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Foreword from Harakat and ACCI

We are pleased to present to our core stakeholders, most importantly the Government of Afghanistan and the international community, the outcome of the Private Sector Priorities for Reform Conference held on 19 October 2014 with the private sector in Afghanistan. The purpose of the Conference was to provide an opportunity for the private sector to identify and recommend 10-15 top priority reforms to the Government and international community in order to stimulate inclusive and sustainable economic growth.

This process gave us a platform to look back at previous attempts to persuade the Government to implement the reforms needed to create a truly enabling environment for private sector growth. The starting point for our deliberations was a comprehensive list of all previous reforms that have been presented by the private sector to the Government over the last eight years. During this period, the private sector has put a great deal of effort into identifying the problems that it faces.

While the response from Government to our suggestions has been positive, the sad fact is that positive words and promises have rarely been followed by effective and measurable action. Far too often the private sector has had to raise the same issues repeatedly with the Government.

There continues to be a strong appetite for reform within the private sector and there appears to be the political will within the Government to address the concerns of Afghan business men and women and international investors. As a result, we are cautiously optimistic that this time, genuine reform will occur.

The eleven reform priorities presented here are specific, realistic, measurable and implementable in three to five years. The main focus has been on the areas where the need for reform is the most urgent and the greatest impact can be achieved. Key reforms include: expanding on the gains of the agriculture sector to create jobs and revenue; implementing a revised "resource corridor" program and expanding on the existing railway to allow for reliable and affordable movement of extractive materials and agricultural products; integrating the national economy regionally through improved trade and transit processes; simplifying and amending the procurement law to increase transparency, improve governance and strengthen procurement systems; expanding credit guarantee schemes and microfinance; streamlining business administration services to reduce costs, time, and the opportunity for corruption; increasing the supply of serviced industrial land and access to electricity through expanded private sector involvement; increasing technical and vocational training based on market-needs and better quality; protecting investors through better contract enforcement, dispute resolution, and improved insolvency processes; and laying the legal and regulatory foundations for Public Private Partnerships (PPPs) to increase private sector investment in infrastructure and public service delivery.

We would like to take this opportunity to thank the Government and the international community for their assistance in organizing the London Conference on Afghanistan. Most importantly, we would like to express our gratitude to the 250 businessmen and women who freely gave their time to participate in the October 2014 Reform Conference in Kabul. In moving forward, we hope that both the Government and the International Community will support our call for meaningful reform. The private sector will watch closely what the Government says and what it actually does on these reforms. To gain the trust and confidence of domestic and international investors, action will carry more weight than words.

Harakat and ACCI will play an active role in advocating for reform and monitoring action. It is our hope that the business community will be involved in these efforts—particularly monitoring progress—and that this time, we will be able to point to concrete outcomes.

Yours sincerely,

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Introduction

Harakat Investment Climate Facility Organization and the Afghanistan Chamber of Commerce and Industry (ACCI) hosted the Private Sector Priorities for Reform Conference in Kabul on 19 October 2014. The purpose of the Conference was to provide an opportunity for the private sector to identify and recommend key policy reforms to the Unity Government in order to help remove constraints to private sector development and stimulate inclusive economic growth, greater tax revenues and job creation.

The Conference provided a forum for private sector participants to agree on a short, prioritized list of recommendations that are specific, measurable, realistic, and achievable within three to five years. The Conference reviewed the recommendations for policy reforms already proposed by earlier private sector events, such as the National Business Forum (ANBF) organized by Harakat and ACCI in February 2014, with the aim of identifying the top priorities (from the long list of reforms proposed at the ANBF and similar, earlier events) that the new Government should seek to prioritize in the next 3-5 years.

Over 250 private sector representatives attended the Conference, including business men and women from large, medium and small-sized companies operating in different provinces of Afghanistan. The Conference was opened by H.E. Mr Zakhilwal, National Economic Adviser to the President and the acting Minister of Finance. It was organized with eight simultaneous focus groups and held in collaboration with the United Kingdom and Germany IFC/World Bank, the United States Embassy Kabul and with strong support from the European Commission Delegation in Kabul.

Participants were allocated to eight sector Focus Groups to discuss and prioritize sector specific reforms. To assist in this process, background papers consolidating the main recommendations raised by the business community in each sector since 2007 were provided in Dari and English. The papers enabled the Focus Groups to discuss: a) recommendations for key priority policy reform suitable for the Private Sector associated event at the London Conference on Afghanistan (measurable, realistic and achievable within three to five years); b) recommendations which the new Government should address; and c) recommendations for reforms that are ongoing which need to be monitored. Following the deliberations of each Focus Group, the consolidated results were presented to the Conference in a plenary session.

Participants also participated in crosscutting Focus Groups discussing and prioritizing issues and policy reforms relevant to several sectors. A decision was taken to exclude two of the most important cross-cutting issues – security and corruption – on the grounds that these would be considered at the London Conference on Afghanistan anyway as these issues are being worked on by the President's Office, civil society and the international community.

To help participants prioritize issues, Briefing Notes were provided in Dari and English, which again consolidated the main recommendations raised by the business community in each cross-cutting area since 2007. Participants were also provided with a brief situational analysis including existing or planned Government or donor-funded programs to address the constraints and a list of potential reform recommendations suitable for the LCA Private Sector associated event. The results of the cross-cutting Focus Groups were also presented to the Conference in a plenary session.

Following the Conference, a report was prepared which summarized the agreed, prioritized recommendations from each of the 16 Focus Groups along with a brief contextual analysis for the recommendations. This report was then used as the basis for engagement with the Government on how to remove the key constraints to private sector development in Afghanistan.

Harakat and ACCI have also worked with the business community and leading technical experts to identify from a list of 47 recommendations arising from the Conference, a short-list of high priority reform recommendations to be tabled at the Private Sector associated event at the LCA. The 11 recommendations selected are presented below. The remaining 36 recommendations are to be put directly to the Government in Kabul.

