AFGHANISTAN

INVESTMENT CLIMATE STATEMENT

2015

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Executive Summary

The Afghan economy has experienced steady economic growth averaging 10 percent between 2005 and 2013. That growth was driven largely by the international presence, including spending by international security forces and international aid agencies. As international assistance declines, growth is expected to be one to two percent per year in the short term and three to four percent per year in the medium term. This growth is not expected to be sufficient to cover anticipated government budget deficits, and the Afghan government must therefore focus on improving domestic revenue generation. The success of private sector led development will depend on the government's ability to convince reluctant investors of the business opportunities in the country and that security risks are manageable.

With a population growth rate of 2.8 percent, the Afghan government recognizes that the development of a vibrant private sector is crucial to the reconstruction of an economy impaired 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). 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 have been limited by institutional capacity, rent seeking behavior, and the political will to undertake necessary reforms.

At present, Afghanistan's legal and regulatory frameworks and enforcement mechanisms remain underdeveloped and irregularly implemented. Much of the framework necessary for encouraging and protecting private investment is not yet in place, and the existence of three overlapping legal systems Sharia (Islamic Law), Shura (traditional law and practice), and the formal statutory 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. The Afghan government continues to modify existing legislation and draft new laws in anticipation of future World Trade Organization (WTO) accession. It has sometimes failed, however, to complement new laws with implementing rules and regulations that translate into revamped administrative practices.

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. Some government officials levy unofficial taxes and inflict bureaucratic delays in order to engage in corrupt practices. Commercial regulatory bodies are often understaffed and hampered by limited 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 corruption high on the list of impediments.

1. Openness To, and Restrictions Upon, Foreign Investment

Attitude toward Foreign Direct Investment

The government of Afghanistan welcomes foreign direct investment (FDI). Following the 2014 elections and the establishment of the Government of National Unity (GNU), President Ghani and the Afghan government has spoken out publicly about the need to attract inward investment. Article 16 of the Private Investment Law of 2005 (PIL) stipulates that foreign investors are provided national treatment.

Other Investment Policy Reviews

Afghanistan is not a World Trade Organization member. A working party was established at the General Council meeting in 2004. Afghanistan's Memorandum on the Foreign Trade Regime was circulated in March 2009. The Draft Working Party Report, prepared by the Secretariat, was circulated in 2013. The Working Party met for the fourth time in July 2013 to continue the examination of Afghanistan's foreign trade regime.

Neither the U.N. Commission on Trade and Development (UNCTAD) nor the Organization on Economic Cooperation and Development (OECD), have conducted an Investment Policy Review.

The Afghanistan National Development Strategy (ANDS), which was developed with the assistance of the United Nations Development Program (UNDP) and covered the period 2008-2013, was Afghanistan's last major investment policy review. It continues to guide development investments 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 job creation, broad geographic impact, and likelihood of attracting additional investment. In 2013 the government released an Investment Incentive Policy (IIP), which sought to channel foreign direct investment into five sectors: 1) industry, 2) construction, 3) exports, 4) agriculture, and 5) mining. The IIP's associated incentives expired in March 2015.

Laws/Regulations of Foreign Direct 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.

Industrial Promotion

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). The Minister of Commerce and Industries chairs it. 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.

Limits on Foreign Control

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. Exceptionally large investments may be granted different terms, provided those investments result in significant economic growth and development within a limited timeframe.

While there is no requirement for foreigners to secure Afghan partners, the Afghan Constitution and the PIL prohibit foreign ownership of land. In practice 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.

Privatization Program

There are no active privatization programs ongoing in Afghanistan.

Screening of FDI

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 USD 3 million requires HCI approval of the investment application.

Any potential 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.

Competition Law

While not official policy, small groups of businessmen reported to have close familial or tribal ties with provincial leaders and government officials dominate trading markets 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 and forestall competition. In addition, some industries, including money changing and carpet production, have well-organized guilds that protect existing firms and create barriers to entry.

Investment Trends

In 2014, Afghanistan maintained its ranking of 24 out of 189 in the Ease of Starting a Business category in the World Bank's Doing Business Report. However, for overall Ease of Doing Business, they remain close to the bottom of the list at 183 out of 189 economies surveyed. 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 can be a difficult exercise. Most AISA licenses must be renewed annually and applications for renewal are contingent upon certification from the Ministry of Finance (MOF) that all tax obligations have been met. 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. According to credible private sector contacts, corruption and bribery related to the license renewal process are commonplace.

