

A GUIDE TO

**BUSINESS
STRUCTURES
in AFGHANISTAN**

APRIL 2015

Sole proprietorship, Partnership,
Limited Liability Corporation,
and Corporation



LEGAL CLINIC PROGRAM
AT THE
AMERICAN UNIVERSITY
OF AFGHANISTAN

Business Structures in Afghanistan

**Sole Proprietorship, Partnership, Limited Liability Company, and
Corporation**

AUAF Legal Clinic Program

Clinic Director: Professor Mehdi Hakimi

Authors:

Abdul Waris Hakim Syal

Samira Abrar

Mohammad Arif Noorzai

Table of Contents

1. Introduction	6
2. Legal Issues	7
3. Summary of Research Findings	7
3.1. Partnership.....	7
3.2. Limited Liability Corporation	8
3.3. Corporation.....	8
4. Research Methodology.....	10
5. Types of Business.....	10
5.1. Sole Proprietorship	10
5.2. Partnership.....	10
5.2.1. Partnership Formation	11
5.2.2. Terms of Partnership	12
5.2.3. Responsibilities of Partners	13
5.2.4. Partnership Dissolution	14
5.2.5. Liquidation	15
5.2.6. Tax Implication	15
5.2.7. Advantages of Partnership	16
5.3. Limited Liability Corporation (LLC).....	16
5.3.1. LLC Formation.....	17
5.3.2. Decision Making and Corporate Governance Structure	18
5.3.3. LLC Dissolution.....	19
5.3.4. Tax Implication	20
5.3.5. What Happens when LLC is Bust or Bankrupt.....	21
5.4. Corporation.....	23
5.4.1. Formation	23
5.4.2. Board of Directors	24
5.4.3. Other Authorities of Board of Directors	25
5.4.4. Board of Supervisors.....	26
5.4.5. Advantages and Disadvantages of Corporations.....	28
Advantages	28
Disadvantages	28
5.4.6. Dissolution	28

6.	Other Important Information	29
6.1.	Four Categories of Tax.....	29
6.2.	Implication and Possibility of Foreign Ownership of Real Property	31
6.3.	Implication and Possibility of Foreign Ownership of Business	31
6.4.	Reporting	32
6.5.	Employer vs. Employee's Rights	33
6.6.	License Registration	33
7.	Work Cited	36
7.1.	Primary Sources	36
7.2.	Secondary Sources	36
10.	Appendices	36
10.1.	Appendix A	36
10.2.	Appendix B	37

Disclaimer

The materials in this publication, and in any communication from the AUAF Legal Clinic Program, are for informational and educational purposes only and do not constitute legal advice. The AUAF Legal Clinic Program does not warrant that information contained in its publications is accurate or complete. The receipt of any information from the AUAF Legal Clinic Program, in any form, including email or other electronic source, will not create an attorney-client relationship. No user of this publication should act or refrain from acting based on information found in this publication without seeking the legal advice of counsel in the relevant jurisdiction. In offering links to websites and resources, the AUAF Legal Clinic Program neither endorses their sponsoring organizations nor vouches for the accuracy of their information. The AUAF Legal Clinic Program expressly disclaims all liability, and any implied warranties, in respect of actions taken or not taken based on any of the contents of its publication.

1. Introduction

In Afghanistan, one of the main problems with developers of new businesses is that they do not know how to structure their businesses. Further, they do not know the advantages and disadvantages of specific types or forms of businesses. Moreover, these developers often have problems with the discrepancies between what the law says about starting a business in Afghanistan and how things work in practice. In addition, many Afghan commercial laws have recently been passed by parliament and, therefore, most of our businesspersons do not know of their responsibilities as businesspersons or which rights the law protects.

Moreover, because businesspersons need to report to different institutions for registration, taxation, dispute settlement, and other business-related issues, it is difficult to understand these differing processes. For these reasons, the legal processes for starting or growing a business are difficult and vague in Afghanistan and require further research. In this paper, we will discuss the different types of businesses (as well as their ease, complexity, advantages, and disadvantages), legal standing, legal rights and responsibilities, liabilities, and ownership (both domestic and foreign). We will further explain tax implications, reporting responsibilities, employee and employer rights, dispute settlement through the ACDR and Commercial Courts, and finally, the registration and documentation processes utilized by domestic and foreign businesspersons.

This report is structured as follows: First, we will focus on legal issues by stating the main areas our research will cover. Second, we will summarize our research findings and briefly mention those topics that the research will address in detail. Third, we will specify the research methodology used to conduct this research. Fourth, in an analysis section we will study main business structures and address potential challenges. Fifth, the Work Cited will list research sources, and the chart in Appendix A will offer a comparison of each business structure to facilitate better understanding.

2. Legal Issues

The legal issues in this paper are very broad and we have done our best to cover them in detail.

The issues are as follows:

- How to identify the various ways to structure or organize a business under the laws of a sole proprietorship, partnership, LLC, and corporation?
- What are the repercussions of structuring a business in a particular way?
- What rights does a particular business structure have when suing another company that holds legal standing?
- How can a business structure be dissolved?
- What are the ways to impose taxes on a specific business structure?
- What rights does an employee have under an employer?
- What happens if a specific business structure does not report to the Central Registry?

3. Summary of Research Findings

3.1. Partnership

This chapter is mainly about what a partnership is, how it can be formed, different types of partnerships, dissolution, liquidation, different characteristics of a partnership, and tax implications. We have examined the law as it is written as well as the way it is applied in practice, because relevant laws and practice are often different. We also discuss the advantages of partnership and the rationale behind forming a partnership.

Moreover, this chapter will cover the documents one needs to form a partnership, as well as the different institutions one must navigate to register those documents and/or secure a license to legally operate in Afghanistan. This chapter will also cover issues of liabilities, economic benefits, and possible risks for a partnership.

3.2. Limited Liability Company

This chapter discusses the formation, life span, and dissolution of one of the most preferred and common business forms in Afghanistan, the Limited Liability Company (LLC). It measures the ease of starting an LLC by noting the procedures officially required or practiced by an entrepreneur to set up and operate a commercial business of this type in Afghanistan. This chapter also measures the estimated time and cost required to complete these procedures.

The prominent characteristics of this business type are set forth in this chapter. For example, the owner of an LLC has limited liability, and thus, his financial liability for the debts of the company is limited to a fixed amount—usually the amount the owner has invested in the company. This value is based on an agreement between the company and his investors. The chapter also discusses shareholders' liability in an LLC in case the company is sued, insolvent, or bankrupt.

The chapter further discusses the economic benefits and possible risks associated with this particular business type in Afghanistan, as well as the factors and circumstances under which an LLC may be dissolved.