Harakat and ACCI have also worked to provide recommendations to the Government on the key steps needed to implement the priorities. This work has been informed by a wide range of experts, analysts, academic and research institutions and international development agencies. These include the UK and Germany, the United States Embassy in Kabul, the EU Delegation in Kabul, ADB, World Bank/IFC, JICA, SIDA, KOICA, the UN (FAO, WFP, WHO, UNESCO, ILO, UNAMA, UNTAD), American University Kabul, Kabul University (Faculties of Economics and Agriculture), Kabul Polytechnic University, and several relevant domestic and international organizations. Our goal has been to access and utilize the best information, analysis, expertise, and options for every single reform priority.

In the matrix below, the private sector reform priorities are in the in first column. To help the government better understand where the key problems are, there is a brief description of the current situation in the second column. We worked with the private sector representatives and the relevant experts to identify the actions needed to achieve the private sector reform priorities. These are set out in the third column of the matrix. Suggested timeline for each action and policy is in the last column.

We wish to take this opportunity to thank all our colleagues at these and other organizations and the more than 150 technical experts and analysts who generously helped us to develop the recommendations. We also wish to note that while we are grateful for the support of our partners, these recommendations represent the views of the business community and are not necessarily the views of the international development organizations that assisted us.

Acronyms:

ACBR	Afghan Central Business Registry
ACCI	Afghanistan Chamber of Commerce and Industries
ACDR	Afghanistan Center for Dispute Resolution
ADB	Asian Development Bank
AISA	Afghanistan Investment Support Agency
AML	Anti-Money Laundering and
ANBF	Afghanistan National Business Forum
ANDS	Afghanistan National Development Strategy
ANQA	Afghanistan National Qualification Authority
ANRP	Afghanistan National Railway Plan
ARA	Afghanistan Railway Authority
ARTF	Afghanistan Reconstruction Trust Fund
CAREC	Central Asia Regional Economic Cooperation
CFT	Combating the Financing of Terrorism
DAB	Da Afghanistan Bank (Afghanistan Central Bank)
EITI	Extractive Industries Transparency International
FAO	United Nations Food and Agriculture Organization
FATF	Financial Action Task Force
JICA	Japan International Cooperation Agency
Harakat	Harakat Investment Climate Facility Organization
KOICA	Korean International Cooperation Agency
ICE	Inter-ministerial Committee for Energy
IFC	International Finance Corporation
IFAC	International Federation of Accountants
IFRS	International Financial Reporting Standards
ILO	United Nations International Labor Organization
LLC	Limited Liability Company
MAIL	Ministry of Agriculture, Irrigation and Livestock
MEW	Ministry of Energy and Water
MoCI	Ministry of Commerce and Industries
MOF	Ministry of Finance
MOJ	Ministry of Justice
MOPH	Ministry of Public Health
MRRD	Ministry of Rural Rehabilitation and Development
NIPC	National Industrial Park Corporation
NOSS	National Occupational Skills Standards
NPP	National Priority Program
PPP	Public and Private Partnership
ROSC	Report on Observance of Standards and Codes
SIDA	Swedish International Development Agency
TIN	Tax Identification Number
TOR	Terms of Reference
TOT	Trainer of Trainers
TVET	Technical Vocational Educational Institute
UNAMA	United Nations Assistance Mission for Afghanistan
UNTAD	United Nations Conference on Trade and Development
UNESCO	United Nations Education, Scientific and Cultural Organization
USAID	United States Agency for International Development
WB DBI	World Bank Doing Business Indicator
WFP	United Nations World Food Program
WHO	United Nations World Health Organization

Private Sector Priorities	Current Situation	Key Actions for Implementing Private Sector Priorities	Timeline
<p>(1) Improve traditional irrigation systems and promote sustainable modern systems.</p>	<p>Agriculture accounts for about a third of the Afghan economy and agro-processing accounts for almost 90 percent of the manufacturing sector. Agriculture is the sector with the highest potential for job creation and poverty reduction in the short and medium term. Achieving this requires game changing policies and strategic investments, particularly in irrigation infrastructure development and water resources management.</p> <p>Irrigated land is the binding constraint for the country's agriculture. Afghanistan has an estimated 4.4 million hectares of potentially irrigable land. Since 2002 effective irrigation rehabilitation schemes covering about 1.8 million hectares have been implemented and about 2 million hectares are now regularly irrigated. The best prospect for quickly increasing the amount of irrigated land is through additional rehabilitation of irrigation infrastructure. A realistic target is to irrigate an extra 500,000 to 700,000 hectares of land over the next 5-6 years, at a cost of \$300-600 million (including tertiary canals).</p> <p>New irrigation schemes will be needed to fully exploit Afghanistan's water potential. There is the potential to irrigate an additional 2 million hectares (e.g. in the Panj Amu and Kabul river basins), but this would require significant new investment in dams, water conveyance, and irrigation infrastructure, as well as reaching agreements with downstream riparian countries. At around US\$4,500/ha, investments in new irrigation schemes are about ten times more costly than rehabilitation, and benefits will take longer to materialize.</p> <p>Irrigation management and planning are currently fragmented across three ministries (MEW, MRRD, and MAIL). The legal framework needs urgent improvement through streamlining ministerial responsibilities with need-based roles and responsibilities.</p> <p>Water use efficiency in farmers' fields is poor and needs to be improved. This requires investing in strong institutions and policies to improve irrigation water management. Building on the national Water Law, Afghanistan needs to create the regulatory structure for managing water at all levels; and strengthen the Irrigation Department of MAIL, Irrigation Associations. In addition, Afghanistan needs to help farmers better manage their water and through extensive training in water management, lining canals, land leveling, installing control and measurement structures.</p> <p>These problems will require longer-term interventions, including strengthening the capacities and coordinating the functions of MAIL, MEW and MRR. In particular, Afghanistan needs to promote Integrated Water Resource Management by improving the basic water resource management functions at MEW, updating the river basin investment plan, developing water storage facilities, initiating a strategy for disaster risk management and discussions with downstream riparian countries that are users of water originating in Afghanistan.</p>	<p>(1) Streamline ministerial responsibilities for irrigation within the government structure (especially between MAIL and MEW); implement the Water Law (i.e.: invest in strong institutions and policies to improve irrigation water management through: (a) defining the legal and regulatory framework and strengthening inter-agency coordination; (b) strengthening the Irrigation Department at MAIL; and (c) strengthening mirabs and irrigation / water users associations).</p> <p>(2) Further develop capacity within the relevant entities (including the Irrigation Department within MAIL, the technical personnel at other ministries and extension workers and the private sector) to improve management and planning of water resources; ensure recruitment of personnel is merit-based; develop a mechanism for water management in cooperation with water users through NPP1 through providing effective extension service delivery and revise and prioritize river basin investment plans.</p> <p>(3) Rehabilitate at least an additional 600,000 hectares of land under irrigation with the support of international partners (under NPP1).</p> <p>(4) Consolidate the current fragmented irrigation feasibility studies into a single national framework and implement National Integrated Watershed Management programs for 6 agro-ecological zones (implement NPP 1 for irrigation).</p> <p>(5) The government with the support of international partners should develop a prioritized long term plan for improving traditional irrigation methods and promoting modern irrigation methods to save water and increase production.</p> <p>(6) Irrigation associations of farmers should be strengthened and training provided to existing and new irrigation associations.</p> <p>(7) Provide scholarships for higher education in irrigation (Masters: 50, PhD: 25) and Fellowships for TVET (300).</p>	<p>(1) 1-2 years</p> <p>(2) 2-3 years</p> <p>(3) 3-5 years</p> <p>(4) 3 years</p> <p>(5) 1-2 years</p> <p>(6) 1 year</p> <p>(7) 1-5 years</p>

