
LAW ON STATE-OWNED ENTERPRISES

(RETRANSLATION - 29 MAY 2005)

CHAPTER ONE GENERAL PROVISIONS

Article One

This law has been enacted to strengthen and promote the economy of the public sector and to regulate the activities of State-owned enterprises.

Article Two

This law ensures the fulfillment of the following objectives:

- To specify the rights, duties, authorities, and responsibilities of State-owned enterprises;
- To upgrade the level of economic and financial activities of State-owned enterprises in compliance with the principles of effectiveness, usefulness and efficiency;
- To facilitate the reasonable and efficient use of State-owned enterprise resources and reserves;
- To facilitate the rapid execution of the affairs which have economic advantages, and to create a mechanism for State control over the economic and financial activities of enterprises; and
- To delegate powers to enterprises in order to ensure compliance with the principle of self sufficiency.
- “Ministry of Finance has the authority to transfer of ownership of State-Owned Enterprises (“Enterprises”), Enterprises with limited or no economically viable future prospects.”

Article Three

A State-owned enterprise shall be a legal person with an independent accounting balance sheet, which operates in different sectors of the economy with 100% of its capital owned by the State, in accordance with this law and the enterprise’s charter.

For the purposes of this law, the word “enterprises” shall hereinafter mean “State-owned enterprises”.

Article Four

For purposes of this law, the following meanings shall apply:

1. *Investment*: means cash, capital goods, fundamental property, and other assets which shall be utilized for the creation of an enterprise in accordance with this law.
2. *Fundamental property*: equipment usable for work for more than a year, with a value not less than the amount determined by the State for definition of fundamental property.

3. *Capital assets*: [shall include without limitation] licenses, royalties, posts.
4. *Fundamental repair*: renewal of consumable parts for fundamental property which have been used for more than a year upon installation/erection or fundamental repair.
5. *Net value*: the value of products or any services rendered and expenses incurred by the enterprise for the purpose of producing and selling such products or provision of services, expressed as an amount of money.
6. *Economic activity*: those activities which create suitable conditions for, and provide timely coverage of, the needs and requirements of an enterprise for the purpose of successfully discharging its essential duties.
7. *Annual profit*: the difference between the sales price of products and services and their net value.
8. *Employees*: official staff [civil servants], laborers, auxiliary staff, and contract employees of an enterprise.

Article Five

Enterprises may be created on the proposal of the relevant ministry or agency, the confirmation of the Ministries of Finance and Planning, and the approval of the Council of Ministers.

Article Six

1. An enterprise shall have a charter which shall be prepared by the relevant ministry or agency and shall be approved by the Council of Ministers upon the agreement of the Ministry of Finance.
2. The charter of an enterprise shall contain:
 - a. the title and the location of the enterprise
 - b. the name of the ministry or agency to which the enterprise reports
 - c. the purpose and type of enterprise operations
 - d. the amount of initial capital for the enterprise
 - e. Any other issues related to the affairs of the enterprise which are essential to be mentioned in the charter, and are not in contradiction with the provisions of this law.

Article Seven

1. Enterprises shall be classified into three categories (category 1, 2, and 3) on the basis of the amount of capital, production capacity, level of services, level of activity, and number of staff.
2. The classification of enterprises and the positions and the amount of additional incentives payable to the Management Board shall be determined in a regulation

prepared by the Ministries of Finance and Labor & Social Services in cooperation with the line ministries.

Article Eight

Enterprises shall be obliged to pay any taxes and duties of the State included in the net value of products or services, in accordance with the income tax law.

Article Nine

An enterprise shall be liable to comply with the undertakings resulting from its agreements or contracts to the extent of its capital and other property.

Article Ten

An enterprise may carry out and maintain commercial transactions and relationships related to its products or services with the relevant parties.

**CHAPTER TWO
CAPITAL AND FINANCIAL PROVISIONS**

Article Eleven

The capital of an enterprise shall be composed of fixed and working capital, which shall be provided to the enterprise upon the proposal of the relevant ministry or agency, agreement of the Ministry of Finance, and approval of the Council of Ministers.

Article Twelve

An enterprise shall be obliged to use its capital efficiently in accordance with its economic needs for upgrading the quality of products, increasing efficiency, controlling costs, and ensuring the interest of its employees.

