U.S. DEPARTMENT OF STATE
DIPLOMACY IN ACTION

Executive Summary

The Afghan economy experienced steady economic growth averaging 10 percent between 2005 and 2012. That growth has been driven largely by the international presence, including spending by the International Security Assistance Force (ISAF) and international aid agencies. As international troops withdraw and international aid declines, growth is expected to drop to 3-5 percent per year in the short- to medium-term. This growth will not be sufficient to cover anticipated government budget deficits. As such, the Afghan government will have to focus on improving domestic revenue generation. We anticipate they will place increasing focus on private-sector-led development. The success of this approach will depend on their ability to convince reluctant investors of the business opportunities in the country.

The Government of Afghanistan (GOA) recognizes the development of a vibrant private sector is crucial to the reconstruction of an economy ravaged by decades of conflict and mismanagement. The government has stated a commitment in principle to fostering private-sector-led economic development and increasing domestic and foreign investment, as reflected in the Afghanistan National Development Strategy (ANDS). However, its efforts to build an enabling environment for a competitive private sector; to expand the scope of private investment by developing natural resources and infrastructure; and to promote investment from domestic sources, the Afghan diaspora, and foreign investors have been limited by weak capacity and political will to undertake necessary reforms.

As part of its World Trade Organization (WTO) accession process, the Government of Afghanistan is modifying existing legislation and drafting new laws and regulations to bring its trade policy framework into accordance with WTO standards. At present, Afghanistan's legal and regulatory frameworks and enforcement mechanisms remain nascent. Much of the framework necessary for encouraging and protecting private investment is not in place, and the existence of three overlapping systems Sharia (Islamic Law), Shura (traditional law and practice), and the formal legal system instituted under the 2004 Constitution can be confusing to both investors and legal professionals. Moreover, corruption affects the consistency of the application of the laws.

Although most senior Afghan government officials express strong commitment to a market economy and foreign investment, many businesses maintain that this attitude is not always reflected in practice. Many government officials, some of whom demand bribes, levy unofficial taxes and inflict bureaucratic delays, are out of step with official government policy. Commercial regulatory bodies are often understaffed and hampered by weak capacity. Financial data systems are limited.

Security threats limit investors' opportunities to develop businesses in some provinces. Certain sectors (such as mining and hydrocarbons) still lack a regulatory environment that fully supports investment. Domestic and foreign investors rank pervasive corruption high on the list of impediments.

The following chart summarizes well-regarded indexes and rankings.

TABLE 1

Measure	Year	Rank or value	Website Address
TI Corruption Perceptions index	2013	177 (tied for last) of 177	http://cpi.transparency.org/cpi2013/results/
Heritage Foundation's Economic Freedom index	2013	Not ranked	http://www.heritage.org/index/ranking
World Bank's Doing Business Report "Ease of Doing Business"	2013	164 of 189	http//doingbusiness.org/rankings
Global Innovation Index	2013	Not ranked	http://www.globalinnovationindex.org/content.aspx?page=gii-full-report-2013#pdfopener
World Bank GNI per capita	2012	US $680	http://data.worldbank.org/indicator/NY.GNP.PCAP.CD

TABLE 1B - Scorecards: The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated commitment to reform, produced scorecards for countries with a 2012 per capita gross national income (GNI) of $4,085 or less. A list of countries/economies with MCC scorecards and links to those scorecards is available here: http://www.mcc.gov/pages/selection/scorecards, including a scorecard for Afghanistan – http://www.mcc.gov/documents/scorecards/score-fy14-english-af-afghanistan.pdf. Details on each of the MCC's indicators and a guide to reading the scorecards are available here: http://www.mcc.gov/documents/reports/reference-2013001142401-fy14-guide-to-the-indicators.pdf.