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<p>(2) Advance the development of a national railway system for Afghanistan (review and address the key decisions and recommendations of the Afghanistan National Railway Plan and seek international support for its implementation).</p>	<p>Afghanistan needs to find a sustainable source of economic development and growth. The mining and agriculture sectors have been viewed as the two potential sources of this growth. The lack of accessible, reliable and affordable transport is a key constraint to the further development of the mining sector. Given the nature of the industry, transportation of ore by rail is the most economic option.</p> <p>The Afghanistan National Railway Plan (ANRP) was completed in August 2013 with renewed impetus generated by recent developments in the mining and agriculture sectors. A recent study related to the ANRP provides a set of 'key decisions' and recommendations for the government to address.</p> <p>An urgent review of these 'key decisions' and the implementation of the realistic recommendations with international support would allow Afghanistan to export minerals and agricultural products, enhance its position as regional trading partner, improve domestic commerce, and link products, consumers and markets across Eurasia and beyond.</p> <p>The ADB is currently conducting a number of feasibility studies and looking at ways to extend the existing 75-km railway in Mazar to Tajikistan and Turkmenistan (Aqina).</p>	<p>(1) Urgently pass a Railway Law that provides for the government, through the Afghanistan Railway Authority, to (a) set railway policy, (b) regulate railway technical standards and safety, and (c) contract for construction, maintenance and operation of railways in Afghanistan. This should be done in such a way that it encourages private sector participation in the railway sector and accords with international best practice.</p> <p>(2) Complete the ongoing capacity building of ARA and fast track development of PPP framework for railway sector.</p> <p>(3) Complete the ongoing feasibility study for the Northern Line (Aqina-Mazar-Tajikistan); implement development of Aqina-Mazar-Tajikistan railway as part of CAREC corridors 5 and 6.</p> <p>(4) Complete the Islam Qala-Herat rail line.</p> <p>(5) Conduct a feasibility study of the Torghondi-Herat rail line and, if warranted, develop the Torghondi-Herat rail line with international assistance as part of the extension to CAREC corridor 5.</p> <p>(6) Conduct a feasibility study of the Torkham-Jalalabad line; and if warranted develop the Jalalabad-Torkham rail line as part of the CAREC corridor 6.</p>	<p>(1) 1 year</p> <p>(2) 1-2 years</p> <p>(3) 1-2 years</p> <p>(4) 3-5 years</p> <p>(5) 3-5 years</p> <p>(6) 3-5 years</p>
<p>(3) Develop ancillary infrastructure (road and electricity) around resource corridors to facilitate development and reliable transport of extracted minerals.</p>	<p>Afghanistan has a large and diverse natural resource endowment (estimated to be worth \$2-3 trillion). Mineral deposits – including oil, natural gas, copper, gold, coal, iron, marble – will provide the nation with a diversity of development opportunities for decades to come. The sector represents a potential driver of economic growth and revenue generation that is less reliant on public investment, given the private sector role in providing capital, expertise and effective management.</p> <p>To develop this sector sustainably, concrete “soft” and “hard” actions are essential. On the “soft” side, better governance in the management, award, and operations of contracts is critical. To avoid the “resource curse,” transparency in the procurement and award system and broadening the benefits of investments in this sector are vital. The recent Mining Law does not fully take the needs and concerns of the private sector into account. It substantially reduces private sector interest in investing in Afghanistan by not allowing for convertibility of exploration rights to mining licenses.</p> <p>On the “hard” side, ancillary and transport infrastructure to allow reliable and affordable transport of materials between mining sites and cities or ports is needed. ARTF’s Afghanistan Resource Corridor Program attempts to leverage road, rail and power infrastructure built by mining investors. This infrastructure will then support other sectors and expand their reach through incremental catalytic investments, for example, in feeder roads to support the development of agriculture.</p> <p>Given the risks and resource constraint, it is necessary for the</p>	<p>(1) Pursue the implementation of a revised resource corridor strategy, with the support of the World Bank, the ADB and the international community, to implement scalable investments around (a) immediate oil & gas opportunities, and (b) Hajigak iron ore and Aynak copper (this includes continuing with ongoing efforts to align public and private sector investment plans and identifying potential incremental public investments (in roads, rail, power and water) to leverage the infrastructure investments of extractive industry investors).</p> <p>(2) To ensure the resource corridor approach works, commit to long term sustainable policies, inclusive growth, benefit sharing and broadening economic benefits in Afghanistan by requiring (i) sound use of extractive industries revenues through the budget process, (ii) public interventions to ensure that the Afghan private sector and workforce benefit, including supplying goods and services to mines and job opportunities for locals, and (iii) ensuring benefit sharing for affected communities through the development of a regulation for Community Development Agreements, (iv) developing and implementing a governance and oversight mechanism to ensure nondiscretionary issuing of licenses and management of contracts (pre-award, award and post-award phases), and (v) streamlining roles and responsibilities within structure for regulating, collecting royalties and taxes.</p> <p>(3) Ensure strong revenue transparency by achieving full compliance with EITI requirements so that that all revenues are traceable, published and framed contextually including public disclosure of key mining agreements and terms.</p> <p>(4) Amend the Mining Law to take the needs and concerns of the private</p>	<p>(1) 3 years</p> <p>(2) 1-2 years</p> <p>(3) 1-2 years</p> <p>(4) 1 year</p>