Table 1

Measure	Year	Index or Rank	Website Address
TI Corruption Perceptions index	2014	172 of 175	transparency.org/cpi2014/results
World Bank's Doing Business Report "Ease of Doing Business"	2015	183 of 189	doingbusiness.org/rankings
Global Innovation Index	2014	Not ranked	globalinnovationindex.org/content.aspx?page=data-analysis
World Bank GNI per capita	2013	USD 690	data.worldbank.org/indicator/NY.GNP.PCAP.CD

Millennium Challenge Corporation Country Scorecard

The Millennium Challenge Corporation, a U.S. Government entity charged with delivering development grants to countries that have demonstrated a commitment to reform, produced scorecards for countries with a per capita gross national income (GNI) of USD 4,125 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. Details on each of the MCC's indicators and a guide to reading the scorecards are available here: http://www.mcc.gov/pages/docs/doc/report-guide-to-the-indicators-and-the-selection-process-fy-2015.

2. Conversion and Transfer Policies

Foreign Exchange

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. It is illegal to transport more than AFN 1,000,000 (approximately USD 17,200) or the foreign currency equivalent out of Afghanistan via land or air; amounts over AFN 500,000 (approximately USD 8,600), but beneath AFN 1,000,000, must be declared. Enforcement of this law is haphazard, particularly for passengers traveling through the VIP lounge at Kabul International Airport, where belongings receive little if any inspection from Afghan authorities to ensure that they are in compliance with reporting requirements.

Remittance Policies

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.

In mid-2014, due in part to Afghanistan's failure to pass Financial Action Task Force (FATF)-compliant Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) laws in a timely manner, some international correspondent banks began closing USD accounts held for Afghan banks abroad, which increased costs and processing times for inbound and outbound international funds transfers. Since then, the government has continued to work with FATF on updating their AML/CFT laws.

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

Legal System, Specialized Courts, Judicial Independence, Judgments of Foreign Courts

The legal system of Afghanistan consists of Islamic, statutory and customary rules. The supreme law of the land is the Constitution. The judiciary system is composed of the Supreme Court, the Courts of Appeal and the Primary Courts. Since 2002, NGOs have been working to strengthen the rule of law in Afghanistan by identifying peaceful means for dispute resolutions, developing partnerships between state and community actors in the hopes of improving access to justice. Despite these efforts, as much as 80 percent of legal disputes are still resolved outside the formal justice system by community based tribal leaders. 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 and 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.

Bankruptcy

Provisions in the Banking Law provide special procedures for bank insolvency. Afghanistan's general Law of Insolvency and Bankruptcy, however, is outdated and ineffective. The Department of Commerce Commercial Law Development Program (CLDP) is providing technical assistance to the Ministry of Commerce and Industry as it moves towards the drafting of replacement insolvency legislation.

Investment Disputes

The Embassy is unaware of any ongoing investment disputes.

International Arbitration

Since 2005, Afghan law has expressly recognized alternative dispute resolution provisions. In October 2014 the Afghanistan Centre for Dispute Resolution (ACDR) was established with the support of USAID and CLDP. The ACDR offers mediation and expert witness services in a limited number of cases referred by the commercial courts and in the future plans to expand its services to include arbitration.

ICSID Convention and New York Convention

Since 2005, Afghan law has expressly recognized within their domestic law, alternative dispute resolution mechanisms. In 2005, Afghanistan became a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (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.

Since 1966, Afghanistan has been a member state to the International Centre for the Settlement of Investment Disputes (ICSID convention)

Duration of Dispute Resolution

According to credible contacts, civil cases in the commercial court system can sometimes take more than 18 months for parties to obtain resolutions. Cases are frequently resolved more quickly through an 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 2014 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 two Filipinos 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 2014 Human Rights Report also notes that some detainees are subjected to torture and other mistreatment.

5. Performance Requirements and Investment Incentives

WTO/TRIMS

Afghanistan is not currently a member of the World Trade Organization; it therefore does not adhere to the agreement on Trade-Related Investment Measures.

Investment Incentives

Not applicable.

Research and Development

Not applicable

Performance Requirements

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 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 ten year maturities, and automatic licenses to artisanal and small-scale mining activities without a bidding process. While the government has provided a limited amount of subsidized land for industrial development, most of the incentive package has yet to be implemented. In July 2014 the Government of Afghanistan adjusted the renewal period for trader’s licenses from one year to three years though implementation has been geographically uneven.