1. Openness To, and Restrictions Upon, Foreign Investment

The GOA has developed and is in the process of implementing the Afghanistan National Development Strategy (ANDS). The strategy prioritizes investments in security, agriculture and rural development, infrastructure and natural resources, education, health and nutrition, good governance, rule of law and human rights, economic governance and private-sector development, and social protection. To advance the implementation of the ANDS, GOA focuses government activities in three main areas: 1) agriculture and rural rehabilitation, 2) human-capacity development, and 3) economic development and infrastructure through implementation of high priority programs chosen for their ability to contribute to significant to job creation, broad geographic impact, and likelihood of attracting additional investment.

In the Private Investment Law of 2005 (PIL), investment is defined as currency and contributions in kind, including, without limitation, licenses, leases, machinery, equipment, and industrial and intellectual-property rights provided for the purpose of acquiring shares of stock or other ownership interests in a registered enterprise. The PIL permits investments in nearly all sectors of the economy with the exception of nuclear power, gambling establishments, and production of narcotics and intoxicants. There are also limitations in place on the total value of service transactions or assets with respect to motion pictures, road transport (passenger and freight), and on the total number of people that can be employed in security companies. Article 16 of the PIL stipulates that foreign investors are provided national treatment.

The High Commission on Investment (HCI) is responsible for investment policy making. The commission includes participation by the Ministers of Agriculture, Economy, Finance, Foreign Affairs, Mines and Industries, the Governor of the Central Bank (Da Afghanistan Bank), and the Chief Executive Officer of the quasi-governmental Afghan Investment Support Agency (AISA). It is chaired by the Minister of Commerce and Industries. The High Economic Council, which is chaired by the President and includes both the HCI ministers and representatives from academia and the private sector, also plays a role in investment policy development.

Investment in certain sectors, such as production and sales of weapons and explosives, non-banking financial activities, insurance, natural resources, and infrastructure (defined to include power, water, sewage, waste-treatment, airports, telecommunications, and health and education facilities) is subject to special consideration by the HCI, in consultation with relevant government ministries. The HCI may choose to apply specific requirements for investments in restricted sectors. Direct investment exceeding U.S. $3 million requires HCI approval of the investment application.

Any potential Afghan investor is required to obtain a corporate registration from the Afghanistan Central Business Registry (ACBR), to register with AISA, and to obtain a Tax Identification Number (TIN). AISA approval can be denied to investors (whether domestic or foreign) if the investment license application is incomplete or contains inaccurate information, the investment is not made through a registered Afghan enterprise, or if the investment is proposed for a prohibited sector.

Although Afghanistan improved its “Starting a Business” ranking in the World Banks 2013 “Doing Business” Report from 28/189 in 2013 to 24/189 in 2014, its overall “Ease of Business” ranking remains dismal (164/189). It is widely understood within Afghanistan’s private sector, especially among international companies operating in Afghanistan, that while starting a business in Afghanistan might be relatively easy, renewing a business license is a tricky – and costly – exercise. AISA licenses must be renewed annually and applications for renewal are contingent upon certification from the Ministry of Finance (MOF) that all taxes due have been paid. Some companies have seen their AISA license renewals delayed while MOF audits their tax status, despite MOF assurances that an ongoing tax audit should not impede AISA license renewal. Credible private-sector contacts allege corruption and bribery related to the AISA renewal process have been on the rise. These allegations cite, in addition to licensing issues, problems with unqualified management, development of an AISA-approved companies list and delays of business license renewals for companies not on the list, and allegations of unaudited use of licensing fees (US$1030 per license) by the CEO.

Although the HCI has the authority to limit the share of foreign investment in some industries, specific economic sectors, and specific companies, that authority has never been exercised. In practice, investments may be 100 percent foreign-owned. The PIL authorizes the HCI, with the agreement of the relevant ministries, to provide, on a case-by-case basis, different terms from those generally applied to investments. For example, the Ministry of Finance is authorized to provide tax incentives, but such authority has never been exercised. Exceptionally large investments may be granted different terms, provided those investments result in significant economic growth and development in rural/disadvantaged regions and create significant economic/employment opportunities.