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	<p>government and private sector to develop a roadmap with strategic support from the World Bank and the ADB that identifies key priorities and feasible projects in the Resource Corridor Program. This will help the private sector in planning and will attract investment by them.</p>	<p>sector into account (especially convertibility of exploration rights to mining licenses, improving transparency, governance).</p> <p>(5) Educate the local community about their rights and obligations, the rights and responsibilities of the private sector and how local communities can maximize benefits from the investment in extractive projects</p>	<p>(5) 4 years</p>
<p>(4) Establish ‘one stop shops’ for public services with integrated electronic systems providing streamlined business administration services (registration, licensing, licensing renewal, tax, custom duty payments and other essential business administration requirements in Kabul and 7 commercial hubs).</p>	<p>All businesses in Afghanistan need to register for a tax identification number (TIN). In addition, those wishing to create a business as a legal entity (e.g. as a LLC or a corporation) must register with the Afghan Central Business Registry (ACBR) at Ministry of Commerce and Industry (MoCI) every 3 years (in Kabul) and annually outside Kabul.</p> <p>Foreign investors must register annually with the Afghan Investment Support Agency (AISA) while under the Afghanistan Companies Act domestic investors are required to have a business license. In practice this means that in addition to establishing a business they must also register with either AISA or MoCI. The license renewals are costly and time consuming.</p> <p>International good practice suggests that registration for most businesses (those not wishing to establish a legal entity) should be a one off event based around registering for taxation purposes with further licenses required only for reasons of health, safety, environmental protection, land use and access to natural resources. Additional processes are then required only for those wishing to establish a business as a legal entity and for foreign investors.</p> <p>There is no rationale for having a process for registering a business and then having an additional general requirement for all businesses to be licensed. This second step adds no value as all the information on a business is already collected when it is registered in step 1. Removing the second step by abolishing MOCI’s Trader (or Business) License and AISA’s Investment License for Domestic Investors is straightforward as neither has a legal basis. Additional reforms are required, however: the Afghanistan Companies Act contains a requirement that all businesses need to be licensed, which should be removed.</p> <p>AISA’s original role as envisaged by the Private Investment Law was to approve foreign investment and facilitate its entry into Afghanistan. This should be confirmed as AISA’s role. It should not have any role in relation to approving or licensing domestic investment.</p>	<p>(1) Streamline registration and licensing procedures before establishing one stop shop:</p> <p>(a) abolish the Traders (or Business) License (MoCI) and transfer the new automated system from MoCI to the “one stop shop”</p> <p>(b) abolish AISA’s Investment License for Domestic Investors.</p> <p>(c) remove requirement for all businesses to have a business license from the Companies Act. [This would leave registration for tax as the key process for registering a business and registering with the ACBR as the process for creating a legal entity (i.e., corporation or LLC).]</p> <p>(d) review the rationale for all licenses and abolish those not justified in terms of safety, environmental protection, resource extraction or consumer protection.</p> <p>(2) Refocus AISA’s mandate on promoting investment in Afghanistan and approving and supporting foreign investment (approval of investment by foreign investors should be a one-off event covering the life of their investment).</p> <p>(3) Rollout a streamlined and electronic business and intellectual property registration process for all regional hubs.</p> <p>(4) Decide on an institutional structure to oversee the establishment of fully unified, standardized, and electronic business service centers (one stop shops) for Kabul and 7 regional commercial hubs for businesses to register with one unique Tax Identification Number (TIN), register intellectual property, pay taxes, duties, vehicle registration and other essential business administration.</p> <p>(5) Develop a fully computerized system for all business administration activities in context of the e-governance strategy for Afghanistan.</p> <p>(6) Simplify and streamline the Procurement Law to increase transparency, provide a level playing field and enable the private sector to effectively take part in the public bidding processes; include sections in the Procurement Law to fully bring defense acquisition and procurement activities within the government procurement system (including regulations to create a level playing field and to get better value for the money by allowing qualified Afghan private sector firms to bid on contracts based on globally accepted standards and practices).</p> <p>(7) Simplify the Customs Law and Income Tax Law (including administrative processes)</p> <p>(8) Develop and implement a program of reform to improve Afghanistan’s WB DBI score based on reforms previously proposed including Improving the Ease of Doing Business in Afghanistan Reform Memo 2012</p>	<p>(1) (a) 3 months (1) (b) 3 months (1) (c) 6 months (1) (d) 2 years</p> <p>(2) 6 months</p> <p>(3) 2 years</p> <p>(4) 6 months</p> <p>(5) 1 year</p> <p>(6) 1 year</p> <p>(7) 2 years</p> <p>(8) 2 years</p>

