

**Islamic Republic of Afghanistan
Ministry of Mines**

National Mining Policy

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1. PREAMBLE

Afghanistan is host to vast hydrocarbon and mineral resources that include oil & gas, precious & base metals, non-metallic minerals, precious & semi-precious stones, rare earth elements, and construction materials. While these resources have to some extent been developed, geo-science data indicates that considerably more development is economically viable and technically possible. Development of the Afghanistan mining sector has the potential to significantly contribute to the country's gross domestic product (GDP), create direct and indirect employment while providing fuel for industry and power generation, materials for industry and construction, for both domestic and export markets. Therefore, it is necessary to have a comprehensive policy for the effective administration, regulation and development of these resources.

According to the article nine of the constitution ownership of all mining resources located on or within the territory of Afghanistan remains in the jurisdiction of the Government of the Islamic Republic of Afghanistan. All exploration and exploitation rights to mineral activities shall be granted by the Ministry of Mines in accordance with the country's Minerals Law, mineral regulation and relevant procedures. .

Keeping in view the environmental and social protection and promotion of private sector investment, Ministry of Mines developed the first ever Mining Policy for the development of mining sector.

The government of Afghanistan is committed to the protection of all domestic and international investments in the sector through effective regulations and facilitation that support prospecting, exploration, mining, processing, and sale of mineral materials within and outside of Afghanistan. The State shall promote good governance and transparency in how the Afghan mining sector is managed, revenue generated and social and environmental protections in place.

2. APPLICATION

This National Mining Policy is the first consolidated mining policy for Afghanistan. It is applicable to all mineral resources in Afghanistan. In addition to the National Mining Policy, a series of specific guidelines and sub-sector policies shall provide more detailed policy and operational directions that are endorsed by Government of Afghanistan.

3. OBJECTIVE

The objective of this National Mining Policy is to provide a clear description of the priorities and practices endorsed by the Government of the Islamic Republic of Afghanistan to develop the Afghan mining sector. Through this Policy and its supporting policies, Government seeks to develop mechanisms and approaches that will facilitate investment,

build institutional capacity, safeguard Afghanistan's resources and improve the quality of life of community residents, the environment, local and national economy.

4. BASIC FEATURES OF THE NATIONAL MINING POLICY

4.1 Guiding Policy: The National Mining Policy is intended to provide a general framework and guidelines for the manner in which Afghanistan's mineral resources shall be developed. Government distinguishes between **"upstream"** (exploration and mining) and **"downstream"** (processing, transformation, trade, export) aspects of mining. Government seeks to foster development of the mining sector as a foundation for national economic development and improved regional linkages.

4.2 Modern Development of Afghanistan Mineral Resources: Government seeks to develop the country's mining resources in a manner that reflects the modern global mining industry in accordance with international best practices, ensure environmental and social safeguards and fair financial returns for the benefit of Afghan citizens. It seeks to encourage diversity in investment, technical and other mine development approaches that will depend on a variety of international experience and skills. Government promotes improved technological performance and improved international competitiveness of the Afghan mining sector. Mineral resources are not renewable; this Policy supports the sound development and improved production of Afghanistan's mineral assets, and also where necessary, shall encourage conservation of resources and optimization of recoveries through the use of appropriate and state-of-the art technologies available to the international mining industry.

4.3 Market-oriented Mining Sector: Government seeks market-oriented mining operations that may include private and state operations. Commercial operations will be conducted in accordance with internationally-acceptable accounting standards, regularized reporting and audit controls. Government will ensure surety of tenure and enforceable license terms for all legitimate mine operators and investors. Government is also committed to implementing the revenue monitoring of Afghan mine operations in accordance with the Extractive Industries Transparency Initiative (EITI).

4.4 Integrated Infrastructure Development: Government seeks to develop Afghanistan's mineral resources in a manner that will integrate and optimize related infrastructure developments such as power generation and supply, roads and rail, and related support services. Government encourages the use of public-private partnerships to

construct infrastructure that will support mine operations as well as broader regional development objectives.

4.5 Social and Environmental Protection: Government is committed to best international practices for social and environmental protection, and seeks to develop the country's mineral resources in a manner that will include conservation measures and require environmental and social safeguards. Government may determine that certain areas will be reserved and not available for licensed operations.

5. LEGAL AND REGULATORY FRAMEWORK

5.1 Legal Framework: The Constitution of Afghanistan (Ch.1, Article 9) states "*Mines, underground resources are properties of the state. Protection, use, management, and mode of utilization of the public properties shall be regulated by law.*" The primary legislative basis for mine operations in Afghanistan is the Minerals Law, including its amendments and regulatory provisions.