The Public Procurement Law of 2005 covers government procurement. 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 and 10 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. In 2014 the government passed legislation providing for one-year multiple entry visas for American citizens engaged in business in Afghanistan. Before it will issue a visa, the Afghan government requires proof that the company the applicant represents is licensed in Afghanistan and that non-Afghans working for the company have work permits. In order for employees to obtain a work permit, they must have a valid Afghan visa.

Data Storage

The Afghan government does not require the use of domestic content in goods or technology related to data storage. There are no requirements for foreign IT providers to turn over source code and/or provide access for surveillance purposes. The Ministry of Communications and Information Technology does not have domestic data storage requirements.

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

Real Property

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 2014 "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 parties 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.

Intellectual Property Rights

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 Government of Afghanistan is working to bring its legislation on patents, trademarks and copyrights into compliance with World Trade Organization (WTO) standards. In December 2014, President Ghani signed a comprehensive trademarks law which meets WTO standards. If Afghanistan accedes to the WTO, it will become a party to the WTO Trade Related Intellectual Property Rights (TRIPS) Agreement. Afghanistan is not a party to the World Intellectual Property Organization (WIPO).

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. No cases have yet been filed under the recently adopted trademarks law.

Afghanistan is not listed in the United States Trade Representative's (USTR) Special 301 report, or in its notorious market report. The Government of Afghanistan has been a member of the World Intellectual Property Organization (WIPO) since 2005.

Resources for Rights Holders

Contact at U.S. Embassy Kabul:

Jeffrey L. Otto
Economic Section
+93 (0)700-10-7532

Contact at American Chamber of Commerce in Afghanistan:

Soraya Ahmadyar
Executive Director
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sorayaahmadyar@amcham-af.org
www.amcham-af.org

List of local lawyers is at 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.

Afghanistan has invested in a business registration website. Foreign and national investors will find a link to the official business registration website and an assessment of the site's user-friendliness at www.ger.co. Click on Afghanistan. Information about other administrative procedures may also be accessible from the official business registration website. Putting business registration and other administrative processes online and simplifying them are significant steps towards a more transparent, welcoming investment climate.

9. Efficient Capital Markets and Portfolio Investment

Most Afghans remain outside the formal banking sector. Only a small minority currently hold bank deposits. Afghans continue to rely on an informal trust-based process referred to as *hawaladas* 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 mobile money 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 December 2013, 17 commercial banks were operating in Afghanistan, with total assets of approximately USD 4.07 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). Punjab National Bank closed in late 2014, but the latest bank asset data available is from fiscal year 2013.

Money and Banking System, Hostile Takeovers

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 financial sector.

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. Following his inauguration in September 2014, President Ghani moved to reopen the Kabul Bank investigation. Subsequently, the Supreme Court upheld an October 2014 appellate court ruling that froze the assets of certain debtors and extended the sentences of previously convicted officials involved in the case. The Afghan Government is developing an asset recovery plan from perpetrators of the large-scale bank fraud.

Formal credit to the private sector stands at less than 10 percent of GDP, significantly lower than other countries in the region. Afghanistan ranks 86 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 the Afghan government and the banking sector to promote improved access to finance and the expansion of financial inclusion. In March 2015, the U.S. Department of Treasury and the Afghan Ministry of Finance signed a memorandum of understanding to reinitiate financial capacity building and technical assistance at both DAB and the MOF.

10. Competition from State-Owned Enterprises

The Government of Afghanistan operates 35 “active” or “partially active” state-owned enterprises (SOEs), ranging across sectors from public security to construction to meat processing. In total, SOEs make up a very small share of overall economic activity. All SOEs are overseen and regulated by the Ministry of Finance and directly operated by specific ministries depending on the nature of the operations. The Law on State Owned Enterprises includes specific targets for R&D investment, social development measures, and employee profit sharing, but compliance is negligible. Only a small number of the SOEs are profitable. The Afghan government is also a stakeholder in several state-owned corporations (SOCs), entities that have independent boards and are not operated or directly supervised by the government.

OECD Guidelines on Corporate Governance of SOEs

Not applicable

Sovereign Wealth Funds

Not applicable

11. Corporate Social Responsibility

The Afghan government 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 comprehensive mining law passed in October 2014 requires 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 continues to implement its Mining Investment and Development for Afghan Sustainability (MIDAS) project, a portion of which provides guidance to communities living near mines through training and governance support.

OECD Guidelines for Multinational Enterprises

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 development of the licit market economy. 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. President Ghani has made anti-corruption efforts a major focus of his attention. In some instances corrupt officials have been relieved of duty. Despite the recent high-level attention, the problem remains systemic.