Article Thirteen

The amount of working capital shall be determined in accordance with the Regulation on the Norms of Working Capital of Enterprises.

Article Fourteen

An enterprise may not use the working capital for expanding the fundamental property without the agreement of the Ministry of Finance.

Article Fifteen

Any decrease or increase in the working capital of an enterprise shall be proposed by the relevant ministry or agency, confirmed by the Ministry of Finance and approved by the Council of Ministers.

Article Sixteen

An enterprise may not invest in other enterprises.

Article Seventeen

An enterprise may invest in a joint [combined State and private] or private undertaking upon the agreement of the Ministry of Finance.

Article Eighteen

An enterprise shall, for the purpose of rehabilitating and repairing fundamental property, depreciate assets in accordance with the norms set forth in the Law for Depreciating, Planning & Using Depreciation Reserves in the National Economy of the Republic of Afghanistan, and shall use the depreciation reserves in accordance with the provisions of Chapter Four of the referenced law.

Article Nineteen

Enterprises shall be obliged to reflect in the capital of the enterprise the monetary value of the depreciation of fundamental property, which has been deducted for the rehabilitation of such assets.

Article Twenty

Enterprises shall prepare their annual financial plan in accordance with the rules approved by the Ministry of Finance.

Article Twenty-One

1. An enterprise shall be obliged to cover the expenses incurred in the production of products or services, and to earn profit.
2. The minimum profit level for an enterprise shall be determined upon agreement with the Ministry of Finance, taking into consideration the sector of work, as mentioned in the charter.

Article Twenty-Two

If the enterprise's products or services are offered at prices less than their net cost with the agreement of the Council of Ministers, the State shall pay the difference between such price and the amount determined by the charter for sales including a profit margin.

Article Twenty-Three

Enterprises shall make annual allocations to the following funds from its overall annual net profits for the purpose of economic growth, payment of bonuses to employees, and compensation of unexpected losses:

1. bonus funds - up to 15%
2. development funds - 5%
3. social and cultural funds - 3%
4. reserve funds - 2%

Article Twenty-Four

The manner for the creation and use of the funds referred to in Article 23 shall be regulated by laws and regulations drafted by the Ministry of Finance in cooperation with relevant ministries and agencies.

Article Twenty-Five

An enterprise may use up to 50% of the remaining annual net profit to provide for, or increase, working capital, fund the approved development plan, or pay off loans received from banks. Any other remaining amounts shall be transferred to the budget of the State.

Article Twenty-Six

An enterprise shall fund its investments, in accordance with the approved plan, from the internal resources of the enterprise, development budget of the State, and bank loans.

Article Twenty-Seven

1. Procurement of items required by the enterprise shall take place in accordance with the work plan, taking into account the norms approved for stocks of goods and the Procurement Regulation.
2. An enterprise may, in exceptional circumstances, obtain additional funds required by the enterprise through bank loans, at the discretion of the Supreme Council.

Article Twenty-Eight

Enterprises may rent production facilities and shops, warehouses, buildings, equipment and vehicles which are owned by the enterprise and not presently used, at market rates, to other organizations or individuals.

CHAPTER THREE

FISCAL AFFAIRS, REPORTING AND BALANCE SHEETS OF ENTERPRISES

Article Twenty-Nine

The accounting affairs of an enterprise shall be carried out in compliance with the standard accounting plan and accounting forms approved by the Ministry of Finance.

Article Thirty

A report of production and financial activities and an annual balance sheet shall be forwarded by the enterprise to the relevant ministry or agency, ministries of finance and Central Statistics, and to the bank which maintains transactions with the enterprise, as follows:

1. A work progress report for the first quarter of the year shall be sent no later than the end of the fourth month [solar month]
2. A work progress report for the second quarter - no later than the end of the 7th month
3. A work progress report for the third quarter -- no later than the end of the tenth month

4. A work progress report for the last quarter -- no later than the end of the first month of the next year.
5. The annual balance sheet of the enterprise -- no later than the first day of the fourth month of the coming year.

