

Afghanistan

Law on Domestic and Foreign Private Investment in Afghanistan (2005)

Unofficial translation

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The year indicated in brackets after the title of the law refers to the year of publication in the Official Gazette or, when this is not available, the year of adoption of the law.

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Law on Domestic and Foreign Private Investment in Afganistan

Official Gazette No. 869

Chapter I. General provisions

Article 1

This legislation has been adopted to encourage and protect domestic and foreign private investment. The goal of this legislation is to promote economic development, expand the labor market, improve national prosperity, advance the people's standard of living and assist the process of Afghanistan's reconstruction.

Article 2

The following terms are defined to mean:

"Investment": Utilization of tangible and intangible capital in the form of cash, credit, material goods, services or other types (i.e. patent, intellectual property, trademark and copyright) in an enterprise approved by the High Commission on Investment.

"Approved Enterprise": Investment by a domestic or foreign real or legal entity as proscribed under this law.

Article 3

Based on the provisions of this law and the Commercial Law, qualified domestic or foreign entities, real or legal, may invest in all sectors of the economy—whether production or service-related.

Article 4

Domestic, foreign, or joint ventures may take any of the following forms:

1. One hundred percent domestic private equity.
2. One hundred percent foreign private equity.
3. Any combination of domestic and foreign private equity.
4. Joint venture between the Government of Afghanistan and the private sector, whether domestic or foreign.

In the last two categories, the parties shall determine the percentage of equity by mutual consent.

Article 5

The Approved Enterprises shall prepare their accounts according to international standards and submit them to the relevant authorities for auditing.

Chapter II. Coordination and monitoring

Article 6

The High Commission on Investment will be the Government's focal point for policy-making on investment; it will also coordinate and monitor the Office of Private Investment. This Commission is composed of:

1. Minister of Commerce
2. Minister of Justice
3. Minister of Foreign Affairs
4. Minister of Finance
5. Minister of Planning
6. Minister of Reconstruction

The Minister of Commerce will chair the High Commission. When a proposed investment pertains to a particular sector, the relevant Minister(s) shall be invited to participate in the meeting of the High Commission.

If necessary, the President may modify the composition of the High Commission.

Article 7

The High Commission shall have two rotating seats for the private sector, with one-year terms. For the first year, the Chamber of Commerce will elect these representatives. Subsequently, investors will propose to the High Commission a new modality of electing these representatives.

Article 8

To implement the articles of this law, the Office of Private Investment will be created within the framework of the Ministry of Commerce. The powers, responsibilities and the organizational chart of this Office will be specified in bylaws to be approved by the High Commission.

Article 9

The Director of the Office of Private Investment mentioned in Article Eight shall serve as the Secretary of the High Commission.

Article 10

The High Commission shall establish a Secretariat Office.

Chapter III. Benefits, waivers and obligations of approved enterprises

Taxes

Article 11

The Government shall grant the following tax waivers:

- Short-term: Tax waivers shall be granted for four years from the date of licensing, or three years from the start of production—whichever comes first.
- Medium-term: Tax waivers shall be granted for six years from the date of licensing, or five years from the start of production—whichever comes first.
- Long-term: Tax waivers shall be granted for eight years from the date of licensing, or seven years from the start of production—whichever comes first.

Under special circumstances for investments requiring a longer period of maturation, the High commission, with due consideration of universal norms, may agree to extend the duration of exemption.

Article 12

With due consideration to universal norms, the Office of Private Investment shall determine as to which of the three categories of Article Eleven a particular investment falls under.

Customs duties

Article 13

Products of the Approved Enterprises shall be exempt from any export tariffs and duties for four years from the start of production.

Renting of land

Article 14

Foreign investors, based on the classification of their Approved Enterprise as short-term, medium-term or long-term [as described in Article Eleven], may lease real estate for ten, twenty or thirty years, respectively. Lease of land is conditional to implementation of the project.

The High Commission, based on need and justifiable cause, can extend the period of the lease.

Transfer of capital and profits

Article 15

Private investors have the right to transfer their capital and profits [out of Afghanistan].

Sale

Article 16

Private investors have the right to sell their approved enterprises after settling their legal accounts and obtaining the agreement of the High Commission.

Article 17

The capital and proceedings of the sale can be transferred outside the country.

Purchase and sale of shares

Article 18

An Approved Enterprise with foreign ownership can sell its shares to Afghans citizens or the Government of Afghanistan.

Article 19

Purchase, sale and use of patents and trademarks, and proprietary information by the investor in the Approved Enterprise will be executed according to legal agreement.

Access to banking

Article 20

All investors, whether foreign or domestic, have the right to avail themselves of the banking facilities in Afghanistan, including opening of accounts in foreign currency and the receipt of loans and credit to advance investment in the country.

Article 21

Whenever possible, private investors are encouraged to employ Afghan personnel who possess the relevant skills, and thus assist in furthering their technical and professional development.

Chapter IV. Miscellaneous articles

Seizure and confiscation

Article 22

The State does not have the right to confiscate or seize domestic or foreign investment without due process of law and the order of a court with the appropriate level of jurisdiction.

Article 23

Confiscation of foreign and domestic investment is only authorized for the purpose of safeguarding the public interest. In such a case, prior to confiscation, the State shall pay the just compensation for said investment on the basis of the prevailing market price or on the basis of an assessment of an internationally respected firm.

Article 24

Private investors may transfer any funds received from the Government as a result of confiscation out of Afghanistan without the payment of taxes.

Should the affected enterprises have any complaints, they have the right to approach the High Commission, which may adopt the appropriate measures for resolution of their grievances.

Sectors not covered by this law

Article 25

Investments in construction of pipelines, telecommunications infrastructure, oil and gas, mines and minerals, and heavy industries are exempt from provisions of this legislation.

Investment in these sectors shall be regulated under separate legislation.

Dispute resolution

Article 26

Disputes between foreign and domestic investors versus the Office of Investment and government officials may be directly resolved in an amicable manner by understanding and observing the rules of this legislation and documentation of the Enterprise, including whatever specialized contracts have been signed and agreed upon.

Should the disputes not be resolved in this manner, the parties shall settle their dispute according to the provisions of the Washington Arbitration Regulations of March 18, 1965 or in accordance with the United Nation's Judiciary Laws for International Commerce.

Article 27

The decision based on these international agreements for dispute settlement and/or their rendered judgments shall be final and both parties are obliged to accept such a final decision.

Article 28

Upon execution of this law, the Office of Investment created within the framework of Investment Legislation dated 8/2/1422 H.Q. is considered abolished. The High Commission will adopt measures concerning projects under submission to the current Office.

Article 29

In the case of discrepancy between provisions of this legislation with any provisions of existing laws relating to national and foreign investment, the provisions of this legislation shall prevail.

Article 30

Upon the execution by the Head of State, this legislation will be published in the Official Gazette and will thereby be executed; private foreign and domestic legislation that was published in the Official Gazette number 797 (dated 8/2/1422 H.Q.) will be null and void.

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