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<p>(5) Lower the cost and increase the availability of financing by expanding existing credit guaranty and microfinance schemes and by making the contract enforcement and debt collection environment more attractive to lenders.</p>	<p>The lack of predictability immensely increases the cost of borrowing. In markets where loan recovery is unpredictable, the costs of finance are very high. In order to increase access to affordable credit, Afghanistan must enhance observation, implementation, and meaningful enforcement of present laws.</p> <p>The legal framework for the financial sector in Afghanistan is incomplete. A bankruptcy law has been drafted but not passed. There have been repeated calls to improve implementation of the Banking Law (currently under review at the Parliament) and develop comprehensive regulations to support it.</p> <p>An arbitration and mediation center, Center for Dispute Resolution (ACDR), has been established in Kabul and it can be expanded to cover financial disputes. Such arbitration and mediation, however, will be valueless if the courts, which enforce arbitration and mediation decisions, continue to act arbitrarily instead of in accordance with the law.</p> <p>As in all sectors, access to relevant finance is a constraint for agribusinesses, extractive industries (large scale, marble, and gem stones) and manufacturing.</p> <p>The demand for increased access to relevant finance is often specified as a need for specific sector-oriented banks. Instead, the challenge is to develop demand-led financial products and trust and understanding between banks and businesses, enabling the banks to expand their lending with better terms.</p> <p>An Accounting and Auditing Report on Observance of Standards and Codes (ROSC) study on Afghanistan was carried out in 2009. The study documented the underdeveloped state of regulation of accountants, auditors, public auditing firms and financial reporting of public interest entities, lack of application of standards and education in accounting and auditing.</p> <p>There is no approved body representing the accounting and auditing profession and no training leading to a recognized professional designation.</p>	<p>(1) Expand existing credit guaranty schemes and current microfinance schemes.</p> <p>(2) Ensure coordinated and speedy execution of money judgments and repossession of collateral. Existing courts must act in accordance with the law, even when this is politically or socially difficult.</p> <p>(3) End suspension of Article 27 of the Mortgage Law that provides for a mortgagee's power of sale.</p> <p>(4) Provide relevant training to commercial judges to enforce contracts in accordance with the law. So-called "traditional practices" must have no bearing on judgment enforcement and collateral repossession. The government should ensure that judges and instrumentalities of the courts that do not act in accordance with the law are removed from office and replaced with people/institutions that implement the law and are immune from political interference.</p> <p>(5) DAB, along with the other shareholders, should ensure that the Afghanistan Institute of Banking and Finance has an effective governance structure and is able to provide high quality demand driven services to the Afghan financial sector.</p> <p>(6) Continue efforts to ensure that the Islamic finance is included in the Banking Law which is under review in Parliament.</p> <p>(7) Establish a progressive, market-oriented Sharia Board.</p> <p>(8) Improve or develop Central Bank regulations relating to provisioning and collateral so that use of movable property as collateral is more widely accepted and utilized by lending institutions.</p> <p>(9) Ensure implementation of and compliance with FATF AML/CFT and governance strictures.</p> <p>(10) Develop and enact a new Accounting and Auditing Law to establish the legal environment required for investment in accordance with international norms and in line with IFRS/IFAC.</p> <p>(11) Establish legal and regulatory framework for microfinance</p> <p>(12) Give secured creditors the highest possible priority in bankruptcy proceedings.</p> <p>(13) Increase of the number of qualified and regulated auditors.</p>	<p>(1) 3 years</p> <p>(2) 2 years</p> <p>(3) 3 months</p> <p>(4) 2 years</p> <p>(5) 1 year</p> <p>(6) 1 years</p> <p>(7) 2 years</p> <p>(8) 1 year</p> <p>(9) 1 year</p> <p>(10) 1 year</p> <p>(11) 2 years</p> <p>(12) 2 years</p> <p>(13) 2-3 years</p>

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<p>(6) Develop a strategy for industrial park which reflects comments and ideas from the private sector (including establishment of an independent office for industrial park with special authority).</p>	<p>As funds are not available for the large green field development of industrial parks (land that has electricity, water, roads and security) that has been attempted in the past, PPPs represent one of the few options available for increasing the supply of serviced industrial land in Afghanistan. For Afghanistan, two models have been suggested:</p> <p><i>(1) Build-Operate-Transfer:</i> under this approach the government grants a concession to a private sector developer to develop and operate an industrial estate for a defined period. While the development will be done as a concession, underlying ownership will remain with government. The concession agreement will include requirements for the developer to build the necessary infrastructure, set limitations on the scope of activities allowed and the rental/sale structure. While the sequencing of commercially viable concessions first will generate capital that can be used to support the development of further parks, there will still be a need to provide some financing. In particular a viability gap fund needs to be established to meet any shortfall in the competition for the concession. This requires seed financing for the necessary preparatory work.</p> <p><i>(2) Pooling of Private Sector Investment:</i> under this model, the cost of developing an industrial park will be estimated and the private sector will be invited to buy a right to purchase one of the plots of developed land within the proposed park. Once sufficient interest has been generated, the government will then tender out the development of the industrial estate with the private companies which have been successful in securing a lot being required to pay for the development in a series of installments.</p> <p>Both AISA and MOCI have at different times proposed establishing an Industrial Parks Authority either as a state owned corporation or as an independent authority. However, this was never agreed to largely because of disagreements over what would be the appropriate 'institutional home' for the independent agency. Establishing the new entity as state owned corporation avoids this issue. Doing this would be in line with global practice and it is more practical than establishing it as a statutory authority as it does not require legislation. Once it has divested itself of its industrial parks, MoCI would be free to take up a regulatory role for the sector.</p>	<p>(1) Establish the National Industrial Park Corporation (NIPC) as a state-owned corporation with shareholding by Ministries of Finance, Commerce and Economy and with a board where two out of five directors are from the private sector.</p> <p>(2) Assign the regulatory role for industrial parks to the Ministry of Commerce and ensure that it devises and implements rules and regulations in a transparent and efficient manner without political interference.</p> <p>(3) Transfer reserves from AISA to enable NIPC to begin its operations.</p> <p>(4) Transfer all existing industrial parks from MOCI and AISA to NIPC.</p> <p>(5) Rapidly increase the supply of serviced industrial land through the transfer to NIPC and subsequent refurbishment and conversion of derelict government properties which are already connected to utilities into serviced industrial land.</p> <p>(6) Pilot both PPP models – Build Operate Transfer and Pooling of Private Sector Investment - with the assistance of international partners (seed financing and funding for viability gap etc).</p> <p>(7) Assess pilots and roll out revised scheme for PPPs.</p>	<p>(1) 3 months</p> <p>(2) 3 months</p> <p>(3) 3 months</p> <p>(4) 1 year</p> <p>(5) 1 years</p> <p>(6) 2 years</p> <p>(7) 3 years</p>
<p>(7) Urgently approve an electricity law, relevant sub-laws and guidelines that facilitate the immediate establishment of an independent electricity regulatory authority to implement policies that support private sector investment in the</p>	<p>Many strategic policies such as the ANDS and NPP (Energy) call for private sector investment in the energy sector. However, a clear legal and regulatory framework is absent. There is, therefore, no meaningful enabling environment for the private sector to get involved in electricity generation, transmission, distribution and maintenance.</p> <p>The current Electricity Bill does not take the private sector's needs and concerns into account. Consequently, it makes the sector unattractive and unlikely to be the recipient of investment. Gas is seen as a source for potential production of electricity domestically. However, the absence of a legal framework discourages private sector interest in it. In</p>	<p>(1) Redraft the current Electricity Bill and regulatory framework in consultation with the private sector and other stakeholders to ensure it encourages rather than discourages private sector investment (the law should also state that expanding access to reliable and affordable electricity has to be a fundamental priority for the nation).</p> <p>(2) Establish an independent energy regulatory authority and clarify the roles and responsibilities of the private sector & government through policy and regulation.</p> <p>(3) Enhance the capacity of the regulatory authority so that it has the ability</p>	<p>(1) 18 months</p> <p>(2) 18 months</p> <p>(3) 2 years</p>