Article Thirty-One

Whenever the progress report or the balance sheet of an enterprise is not submitted to the relevant authorities within the designated time, the Board of Management and the accounting staff shall be deprived of their incentive payments and shall be dealt with in accordance with the law.

Article Thirty-Two

The financial year of an enterprise shall start from the first day of the first month of the year and shall terminate at the end of that year. [Solar years]

CHAPTER FOUR ORGANIZATION, DUTIES AND AUTHORITIES OF ENTERPRISES

Article Thirty-Three

An enterprise shall be managed by:

1. the Supreme Council
2. the Board of Management

Article Thirty-Four

The Supreme Council is the highest authority of the enterprise and shall be composed of five to seven members as follows:

1. The minister or chief of the agency under the supervision of which the enterprise operates, as the chairman of the Supreme Council
2. A representative of the Ministry of Finance, as the vice chairman
3. other members as defined in the enterprise's charter

Article Thirty-Five

Regular or extraordinary meetings of the Supreme Council shall be convened as follows:

1. Regular meetings at least once every two months
2. Extraordinary meeting as requested by the chairman of the Supreme Council or the Ministry of Finance, or on the proposal of the chairman for the Board of Management, approved by the chairman of the Supreme Council

Article Thirty-Six

1. The quorum for meetings of the Supreme Council shall be as follows:
 - a. Three out of a total of five members
 - b. Five out of a total of seven members

2. The decisions of the meetings shall be made by a majority of votes present.
3. The meetings of the Supreme Council shall be convened under the direction of the chairman, or the vice chairman in his absence.

Article Thirty-Seven

The Supreme Council shall be assigned with, and enjoy, the following duties and authorities:

1. To determine the policy of and to approve the annual work plan for the enterprise
2. To approve the financial plan and organization of the enterprise
3. To approve the internal procedures of the enterprise
4. To present proposals to the Council of Ministers with regard to appointment or removal of members of the Board of Management
5. To conduct partial or total reviews of the executive body of the enterprise (Board of Management)
6. To evaluate and assess the progress report for production and economic activities and to take decisions with regard to improvement of affairs and correction of any deficiencies
7. To take decisions for the purpose of promoting the efficiency of production and the quality of products, and to efficiently take advantage from the production capacity, raw materials, and human and financial resources
8. To approve Procedures for determining the sales price for products or services
9. To approve the annual balance sheet for the enterprise in accordance with the General Rules for Accounting and Reporting.
10. To render decisions with regard to use of financial resources of the enterprise, in accordance with this law
11. To approve Procedures for distribution of the incentive fund to the employees of the enterprise.
12. To approve the establishment or termination of offices of the enterprise in the country.

Article Thirty-Eight

The approvals of the Supreme Council shall be recorded in a specified book

Article Thirty-Nine

The Board of Management shall be the executive body of the enterprise and shall be composed of a Director and Deputy Director(s).

Article-Forty

The Director for the Board of Management shall be the chief executive and shall be responsible for the implementation of approved work plans, budgetary commitments, ensuring reasonable and efficient use of the capital and other financial resources available to the enterprise, preparation and timely submission of quarterly reports, preparation of an annual balance sheet for the enterprise, compliance with the financial regulations, and execution of other business affairs

Article Forty-One

The Director of the Board of Management shall have the following duties and authorities:

1. To organize the executive affairs of the enterprise
2. To represent the enterprise in courts, agencies and administrative offices of the State, and other authorities
3. To enter into contracts and agreements within the scope of authorities provided for by the charter or delegated by the Supreme Council
4. To appoint, promote, transfer, retire or remove the employees of the enterprise, in accordance with the relevant legislation
5. To prepare the annual work plan and program for the enterprise, with maximum use of the available capacity, to take into consideration the control figures of the State announced through the relevant ministry and to submit such figures to the relevant bodies upon approval by the Supreme Council.
6. To prepare financial and organizational plans for the enterprise and submit those to the relevant authorities upon the approval of the Supreme Council.
7. To open bank accounts for the enterprise
8. To issue necessary orders to the employees of the enterprise, within the scope of his authorities.
9. Any other duties and authorities as may be provided for in this law or the charter of the enterprise.

Article Forty-Two

In the absence of the Director for the Board of Management, his duties shall be carried out by the Deputy Director delegated by the Director.