3.3. Corporation

To set up a corporation, at least five shareholding founders are required. Additionally, two boards must be established: a Board of Directors and a Board of Supervisors. The Board of Directors should contain at least three shareholders to serve for a maximum of three years. Likewise, the Board of Directors can select each year from among themselves a Chairperson of the Board, and, if necessary, a Vice-Chairman. Significantly, a corporation may adopt by-laws to better implement its relevant Articles of Incorporation, provided that the by-laws are not inconsistent with applicable law or the Articles of Incorporation. The Board of Directors can determine the amount of members stipulated in its own by-laws or Articles, under certain conditions pursuant to Article 34 of the Corporation Law:

1. Natural persons who are eighteen (18) years of age
2. Persons that have never been deprived of civil rights by a court order

The Board of Supervisors shall be composed of two or more members that shall be elected by the shareholders at the regular/annual meeting of shareholders, unless provided otherwise in the Articles of Incorporation or the by-laws. If appointed in the Articles of Incorporation, the first term shall be for one year, and thereafter for a maximum period of three years. A person sitting on the Board of Supervisors whose term has expired may be re-elected.

A corporation has an indefinite life upon creation; however, shareholders reserve the right to dissolve the corporation at any time. The Board of Directors should approve the dissolution proposed by the shareholders and they should vote on the proposal. In addition, a commercial court could dissolve a corporation under certain conditions. For instance, if a company illegally obtains its Articles or the corporation exceeds its boundary of authority, the Ministry of Commerce and Industry could initiate the request to dissolve the corporation. One of the shareholders could also request dissolution if a director has not acted within its boundaries. Also, when shareholders are prevented from choosing directors, the company may be dissolved upon the shareholders' request.

A Commercial Court of proper jurisdiction may dissolve a corporation in a proceeding if:

1. Initiated by the Ministry of Commerce and Industry, it is established that the corporation obtained its Certificate of Incorporation through fraud; or, the corporation has exceeded or abused the authority conferred upon it by law.
2. By one or more shareholders it is established that the directors are deadlocked in management of the corporation's affairs and the shareholders are unable to break the deadlock, causing irreparable injury to the corporation and its assets; or the directors, or those in control of the corporation have acted, or are acting, in a manner that is illegal or fraudulent; or the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive regular/annual meetings, to elect directors.
3. By a creditor it is established that the creditor's claim: (i) has been reduced to judgment; and (ii) the execution on the judgment is unsatisfied; and (iii) the corporation is insolvent; or the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent; or when a claim is filed against the corporation, the corporation's voluntary dissolution shall be executed under court supervision.

4. Research Methodology

In Afghanistan, the processes that the law most often set for businesses to structure, license, and pay taxes are very different from how these processes work in practice. Therefore, in order to understand both what the law has to say about the above legal issues and what the practice is in related governmental institutions, we used different sources to complete this research project. Through our research we used different laws, books, commentaries, and regulations, and we also interviewed law professors, commercial law judges, businessmen, the officials of the Afghanistan Investment Support Agency (AISA), and officials of the Afghanistan Center for Dispute Resolution (ACDR).

5. Types of Business

5.1. Sole Proprietorship

A single person owns a single business. This is the simplest form of business in terms of both formation and registration. This type of business is called a sole proprietorship. The single owner receives all of the profits and is personally liable for all of the debts of the business. If the owner wants to sell or transfer her ownership interest, she can sell the entire business to another party.

5.2. Partnership

Another way to structure and organize a business in Afghanistan is through a partnership. Article 2 of the Afghan Partnership Law says that, “Partnership is an association of two or more persons to carry on business for profit as co-owners, as governed by the Partnership Agreement (Partnership Law).” Further, the legal completion and recognition of the partnership is provided by Article 20 of the Partnership Law, saying that, “Legal existence of a partnership shall be established upon the association of two or more persons as co-owners of a partnership and shall be completed upon registration in the Central Registry. A partnership shall be liable if it carries out any transaction before registration in the Central Registry. In such case the partnership may not enforce its rights against third parties unless notified in the Central Registry (Partnership Law).” This section reviews how partnerships are formed, discusses the rights and obligations of partners, and explains what happens when a partnership terminates.

5.2.1.Partnership Formation

The partnership is the simplest form of a joint ownership. Why would two or more parties choose to form a partnership and therefore be forced to work together, inviting conflict over business policies and the division of profits? There are many reasons that a person would choose to form a partnership. For example, one may have an innovative and potentially lucrative idea for a business but may not have enough cash. Further, that individual may have the capital but not want to put all of his money at risk. This individual may bring in a partner that can provide the necessary capital to start the business. Another reason would be to obtain an asset other than capital, such as a unique set of skills, services, processes, clients, or goodwill within the community. Although these assets can be difficult to value, they often can make a business more successful and profitable. Article 3 of the Partnership Law talks about four types of partnerships:

1. General Partnership(s)
2. Special Partnership(s)
3. Work Partnership(s)
4. Credit Partnership(s)

Article 21 General Partnership: A general partnership is “established for the purpose of carrying out economic or business transactions between two or among more persons with collective responsibility. If the capital of a general partnership is not sufficient to pay the debts of the general partnership, each of the partners is responsible for paying all the debts of the general partnership. The partner or partners paying such debts shall be entitled to receive contributions from the other partners (Partnership Law, Art. 21).”

Article 22 Special Partnership: A special partnership is “a partnership established under a specified title in accordance with the provisions of this Law for the purpose of carrying out economic and business transactions, in which one or more partners have unlimited liability (general partners) and the rest of the partners have limited liability with a definite capital (special

partners). The capital of the partners with limited liability can be divided into shares (Partnership Law, Art. 21).”

Article 23 Work Partnership: A work partnership is “an association of two or more persons who perform work or fulfill an obligation for another person. The profits of the partnership shall be distributed between them as agreed by the partners (Partnership Law, Art. 23).”

Article 24 Credit Partnership: A credit partnership is “a company in which two or more persons agree to buy goods on credit to sell them and to share the profits and losses of the credit partnership. Each of the partners shall be responsible for his own specific part (Partnership Law, Art. 24).”

The Partnership Law does not provide more details about the different types of partnership, other than their definitions. Through our research, we came to the conclusion that there are two general types of partnership: a general and a special partnership. Considering Article 23 of the Partnership Law defines a credit partnership as any partnership—either general or special—when a partnership includes contracts and pays with credits, it is called a credit partnership. Even in a credit partnership, the partners are permitted to pay with cash.