The Government will strictly enforce all existing laws and will, as necessary, amend legal provisions to conform with prevailing international practices so as to bring Afghanistan into a more-competitive position in the global minerals industry.

5.2 Regulatory Framework: The Regulatory Framework for the Afghan mining sector is being developed as part of the overall Mining Regulations. Various environmental, labor and other regulations are in place. Technical, financial, health and safety, environmental, and social regulations to support mining development are and will continue to be developed by the Ministry of Mines in coordination with relevant Government authorities. Technical standards for mine operations are to be prepared by the appropriate technical bodies.

5.3 Procedures and Guidelines: The Ministry of Mines shall issue relevant procedures and guidelines in detailed support of the legal and regulatory framework for the Afghan Mining Sector.

5.4 Dispute Resolution: Disputes arising under or in connection with upstream or downstream operations shall be resolved in the manner provided by applicable laws, regulations or procedures. However, nothing in these legal acts shall prevent or limit the informal resolution of disputes by discussion, negotiation, or other mutually-agreeable informal means. Where dispute resolution is not possible, a court of law will be addressed as a matter of last resort.

6. KEY INSTITUTIONAL PLAYERS

6.1 Ministry of Mines (MoM): The Ministry of Mines is the primary government agency responsible for the administration, oversight and regulation of the “upstream” aspects – exploration and exploitation - of the mining sector. The MoM and its related departments will set forth the parameters of mining sector policy, relevant legal and regulatory frameworks, be responsible for the licensing, registration and inspection of mines, revenue collection, geo-science data, and working with relevant government agencies to establish a clear fiscal and operating regime for the sector. The Ministry of Mines shall develop fair and reasonable royalty schemes for commercial mine production that are based on type of mine materials. The implementation, oversight and enforcement of royalties will be conducted by the Ministry of Mines.

6.2 Ministry of Finance (MoF): Responsible for the implementation of certain fiscal management and revenue collection functions relevant to the Afghan Mine Sector. Tax and Custom payment and filing requirements are the responsibility of the Ministry of Finance. Issues on temporarily or permanently importing mining equipment and re-exporting mining equipment (e.g., on lease) will require compliance with the Customs Office under the MoF.

6.3 National Environmental Protection Agency (NEPA): Responsible for the certification of mine operations in accordance with the Law on Environment and its supporting regulations. Mine operators will be responsible for reporting to NEPA in accordance with NEPA requirements on mining and for preparing environmental management plans as required by NEPA. No mine shall be permitted to operate without prior certification from NEPA.

6.4 Ministry of Commerce and Industries (MoCI): The Ministry of Commerce and Industries has a regulatory role relevant to various “downstream” aspects of mining that include but is not limited to processing, transformation, trade and export of mineral products that take place once the raw mine material has been mined.

6.5 Ministry of Labor and Social Affairs, Martyrs and Disabled (MoLSAMD): The Ministry of Labor, Social Affairs, Martyrs and Disabled (MoLSAMD) is mandated by the Government to regulate the labor market and provide the necessary and proper technical, educational and vocational training opportunities for the different sectors.

6.6 Inter-Ministerial Committee (IMC): The IMC is officially established by the Minerals Law to ensure broad-based oversight of extractive industry activities in Afghanistan as well as to inform various government players of the status of sector developments. IMC membership is legally prescribed: Ministry of Mines (Chair); Ministry of Finance (Vice Chair); Ministry of Economy (Member); Ministry of Commerce & Industries (Member); Ministry of Foreign Affairs (Member), Independent Directorates of Local Government (IDLG) and the National Environmental Protection Agency (NEPA).

6.7 New Mine Institutions: As may be deemed necessary, Government may establish and/or restructure existing institutions in order to contribute to capacity building and the sound development of the Afghan mining sector. Existing institutions may be strengthened by the National Government in the furtherance of sound development of Afghanistan's indigenous mining resources as well as imported mining materials.

7. COMMITMENT TO TRANSPARENT OPERATIONS

7.1 Mining Rights: This Policy provides the rights for mining and investment and encourages private sector investment that may include Afghan or international corporations, joint ventures, public-private partnerships, sole proprietorships or any other legal structure allowed under Afghan Mining, Business and Investment Laws. The Government of Afghanistan may support the operation of Government owned mining companies.

7.2 Mining Revenue Management Policy

Following the international best practices and for the better management of the revenues from natural resources, the Ministries of Mines and Finance are working together to establish a wealth fund. The Fund will allocate revenues through public financial management system for infrastructure development, education (including higher education and vocational training), health, community development, and will also provide a measure for fiscal stabilization due to economic shocks such as commodity price changes.