Article Forty-Three

1. The scope of duties and authorities of the Deputy Director(s) of the Board of Management shall be determined by the Director for the Board of Management

2. The Chief Accountant shall discharge his duties in accordance with the Regulation for Chief Accountants.

Article Forty-Four

The Deputy Director(s), Chief Accountant, and other employees of the enterprise shall be responsible to the Director of the Board of Management

Article Forty-Five

1. The Board of Management shall be obliged to present its annual development and financial plans to be approved by the Supreme Council, taking into consideration the main objectives of the Plans for the economic and social development of the country.
2. The Board of Management shall be obliged to consider in the preparation of its plan the maximum use of resources for increasing productivity, decreasing the net cost of products, carrying out of work, and supplying services.
3. The relevant control figures shall be announced by the relevant ministry to the enterprise three months prior to start of the new financial year. Whenever the Board of Management finds the mentioned figures to be unrealizable, the board shall inform the relevant ministry about the situation and attach documented reasons to the notice two months prior to the start of the new financial year.

Article Forty-Six

1. The approved plans shall be implemented by the Board of Management. If the fixed control levels are not realizable, the board shall give notice about the situation and attach justifiable and documented reasons to the notice to be submitted the Ministry of Finance and the relevant ministry.
2. If the reasons of the enterprise with regard to the factors prohibiting the application of the approved plans are not satisfactory to the relevant ministry or the Ministry of Finance, the Supreme Council of the enterprises shall replace the Board of Management partially or totally.

Article Forty-Seven

The Board of Management shall ensure the daily and fundamental repair of fundamental property, modernization of equipment and machinery, upgrading the technical level and productivity, and reasonable use of buildings and facilities.

Article Forty-Eight

The Board of Management shall organize the timely supply of materials and other requirements, in accordance with the approved plan.

Article Forty-Nine

The Board of Management shall be authorized to sell any surplus and unneeded goods and assets of the enterprise to State, joint, or private institutions, or individuals,

on the prescription of the Supreme Council of enterprises, in accordance with the Law of Auction.

The proceeds of sale of surplus and unneeded goods and assets shall be available to the enterprise.

The proceeds of sale of fundamental property shall be transferred to the development reserves of the enterprise.

Article Fifty

The Board of Management shall determine and specify the standards for expenses and waste of raw and semi-processed materials during production, and shall submit such standards to the Supreme Council for approval.

Article Fifty-One

The Board of Management shall take necessary measures to ensure that the expenses related to raw or semi-processed materials and fuels are controlled, and to ensure that waste in the processes of production and sale are reduced, and that efficient use is made of scrap and waste resulting from production.

Article Fifty-Two

The Board of Management shall organize the affairs related to marketing of the enterprise's products and goods, and shall promote sales through advertisements and announcements.

Article Fifty-Three

The Board of Management shall use the working capital and other funds made available to the enterprise for the purpose of carrying out its operations, in accordance with the approved plan, in order to maximize profit.

Article Fifty-Four

1. The Board of Management generally carries out the transactions of the enterprise on a non cash basis.
2. The Board of Management may, for purposes of meeting its various requirements, maintain limited funds in the reserves of the enterprise in accordance with the Regulation of Reserves.

Article Fifty-Five

The Board of Management shall be authorized to obtain the following loans from banks, upon approval of the Supreme Council:

1. Short or medium term loans for meeting temporary monetary requirements.
2. Long terms loans for investments as provided for in the plan.

Article Fifty-Six

The Board of Management shall make an inventory of assets, monetary funds, and current accounts of the enterprise, in accordance with the relevant legislation.

Article Fifty-Seven

The Board of Management shall upgrade the level of skills of the workforce, by implementing on-the-job training, or sending members of the workforce to other enterprises or domestic or foreign educational organizations.

Article Fifty-Eight

The Board of Management shall, in cooperation with the association of enterprises, take measures to improve working conditions and shall comply with safety regulations and product sanitation.

Article Fifty-Nine

For the purpose of efficient and effective use of human resources, the Board of Management may, within the limits of the approved fund for salaries, present to the Supreme Council for approval various methods of paying wages, in accordance with the law on labor.

