



Islamic Republic of Afghanistan
Ministry of Mines

The Minerals Law

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Islamic Republic of Afghanistan Ministry of Mines



The Minerals Law

Part 1 Context

Part 2 Recent History of the Minerals Law

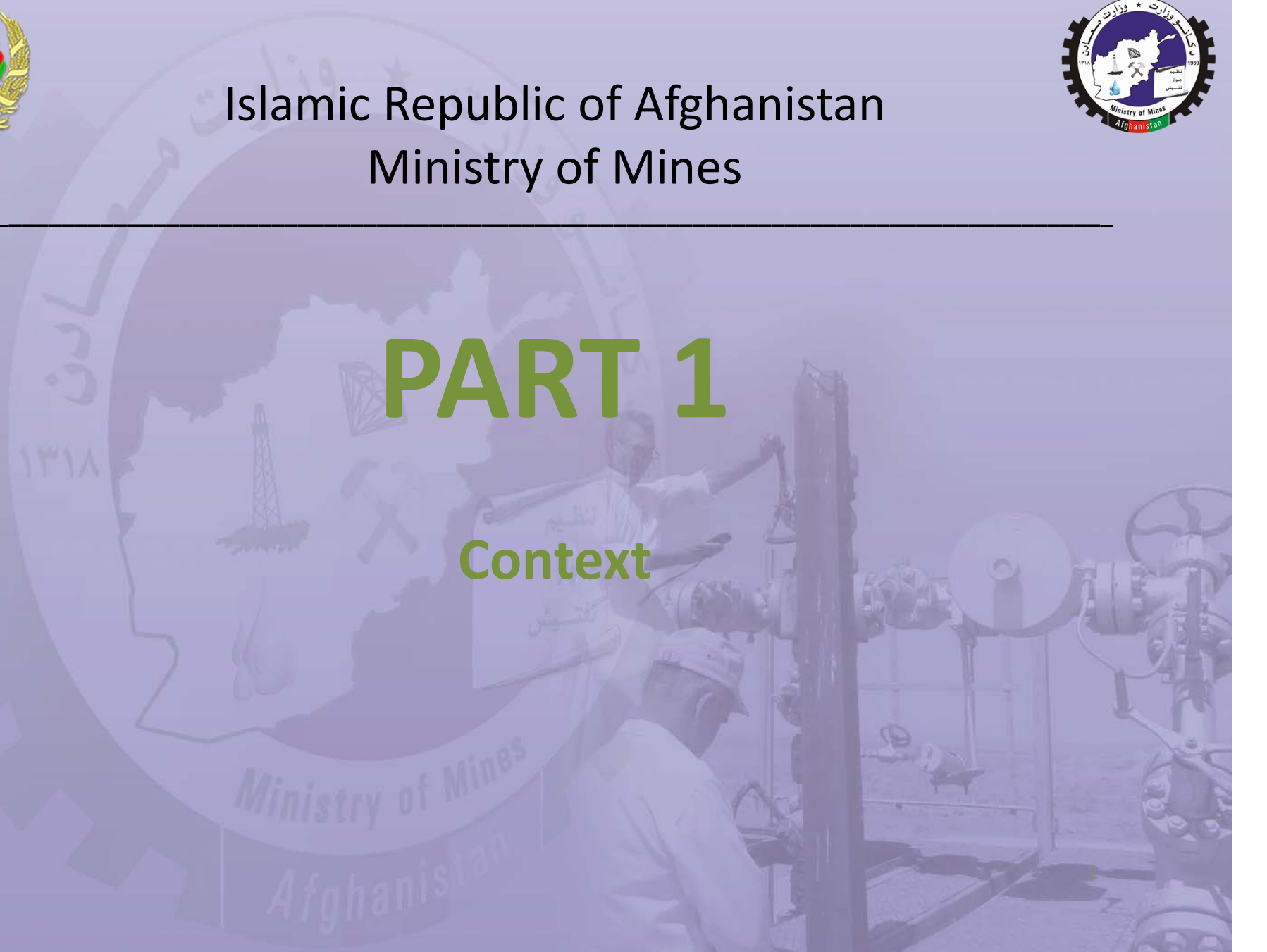
Part 3 Key Provisions of the 2012 Minerals
Law Draft



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PART 1

Context





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Who owns Afghan Minerals?