7.3 Extractive Industries Transparency Initiative (EITI): The Extractive Industries Transparency Initiative (EITI) is the global standard for transparency and accountability of revenues in the extractive industries. Government fully supports the EITI, and believes that it will benefit the citizens of Afghanistan through a complete accounting of revenues generated by development of the country's resources, and the use of such funds. Government will use the EITI mechanisms to promote transparency and good governance in the extractive industries.

8. SURVEY, PROSPECTING AND EXPLORATION

The Afghanistan Geological Survey (AGS) is the principal agency for conducting geoscientific studies including regional geological mapping, geochemical and geophysical surveys and regional mineral district assessment. AGS shall produce reports and maps and maintain geological records of Afghanistan for dissemination to various domestic and international stake holders, including but not limited to geoscientific research, academic institutions and private sector companies.

The Government of Afghanistan recognizes private sector exploration as an integral element of a vibrant mining industry and endeavors to promote favorable conditions conducive for Afghanistan to compete as a global exploration investment destination. The Government seeks to redress obstacles and provide first of right to exploitation from exploration rights.

9. EXPLOITATION

9.1 The exploitation of mineral resources: The exploitation of mineral resources in Afghanistan shall be conducted by legally-licensed operators that are in compliance with the terms and conditions of their mining license, lease, permits and/or contract. Exploitation activities shall proceed with legally-required permits and certifications issued by the relevant Laws of Afghanistan that include but are not limited to: the Mining Laws and Regulations, and NEPA.

9.2 Illegal Mining. This National Policy strictly prohibits illegal mining in Afghanistan. Where illegal mining is discovered appropriate legal action shall be taken to bring such operations into compliance with the Mining Law.

10. Processing and Sales

The sale of mineral products or commodities after they have been mined and processed is solely the responsibility of the licensed mine operator. The transport, processing or any other activity relevant to the disposal of mineral commodities after they have been mined is solely the responsibility of the licensed mine operator or consumers of the mining products and must be conducted in compliance with Government legal and regulatory requirements specific to these activities.

Where possible the Government strongly encourages in-country value-added processing of mining products, as well as free and open export of Afghan mineral commodities in their raw and/or processed forms to traditional and new markets.

11. Artisanal and Small Scale Mining

As a matter of National Policy, artisanal mining activities shall be available for license only to Afghan citizens and small scale mining licenses shall be open for national and international investors. These licenses shall be granted on application basis provided that the license holder meet the necessary permitting requirements. These mines will be subject to the licensing, reporting and inspectorate requirements provided for by the Mining Laws and Mining Regulations. Environmental and social safeguards apply to such mines, as do legal requirements for the payment of taxes and applicable royalties. Where clustering artisanal or small scale mines is determined by the Ministry of Mines to be in the development interests of that mine area, licensing may cover one or more such deposits.

12. TECHNICAL OPERATIONS OF MINES IN AFGHANISTAN

12.1 Mine and Other Plans: In accordance with Mining Regulations, prior to mining, each mine developer or proponent shall prepare and submit to the MoM and NEPA a Mine Development Plan, Mine Closure Plan, Health and Safety Plan and Environmental Impact and Social Assessment, and all other documents deemed relevant to mine operations during the requested license term. As required, the content of these plans will follow a prescribed format and must be approved before mine operations commence.

12.2 Appropriate Technology and Methodologies: Appropriate and acceptable mining technology and methodologies should be utilized during exploration, mining and processing for optimal recoveries / production, minimized environmental impact and safe transportation of the mineral products.

13. ENVIRONMENTAL AND SOCIAL MANAGEMENT OF MINING

13.1 Approved Mining Areas: Mining operations may be conducted in all areas of the country except those places that are identified as ecologically fragile, biologically rich ecosystems, and/or national heritage areas.

13.2 Sustainable Development: All mining in Afghanistan shall be undertaken in accordance with the principles of sustainable development. No Mine Plan shall be approved without a comprehensive Environment Impact and Social Assessment (EISA) accompanied by a time-bound detailed Environmental Management Plan (EMP) that is approved and enforced by NEPA and MoM, respectively. At a minimum, the EMP shall address solid and liquid waste management, water and soil pollution mitigation and abatement, impacts of removal of overburden, and deforestation.