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<p>electricity sector.</p>	<p>addition, there have been no credible feasibility studies on the size of gas fields in Afghanistan. Currently, the Gas Sector Development Plan is being prepared with ADB's help. This work needs to be expedited.</p> <p>The tariff regime for the purchase of power from the private sector is currently pending. This function should belong to the regulatory authority and rates needs to be finalized after consultation with the private sector.</p> <p>The terms of reference (TORs) for Electricity Regulatory Authority have been drafted by the MEW with the assistance from the Inter-ministerial Committee for Energy (ICE).</p>	<p>to lead efforts to further develop the electricity sector.</p> <p>(4) Finalize the tariff for purchasing power from the private sector after consultations with prospective investors.</p> <p>(5) Conduct a credible assessment of the natural gas reserves and the potential of alternative and renewal energy production sources in Afghanistan; implement 2 pilot programs based on the findings of the assessment.</p> <p>(6) Develop a strategic roadmap for private sector investment in the energy sector (especially electricity).</p> <p>(7) Increase access to affordable electricity to support investment, doing business and economic development.</p>	<p>(4) 2 years</p> <p>(5) 2 years</p> <p>(6) 1 year</p> <p>(7) 3-4 years</p>
<p>(8) Establish a program to upgrade the infrastructure and equipment of TVET institutions for 200,000 students based on market needs.</p>	<p>A National TVET Strategy has been developed for Afghanistan. This Strategy identifies four priorities for strengthening the sector: improved governance, improved quality, increased access for all and the development of mechanisms for sustainable financing. A National Qualifications Framework for Technical and Vocational Education and Training (TVET) has also been developed. Development of National Occupational Skills Standards (NOSS) is under way with 180 standards completed out of 750. A mechanism for assessing "prior skills" needs to be developed. Skills and competencies need to be based on standardized international norms (including ensuring gender-sensitivity).</p> <p>While no credible labor demand and supply survey has been conducted since 2008, it is clear that the supply of TVET is substantially less than Afghanistan needs. Given the urgent needs for skills in the national economy and emerging labor export opportunities in the, it is tragic that many young people entering the workforce do not have the skills they need to secure a job</p> <p>The small average size of providers (less than 350) increases the unit costs. Courses are not offered based on market needs. The quality of trainers and teaching methods are neither good nor uniform, partly due to inadequacy of training and education methodology, manuals and qualification of trainers. Training providers often have poor classrooms, labs, computers, and libraries—occasionally accessibility to training premises affects continuity of attendance of students.</p> <p>The system is overly centralized. The private sector is not involved in TVET programs to a great extent. The National TVET Strategy calls for greater private sector involvement to improve the quality and relevance of TVET and to support the development of new sources of financing for the sector. Decentralized governance and clear quality assurance guidelines are key factors to facilitating greater private sector involvement.</p>	<p>(1) Establish an independent Afghanistan National Qualification Authority (ANQA) to streamline and coordinate the overlapping TVET efforts; develop the most needed NOSS; ensure all NOSS are based on international standards; and develop pathways from the informal to the formal TVET sector.</p> <p>(2) Reform the TVET system with all training to be delivered by private firms or nonprofits (as they are more able to respond to changing market demands) and with the government to focus only on coordinating funding, setting standards, monitoring, training and confirming certification.</p> <p>(3) Establish a digital National Labor Data Center to conduct a credible, national demand and supply baseline labor market survey.</p> <p>(4) Increase the quality of TVET through developing a TVET Teaching Strategy, establishing 7 independent regional TOT Centers and exchange programs (with attention to PPP and using existing TVET premises).</p> <p>(5) Embark on a national level, private sector-led skills development program delivered through competency-based short-term training programs for mid-career individuals particularly in the informal sector (these people are currently not served by the TVET system).</p> <p>(6) Standardize assessment and certification of people's prior skills.</p> <p>(7) Equip 30 TVET institutions and 7 regional TOT Centers with the essential infrastructure and equipment.</p>	<p>(1) 18 months</p> <p>(2) 3 years</p> <p>(3) 2 years</p> <p>(4) 3 years</p> <p>(5) 2-3 years</p> <p>(6) 2 years</p> <p>(7) 3 years</p>