Article Sixty

1. The Board of Management shall present proposals to the Supreme Council with regard to the production of new products which shall be compatible with scientific requirements, new technology, and the needs of national economy.
2. The Board of Management shall implement an efficient technological process and rules for organizing production and sales affairs.
3. The Board of Management shall take measures to mechanize and automate the process of production and to ensure an increased use of domestic products.

Article Sixty-One

The Board of Management shall take advantage from the experiences obtained by other similar enterprises for development and facilitation of inventions and innovations.

**CHAPTER FIVE
EXEMPTIONS AND RELIEF**

Article Sixty-Two

1. Enterprises shall be exempted from paying income tax on consumer goods and taxes on profitable transactions pursuant to section 2 of this article.
2. The period of the tax exemption shall not exceed two years in Kabul and shall not be less than three nor more than five years in the provinces. An extension of such periods may be granted for not more than two additional years where there are justifiable reasons and conditions, and considering the location for the establishment of an enterprise, at the discretion of the relevant ministry or agency, along with the agreement of the Ministry of Finance, and the approval of the Council of Ministers.

3. The exemption period shall start from the date for beginning the activities of the enterprise.

Article Sixty-Three

An enterprise which imports spare parts, raw, processed or semi-processed materials for the purpose of constructing, supplementing, producing or erecting in accordance with the approved annual plans for importation, finance, and investment of fundamental property, shall benefit from the following customs exemptions upon the confirmation of the Ministries of Finance and Planning:

1. [total] Exemption of fundamental property from customs duty
2. Assessment of a maximum of ten percent customs duty on spare parts valued as the purchase cost for such goods plus any expenses for transportation of the goods [from the production site] to the customs.
3. Assessment of a maximum of five percent customs duty on machinery, equipment, and supplies which are imported upon the agreement of the Ministry of Finance for incorporation into, or replacement of, machinery or fundamental property of the enterprise.
4. The customs duty on raw processed or semi-processed goods shall be levied in accordance with the industrial tariff. If the industrial tariff does not include such goods, the customs duty of the goods shall be assessed at a maximum of ten percent on the basis of the net value of the goods plus any transportation costs to move the goods to the customs of destination, using the independent valuation method.

Article Sixty-Four

Fast paced vehicles, office supplies, equipment, ordinary construction materials, and goods that can be produced domestically in quantities sufficient to meet the needs of enterprises of the country, shall not enjoy customs exemptions if imported from abroad.

Article Sixty-Five

A quarter of domestic and foreign loans of an enterprise may be deducted as expenses in the annual balance sheet.

CHAPTER SIX REORGANIZATION, DISSOLUTION AND LIQUIDATION OF ENTERPRISES

Article Sixty-Six

“1. The Ministry of Finance, in consultation with the relevant ministry, and under oversight of SOEs Evaluation Commission composed of the Minister of Finance, Minister of Commerce, Minister of Economy, and the Senior Economic Advisor to the President of the Islamic Republic of Afghanistan can review and evaluate and take action regarding those SOEs which are not economically viable or for which the continuation of operations would not be profitable, through the

following methods: change of legal form, reorganization, restructuring, liquidation and dissolution, transfer of ownership through sales of shares or assets, management contracts, or lease contracts. Any such actions shall be announced in the public media.

“2. Proposals for individual enterprises, made and implemented by the Ministry of Finance as provided for in Paragraph 1 of this Article, shall be concurred by SOEs Evaluation Commission and approved by the Cabinet of Ministers. The SOEs Evaluation Commission shall establish appropriate monitoring and oversight procedures.

“3. The Ministry of Finance, in consultation with the line ministries, shall develop and establish appropriate Rules and Procedures and after concurrence of the SOEs Evaluation Commission shall be published in the appropriate media.”

“4. Changing of the legal form of SOEs to new created corporation under the authority of this Article shall be according to the Commercial Code and other relevant legislations. The charter of any such new corporation shall be prepared and processed by the Ministry of Finance.

Article Sixty-Seven

Reorganization may take place in one of the following situations:

1. (1)merger of one enterprise with another
- (2) acquisition of one enterprise by another
- (3) breakup of an enterprise
- (4) divestiture of part of an enterprise

2. The new created corporation shall cease to be an enterprise, as defined by this law, and no provision of this law shall apply to such corporation.