1. All minerals within, upon or under the soil and sub-soil in Afghanistan is the property of the State to be managed and administered on behalf of and for the benefit of the people of Afghanistan.
2. The State may convey certain mineral rights to other entities by means of licenses as defined in the law.
3. The entire ownership of any mineral extracted from any license area shall vest in the license holder upon removal from the ground.



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Who is responsible for the oversight and development of Afghan Minerals?

MoM as a government agency, is responsible for

1. ensuring in the public interest that the mineral resources of Afghanistan are investigated and exploited in the most efficient, effective and timely manner,
2. for implementing relevant laws, and
3. for granting mineral rights.



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Application of the Minerals Law

1. For **reconnaissance, exploration** and **exploitation** of **all types of mineral resources** in Afghanistan except water, petroleum and natural gas.
2. For upstream mineral activities (not trading, export, etc.)



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PART 2

Recent History of the Minerals Law in Afghanistan

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Recent History of the Minerals Law in Afghanistan

2005 – Minerals Law adopted by Cabinet

2009 – Minerals Law significantly amended
by Ministry of Mines resulting in reduced investor
confidence

2011 – Amendments to the 2009 Minerals Law
developed but proved insufficient to address
deficiencies in 2009 Minerals Law

2012 - Agreement between MoM and MoJ that
improved law is required



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Recent History of the Minerals Law

As part of improved legal framework to support the Afghan Mining Sector, 2 improved laws shall be introduced:

1. Minerals Law 2012
2. Petroleum Law 2012

In future a Coal Law shall also be introduced.



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Rationale for the 2012 Minerals Law

- Introduce **security of tenure** and **transferability of exploration and mining rights**
- **Remove excessive bidding** required to acquire mineral right
- **Clarify institutional roles** and legal authority
- Reinforce **transparent licensing** procedures
- Highlight Government priorities for **social and environmental protection**
- Provide **clear legal basis** from which Regulations and Procedures may be drafted



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Part 3

Structure and Key Provisions of the 2012 Minerals Law

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Key Provisions of the 2012 Minerals Law

Structure of 2012 Minerals Law



Part	Illustrative Content of Chapters
1 ADMINISTRATION	<i>General principles of minerals sector, definitions, review of MoM and primary institutional arrangements</i>
2 LICENSES	<i>Detailed information on registration of licenses and license requirements</i>
3 GOVERNANCE	<i>Fiscal regime, Environment, Community provisions, Dispute Resolution, Anti-Corruption , Other Mineral Activities</i>
4 MISCELLANEOUS	<i>Archeology, Notices, Calendar, Language</i>



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Key Provisions of the 2012 Minerals Law

Institutional Framework



Institution	Function
Ministry of Mines	Implementation of effective and efficient minerals sector
	1. Geological Survey – geo-investigations, mapping
	2. Mining Cadastre – licensing, monitoring
	3. Mining Inspectorate – health & safety, community
	4. Claims Commission – mineral rights disputes
Ministry of Finance	Taxes, Customs
National Environmental Protection Agency	Environmental requirements, monitoring & enforcement
Inter-Ministerial Commission (IMC)	Oversight and advisory and approval of specific licenses as prescribed in the law.



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Key Provisions of the 2012 Minerals Law

Institutional Framework



Inter-Ministerial Commission

Minister of Mines, Chairperson

Minister of Finance, Vice Chairperson

Minister of Economy, Member

Minister of Commerce & Industries, Member

Minister of Foreign Affairs, Member

General Director, National Environmental Protection Agency, Member

General Director, Independent Directorate of Local Governance, Member

- *As prescribed, Government may appoint additional members*
- *Odd number of members required*
- *Each individual serving on the IMC may appoint a proxy for one (1) year*
- *IMC Secretariat based at the Ministry of Mines*



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Key Provisions of the 2012 Minerals Law



5 Types of Mineral Licenses

License	Purpose
Reconnaissance	Preliminary stage of mineral exploration involving regional geological mapping, geochemical surveys & airborne surveys, aimed at identifying anomalies or prospective terrain.
Exploration	Main phase of exploration from prospect identification up to and including feasibility studies, environmental/social impact and mine plan.
Exploitation	Mine development and mining.
Small-Scale Mining	Mine development and mining for smaller, shallow and surface mineral deposits.
Artisanal	Mining of very small, surface deposits.



