a copy on the objector, in the time and manner prescribed.

(2) If the responsible authority does not file and serve a counter statement in a timely manner, the application shall be deemed abandoned, and the proposed geographical indication shall not be entered into the Register.

Article 16. Hearing

The Registrar shall afford both the objector and the responsible authority the opportunity to present at a hearing evidence and testimony to support their respective positions.

Article 17. Final Determination

(1) After considering the totality of the evidence and positions presented, including any objections, the Registrar shall, within the time prescribed, make a final determination on the whether the proposed geographical indication meets the legal requirements for entry into the Register.

(2) Based on provisions of this law the Registrar shall notify the responsible authority and the objector, if any, in writing of the final determination and the legal basis there for.

Article 18. Registration

Promptly upon making a positive final determination, the Register shall enter the geographical indication into the register.

(1) The registry entry for a geographical indication shall specify:

- 1- the name of the geographical indication
- 2- the good or class of goods to which the geographical indication applies;
- 3- the boundaries relating to the geographical indication;
- 4- the conditions, if any, relating to the geographical indication;
- 5- the name of the responsible authority in relation to the geographical indication; and
- 6- the producers verified by the responsible authority as meeting the criteria to use the geographical indication in trade.

Article 19. Amendment of Register

- (1) The Registrar has the authority to correct any obvious errors in, or omissions from, the Register.
- (2) The Registration office may, in the manner prescribed, amend the list of producers verified as meeting the criteria to use the geographical indication in trade.

Article 20. Termination of Registration

- (1) A geographical indication registered under this Law may be removed from the Register upon petition of an interested party or on the initiative of the Registrar, on the grounds that the conditions for registration are not met.
- (2) A notice of intention to terminate a registration, and the legal grounds there for, must be served on the responsible authority in the time and manner prescribed.
- (3) After a notice of intention to terminate has been served on the applicant, the responsible authority may file a response with the Registrar and serve a copy on the petitioning party, if any, in the time and manner prescribed.
- (4) If the responsible authority does not file and serve a response in a timely manner, the geographical indication shall be removed from the Register and the responsible party shall promptly be informed in writing of the removal.
- (5) If the applicant does file and serve a response in a timely manner, the Registrar shall afford the responsible authority and the petitioning party, if any, the opportunity to present at a hearing evidence and testimony to support their respective positions.
- (6) After considering the totality of the evidence, the Registrar shall, within the time prescribed, make a final determination on the whether the geographical indication shall be removed from the Register.
- (7) The Registrar shall notify the responsible authority and the objector, if any, in writing of the final determination and the legal basis there for.

Article 21. Appeals

- (1) Any interested person who objects to a preliminary determination under Article 12 of this Law may, in the prescribed time and manner, appeal the decision to the commercial court.

(2) Any person who objects to a final determination by the Registrar under Article 17 of this Law may, in the prescribed time and manner, appeal the decision to the commercial court.

(3) Any person who objects to a termination decision by the Registrar under Article 20 of this Law may, in the prescribed time and manner, appeal the decision to the commercial court.

(4) Every appeal made pursuant to this Article shall follow the prescribed form and procedure of the commercial court, and shall be subject to payment of the prescribed fee.

(5) The prescribed fee based on approved structure.

Chapter Four

Protected Geographical Indications

Article 22. Legal Protection

(1) Geographical indications duly registered in accordance with this Law and the regulations promulgated hereunder shall be protected as set forth under this Law.

(2) Interested parties shall have a cause of action in court to address violations of this Law.

Article 23. Restrictions Relating to Protected Geographical Indications

In respect of geographical indications protected under this Law, the following activities shall be prohibited:

(1) the use in trade of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin, in a manner which misleads the public as to the geographical origin of the good;

The use in trade of a geographical indication which, although literally true as to the territory, region or locality in which the goods originate, falsely represents to the public that the goods originate in another territory;

(2) any use of an indication in trade which constitutes an act of unfair competition under the laws of Afghanistan.

Article 24. Limitations on Restrictions

(1) Nothing in this Law shall prejudice rights in trademark that have been applied for or registered in good faith, or acquired through use in good faith, under the Trademark Law of 2009, as amended.

(2) Nothing in this Law shall prohibit the use of an indication with respect to goods or services which is identical with the term customary in Afghanistan as the common name for such goods or services in Afghanistan.

(3) Nothing in this Law shall prejudice the right of any person to use, in the course of trade, his own name or the name of his predecessor in business, except where such name is used in such a manner as to mislead the public.

Chapter Five Penalties

Article 26. Injunctive Remedies

(1) The judicial authorities shall have the authority to order a party to desist actions in violation of any right under this Law, including the introduction into the channels of commerce in Afghanistan of imported goods that involve a violation of this Law.

(2) The judicial authorities shall have the authority to order that goods that they have found to violate this Law be, without compensation of any sort, destroyed or disposed of outside the channels of commerce in such a manner as to avoid any harm caused to the responsible authority, any verified producer, or the public.

(3) The judicial authorities shall also have the authority to order that materials and implements whose predominant use has been to create of goods violating this Law be, without compensation of any sort, disposed of outside the channels of commerce in such a manner as to minimize the risks of further infringements. In considering requests for relief under this paragraph, the need for proportionality between the seriousness of the violation and the remedies ordered, as well as the interests of third parties, shall be taken into account.

Article 27. Indemnification

(1) The judicial authorities may order a party at whose request enforcement measures were taken, and who has abused enforcement procedures, to provide to a party wrongfully enjoined or restrained adequate compensation for the injury suffered because of such abuse.

(2) In such a case, the judicial authorities shall also have the authority to order the applicant to pay the defendant's expenses, which may include appropriate attorney's fees.

Article 28. Damages

(1) The judicial authorities shall have the authority to order a violator of this Law to pay any injured party damages adequate to compensate for the injury sustained because of the violation.

(2) The judicial authorities shall also have the authority to order the violator to compensate the injured party for his expenses, which may include appropriate attorney's fees

Chapter Six Miscellaneous Rules

Article 29. Enactment of Regulations

For better implementation of this Law, the Ministry of commerce and Industries may draft and enact, after appropriate procedures, regulatory measures and procedures.

Article 30. Date of Enforcement

This law is promulgated after signature of the President and shall be published in the Official Gazette.