5.2.2. Terms of Partnership

Partnerships, whether general or special, must include the following conditions as a requirement in the written Partnership Agreement (Partnership Law, Art. 25):

- (1) Date of concluding Partnership Agreement
- (2) Name, identity, and address of each partner, and if a partner is another company, the title of that company
- (3) Business location and type of business
- (4) The fact that the company is a partnership company
- (5) The title of the partnership
- (6) The names of all the partners who are jointly or severally authorized to acquire legal possession and sign
- (7) The capital contribution committed by each partner, the approximate value of non-cash capital, and the method applied to determine such approximate value
- (8) Each partner’s share in loss and profit
- (9) If the general or special partnership is for a limited period, the date for expiration of its term

The document that governs a partnership is its Partnership Agreement. A Partnership Agreement can be written or oral according to Article 4 of the Partnership Law, but a written agreement is required for general and special partnerships (see Article 61). A written Partnership Agreement must specify, among other things, the names of the partners, their capital contributions, and their shares of the profits and losses (Article 25). The Partnership Agreement, together with the Partnership Law, governs the partnership, relations among partners, and responsibilities to third parties.

The duration of a partnership can be for either a definite or unlimited amount of time. Unless the Partnership Agreement specifies a definite term, the partnership is deemed to have an unlimited duration.

5.2.3. Responsibilities of Partners

As partners contribute capital, each partner becomes a partial owner of the business. The interest of each partner is called his or her ownership share. The ownership share carries certain rights and obligations for the partners.

Profit and Loss:

As joint owners, each partner is entitled to a share of the profits from the business. The capital that each partner contributes to the partnership is transferred to the partnership and is owned by the partnership (see Article 10). In Afghanistan, the default rule is that partners receive profits and bear losses in proportion to their capital contribution (see Article 15).

Liability for Partnership Debts:

Partnerships are valuable because they provide a segregated pool of assets available to secure business debts. Making a separate pool of assets available encourages creditors to make loans to the partnership since they are more confident about repayment. These loans, in turn, allow the partnership to carry out its business activities. What happens when the partnership has insufficient assets to pay its debts? The rules are different for general and special partnerships (see Articles 22-24). In a general partnership, all of the partners are general partners, and each partner is individually liable for all debts of the partnership. This means that a general partner must pay off the debt with her own personal assets (see Articles 86 and 134). However, the

general partner that pays the partnership's debt can seek reimbursement from the other general partners. In a special partnership, the general partner(s) will likewise be individually liable for the entire debt of the partnership, but the liability of special partners will be limited to the amount specified in the Partnership Agreement. However, if the partnership suffers a loss due to an individual partner's negligence, the negligent partner is solely responsible for that loss. However, this is only a default rule, and the partners can agree to jointly pay for the loss (Article 12).

Decision-making and Control:

One potential problem that arises from a partnership is agency conflict between partners as joint owners. This is because one partner can enter into contracts on behalf of the partnership and can bind the other partners. The Partnership Law covers this issue and Article 40 of the law requires the partners to designate at least one partner "to administer the affairs of the partnership who is called a manager." In decision-making, the Partnership Agreement plays a vital role. A Partnership Agreement will stipulate whether each partner will have an equal vote or whether the vote will be based on the partners' shares (Article 43). If the agreement is silent, each partner will have an equal vote. In a general partnership, if the Partnership Agreement is silent, Article 69 will grant this right to the manager.

5.2.4. Partnership Dissolution

The Partnership Law makes the dissolution of a partnership easy and describes the rules that apply to all four types of partnership. Article 50 of the Partnership Law describes how a partnership can be dissoluble. There are eight situations where a partnership can be dissoluble.

1. Expiration of the period set in the Partnership Agreement
2. Realization of the objective for which the partnership had been established
3. Elimination of a whole or part of the capital of the partnership, eliminating the profitability of the partnership
4. The death of one of the partners, or a court order that a partner be dispossessed, or the registration of a partner as bankrupt
5. Withdrawal of one of the partners from the partnership when the period of the partnership's activity is unlimited, provided that the partner declares such partner's intention of withdrawal to other partners three months in advance; otherwise, such partner's withdrawal would be deemed inappropriate or arising from dishonesty, unless an agreement is made to the contrary
6. Agreement of the partners to dissolve the partnership

7. Dissolution of the partnership by court order
8. An adjudication of the bankruptcy of the partnership by the court, or by agreement of the partners and creditors of the partnership to bankrupt the partnership

The fifth situation is particularly powerful. It applies only to partnerships of unlimited duration and gives any partner the right to withdraw from the partnership for any reason. In other words, as soon as a partnership of unlimited duration ceases to serve the interests of a partner, that partner may request dissolution. In general and special partnerships, the withdrawing partner must provide notice six months before the end of the fiscal year (see Article 93), and the remaining partners can choose to continue the partnership (see Articles 97 and 101). Unless otherwise provided for in the Partnership Agreement, the withdrawing partner in a general partnership will be paid out in cash for their interest in the partnership when the firm dissolves. However, for partnerships of a fixed duration, partners do not enjoy the same freedom to force dissolution. A partner cannot force dissolution for any reason; if one of the other seven situations does not apply, a partner can force dissolution only by obtaining a court order (see Article 53 for general rules and Articles 94 and 102 for rules governing general and special partnerships).

5.2.5. Liquidation

Once the partnership is dissoluble, the partners decide the liquidation (selling) of the partnership asset in accordance to the partnership agreement. In addition, the partners can decide and plan for the liquidation and distribution of the asset of the partnership. Articles 55-59 talk about general liquidation rules and Articles 114-146 describe the special rules for general and special partnerships.

Liquidation and distribution generally proceed as follows: First, the partners or the court will appoint a party to sell all of the partnership assets. Second, the proceeds from the liquidation will be used to settle any partnership debts. Third, any surplus will be divided among the partners. If the Partnership Agreement has not specified how the surplus should be allocated among the partners, each partner will receive a share that is proportional to their ownership percentage.

5.2.6. Tax Implication

Article 3 of the Income Tax Law says that, “The income tax of legal persons, corporations, limited liability companies, and general partnerships is 20 percent of its taxable income in the

fiscal year.” The taxable income of legal persons (corporations, LLCs, and other legal entities) is taxed at a fixed rate of 20 percent (Article 4). This is a “progressive income tax.” However, sole proprietorship and members of a partnership are taxed as a natural person. This makes sense because sole proprietorships and partnerships do not qualify as corporations or LLCs. If the income of a sole proprietorship or partnership exceeds more than 1,200,000 Afghanis, they will be subject to a 20% income tax. However, the first 1,200,000 Afghanis will be subject to the lower natural person tax rate.

5.2.7. Advantages of Partnership

Every type of business structure has its pros and cons, and so does a partnership. However, there are some advantages that a partnership has which other types of business structures do not. For example, a partnership is relatively easy and inexpensive when compared to other types of business structures. Further, a partnership is easy in terms of registration and does not require frequent meetings besides formalities. Moreover, a partnership does not need to pay the same amount of income tax as an LLC must pay. LLCs and corporations need to pay 20 percent of their income tax while a partnership pays only 10 percent of its annual income tax (up to 1.2 million Afghanis). Last but not least, partners in a partnership are free to have either limited or unlimited liability, which is different from LLCs and corporations.