While there is no requirement for foreigners to secure Afghan partners, the Afghan Constitution and the PIL prohibit foreign ownership of land. So, most foreign firms find it necessary to work with an Afghan partner, and many businesses cite lack of land ownership as one of the greatest impediments to investment in Afghanistan. Foreigners may lease arable land for periods up to 50 years and non-arable land for longer. Some businesses have negotiated leases with an automatic renewal clause for terms of up to 99 years.

While not official policy, small groups of businessmen reported to have close familial or tribal ties with provincial leaders and government officials dominate the trading market in many areas. These individuals enjoy excessive advantages that result in a non-competitive environment in several fields, due to their wealth and insider access to land, credit and contacts, and their ability to manipulate prices. In addition, some industries, including money changing and carpet production, have well-organized guilds that protect existing firms and create barriers to entry.

2. **Conversion and Transfer Policies**

Private investors have the right to transfer capital and profits out of Afghanistan, including for off-shore loan debt service. There are no restrictions on converting, remitting, or transferring funds associated with investment, such as dividends, return on capital, interest and principal on private foreign debt, lease payments, or royalties and management fees, into a freely usable currency at a legal market clearing rate. The PIL states that an investor may freely transfer investment dividends or proceeds from the sale of an approved enterprise abroad.

Afghanistan does not maintain a dual-exchange-rate policy, currency controls, capital controls, or any other restrictions on the free flow of funds abroad. In 2012, President Karzai issued an executive order making it illegal to transport more than AFS 1,000,000 (approximately USD 18,000) or the foreign currency equivalent out of Afghanistan via land or air; amounts over AFN 500,000 (approximately USD 9,000), but beneath AFN 1,000,000 must be declared. Enforcement of this law is haphazard, particularly for those traveling through the VIP lounge at Kabul International Airport, whose belongings receive little if any inspection from Afghan authorities to ensure that they are in compliance with reporting requirements.

Access to foreign exchange for investment is not restricted by any law or regulation. In practice, however, particularly in the provinces, many banks might not have the capacity to deal with foreign exchange. There are large, yet informal, foreign exchange markets in major cities and provinces such as Jalalabad, Kabul, Kandahar, Herat and Mazar-e Sharif, where U.S. dollars, British pounds, and Euros are readily available. Entities wishing to buy and sell foreign exchange in Afghanistan must register with the central bank, Da Afghanistan Bank, but thousands of unlicensed money changers ("hawalas") continue to practice their trade. Non-official money service providers often cite the lack of enforcement in the currency exchange sector, and the resulting competitive disadvantage to licensed exchangers, as a disincentive to becoming licensed.

Due in part to Afghanistan's failure to pass Financial Action Task Force-compliant Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) laws in a timely manner, some international correspondent banks have begun to close USD accounts held for Afghan banks abroad, which may increase costs and processing times for inbound and outbound international funds transfers.

3. Expropriation and Compensation

The PIL allows for expropriation of investments or assets by the government on a non-discriminatory basis and "only for the purposes of public interest." The law stipulates that the government "shall provide prompt, adequate, and effective compensation in conformity with the principles of international law, equivalent to the fair market value." In cases of investment in a foreign currency, the law requires compensation to be made in that currency. The government may also confiscate private property to settle bad commercial debts. According to the PIL, investors with an ownership share of more than 25 percent may challenge the expropriation. There have been no reports of government expropriation of foreign assets, "creeping" or otherwise.

4. Dispute Settlement

Contract law in Afghanistan is set out in the Afghanistan Commercial Code 1955 and the Afghanistan Civil Code 1977. Under these codes, parties are generally free to: a) enter into an perform a contract on any commercial subject matter provided that subject matter or performance is not contrary to law, public policy, or sharia; and b) agree to have the law of a foreign state govern their contract.

Since 2005, Afghan law has expressly recognized alternative dispute resolution provisions. In 2005, Afghanistan became party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention). Under the New York Convention, Afghanistan has agreed to: a) recognize and enforce awards made in another contracted state, and b) apply the convention to commercial disputes. Under the PIL and the Commercial Arbitration Law of 2007 (Arbitration Law): a) parties can agree to have foreign law govern their contract and agree to have their disputes resolved through arbitration or other mechanisms inside or outside of Afghanistan, and b) the Afghan courts must enforce any resulting award or agreement.