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Key Provisions of the 2012 Minerals Law

Environmental and Social Requirements



License	Environmental	Social
Reconnaissance	Statement of potential impacts and mitigation measures	→ + Community consultation
Exploration	Statement of potential impacts and mitigation measures	→ + Community consultation
Exploitation	Environmental Impact Assessment and Environmental Management Plan	EIA and EMP to include social impact and mitigation measures Community development agreement
Small-Scale Mining	Environmental Impact Assessment and Environmental Management Plan	EIA and EMP to include social impact and mitigation measures Signed community development agreement
Artisanal	Statement of potential impacts and mitigation measures	Community consultation



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Key Provisions of the 2012 Minerals Law



How shall Mineral Rights be Granted?

Grant	Implementation
Application	<ul style="list-style-type: none">• Meet all eligibility requirements• Meet all environmental & social requirements
Competitive Bidding –	<ol style="list-style-type: none">1. Auction – MoM may identify pre-qualified companies to submit applications for specific mineral rights2. Tender – MoM may implement a full public tender process



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Key Provisions of the 2012 Minerals Law



Classification, Areas and Restricted Substances

Action	Implementation	Institutional Role
Classification or Declassification of Minerals	Classification, de-classification or re-classification of minerals	MoM may propose to Cabinet for approval
Reserved Area	Such Area Must be competitively bid	MoM with IMC approval
Prohibited Area	National interest, health & safety, incompatible land for mining	MoM may propose to Cabinet for approval
Designated Area	In public interest, for small-scale mining and artisanal mining	MoM may designate
Restricted Substances	In public interest, all radioactive substances	MoM may recommend to Cabinet for approval



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Key Provisions of the 2012 Minerals Law

Other Key Provisions



Provision	Implementation
Local Procurement	<ol style="list-style-type: none">1. All unskilled labor must be Afghan nationals2. Afghan goods and services shall be procured where substantially equivalent to foreign goods and services
Compensation for disturbance to land	Land owners, legal occupants are entitled to compensation.
Discovery of archeological or cultural relics	Legal requirement to report signs or discovery and to stop mineral activities as may be required.



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Key Provisions of the 2012 Minerals Law

Other Key Provisions



Provision	Implementation
Prohibition of Public Officials and Advisors from holding mineral rights	<ol style="list-style-type: none">1. During their tenure in public or advisory office2. For MoM political appointees, IMC members – 2 year cooling off period3. For all Ministers, Deputy Ministers, MoM high ranking officials, MPs, advisors – 1 year cooling off period
Anti-Corruption provisions	Legal commitment to transparent operations Commitment to EITI activities.



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Key Provisions of the 2012 Minerals Law

Other Key Provisions



Provision	Implementation
Surface Rent	Required to be paid by all license holders.
Royalty	<ol style="list-style-type: none">1. May be prescribed in regulations2. MoM may recommend to IMC for approval3. May be negotiated between applicant & MoM for IMC approval
Financial Guarantees	May be required for performance, environmental or other obligations.
MoM authority to draft and implement Mineral Regulations and Procedures	As required to improve the implementation of mineral sector operations.



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Primary differences between 2009 & 2012 Minerals Laws

2009 Minerals Law	2012 Minerals Law
Definition of mine size by USD	Definition of mineral operations by License type
Tendering of all mineral rights	Minerals rights may be granted: (1) By application (2) By competitive bidding
Licenses and Authorizations issued	5 types of Licenses may be granted
Limited number of licenses and years	No limit on number of licenses except Artisanal Improved duration and extension provisions
Unclear requirements on health and safety, community development, environmental protection	Definite requirements including: -Environmental Impact Assessments & Plans -Community Development Agreements -Community Consultations



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Primary differences between 2009 & 2012 Minerals Laws

Transition Provisions: 2012 Minerals Law

1. Any mineral right granted before the adoption of this Law shall continue in force until its expiration.
2. A holder of a mineral right granted prior to the adoption of this Law may apply for a mineral right covering the area subject to its existing right on a priority basis.
 - a. Where the right to renewal was included in the original license; or
 - b. Where dispute over mineral rights, the MoM Claims Commission review.



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Thank you.