5.3. Limited Liability Corporation (LLC)

Many business owners, when looking at different business types, choose to form a Limited Liability Company. The nature of this business structure is similar to a corporation in terms of its liability-shield advantages, and it has traits similar to a limited partnership regarding taxation and flexibility. Like in a corporation, the owners of LLCs have limited liability for the corporation’s debts. However, ownership interests are not divided into shares, so the liability of each shareholder is instead capped at an amount agreed to by that shareholder. As mentioned earlier, limited liability is also the most significant difference between an LLC and a partnership. An LLC cannot have less than two or more than 50 owners, its shares cannot be traded on a public exchange, and shareholders are not authorized to transfer, exchange, or sell the company. In Afghanistan, the LLC form is usually considered the finest and most common business form for particularly small businesses with a small number of owners.

The relevant laws of Afghanistan define the “Limited Liability Company;” “Limited” as a business company whose capital is not divided into shares, with the responsibility of each shareholder limited to the amount of their capital in the company. The capital of such a company must not be less than 100,000 Afghanis.

5.3.1.LLC Formation

Under the Corporation and Limited Liability Law, in order for an LLC to become a legal entity in Afghanistan, it should be registered with the Afghanistan Central Business Registry (ACBR) in the Ministry of Commerce and Industry.

The business registration process involves obtaining a tax identification number (TIN) from Mustofiat, publishing business information on the AISA website, and getting a referral letter to any licensing agency for a low flat fee in a short period of time.

According to the Law, the officer(s) are authorized to execute action on behalf of the LLC. The Board of Directors, one or more incorporators of the Corporation, the receiver, trustee, or other court-appointed fiduciary shall prepare the following documents for registration:

- 1. Articles of Incorporation which outline the name of the Corporation*
- 2. The name and address of each Incorporator and Director*
- 3. The address of its Registered Office in Afghanistan and the name of its responsible agent at such office*
- 4. The number and types of shares the corporation is authorized to issue*
- 5. The purpose for which the corporation was organized*
- 6. The per value for capital stock*
- 7. The limited liability of directors*
- 8. The duration of the corporation if it is anything other than indefinite¹*

After the required documents are submitted and the applicable filing fee is paid, the Central Registry will issue a Certificate of Existence, which includes the following information:

- 1. Activity of the corporation in Afghanistan*

¹ Article 21

² Article 25

³ Article 33

⁴ Corporation and Limited Liability Law of Afghanistan, Article 46(3)

2. *That the corporation has not dissolved or has not terminated its activities*
3. *The name of the domestic or foreign corporation as it is registered in Afghanistan*
4. *The date of establishment of the corporation and the period of its duration (if for a limited period)*
5. *That the foreign corporation is authorized to transact business in Afghanistan*
6. *The date of registration of the Articles of Incorporation in the Central Registry*

In addition to the Certificate of Existence, the Board of Directors and incorporators may also enact some additional rules (by-laws) for *corporate governance*, which determines how the company sets and achieves objectives and how performance is to be monitored. The by-laws should not contradict with the Laws of Afghanistan and the Articles of Incorporation.²

5.3.2. Decision Making and Corporate Governance Structure

In today's complex business environment, and with the existence of large companies with many owners, it is difficult and impractical to assemble all shareholders to vote for every single decision a company may face. Hence, in order to improve efficiency, the law mandates that shareholders in corporations and LLCs elect a central body, called a "Board of Directors," to "direct and regulate the affairs" of the company.³

The Board of Directors, according to the law, will have the power to represent the corporation and execute any legal document subject to any limitations set forth in the Articles of Incorporation. The 'Board' can be composed of one or more members, as regulated by the by-laws and the Articles of Incorporation of the company. The Corporations & Limited Liability Law further emphasizes that members of the 'Board' shall be natural persons who are eighteen (18) years of age who have never been deprived of civil rights by a court order. The Board of Directors can execute and sign any legal document and represent the company in any legal transaction; they also may assign one or more committees and delegate authority to them to act on their behalf.

On the other hand, the committee may not perform the functions and exercise powers related to shareholders; appoint any person to fill a vacancy on the Board of Directors or on any

² Article 25

³ Article 33

committee; propose the amendment or adoption of the Articles of Incorporation or by-laws; or approve a plan of merger or dissolution of the company.⁴

In addition to a Board of Directors, corporations and LLCs in Afghanistan are required to have a “Board of Supervisors.” The Board of Supervisors sits “above” the Board of Directors and is primarily responsible for reviewing the financial and operational records of the company and supervising the conduct and implementation of actions by the Board of Directors.⁵

It is worth mentioning that in an LLC, every single owner is entitled to one vote whereby they will have an equal say in the decision-making process. Each owner’s vote carries the same weight as another’s vote. Yet, if voting rights are determined in the Articles of Incorporation by a percentage share of the owners, the members with the most ownership have the most authority in LLC decision-making.

5.3.3.LLC Dissolution

Although a corporation has an indefinite life upon creation, the shareholders can dissolve it voluntarily once it achieves the objectives for which it was created, or once it ceases to serve the shareholders’ interests. To dissolve a corporation, a majority of directors must approve the dissolution proposal, and the shareholders must vote on the proposal.⁶

In addition to voluntary dissolution, a Commercial Court may dissolve a corporation in certain situations. The Ministry of Commerce and Industry may request dissolution if the company obtained its Articles of Incorporation fraudulently or if the corporation has exceeded its authority. A shareholder may request dissolution if the directors have acted illegally or fraudulently, if the shareholders are unable to elect directors at two or more consecutive annual shareholder meetings, or if there is a deadlock among the directors or shareholders and the company is suffering irreparable injury. Finally, a creditor of the corporation may seek dissolution if the corporation owes the creditor money and the corporation is insolvent.⁷

⁴ Corporation and Limited Liability Law of Afghanistan, Article 46(3)

⁵ Corporation and Limited Liability Law of Afghanistan, Article 64 and 66

⁶ Corporation and Limited Liability Law of Afghanistan, Article 103

⁷ Corporation and Limited Liability Law of Afghanistan, Article 107

5.3.4. Tax Implications

Any company, of any form, running in Afghanistan must pay the government taxes according to law. To do so, the applicant needs to obtain a Tax identification Number (TIN), for which the below documents should be provided and submitted to the Ministry of Finance (MoF):

1. License from the Afghanistan Investment Support Agency (AISA) or the Ministry of Commerce & Industry (MoCI) showing that the investor has registered the investment
2. Inquiry letter to the TIN Department of the MoF to the Mustofiat (Revenue Department) saying that it must pay a 1% Sukook; the 1% Sukook is 1% of the total price of the obtained license (each license has a fee) to be paid to the Mustofiat (Revenue Department)
3. Letter from the Mustofiat to the TIN Department confirming that the 1% Sukook has been paid

An LLC could be subject to the following four types of taxes regulated by the law:

1. Income Tax:

The income tax is imposed on LLCs as 5% of gross receipts (before any deductions) during the fiscal year of commissions, fees, interest, dividends, rent, royalties, and similar income.