In practice, however, where one contracting party ignores the agreed dispute-resolution provision and seeks to enforce contractual rights through the Afghan courts or law-enforcement agencies, foreign investors have generally been unable to invoke the dispute resolution as a bar to, or a stay on, the action through the Afghan courts or law enforcement agencies, resulting in some foreign investors being forced to settle the dispute on less than favorable terms.

The criminal code prescribes penalties for some contractual violations, which are dealt with by regular courts in major cities. Separate *diwans*, or benches, nominally exist to handle commercial disputes arising from commercial transactions, but in practice may not be operational in many locations. In commercial court cases, if either party to a case is not satisfied with the decision, the case can be appealed to the Appeals Court and then to the Commercial Tribunal of the Supreme Court. The law provides for an independent judiciary, but the judiciary continues to be underfunded, understaffed, inadequately trained, ineffective, and subject to threats, bias, political influence, and pervasive corruption. Bribery, corruption, and pressure from public officials, tribal leaders, families of accused persons, and individuals associated with the insurgency continued to impair judicial impartiality. Most courts administer justice unevenly, according to a mixture of codified law, sharia, and local custom. Some courts disregard applicable statutory law in favor of judges' personal interpretations of Islamic Law principles or local custom.

Civil cases are frequently resolved in the informal system or, in some cases, pursuant to negotiations facilitated by formal justice system actors or private lawyers. Because there is often limited access to the formal legal system in rural areas, local elders and shuras (consultative gatherings, usually of men selected by the community) are often the primary means of settling both criminal matters and civil disputes, and they are known to levy unsanctioned punishments. Some estimates suggested that 80 percent of all disputes are resolved by shuras/jirgas.

Investors should be aware that the 2013 Human Rights Report notes that arbitrary arrests occur in most provinces and that there have been a number of cases in which the Attorney General's office, with the complicity of some police officials, imposed or threatened to impose criminal penalties on persons who may only be indirectly connected to a contractual dispute between a foreign company and an Afghan person or entity. For example, in September 2012, authorities arrested two Philippine citizens because their foreign employer allegedly failed to pay for goods and services it had received from Afghan subcontractors. When government authorities could not locate any senior managers of the company, they initially detained 20 employees as collateral for the alleged debt, eventually releasing all but two. After being held without charge for more than a year with no opportunity to contest their detention, the remaining 2 Filipino men were brought before a judge in October 2013. They were released in November 2013, following intensive diplomatic engagement with Afghan officials.

Although incommunicado imprisonment remains a problem and prompt access to a lawyer is rare, the men did eventually have access to a lawyer. The 2013 Human Rights Report also notes that some detainees are subjected to torture and other mistreatment.

5. Performance Requirements and Investment Incentives

Afghanistan has no formal regulations or laws governing performance requirements. There are no existing government-imposed conditions on investment, beyond the procedures required for establishing or acquiring a business.

There are no discriminatory export or import policies affecting foreign investors. In fact, faced with increased uncertainty and a slowdown in economic activity in the country, in July 2013, the Afghan cabinet approved a series of incentives intended to encourage private investment. The package included tax holidays of up to 10 years, subsidized land, public loans with five- to 10-year maturity, and automatic licenses to artisanal and small-scale mining activities without a bidding process. The incentive package, however, has yet to be implemented.

Government procurement is covered by The Public Procurement Law of 2005. That law specifies that procuring entities are obliged to procure goods, works, or services produced/furnished domestically in accordance with bidding documents, provided that the price of domestic procurement was not higher than imported procurement by a percentage set between five and10 percent. The procuring entity specifies the margin in its bidding documents. Furthermore, in comparing bids of bidders who did not have a resident representative in Afghanistan, or who were not subject to Afghan taxes, with the bids of those that had a resident representative or were subject to Afghan taxes, the bid prices of the former would be increased by a percentage set in the bidding procedures.