Disputes over land and land grabbing have risen over the last decade. Land grabbing has been an ongoing inter-generational conflicts, which remains a serious issue, if left unresolved, disagreements over land ownership can quickly escalate from a civil dispute, to a criminal, up to acute acts of violence. 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.

UN Anticorruption Convention, OECD Convention on Combatting Bribery

Afghanistan has signed and ratified the UN Anticorruption Convention. The country, however, is not party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

Resources to Report Corruption

The Afghan Government body responsible for combating corruption is the High Office of Oversight & Anti-corruption.

Afghan Government Point of Contact:
Aminullah Amini
Head of Information and Communication Technology Department
High Office of Oversight & Anti-corruption
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Watchdog Organization Contact:

Sayed Ikram Afzali
Executive Director
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14. Bilateral Investment Agreements

In 2004, Afghanistan signed a Trade and Investment Framework Agreement (TIFA) with the United States. Afghanistan does not have a bilateral investment treaty (BIT) with the United States.

Afghanistan has signed 31 bilateral trade and investment agreements/memoranda of understanding and a further 10 bilateral economic agreement/memoranda of understanding. In 2010, Afghanistan and Pakistan signed the Afghanistan Pakistan Transit Trade Agreement (APTTA), and an investment-related agreement with China and Kazakhstan. In November 2014, the Afghan government signaled its interest in expanding the APTTA agreement to include Tajikistan. Preliminary negotiations are ongoing.

The European Union, the United States, India, Canada, and Japan have granted Afghan exports preferential treatment under their Generalized Systems of Preference. Afghanistan is a member of the Economic Cooperation Organization (ECO), the South Asia Free Trade Area (SAFTA), and the South Asian Association for Regional Cooperation (SAARC), and of Central Asian Regional Economic Cooperation (CAREC). The Afghan government has stated its intent to formally join the Transport Corridor Europe Caucasus Asia organization (TRACECA).

Bilateral Taxation Treaties

Afghanistan does not have a bilateral taxation treaty with the United States.

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 USD 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 Afghan government. Since 2013, however, the Afghan government has attempted to levy a 20 percent withholding tax on interest paid to OPIC by several OPIC clients, in direct contravention of the IIA.

In January 2014, OPIC President and CEO Elizabeth Littlefield sent a formal letter to the Afghan Minister of Finance notifying the Afghan government that its efforts to tax interest payments made by loan recipients to OPIC ignores the terms of the IIA. This practice gave OPIC "no choice but to suspend consideration of and support for any new transactions in Afghanistan."

In February 2014, the Afghan government 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 Afghan government diplomatic note also stated, however, that the government would undertake a review of the provisions of the IIA and make recommendations on its future. In October 2014, then-Finance Minister Zakhilwal sent a letter to OPIC stating Afghan intentions to comply with the terms of the IIA. In response, the U.S. Embassy in Kabul sent a diplomatic note acknowledging the letter.

In early 2015 the issue remained outstanding. Given high-level attention to the matter, the U.S. Embassy is cautiously optimistic the final outcome will be positive, though the timing of a final resolution remains uncertain.

16. Labor

There is a critical shortage of skilled labor in Afghanistan. Only 32 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, especially outside of Afghanistan.

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. A 2014 law introduced penalties for labor violations, guaranteed rights to union membership and collective bargaining, and strengthened the authority of labor 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/Trade Facilitation

Not applicable.

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 proactive measures to attract industrial investment from both within and outside Afghanistan, thus generating employment and economic growth. While the Afghan government 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: BEA; IMF; Eurostat; UNCTAD, Other
Economic Data	**Year**	**Amount**	**Year**	**Amount**	
Host Country Gross Domestic Product (GDP) ($M USD)	2014	20,310	2013	20,366	www.worldbank.org/en/country
Foreign Direct Investment	**Host Country Statistical source***		**USG or international statistical source**		**USG or international Source of data: BEA; IMF; Eurostat; UNCTAD, Other**
U.S. FDI in partner country ($M USD, stock positions)	N/A		2013	3	http://bea.gov/international/factsheet/factsheet.cfm?Area=600
Host country's FDI in the United States ($M USD, stock positions)	N/A		2013	1	http://bea.gov/international/factsheet/factsheet.cfm?Area=600
Total inbound stock of FDI as % host GDP	N/A		N/A		

Table 3: Sources and Destination of FDI

Foreign direct investment position data are not available for Afghanistan.

Table 4: Sources of Portfolio Investment

Portfolio investment data are not available for Afghanistan.

19. Contact for More Information

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