TAXABLE INCOME				AMOUNT OF TAX	
From	1 afghani	up to afs	12,500 per month		exempted
	afs12,501	up to afs	100,000 per month		10%
	afs100,000	above		in addition to afs 8,750	20%

Any Limited Liability company organized under the laws of Afghanistan is required to withhold income tax from wages and salaries paid. A corporation or LLC is also required to withhold 20% of all dividends or distributions paid in cash. An additional 10% (for a total of 30%) shall be withheld from such dividends upon anonymous investments in shares of the corporation or LLC.

The amounts withheld are to be paid by the corporation or LLC to the State within one week. A report shall also be filed with the Ministry of Finance listing the names of all shareholders or partners, the amount of dividend withheld, and the amount paid to each shareholder or partner. When distributing dividends, a corporation or LLC shall issue to each shareholder or partner a statement of the amount of his dividend, the amount withheld, and the balance paid to him. The

amount withheld shall be a credit against the income tax of the shareholder or partner on all of his income, including the dividend before withholding. The statement from the corporation or LLC shall be attached to his income tax return for the taxable year in which the dividend was paid.⁸

2. Fixed tax

Entrepreneurs who are not able to prepare taxation documents are obligated to pay a 10% fixed tax on their annual sales.

The Afghanistan Income Tax Law further stipulates that the fixed tax of business establishments is to be approved by the Minister of Finance every three years and is to be set by a committee considering the following factors:

- 1- The kind of goods and services offered
- 2- The estimated volume of business
- 3- The size and rental value of the establishment
- 4- The economic advantages of its location in relation to the population
- 5- The demand for goods and services offered
- 6- An estimation of the turnover costs of goods and sales of goods
- 7- A classification between domestic and foreign products
- 8- A classification between consumable and non-consumable goods
- 9- An estimation of the daily, monthly, and annual net income of the business establishment⁹

5.3.5. What Happens when an LLC is Bust or Bankrupt?

One reason many businesses prefer to form an LLC is because LLCs make it very challenging to pin debt on shareholders or owners. Nevertheless, one should bear in mind that actions taken by an LLC may compromise the limited liability of the company, and individual shareholders may

⁸ Afghanistan Income Tax Law, Special Provisions Relating to Corporations and Limited Liability Companies, Article 51

⁹ Afghanistan Income Tax Law, Article 89(1)

lose their limited liability by making improper decisions. Therefore, shareholders must carefully follow the rules governing LLCs.

In the LLC structure, members are shielded from the company's debts and most lawsuits, similar to the shareholders of a corporation. Creditors and litigators must go after the business's assets rather than those of the owner or owners.

Because LLCs bear the burden of most debts and litigation, members face less personal investment risk. For example, if an LLC goes out of business, members are only liable for the amount of money they invested in the company. If an LLC goes bankrupt and cannot repay its debt, members do not need to fear losing their personal property, such as cars, homes, or additional assets other than those the shareholders have invested in the company.

On the other hand, according to Siddiqullah Mujadadi, the AISA Planning and Policy Manager, LLCs in Afghanistan are in practice not limited in terms of liability. Moreover, the corporate veil is pierced in case the company is involved in fraud or, contrary to its by-laws and Articles of Incorporation, has been involved in illegal activities such as money laundering or personal business. In such a case the members may lose limited liability, to which the Kabul Bank crisis in 2012 is an example of such involvement in fraud. Also, individual members may lose their limited liability if, for instance, they personally guarantee the debt of the company or deliberately harm it.

One should bear in mind that there are certain pros and cons associated with each business type in Afghanistan. When discussing the advantages of an LLC, it should be highlighted that this particular business type has a more flexible management structure than a corporation. This flexibility comes from the Articles of Incorporation, allowing business owners to create a structure tailored to the business owners' requirements.

In addition, this business type protects its owners and shareholders from personal liability in case of insolvency or debts against the business. Moreover, an LLC has a life of its own and can continue to exist after the owners die or sell their shares. There are some disadvantages, however. The lack of a strict corporate structure, as well as the pass-through taxation accompanying this business structure, may cause individuals to hesitate to put their money into a LLC.

5.4. Corporation

A corporation is a third type of business structure. According to Article 4 of the Corporation Law of Afghanistan, a corporation is a company whose capital is definite and divided into shares, with the share and responsibility of each shareholder limited to the proportion of his share¹⁰. For a corporation to be established, at least five shareholding founders are required¹¹.

5.4.1. Formation

This law talks about the establishment and existence of foreign or domestic corporations, which require the following terms:

1. Having a business license
2. Payment of fees, fines, penalties, and interest in accordance with the provisions of this Law
3. Filing annual reports with the Central Registry in accordance with this Law
4. No dissolution or withdrawal of activities
5. If the corporation does not meet the above-mentioned requirements, the Central Registry shall certify the dissolution or termination of the activities of the corporation
6. A Certificate of Existence issued by the Central Registry shall be regarded as conclusive evidence that the domestic or foreign corporation is in existence as a corporation

A corporation should abide by certain criteria while giving their corporation a name. A corporate name shall contain the word “corporation,” “incorporated,” “company,” or “limited,” or the abbreviation “Corp.,” “Inc.,” “Co.,” or “Ltd.”¹² Also, under certain conditions, a corporation should not choose the following types of names:

1. A corporate name that is prohibited by law
2. A name that has been selected and registered with the Central Registry for another corporation
3. A name of a foreign corporation, unless the selected name can be distinguished from the foreign name

¹⁰ Corporations and Limited Liability Companies Law of Afghanistan

¹¹ Article 268 of the Commercial Code 1955 of Afghanistan

¹² Article 26 of Corporations and Limited Liability Companies Law of Afghanistan

Corporations are composed of two Boards, each of which carries out certain activities: The Board of Directors and the Board of Supervisors:

5.4.2. Board of Directors

The joint stock company shall have a Board of Directors composed of at least three persons to be selected from among the shareholders. The first members of the Board Directors may also be appointed by the Articles of Incorporation¹³. Additionally, members of the Board of Directors may serve three years at the maximum, and Board members may be re-elected unless the Articles of Incorporation state otherwise.¹⁴ The members of the Board of Directors elect each year, from among themselves, a Chairman of the Board, and, if necessary, a Vice-Chairman.¹⁵ Likewise, if a member of the Board of Directors is dismissed for legal reasons, the Board can appoint, temporarily, another member meeting the legal requirements. That person must, at the next general meeting, propose his appointment for approval.¹⁶ The Board of Directors carries out the administrative activities of the corporation, as well as its agencies¹⁷. The Board of Directors is responsible for directing and regulating the affairs of the company and is responsible for monitoring the performance of its officers.