Article Sixty-Eight

When an enterprise is merged with another, the assets, liabilities, authorities and duties of the merged enterprises shall be transferred to the newly formed enterprise.

Article Sixty-Nine

If one enterprise is acquired by another, the assets, liabilities, authorities and duties of the acquired enterprise shall be transferred to the enterprise by which the other has been acquired.

Article Seventy

In the case of a breakup of an enterprise, the relevant assets, liabilities, authorities, and duties shall be transferred to each of the newly formed enterprises.

Article Seventy-One

In case of divesting a part of an enterprise, the assets, authorities, and duties related to the divested part shall be transferred to the new enterprise.

Article Seventy-Two

The fiscal and financial issues related to reorganization liquidations and dissolution of an enterprise shall be dealt with in accordance with the fiscal and financial legal documents governing enterprises.

Article Seventy-Three

“The settlement of all methods which are mentioned in Article sixty six of the law should be performed by Settlement Mission, which is appointed by SOEs Evaluation Commission with assistance of line ministry. The Settlement process and the authorities and duties of the Settlement Mission shall be set out in the Rules and Procedures established by the Ministry of Finance then would be approved by SOEs Evaluation Commission.”

Article Seventy-Four

“If the liquidation requires more than four months, the Ministry of Finance shall have the sole authority to extend the liquidation period as it deems appropriate.”

Article Seventy-Five

1. The liquidation committee shall announce the liquidation of an enterprise through mass media outlets and shall inform organizations or persons having business with the enterprise in writing.

“2. Any creditor or ownership claims shall be resolved in court according to the relevant applicable laws and regulations, within two months from the date of the announcement of the proposed methods as provided in article sixty six of the Law.”

Article Seventy-Six

The debts of a liquidated enterprise may be paid from the assets of such enterprise, in accordance with law, and the surplus assets shall be transferred to the Revenue Account of the State.

CHAPTER SEVEN MISCELLANEOUS PROVISIONS

Article Seventy-Seven

The various aspects of the work and operations of an enterprise shall be evaluated and supervised by the relevant ministry or agency.

Article Seventy-Eight

Regulating the accounting and reporting of an enterprise, and analyzing and systematically evaluating its economic and financial activities shall be carried out by the specialized branches of the relevant ministry or agency.

Article Seventy-Nine

The Ministry of Finance shall, in addition to the other duties and authorities provided for in this and other laws, be assigned the following duties and authorities:

1. Supplying procedural guidance with regard to planning, financial, fiscal, and reporting affairs.

2. Preparing and approving standard forms for financial and fiscal planning, balance sheets, and reporting and standard fiscal planning [?]
3. Organizing the interrelation of enterprises and the budget of the State.
4. Evaluating and assessing the financial and economic operations of the enterprise on the basis of quarterly reports and annual balance sheets
5. Analyzing and evaluating the reasonable use of capital and available financial resources
6. Drafting regulations for organizing the financial and fiscal affairs of the enterprise and [for regulating] the financial and fiscal branches of the administrations in the headquarters of ministries or agencies
7. Issuing guidelines and procedures for regulating the financial and fiscal affairs of an enterprise
8. Evaluating other issues related to the operation and activities of an enterprise

Article Eighty

1. Post auditing of the financial and fiscal affairs of an enterprise shall be carried out once every year in accordance with this law and relevant legislation by the assigned auditing staff. Extraordinary situations shall be an exception to this rule.
2. The auditing shall be completed in a minimum of fifteen days and a maximum of three months.
3. The duration of auditing may be extended for only one term where there are important and complicated issues which require further evaluation and study, on the proposal of the auditing body, and the approval of the Council of Ministers.

Article Eighty-One

Offices of an enterprise may be established abroad on the proposal of the relevant ministry or agency, agreement of the Ministry of Finance, and approval of the Council of Ministers.

Article Eight-Two

An enterprise shall have a specific stamp.

Article Eighty-Three

This law shall be enforced upon endorsement [by the president], and shall be published in the official gazette. Upon enforcement of this law, the law on State-owned enterprises, published in official gazette # 459, dated, 30, 05, 1359, and any other legislation in contradiction to this law shall be null and void.