Businesses report that they find it very difficult and time consuming to obtain visas for tourist passport holders coming to Afghanistan for business reasons. There have been reports of Afghan government officials soliciting bribes for faster visa processing. Before it will issue a visa, the Government of Afghanistan insists the applicant provide proof that the company they represent is licensed in Afghanistan and that each of the non-Afghans working for the company has a work permit. In order for employees to obtain a work permit, they must have a valid Afghan visa. Individuals with a valid work permit should be able to obtain a six-month, multiple entry visa.

6. Right to Private Ownership and Establishment

Under the PIL, foreign and domestic private entities have equal standing and may establish and own business enterprises, engage in all forms of remunerative activity, and freely acquire and dispose of interests in business enterprises.

7. Protection of Property Rights

Property-rights protection is weak due to a lack of cadasters or a comprehensive land titling system, disputed land titles, incapacity of commercial courts, and widespread corruption. Land laws in Afghanistan are inconsistent, overlapping, incomplete, or silent with regard to details of effective land management. Judges and attorneys are generally without expertise in land matters. An estimated 80 percent of land is held and transferred informally, without legally recognized deeds, titles, or a simple means to prove ownership.

At present, the acquisition of a clear land title to purchase real estate or a registered leasehold interest is complicated and cumbersome. The World Bank estimated in its 2013 "Doing Business Report" that it takes an average of 250 days and entails legal fees of five percent of the property value to register property. Investment disputes are common in the areas of land titling and contracts. Many documents evidencing land ownership are not archived in any official registry. Frequently, multiple "owners" claim the same piece of land, each asserting rights from a different source. These disputes hinder the development of commercial and agricultural enterprises. Real estate agents are not reliable. Instances of "Land Mafia" falsely claiming title to land that they do not own undermines investor confidence. Foreign investors seeking to work with Afghan citizens to purchase property should conduct thorough due diligence to identify reliable partners.

The Intellectual Property Office at the Ministry of Commerce and Industries is responsible for issuing patents, trademarks, industrial designs, geographical indications, and genetic resources. The Copyright Directorate at the Ministry of Information and Culture deals with copyright and related rights. The GOA is working to bring its legislation on patents, trademarks and copyrights into compliance with World Trade Organization (WTO) standards. Afghanistan will become a party to the WTO Trade Related Intellectual Property Rights (TRIPS) Agreement if/when it accedes to the WTO. Afghanistan joined the World Intellectual Property Organization (WIPO) in 2005.

Theoretically, intellectual property right-holders have recourse to judicial protection through Afghanistan's civil court system. Courts are empowered to take evidence from all parties, make factual findings, render final decisions and order payment of damages and court costs. Yet, there is no serious enforcement of intellectual property rights. Pirated DVDs and software are sold throughout the country. Counterfeit pharmaceuticals and building materials are also widespread. Since the adoption of the trademarks law, 25 court cases have been filed, five of which have been resolved.

For additional information about treaty obligations and points of contact at local IP offices, please see WIPO's country profiles at http://www.wipo.int/directory/en/.

Embassy point of contact: Lori Michaelson MichaelsonLJ@state.gov until late August 2014, and then Jeffrey Otto OttoJL@state.gov

Local lawyers list: http://kabul.usembassy.gov/lol.html

8. Transparency of the Regulatory System

Parliament must approve all legislation, but when Parliament is in recess, the president may issue decrees that have the force of law. In these cases, Parliament has the right to review and reject the decrees.

Afghanistan's Law on Publication and Enforcement of Legislation requires publication in the Official Gazette of official declarations, laws, decrees, and other legislative documents. In contracts, there is no legal requirement or practice for publication and comment for domestic laws, regulations, or other measures of application that will become legally enforceable. In general, the Afghan government shares draft legislation with interested parties for comment and some ministries publish draft legislation in national newspapers for comment by the general public.