In accordance with the Articles of Incorporation, directors shall be elected by the shareholders at each regular/annual shareholder's meeting and, under the Articles of Incorporation or by-laws, may authorize the shareholders or the Board of Directors to fix or change the number of Directors¹⁸. Unless the Articles of Incorporation provides otherwise, each outstanding share, is entitled to one vote¹⁹. Members of the Board of Directors shall elect from among themselves, a

¹³ Article 301 of the Commercial Code of Afghanistan

¹⁴ Article 303 of the Commercial Code of Afghanistan

¹⁵ Article 304 of the Commercial Code of Afghanistan

¹⁶ Article 305 of the Commercial Code of Afghanistan

¹⁷ Article 307 of the Commercial Code of Afghanistan

¹⁸ Article 35 of the Corporation Law of Afghanistan

¹⁹ Article 81 of the Corporation Law of Afghanistan

Chairman of the Board Each year, unless otherwise required by the Articles of Incorporation or the by-laws²⁰.

Members of the Board of Directors cannot, without permission in the general meeting, engage in commercial transactions with companies they have a proprietary interest in. Members of the Board are also not allowed to join another company engaged in the same activities as their related company. The company can ask for compensation from the Board member not complying with this Article, or can consider the transaction made in his name as made in name of the company, and can ask that the profit made through these transactions be turned over to the company²¹.

In resolving the above-mentioned matters, members of the Board involved in the conflict cannot participate. The right of the company to take advantage of this privilege exists for a period of one year from the date such transaction takes place.

5.4.3. Other Authorities of the Board of Directors

The incorporators or Board of Directors of a corporation may adopt by-laws to better implement the relevant Articles of Incorporation, provided that they are not inconsistent with this law or the Articles of Incorporation²². In other words, a corporation has this opportunity to adopt and enact by-laws that are their own laws in an attempt to operate more efficiently.

- (1) According to the provision of this law, the Board of Directors can start its activities after the establishment of the corporation and can hold its meetings inside or outside Afghanistan
- (2) According to the provisions of this law, incorporators of the corporation can hold their meetings inside or outside Afghanistan

²⁰ Article 39 of the Corporation Law of Afghanistan

²¹ Article 313 of the Commercial Code of Afghanistan

²² Article 25 of the Corporation Law of Afghanistan

(3) According to the provisions of this law, the incorporators of a corporation can make decisions without holding meetings if the action taken is evidenced by a written consent signed by each incorporator

Additionally, the Board of Directors can determine the amount of members stipulated in its own by-laws or Articles under certain conditions, according to Article 34 of the Corporation Law:

1. Natural persons who are eighteen (18) years of age.
2. Persons that have never been deprived of civil rights by a court order

The appointment of the members to the Board of Directors should be specifically stipulated in the bylaws²³:

- (1) Directors shall be elected by the shareholders at each regular/annual shareholder's meeting
- (2) The Articles of Incorporation, or by-laws, may authorize the shareholders, or the Board of Directors, to fix or change the number of directors

The Board of Directors has the following responsibilities²⁴:

1. To ensure the best interests of the corporation and its shareholders
2. To discharge assigned duties with due diligence
3. To rely on information, opinions, reports, or statements, including financial statements, and other financial data

5.4.4. Board of Supervisors

The Board of Supervisors of the corporation should be composed of two members. These members can be elected from among stockholders or initially by the founders, or at a general meeting for a period of one year, and subsequently by the general assembly for a maximum period of three years. The supervisors whose terms have expired can be re-elected. Members of the Board of Supervisors cannot be elected as members of the Board of Directors, nor can they

²³ Article 35 of the Corporation Law

²⁴ Article 47 of the Corporation Law

administer the business transactions of the company. Members of the Board of Directors whose terms have expired cannot be elected as members of the Board of Supervisors until the general assembly releases them from responsibility²⁵.

Electing the Board of Supervisors²⁶:

(1) The Board of Supervisors of the corporation shall be composed of two or more members that shall be elected by the shareholders at the regular/annual meeting of shareholders, unless provided otherwise in the Articles of Incorporation or the bylaws. If appointed in the Articles of Incorporation, the first term shall be for one year, and thereafter for a maximum period of three years. The Board of Supervisors whose terms have expired may be re-elected.

(2) Members of the Board of Supervisors cannot also be members of the Board of Directors nor can they administer the business operations of the corporation.

According to Article 64 of the Corporation Law, the Board of Supervisors has the following responsibilities and rights²⁷:

1. Cooperation with the Board of Directors in preparation and review of the financial statements of the corporation
2. Investigation of the operations and books of the corporation at least once every six months
3. Inspection, without notice, of the treasury of the company at least once every three months
4. Supervision of the actions of the Board of Directors with regard to the provisions of this law and as prescribed by the Articles of Incorporation and by-laws
5. Notice of regular/annual or special meetings of the shareholders if the Board of Directors does not fulfill such duties
6. Attendance at the general meetings of shareholders
7. Calling special meetings of the shareholders in cases of importance or emergency
8. The Board of Supervisors must present to the regular/annual meeting of shareholders the result of its reviews of the financial statements and other accounts of the corporation, and the distribution of profits

²⁵ Article 335 of the Commercial Code of Afghanistan

²⁶ Article 59 of the Corporation Law of Afghanistan

²⁷ Article 64 of the Corporation Law of Afghanistan

If there is any complaint against the Board of Directors, shareholders may refer to the Board of Supervisors²⁸.

5.4.5. Advantages and Disadvantages of Corporations

Advantages:

- The corporation's shareholders are not liable for any debts incurred or judgments handed down against the corporation. Shareholders only risk their equity in the corporation.
- The corporations may be able to raise additional funds by selling shares in the corporation.
- Ownership is transferable.
- The possibility of establishing a special name for the business.

Disadvantages:

- Forming a corporation requires more time and money than forming other business structures.
- Governmental agencies monitor corporations, which may result in added paperwork.
- Corporate profits may be subject to higher overall taxes because the government will tax profits at the corporate level and again at the individual level, if such profits are distributed to shareholders. Furthermore, a corporation may not deduct from its business income any dividends it pays to its shareholders.
- Double taxation.
- Challenging to form such a business.

5.4.6. Dissolution

A corporation has an indefinite life upon creation; however, shareholders may dissolve it anytime after achieving the objectives for which it was intended, or for ceasing to serve the corporation. The Board of Directors should approve the dissolution proposed by shareholders and they should vote on the proposal. The Corporation Law of Afghanistan holds that the Board of Directors may approve the dissolution of the corporation by a majority of votes and present the proposal (whether conditional or unconditional) to shareholders for adoption and approval.”²⁹

In addition, a Commercial Court could dissolve a corporation under certain conditions: If the company illegally acquires its Articles or the corporation exceeds its boundary of authority, the Ministry of Commerce and Industry could initiate a request to dissolve the corporation. One of

²⁸ Article 67 of the Corporation Law of Afghanistan

²⁹ Article 103 of the Corporation Law of Afghanistan

the shareholders can also request dissolution if the directors have not acted within their boundaries. Also, if shareholders were prevented from choosing directors, the company may be dissolved upon the request of the shareholders.