13.3 Social Impacts: Where communities located in mine areas or may reasonably be expected to be negatively impacted by mine development, detailed social impact assessments of impacts and mitigation measures must be provided to the MoM for review and approval. Active participation and consultation with the impacted community shall be undertaken. Where necessary, resettlement, rehabilitation and compensation actions shall be agreed upon with the mine community, mining company and Government.

13.4 Public Consultation and Disclosure: Government is committed to building institutional capacity to collect, analyze and provide timely and accurate geological information for public, industry, investor and government use. As part of this commitment, mechanisms to consult stakeholders, and to address concerns and grievances shall be developed by the Ministry of Mines and relevant Government agencies, industry and civil society organizations. Government will ensure that its guidelines and information are freely available that will include but not be limited to licensing procedures, fee and penalty structures, royalty, tax and other fiscal parameters.

14. HEALTH AND SAFETY

The Government of Afghanistan and the Ministry of Mines believe that the health and safety of workers in the minerals industry are of prime importance to the growth of the sector and the country. The MoM is committed to strengthening mining inspections in order to provide competent and certified inspectorate staff, clear safety procedures and regular monitoring of mine operations.

Mining companies are required to conduct mining operations in a safe and productive manner, and comply with all appropriate laws and regulations related to occupational health and safety in all areas of their business activities. Employees are responsible for working safely in the interests of their own welfare and that of their fellow employees. Accident prevention is the responsibility of every employee.

15. FINANCIAL ASPECTS

15.1 Optimization of Investments: Government seeks to optimize financial return generated from mining operations in Afghanistan. In negotiating mine contracts, Government will work with the investor to ensure that on an overall basis the terms yield a level of financial return to the mining company that is commensurate with the risk of the investment while safeguarding resources and employment opportunities for Afghan citizens.

15.2 Tax and Royalty Payments: The Government is committed to the development of a competitive royalty regime. Mining companies operating in Afghanistan will be responsible for the timely payment of applicable business, rental and other taxes as well and the timely payment of royalties. Where possible, mining companies may take advantage of existing tax and other fiscal benefits applicable to qualified extractive industry operations. As a matter of Government policy, mining companies will not be encumbered with excessive taxes, fees and duties at the international borders.

15.3 Payment of Fees and Penalties: Fees and penalties relevant to mining in Afghanistan shall be detailed in procedures of the relevant Government agencies. Criminal provisions may be reasonably applied where a mining company fails to comply with these procedures.

16. PROTECTION OF INVESTMENTS

16.1 Non-discriminatory Investment: Government seeks to provide a fair and balanced fiscal and regulatory regime. In accordance with the Laws of Afghanistan, the Government shall protect mining sector investments and shall apply all laws equally and fairly to all similarly situated registered companies whether they have foreign equity ownership or not. Government ensures security of tenure, management and ownership control for all mine companies operating in accordance with the Laws of Afghanistan.

16.2 Expropriation: In accordance with the Investment Laws of Afghanistan, the State can expropriate an investment or the assets of a registered enterprise only for the purpose of public interest, based on a law permitting such expropriation, and on a nondiscriminatory basis. The State shall provide prompt, adequate and effective compensation in conformity with principles of international law, equivalent to the fair market-value of the expropriated Investment or assets immediately before the expropriating action was taken.

16.3 Repatriation of Capital and Profits: This Policy recognizes that for international investors repatriation (return of foreign-earned profits or financial assets back to a company's home country) of capital and profits is an important factor for investment profitability and does not support strict profit repatriation legalities for mining and/or mine-related activities. This Policy does not support the imposition of barriers that will prevent repatriation of capital and/or profits. However, reporting of investor capital and profits shall be guided by the laws of Afghanistan that detail requirements to be met in order to

repatriate capital and/or profits. Repatriation does not reduce other legal requirements for tax, debt, and other contractual obligations.

16.4 Insurance: Mining companies are required to insure their assets including its manpower with national and/or international insurance companies.

17. USE OF MINING MATERIALS

17.1 Upstream Mining: Government encourages the beneficiation and other processing techniques to bring lower grades and finer size mine materials into use.

17.2 Downstream: Government encourages the commercial use of mine materials produced in Afghanistan for domestic and export markets that may include industry, energy, construction and ornamental uses.

18. MINE-RELATED DEVELOPMENT

18.1 Infrastructure Linkages: Government is firmly committed to linking infrastructure developments in mine regions and linking infrastructure throughout Afghanistan that will facilitate improved mine operations as well as contribute to overall economic development. As part of this commitment Government supports the development of national and regional resource corridors and will leverage its' own and external funding to promote these infrastructure linkages.