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<p>(9) Protect investors and promote investment (improve contract enforcement, dispute resolution, solving insolvency).</p>	<p>Over the last decade, Afghanistan has passed a number of commercial laws (e.g., the Private Investment Law (2005), the Commercial Arbitration Law, the Commercial Mediation Law), which, on their face, purport to protect domestic and foreign investors from expropriation and ensure national treatment and protection of foreign shareholder and investors yet contain inconsistencies throughout their applicability within the context of Afghanistan’s evolving legal framework.</p> <p>However, the reality on the ground is different. Despite those steps, Afghanistan is ranked 189 (out of 189) in the World Bank’s Doing Business Index in terms of “investor protection.” In 2014, the World Bank ranked Afghanistan 183 (out of 189) as far as ease of doing business is involved. Key problems include: contract enforcement, dispute resolution and resolving insolvency.</p> <p>In July 2014, Harakat and ACCI launched the Commercial Dispute Resolution Center (ACDR) in Kabul which aims to provide alternative dispute resolution services for domestic and foreign firms in Kabul. By lowering the costs of resolving disputes and reducing the risk of arbitrary adjudication of disputes, investor’s assets and rights are better protected. Given the current weaknesses in the judiciary system, alternative dispute resolution is a good option for investors. Being independent is essential for this mechanism to be effective and sustainable.</p> <p>To attract new private investment and retain existing investments, the government needs to take specific actions to streamline roles and responsibilities within the government, fill in the gaps in the legal and regulatory frameworks, and, above all, implement existing laws and regulations effectively. Implementing these proposed measures in the short and medium term will reduce the cost of doing business, improve the enabling investment environment and repair the standing of investing in Afghanistan among domestic and foreign investors.</p>	<p>(1) The government should confirm that:</p> <ul style="list-style-type: none"> • under the Commercial Arbitration Law, parties may elect to refer a dispute to international arbitration (and not to the Afghan Commercial Courts) and that awards arising from such arbitrations will be upheld by the Courts in Afghanistan as agreed to in the New York Convention to which Afghanistan is a signatory. • the Attorney General’s Department is strictly prohibited from involvement in, or the resolution of, commercial disputes in Afghanistan that fall under the jurisdiction of the Afghan Commercial Courts or arbitration. • the judiciary system will recognize the ACDR as a practical forum for the resolution of commercial disputes. • the government will respect the independence of the arbitration system. <p>(2) Increase the number of qualified, licensed and regulated insolvency practitioner; expand the ACDR to major commercial hubs outside of Kabul.</p> <p>(3) Protect investors by improving disclosure requirements: amend the Joint Stock Company Law and the Corporations and Limited Liability Companies Law to increase disclosure requirements to the public and in the annual reports; mandate an independent auditor review and shareholder approval of large related-party transactions before the transaction takes place; increase director liability in related-party transactions by stating clearly in the law the directors’ duties to act in the best interest of the company and strengthen punishment for violators and hold director and approval body liable to the extent of damages caused by any related-party transactions.</p> <p>(4) Enable investors to enforce their rights through the courts by allowing minority shareholders to access relevant non-confidential company documents in cases of suspected mismanagement, without filing suit; allowing plaintiffs to obtain any documents from the witnesses during trial that are relevant to the case at hand; allowing parties to a trial to request categories of documents from the opposing party without identifying specific ones; allowing parties to a trial to question (orally or in writing) the opposing party/witnesses without prior approval of questions by the judge.</p> <p>(5) Enact a Contract Law to enhance enforcement of a contract (and reduce cost, time etc), conduct a mapping exercise to identify delays during trials & enforcement of the judgment; increase procedural efficiency by introducing active case management in commercial divisions including piloting electronic systems for managing cases in the commercial courts; set in place judges’ performance measurements to improve efficiency.</p> <p>(6) To improve insolvency and enforcing debt procedures, revise the Law of Insolvency so that it recognizes the key needs of creditors, provides for training and regulation of insolvency practitioners and mandates adequate remuneration for them, enact fair remuneration schedules for creditor representatives to ensure their participation in bankruptcy proceedings; empower secured creditors by mandating unambiguous protection of their rights; reduce the exemptions for negligence for creditor representatives</p>	<p>(1) 3 months</p> <p>(2) 2 years</p> <p>(3) 1 year</p> <p>(4) 1 year</p> <p>(5) 2 years</p> <p>(6) 1 year</p>

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		<p>who participate in the proceedings.</p> <p>(7) Ensure that existing regulatory agencies/bodies are independent from line ministries or moving towards becoming completely independent regulatory bodies, are fully independent from the industries they regulate, and are providing rules and regulations in an open and transparent manner which promote competition and cost-effective services which serve the interest of the public and end-user consumers.</p> <p>(8) Use ACCI's Incentive Policy recommendations as a basis for developing a national investment incentive policy.</p> <p>Note: Points 3-6 are drawn from the WB/IFC Reform Memo 2012</p>	<p>(2) 2 years</p> <p>(8) 1 year</p>
<p>(10) Develop a national policy and a legal and regulatory framework for public private partnerships.</p>	<p>Public private partnerships (PPPs) are new phenomena in Afghanistan, especially as a mechanism for delivering public services. However, there are successful ongoing projects (Hairatan Railway, Public Health Program and DABS Kandahar operations). The government lacks sufficient resources to adequately invest in infrastructure and the delivery of public services. PPPs provide one proven approach to bring much needed private investment, expertise and innovation to certain economic sectors in Afghanistan.</p> <p>There is considerable lack of awareness throughout the government and the private sector about the nature and benefits of PPPs. The institutional capacity in the government for managing PPPs and the procurement mechanism for establishing them are inadequate. There are also gaps in the legal and regulatory frameworks relating to PPPs, impeding implementation of them.</p> <p>Currently, Article 40 of the Procurement Law is being amended to serve as the legal basis for PPPs in Afghanistan. National PPP Regulations, led by the PPP Taskforce (MOPH, MOF, MOJ and ACCI), are currently under development and will be finalized in conjunction with Article 40 of the Procurement Law.</p> <p>A comprehensive PPP Manual for Public Health based on international best practices is being developed. The PPP health experience can inform planning of future PPPs. Harakat is supporting the creation of a Central PPP Unit within MOF, which will serve as the main coordinating body within the government system for PPP matters (the PPP Unit at MOPH is currently being staffed with USAID support).</p> <p>A legal and regulatory diagnostic assessment (1 general, 2 sector-specific) is needed to understand how PPPs can be tendered under current legislation/regulations, what the gaps/overlaps are and what legislation/ regulation if any could be modified in the short term to alleviate any constraints currently impeding the pursuit of PPPs.</p> <p>There is a low level access to international expertise. Future PPPs need to involve transfer of expertise to domestic firms. For the success and</p>	<p>(1) Expedite the approval of the Procurement Law amendments currently in Parliament and secure approval of the related PPP Regulations by Cabinet.</p> <p>(2) Complete the development of a National PPP Policy being supported by Harakat.</p> <p>(3) Conduct legal and regulatory diagnostic assessments (1 general, 2 sector-specific in those sectors deemed the highest priority for PPPs) to understand how PPPs can be tendered under current legislation/ regulations, what the gaps/overlaps are and what legislation/ regulation if could be modified in the short term to alleviate any constraints currently impeding the pursuit of PPPs.</p> <p>(4) Improve the institutional capacity of the Central PPP Unit at MOF and other relevant PPP Units and secure the required technical assistance for them based on needs (e.g., transaction advisory services).</p> <p>(5) Improve coordination among key stakeholders; provide incentives (i.e., serviced industrial land, political risk insurance, tax breaks) to attract private investment; conduct a public awareness campaign on benefits of PPPs and the updated legal framework.</p> <p>(6) Improve the enabling environment for PPPs, particularly through reforms to the following: contract enforcement, solving insolvency, construction permit, registering property, protecting the minority investors, renewing annual business licenses and clarifying the ability of investors to repatriate profits under the Private Investment Law.</p> <p>(7) Identify 2-3 potential projects and conduct feasibility studies (by independent service providers) for possible PPPs.</p> <p>(8) Review the Private Investment Law Art 5.4 in regard to inclusion of health facilities in the definition of "Infrastructure" (infrastructure is a restricted economic sector (Article 5.4) and so any investment will need to be in accordance with "special laws"; however, it is unclear what these special laws are and if there are any such laws dealing with health</p>	<p>(1) 3 months</p> <p>(2) 1 year</p> <p>(3) 2 years</p> <p>(4) 2 years</p> <p>(5) 2 years</p> <p>(6) 1 year</p> <p>(7) 1 year</p> <p>(8) 1 year</p>