The Commercial Court of proper jurisdiction may dissolve a corporation in a proceeding³⁰:

1. Initiated by the Ministry of Commerce and Industry, if it is established that the corporation obtained its Certificate of Incorporation through fraud; or the corporation has exceeded or abused the authority conferred upon it by Law.
2. By one or more shareholders if it is established that the directors are deadlocked in the management of the corporation's affairs, the shareholders are unable to break the deadlock, and irreparable injury to the corporation and its assets is being suffered; the directors, or those in control of the corporation have acted, or are acting, in a manner that is illegal or fraudulent; or the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive regular/annual meetings, to elect directors.
3. By a creditor if it is established that the creditor's claim: (i) has been reduced to judgment; (ii) the execution on the judgment is unsatisfied; and (iii) the corporation is insolvent; or (iv) the corporation has admitted in writing that the creditor's claim is due and owing and the corporation is insolvent. When a claim is filed against the corporation, the corporation's voluntary dissolution shall be executed under court supervision.

6. Other Important Information

6.1. Four Categories of Tax

There are four categories of taxes in Afghanistan:

1. Income Tax:

This tax is levied on the annual net income of companies and individuals. Companies should pay a 20% tax of their annual net income. Individuals as per the range of their net incomes respectively pay 20% tax, 10% tax, and 20% tax annually.

2. Sales Tax:

This tax is levied on the annual gross income of companies and individuals which includes:

1. 2% from gross income of construction, commercial, and other services.

³⁰ Article 107 of the Corporation Law of Afghanistan

2. 2% from gross income of hotels and restaurants with less than Afs. 250,000 gross income per month.
3. 5% from gross income of hotels and restaurants with more than Afs. 250,000 gross income per month.
4. 5% from gross income of wedding halls.
5. 10% from gross income of telecommunication companies, aviation companies, hotels, and restaurants that provide high-level services.

3. Salary Tax, Rental Property Tax, Contractual Tax:

a. Salary Tax:

1. Salary lower than Afs. 5,000 is exempted from the tax.
2. Salary ranging between Afs. 5,001 to Afs 12,500 should pay 2% tax.
3. Salary ranging between Afs. 12,501 to Afs. 100,000 should pay 10 % tax.
4. Salary ranging above Afs. 100,000 should pay 20% tax.

b. Rental Property Tax:

With houses, apartments, and complexes being rented for business activity purposes, the owners of these properties are obligated to pay taxes as below:

1. For rent ranging lower than Afs. 100,000, the owner pays 10% tax.
2. For rent ranging above Afs. 100,000, the owner pays 20% tax.

c. Lotteries, shared revenues, and similar categories are obligated to pay 20% tax on the total amount.

d. Contractual Tax:

1. If the entrepreneur does not have a business license, this category pays a 7% tax of the total amount of the contract.
2. If the entrepreneur has a business license and does business according to the business by-laws, he/she pays a 2% tax of the total amount of the contract.

4. Fixed Tax:

The entrepreneurs who are not able to prepare taxation documents are therefore obligated to pay a 10% fixed tax of their annual sales.

Documents required for paying taxes:

1. Balance Sheet & Income statement of the company.
2. Research papers from the Mustofiat.
3. Tax payment tariff from the Mustofiat.
4. Confirmation letter on renewing the company's business license from the Ministry of Commerce & Industry (MoCI) or Afghanistan Investment Support Agency (AISA).

6.2. Implication and Possibility of Foreign Ownership of Real Property

Foreigners cannot own property in Afghanistan. As per Article 41: "Foreign individuals shall not have the right to own immovable property in Afghanistan." Lease of immovable property for the purpose of capital investment shall be permitted in accordance with the provisions of the law.

The sale of estates to diplomatic missions of foreign countries as well as international organizations to which Afghanistan is a member shall be allowed in accordance with the provisions of the law. However, the Land Law introduced in 1387 to attract more foreign investment extended the land lease period as follows:

1. The Ministry of Agriculture, to attract and encourage private investment with the aim of creating agricultural, animal, and gardening farms, can deliver pure agricultural land for 50 years and original land as a lease for 90 years to individuals, private agricultural and animal sciences, and internal and external companies.
2. The Ministry of Agriculture and Irrigation can lease original land to the private sector based on investment law and the agreement of relevant departments, bearing in mind the type of the land, the project, and the amount of investment.
3. Ministries and other relevant government departments can lease their relevant land for a period of five years based on the first and second parts of this Article.

6.3. Implication and Possibility of Foreign Ownership of Business

Any foreign corporation organized under the laws of foreign companies that operate in Afghanistan is subject to the provisions of the Corporations & Limited Liability Law in regard to the formation, structure, responsibilities, and rights, and should complete the Afghanistan business set-up process.

Under the relevant laws of Afghanistan, foreign investment can take place in the forms of a 100% domestic private capital; a 100% foreign private capital, a mixed domestic and foreign private investment, and a mixed government and private domestic and foreign investment.

However, the Law on Domestic and Foreign Private Investment in Afghanistan stipulates that foreign investors, based on the classification of their Approved Enterprise as short-term, medium-term, or long-term, may lease real estate for ten, twenty, or thirty years, respectively. Lease of land is conditional on implementation of the project.³¹

The Afghanistan Income Tax Law stipulates that the taxability of income in Afghanistan for foreigners shall be determined by the provisions of existing treaties and contracts with the State. If citizens of Afghanistan are exempt from income tax in certain foreign countries, Afghanistan shall grant a similar exemption to those foreigners.³²

It is worth mentioning that the limited liability form is the most common form used to when incorporating in Afghanistan. Shareholders enjoy a limited liability and are not personally responsible for the company's losses.

6.4. Reporting

An approved enterprise must immediately notify the Office if there has been a change in its ownership, capital structure, or contribution of additional capital. An approved enterprise shall annually file an update with the Office within ninety days of the end of the fiscal year, which shall include details required by the Commission in accordance with this law, and the relevant regulations, rules, and procedures. For tax purposes, proceeds from sale, exchange, and transfer of assets, except by inheritance, shall be reported in full. The following deductions from proceeds of sale or exchange are allowed in the determination of taxable gain. Every general partnership is required to make an annual report of all its receipts, expenses, and disbursements, and to determine its net income in the same manner as an individual, except that no deductions for personal exemptions may be made. The partnership is required to separately report for each partner his share of the following items:

- a. The net income or net loss
- b. The gains or losses from sale or exchange of movable and immovable property
- c. Salary, interest, dividends, advances, etc.