9. Efficient Capital Markets and Portfolio Investment

Most Afghans remain "unbanked." Only a small minority currently hold bank deposits. Afghans continue to rely on hawaladars to access finance and transfer money, due in part to unfamiliarity with a functioning banking system and limited access to banks in rural areas. Three of the four mobile network operators - Etisalat, AWCC, and Roshan - offer money mobile services, with MTN expected to roll out their mobile money products in 2015.

Still, finance is Afghanistan's second-largest service industry (behind telecommunications) and is potentially an important driver of private investment and economic growth. As of July 2012, 17 commercial banks were operating in Afghanistan, with total assets of approximately $4.4 billion. There are three state banks: Bank-e Millie Afghan (Afghan National Bank), Pashtany Bank, and New Kabul Bank (formerly the privately owned Kabul Bank), and there are also branch offices of foreign banks, including Alfalah Bank (Pakistan), National Bank of Pakistan, Habib Bank of Pakistan, Punjab National Bank (India), and Arian Bank (Iran).

Banking remains highly centralized, with a considerable majority of total loans made in Kabul Province. Bank lending is undermined by a deficient legal and regulatory infrastructure that impedes the enforcement of property rights and development of collateral. The aggregate loan-to-deposit ratio for the banking sector is 22 percent, and most banks concentrate on short-term credit to well-known customers. The difficulty of accessing credit through banks and other formal financial institutions makes existing firms dependent on family funds and retained earnings, limits opportunities for entrepreneurialism, and reinforces dependence on the informal credit market.

The 2010 exposure of pervasive fraud at Kabul Bank revealed the underlying weaknesses in banking regulation and supervision. Despite receiving significant technical assistance, Da Afghanistan Bank (DAB -- the Afghan central bank) has been unable to match the pace of banking sector growth with requisite improvements in monitoring and supervision. These weaknesses have been compounded by a lack of political will in the Afghan government to enforce laws against well-connected wrongdoers in the financial sector. Formal credit to the private sector stands at less than 10 percent of GDP, significantly lower than other countries in the region. Afghanistan ranks 130 out of 189 economies for ease of obtaining credit in the World Bank's Doing Business 2014. Afghan entrepreneurs complain interest rates for commercial loans from local banks range from 15 to 20 percent. In response to this situation, investment funds, leasing, micro-financing and SME-financing companies have entered the market. Yet, despite strong donor support for many of their activities, these firms have been handicapped by difficulties in securing repayment. USAID is working with GOA and the banking sector to promote improved access to finance and the expansion of financial inclusion. IMF-mandated banking legislation to improve banking-sector oversight has stalled in Parliament, and passage of an IMF approved law is not likely until after the 2014 presidential elections.

10. Competition from State Owned Enterprises

Not applicable.

11. Corporate Social Responsibility

The Government of Afghanistan encourages large companies and foreign investors to invest in corporate social responsibility (CSR). Large mining contracts include stipulations for environmental protection and community inclusion. Afghanistan law prohibits mining that would result in the destruction of antiquities, unless the mining company has prior approval from the Ministry of Information and Culture. A draft mining law now before Parliament calls for mining contract holders to consult with communities that will be affected by mining projects and to implement a community development agreement that includes details of the firm's environmental and social impact assessment. USAID recently inaugurated Mining Investment and Development for Afghan Sustainability (MIDAS) project will provide guidance to communities living near mines through training and governance support to help them benefit from mining operations.

All four competing mobile network operators in the country have well-developed CSR outreach programs that include health, education, job creation, environmental protection and outreach to refugees. Some Afghan charities are also benefiting from CSR funds from companies outside of the country. The American Chamber of Commerce in Afghanistan has identified CSR as one of its core focus areas. In addition, some Afghan entrepreneurs, such as Ihsanullah Bayat, the Barakat Group, the Ghazanfar Group, Hotak Azizi and the Alokozay Group, have foundations that provide assistance in the fields of health, education, and the eradication of poverty.

12. Political Violence

The U.S. Department of State continues to warn Americans against travel to Afghanistan. U.S. citizens should review the Consular Information Sheet and Travel Warning for Afghanistan for the most up-to-date information on the security situation and possible threats.