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	<p>effectiveness of promising PPP projects, Transaction Advisory Services are critical (note: following a successful feasibility study, a Transaction Advisory Service is being considered for MOPH PPP).</p> <p>PPPs are contract heavy. Executing them requires significant technical capacity. Capacity building in the government is needed to ensure it has the capacity to regulate PPPs effectively. Oversight and monitoring mechanism by third parties is essential to ensure effectiveness and sustainability of PPPs. Access to long term financing is also needed.</p>	<p>infrastructure); amend the Private Health Centers Regulations Arts 6, 24, 40 (setting fees etc) and the Procurement Law Art 54 (subcontracting) to address the private health sector's concerns.</p>	
<p>(11) Establish an alternative transit route through Central Asia that would be implemented along with the proposed Central Asian Gas Pipeline project.</p>	<p>At the present time, the Afghan economy has only limited production capacity in many areas and is, hence, strongly import-dependent. This means heavy reliance on transit routes. Unnecessary costs imposed during transit can contribute 30-40% of the goods final prices. Reducing these costs would be highly beneficial to the Afghan consumer. Higher costs for imported goods increase the cost of domestic production. In addition, high transit costs make Afghan exports less competitive. Reducing these costs is also an important part of helping Afghanistan to evolve into a trade hub that facilitates and benefits from regional trade.</p> <p>When it comes to trade and transit, the neighboring countries do not fully respect international rules and regulations. For example, Pakistan has been inspecting 100% of the goods transiting its territory. The accepted international rule allows for inspection of 5%. Inspecting 100% of goods in transit increases costs and prevents the free import of commercial products. It is estimated that Afghan traders are forced to overpay \$500-700 million per year in Iran and Pakistan in demurrage and other unnecessary costs.</p> <p>There are also problems with Iran and Uzbekistan. Uzbekistan does not allow goods to be transported from Afghanistan to Uzbekistan, forcing the newly established railway to go empty from the Afghan side.</p> <p>The two countries which cause the least problems in trade and transit are Tajikistan and Turkmenistan. The government should take note of this and expand trade and transit with these two countries.</p> <p>The government needs to work with the international community to convince the neighboring countries to delink trade from politics and allow it to be governed by economic forces and international rules and regulations.</p> <p>In terms of improvements, focus needs to be placed first on the Black Sea Route which goes from Afghanistan through Turkmenistan to Georgia. This is a vital program and will alleviate many trade and transit problems. Second, the New Silk Road program is highly important as this covers key transport connections and trading links for Afghanistan.</p>	<p>(1) Urgently implement the China-Tajikistan-Afghanistan Trade and Transit Agreement (Kashghar) signed between China, Afghanistan and Tajikistan.</p> <p>(2) Completion of the Aqina-Mazar-Tajikistan rail line is a strategic trade and transit program and the government should treat it as such.</p> <p>(3) Expedite the implementation of the Dry Port Project in Nangarhar, Faryab and Kandahar to provide businesses with services based on international standards; establish an independent dry port authority to manage and lead the full implementation of the Dry Port Project.</p> <p>(4) Rehabilitate Afghanistan as a transit hub and advance the New Silk Road project through completing the missing road links between Torkham and Mazar and Spin Boldak and Herat as well as finishing Mazar-Herat section of the Ring Road</p> <p>(5) Expedite the development of an alternative transit route through Central Asia by:</p> <ul style="list-style-type: none"> • Reviewing and revising the current bilateral trade and transit agreements with the Central Asian countries and trying to make them multilateral. • Starting with the Central Asian alternative transit route, build the technical and administrative capacity of the Ministry of Transport and the Customs to implement to TIR system • Implementing a customs joint operation (clearance) mechanism with the Central Asian neighbors and later on extending it to other transit routes • Developing and implementing a program to address the missing infrastructure linkages necessary for making this route operational 	<p>(1) 2 years</p> <p>(2) 2 years</p> <p>(3) 2 years</p> <p>(4) 2 years</p> <p>(5) 3 years</p>