At the same time a report shall be filed with the Ministry of Finance listing the names of all shareholders or partners, the amount of dividend withheld, and the amount paid to each

³¹ Law on Domestic and Foreign Private Investment in Afghanistan, Article 14

³² Afghanistan Income Tax Law, Article 9 and 10

shareholder or partner. Articles 12-13 of the Procurement Law state that no approved enterprise can initiate procurement without first reporting to the Treasury Department of the Ministry of Finance. Multi-year contracts may be entered into only based on the prior approval of the Ministry of Finance. Planned procurement expenditures pursuant to multiyear contracts shall be reported to the Ministry of Finance annually in the documented form depicting the actual annual expenditure and progress of the contract. Foreigners who want to transfer money need to report to Afghan customs. The transport of more than Afs. 1,000,000 or equivalent in cash across the border of Afghanistan into another country must be reported in advance to Afghan Customs.

6.5. Employer vs. Employee's Rights

Work is the right of every Afghan. The law shall regulate working hours, paid holidays, employment and employee rights, and related matters. Choice of occupation and craft shall be free within the bounds of law.

1. An approved enterprise shall have the right, directly or indirectly, to employ foreign managerial and expert staff, in accordance with enforced legislative documents.
2. An approved enterprise shall have the right to enter into service contracts with foreign persons in order to conduct its business activities. In such cases, work permits shall be granted to such foreign personnel according to the applicable legislative document, provided however that such foreign persons comply with the enforced Afghan laws during their stay in Afghanistan.

Approved enterprises, whether domestic or foreign, in which foreign investors have equity ownership are encouraged to hire Afghan personnel.

6.6. License Registration

Domestic Licenses: This type of license is issued only to Afghan investors to operate within Afghanistan. Such license will hold a 'D' character before the License Number (e.g. D -00000).

Documents Required:

- Original ID card of President, Vice-President, shareholders, and contact person.
- Presence of both President and Vice-President.
- Legal Power of Attorney (if President or Vice-President cannot be present).
- Four normal size photos of President and Vice-President (total of eight photos).
- Copy of official rental agreement/owner equity letter.

- Agreement letter from the relevant Ministry (if it is a sector-based corporation).
- Experience letter of both President and Vice-President (if it is a consultancy or legal services corporation).

Foreign Licenses: This type of license is issued only to foreign investors willing to operate within Afghanistan. However, the procedures are slightly different from the domestic licenses considering a number of factors, such as: who wants to invest, whether the company is a separate entity or a branch of a foreign company, etc.

Licenses for Foreign Individuals: For foreign investors establishing a new company in Afghanistan, the company's President, Vice-President, and shareholders have their own shares and get dividends as per their shares' rate. Such licenses hold an 'I' character before the license number. (e.g I-00000).

Required Documents:

- Copy of passport with valid visa of President, Vice-President, and shareholders.
- Original ID card of contact person (who must be Afghan).
- Original ID card of President, Vice-President, or shareholders (if any of them is Afghan).
- Presence of both President and Vice-President with shareholders.
- Legal Power of Attorney (if President or Vice-President cannot be present).
- Four normal size photos of President and Vice-President (total of eight photos).
- Copy of official rental agreement/owner equity letter.
- Agreement letter from relevant Ministry (if it is a sector-based corporation).
- Experience letter of both President and Vice-President (if it is a consultancy or legal services provider).

Opening a New Branch: This type of license will be for investors establishing a branch of their company with a 100% share in Afghanistan, where President and Vice-President act as managers and are responsible for all legal activities in Afghanistan. Such licenses will hold an 'I' character before the license number (e.g. I-00000)..

Required Documents:

- Company Board of Resolution Letter.
- Company Status Form.
- Letter from relevant embassy.
- Letter from Ministry of Foreign Affairs of Afghanistan.
- Legal Power of Attorney.
- Copy of passport with valid visa of President and Vice-President.
- Original ID card of contact person (who must be Afghan).
- Original ID card of President or Vice-President (if any of them is Afghan).

- Presence of both President and Vice-President.
- Four normal size photos of President and Vice-President (total of eight photos).
- Copy of official rental agreement/owner equity letter.
- Agreement letter from relevant Ministry (if it is a sector-based corporation)
- Experience letter of both President and Vice-President (if it is a consultancy or legal services provider).

7. Work Cited

7.1. Primary Sources

- a) Commercial Code of 1955
- b) Corporation and Limited Liability Law
- c) Income Tax Law
- d) Labor Law
- e) Investment Law
- f) Private Investment Law
- g) Partnership Law
- h) Law on Domestic and Foreign Private Investment in Afghanistan
- i) New license procedure (AISA)

7.2. Secondary Sources

8. Interview with Siddiqullah Mujadiddi *Planning & Policy Manager* - AISA
9. Interview with Commercial Appellate Court

10. Appendices

10.1. Appendix A

Business Structure	Individual Liability	Easy Transfer of Ownership	Easy Continuity of Existence	Centralized Management Structure	Required Registration with Government	Tax
Sole Proprietorship	Yes	Yes	Yes	No	No	Natural Person
Partnership	Yes	No	No	No	Yes	First 1.2 million (10 %)
Corporation	No	Yes	Yes	Yes	Yes	20%
LLC	No	No	Yes	Yes	Yes	20%

10.2. Appendix B

<i>Business Structure</i>	Sole Proprietorship	Partnership	LLC	Corporation
<i>Formation</i>	One person can form it	-Two or more persons make an association -Register and take a license -Publish business information on AISA web site -Partnership agreement	-Not less than two and more than 50 members -Business registration process -Obtaining a tax identification number (TIN) from Mustofiat -Publishing business information on the AISA website -Articles of Incorporation - Board of Directors -Board of Supervisors	-Minimum five founders -Registration process -Articles of the Incorporation -Board of Directors -Board of Supervisors
<i>Liability</i>	Unlimited	Can be either limited or unlimited, depending on the Partnership Agreement	Limited	Limited
<i>Transfer of Ownership</i>	The owner can transfer anytime he/she wants	By the agreement of partners	By the agreement of partners	Each shareholder can sell their shares anytime they want
<i>Dissolution</i>	The owner can dissolve anytime he/she wants	-Expiration of period of partnership -Achievement of objectives -Complete or partial elimination of capital -Death of a partner -Withdrawal of one of the partners from the partnership -Agreement of partners -By court -Bankruptcy	-Voluntary by shareholder -By Commercial Court -By Ministry of Commerce -By request of one of the shareholders	-Illegally obtaining Articles of Incorporation -Exceeding the boundaries of authority the MoCI can initiate -With the request of one of the shareholders if directors did not act within boundaries -If the shareholders could not choose directors
Registration with Government	Yes	Yes	Yes	Yes
Centralized Management Structure	No	No	Yes	Yes
Individual Liability	Yes	Yes	No	No
Tax Implication	Natural person (10%)	Natural person (10%) as long as income is up to Afs. 1.2 million	20%	20%