Anti-government and political violence are common and public concerns regarding security constrain economic activity. As the international forces draw down in the coming year, security remains a primary concern for investors. Foreign firms operating in country report spending a significant percentage of their revenues on security infrastructure and operating expenses.

13. Corruption

Reports indicate corruption is endemic throughout society. Systemic corruption at border crossings hampers licit market economy development. Afghan officials collect bribes in exchange for undervaluing, under-weighing, or not scanning shipments, which facilitates smuggling of illegal goods and the illicit trade of legal goods, while also weakening Afghan revenue collection and regulatory institutions.

The practice of criminalizing commercial complaints is commonly used to settle business disputes or extort money from wealthy international investors. The government does not implement criminal penalties for official corruption effectively, and officials are reported frequently to engage in corrupt practices with impunity. There are reports of low-profile corruption cases successfully tried at the provincial level. The government made several commitments to combat corruption, including President Karzai's 2012 decree, but little progress had been made towards implementation.

During the past year, reports indicated a rise in incidents of "land grabbing" by both private and public actors. The most common type occurred when businesses illegally obtained property deeds from corrupt officials and sold the deeds to unsuspecting "homeowners," who would then get caught in criminal prosecutions. Other reports indicated that government officials grabbed land without compensation to swap the land for contracts or political favors. Occasionally, provincial governments illegally confiscated land without due process or compensation to build public facilities.

14. Bilateral Investment Agreements

Afghanistan has signed 31 bilateral trade and investment agreements/memoranda of understanding and a further 10 bilateral economic agreement/memoranda of understanding. Among these are the Afghanistan Pakistan Transit Trade Agreement (APTTA), which Afghanistan and Pakistan signed in October 2010 and investment-related agreements with China and Kazakhstan. Afghanistan signed a Trade and Investment Framework Agreement (TIFA) with the United States in 2004. Afghanistan does not have a BIT or a bilateral taxation treaty with the United States.

The European Union, the United States, India, Canada, and Japan have granted Afghan exports preferential treatment under their Generalized System of Preference schemes. Afghanistan is a member of the Economic Cooperation Organization (ECO), the South Asia Free Trade Area (SAFTA), the South Asian Association for Regional Cooperation (SAARC), and of Central Asian Regional Economic Cooperation (CAREC).

15. OPIC and Other Investment Insurance Programs

The Overseas Private Investment Corporation (OPIC) offers financing (from large structured finance to small business loans), political risk insurance, and support for private-equity investment funds. Since 2003, OPIC has committed more than $295 million in financing and political risk insurance to support 38 projects in Afghanistan.

OPIC operates its programs in Afghanistan under the Investment Incentive Agreement ("IIA") signed in 2004 with the Government of Afghanistan. Nonetheless, during this past taxation year, the GOA Ministry of Finance pursued a 20% withholding tax on interest paid to OPIC by several OPIC clients. Such taxation ignores the tax exemption explicitly provided to OPIC under the IIA.

On January 10, 2014, OPIC President and CEO Elizabeth Littlefield sent a formal letter to the Afghan Minister of Finance, notifying the GOA that its efforts to tax loan recipients' on interest payments made to OPIC, which ignores the terms of the IIA, gave OPIC “no choice but to suspend consideration of and support for any new transactions in Afghanistan.”

Since the U.S. Embassy delivered the letter, the GOA has discussed this matter in a series of cabinet meetings, and on February 22, 2014, the GOA provided the Embassy with a diplomatic note indicating that loan recipients would not owe any taxes on their payments to OPIC for the 2013 tax year. The GOA diplomatic note also stated, however, that the Ministers of Commerce, Foreign Affairs and Finance have been mandated by the Cabinet to review and make recommendations on the issue of whether the IIA is in the national interest of Afghanistan, and whether it should be (a) left as is, (b) modified, or (c) terminated (which either party has a right to do within certain parameters). , Given the uncertainty over the future of IIA, the U.S. Embassy has been advised that OPIC would not support any new transactions until the matter was satisfactorily resolved. While the U.S. Embassy is cautiously optimistic the final outcome will be positive, given its understanding of the views of the relevant ministries, the Embassy cannot predict with certainty the outcome nor its timing. Should the GOA elect to terminate the IIA, the provisions of the agreement (including the tax exemption) apply to OPIC investment support provided to loan recipients during the time the agreement was in force for so long as such investment support remains outstanding.