18.2 Community Development: Where possible, the Ministry of Mines will collaborate with mine communities, mine and mine-related companies and local governments to facilitate local linkages between upstream and downstream mining activities. Government encourages the establishment of long-term business relationships between suppliers and consumers that may safeguard employment, supply and prices for various mine products. The policy strictly recommends that local labor should be hired to greatest extent possible.

18.3 Research and development: Research and development shall be oriented to ensure the maximum economic recovery of minerals and metals. Where practical, Government will provide access to capital and / or financial resources in support of research and development activities related to the sector. The Government supports full, fair and complete transfer of information, knowledge and technology in support of the sector.

19.MINE CLOSURES

This policy strongly supports mine closure plans developed according to international best practices that will be approved by the MoM and NEPA before mining is commenced, and will be updated on a regular basis throughout the mine life cycle and subsequent mine closure.

A trilateral process of consultation and problem solving, involving mining companies, the government and local communities, should held while designing the mine closure plan. The mine closure plan must include, but not be limited to: community risk assessment, removal of buildings, equipment and any hazardous materials, securing the pits and waste disposal facilities, reclaiming the surface lands to the greatest possible extent, taking practical and appropriate measures to avoid possible future ground water pollution, and monitoring the mine site post-closure for an appropriate period of time.

Prior to the start of production, mining companies will be required to provide adequate financial assurance for mine closure and post-closure activities, based on the costs as defined in the feasibility study and Mine Closure Plans reviewed and approved by NEPA. The financial security should be held or issued by a qualified and approved financial institution and be payable to NEPA or the MoM in the event that the mine operator is unable to complete the mine closure plan.

20.EXPORT OF MINERAL COMMODITIES

The Government strongly encourages in-country value-added processing of mineral products, as well as free and open export of Afghan mineral commodities in their raw and/or processed forms to traditional and new markets. The government reserves the right to offer financial incentives, including but not limited to reduced export duties, taxes and/or royalties to support in-country beneficiation or value-added processing.

21.IMPORT OF MINERAL COMMODITIES, TECHNOLOGY & EQUIPMENT

This Policy encourages the importation of new technology, mining equipment, machinery and supplies that will improve the efficiency, safety and productivity of Afghan mines. This Policy does not preclude the import of raw materials.

22. SUPPORT OF THE DEVELOPMENT OF THE AFGHANISTAN MINING SECTOR

22.1 Geological Surveys, Research and Development: This Policy supports the systematic collection, analysis and safeguarding of geological data relevant to mining in Afghanistan. Through the Afghanistan Geological Survey (AGS) and other public or private academic structures, the MoM will support basic and applied research that is aimed at discovering technical solutions to mining problems and/or creating new goods and knowledge specific to Afghanistan mines and mine-related development. These activities and research and development may be facilitated by the Ministry of Mines and conducted by the AGS, other government agencies, institutions, educational facilities and the private sector.

22.2 Development of Mid-Career Professionals: Where possible, this Policy encourages that the Ministry of Mines develop initial and mid-career training programs for mine technicians, commercial staff, government officials and other essential professional and technical positions. Where possible Government and mine authorities should develop international partnerships that support mid-career internships, training and other professional development opportunities both in Afghanistan, and abroad.

22.3 Promotion of Young Afghan Professionals: This Policy encourages the MoM, in collaboration and close association with MoLSAMD and the Ministry of Higher Education, to provide fiscal and other resources for the development of educational and training services in mining regions of Afghanistan that target the technical, fiscal, legal, environmental and other aspects of mining sector development, and ensure sustainable supplies of technical and skilled labor. Where possible, existing academic and training institutions are encouraged to enhance their programs to suit specific mine sector development while in other cases, stand-alone educational and training facilities will be required. National, Provincial and District Governments are encouraged to identify possible international educational and training programs that would suit these purposes as well as partnership opportunities to develop in-country facilities that are based on established international institutions.

22.4 Domestic Mine Equipment and Machinery Production: Government encourages the development of domestic-based production of equipment, machinery, supplies and materials for mine operations.

23. MODIFICATION OF THE NATIONAL MINING POLICY

The National Mining Policy shall be reviewed periodically with the growth of the mining sector in Afghanistan. An initial formal review by the Review Committee - in consultation with all major stakeholders - shall occur no later than two years after the release of this Policy. Thereafter, this Policy shall be reviewed by the committee every three years.

24. EFFECTIVENESS OF THE NATIONAL MINING POLICY

This National Policy is effective as of its approval by the Cabinet and is deemed to be the foundation document on which the Afghanistan Mining Sector will operate and from which relevant legal and regulatory acts and other supporting policies may be developed.