

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

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.

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 policies 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 s6 Tcirst and s6 Tcirst and s6 Tcirst 5.1(r)0.001 5 T-0.00T@cc0 -5.76(O)-6,0 TD-0.07TD0 Tc4()TJ-1 e07TD

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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.

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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

Article 8. Hydrocarbons Data Bank

The Ministry of Mines shall be obliged to maintain, in compliance with international standards, a

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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 s sh-9.220.1267 0 TD-erati
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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,

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

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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

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

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(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

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(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

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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

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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

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(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

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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.