16. Labor

There is a critical shortage of skilled labor in Afghanistan. Less than 30 percent of the population over the age of 15 can read and write. Decades of war, a low level of education and a lack of training facilities have resulted in a serious scarcity of skilled technicians, qualified managers and educated professionals. U.S. companies that establish training programs for their employees should expect significant returns in enhanced productivity, but there is a risk of high turnover as skilled employees seek higher-paying opportunities.

Labor-management relations are undeveloped. While there are major and smaller trade union organizations in the country, there is little knowledge or practice of collective bargaining. A 2005 labor regulation allows for the employment of foreign workers, but requires priority be given to equally qualified Afghan workers. The 2007 Labor Law guarantees basic workers’ rights, such as wages, overtime, leave, and other benefits, and bans forced labor and child labor. The law does not contain provisions for criminal penalties for violations, and the Ministry of Labor, Social Affairs, Martyred and Disabled (MoLSAMD) lacks the capacity to conduct widespread inspections or enforce current regulations. There is little awareness of the law’s provisions in either the government or the private sector. After two years of drafting, the International Labor Organization (ILO) and MoLSAMD recently finalized a new law, which would introduce penalties for labor violations, guarantee rights to union membership and collective bargaining, and strengthen the right of inspectors. The law is currently in the Ministry of Justice for review.

Under the law on Foreigners Employment in Afghanistan, foreigners can be employed on the basis of a work permit issued by the Ministry of Labor and Social Affairs. Work permits are issued for one year and are renewable. Foreign citizens traveling to Afghanistan for employment are required to obtain resident and business visas.

17. Foreign Trade Zones/Free Ports

Afghanistan has no duty-free import zones or ports.

18. Foreign Direct Investment and Foreign Portfolio Investment Statistics

The Afghanistan Investment Support Agency (AISA) is responsible for facilitating registration, licensing and promotion of all investments in Afghanistan. It concentrates on pro-active measures to attract industrial investment from both within and outside Afghanistan, thus generating employment and economic growth.

While the GOA data-collection methods have improved in recent years, significant data capture and data entry problems and persistent data gaps result in discrepancies between sources, as demonstrated in the chart below.

TABLE 2: Key Macroeconomic data, U.S. FDI in host country/economy

	Host Country Statistical source*		USG or international statistical source		USG or international Source of data (Source of Data: BEA; IMF; Eurostat; UNCTAD, Other)
Economic Data	Ministry of Finance		World Bank		
Host Country Gross Domestic Product (GDP) (*Millions U.S. Dollars)*	2013	20,366	2012	19,881	http://www.worldbank.org/en/country
Foreign Direct Investment	Host Country Statistical source*		USG or international statistical source		USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other
U.S. FDI in partner country (*Millions U.S. Dollars, stock positions)*	N/A		2012	3	(BEA) click selections to reach. • Bureau of Economic Analysis • Balance of Payments and Direct Investment Position Data • U.S. Direct Investment Position Abroad on a Historical-Cost Basis • By Country only (all countries) (Millions of Dollars)
Host country's FDI	N/A		2012	N/A	(BEA) click selections to reach

in the United States (*Millions U.S. Dollars, stock positions)*					• Balance of Payments and Direct Investment Position Data • Foreign Direct Investment Position in the United States on a Historical-Cost Basis • By Country only (all countries) (Millions of Dollars)
Total inbound stock of FDI as % host GDP (***calculate)***	N/A		2012	.02%	

19. Contact Point at Post for Public Inquiries:

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Embassy of the United States of America
Great Massoud Road
Kabul, Afghanistan
93-0700-107-532