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Regulation on Drafting Procedure and Processing of the Legal Acts

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Regulation on Drafting Procedure and Processing of The Legal Acts

Chapter one

General Provisions

Basis

Article 1:

This regulation is enacted to regulate affairs related to equal and coordinated drafting of legal acts and its due process by the Government, to strength the rule of law in the country.

Terms

Article 2:

For the purposes of this regulation, the terms hereunder shall have the following meanings:

1. **Legal Act:** includes laws, legislative decrees, presidential decrees, regulations and statutes, including their annexes, amendments, additions, deletions and suspensions. Resolutions of the Council of Ministers shall also be considered a Legal Act.
2. **Law:** Means obligatory legal rules which are processed based on article 94 of the constitution of Afghanistan.
3. **Legislative decree:** Means obligatory legal rules which are processed in accordance with article 79 of the Constitution of Afghanistan.
4. **Presidential decree:** Means a written order of the president issued and registered in accordance with powers conferred under the constitution of Afghanistan or the provisions of other laws.
5. **Regulation:** means rules enacted by the Government for the implementation of policies, rules which improve the implementation of existing laws, and governing the duties and responsibilities of ministries and other Government agencies.
6. **By-laws:** means rules governing the operation of an organization including scientific research organizations, ministries, government agencies, companies and state –owned enterprises.
7. **Amendment:** means a change to either the structure or content of an enforced legal act.
8. **Addition:** means adding letters, words, sentences or numbers to all or part of the provisions of an enforced legal act.
9. **Deletion:** means deleting letters, words, sentences or numbers to all or part of the provisions of an enforced legal act..

10. **Revocation:** means the repeal of the provisions of an enforced legal act or all provisions of it.
11. **Suspension:** means to cease implementation of a provision or provisions of an enforced legal act at least for a period of time.
12. **Annex:** means new provision and or provisions added as complementary to an enforced legal act, based on need and particular circumstances.
13. **Preparation:** means collection of information and comments for the purpose of drafting of legal act.
14. **Drafting:** means the writing of sentences and words of provision of legal act.
15. **Scrutinize:** means accurate evaluation of words, terms, sentences, and phrases of the initial draft of the legal act, from perspective of form and content and it's conformity with the provisions of the Islamic Sharia, constitution, other enforced legislation and with observance of the international treaties, conventions that Afghanistan is a signatory to it and sound custom of the society.
16. **Processing:** includes drafting, scrutinizing, ratifying, approving, issuing and publication of a legal act by its relevant competent authorities stated in this regulation.
17. **Initial draft:** means the preliminary draft of a legal act, which is prepared in a summarized and comprehensible manner and is ready to be scrutinized, by the relevant authority, taking into account the real and concrete needs of the subject matter.
18. **Final draft:** means the draft of a legal act which has been scrutinized and made ready for the subsequent legislative process, by the Institute of Legislative Affairs and Scientific-legal Researches (ILASLR), taking into account the high criteria of legislative technique.
19. **Legislative Work Plan:** is a document which contains the list of needed draft legislative documents of entities. These drafts will be processed and regulated based on priority in quarters during the year.
20. **Approval:** means taking decision to ratify the draft of a legal act by the competent authority.
21. **Issuance:** means Signing of a legal act by the president for the purpose of enforcement.
22. **Resolution:** means a written document which is developed after the approval or rejection of a legislative document by the relevant entity.

23. **Agencies:** includes ministries, attorney General office, independent general directorates, independent commissions, municipalities, joint and state owned enterprises and corporations.

24. **Legislative ordinance:** means a legal obligatory rule based on which the right and obligation or both will be specified.

Process of a legal act

Article 3:

The initial draft of a legal act shall be processed in accordance with the legislative work plan.

Obligations of the agencies

Article 4:

The agencies are responsible to prepare and process their needed legislative documents based on the provisions of this regulation.

summary name

Article 5:

- (1) In this regulation, the Institute of Legislative Affairs and Scientific-legal Researches (ILASLR) , shall be referred to as “the Institute”.
- (2) The General Directorate of the Office of administrative affairs and the secretariat of the Council of Ministers in this regulation shall be referred to as “the Office of the Administrative Affairs”.

Chapter two

Legislative Work Plan

Preparing draft of the Legislative Work Plan

Article 6:

- (1) Preparing the Legislative Work Plan is the responsibility of the Ministry of Justice.
- (2) Based on the proposal of the administrative bodies, the draft legislative work plan shall be developed in accordance with the provisions of this chapter.

Reasons of need for enacting a legal act

Article 7:

The agencies are responsible, prior to the submission of related initial draft of a legal act, to be included in the legislative work plan, present the written reasons pertaining its need to the Ministry of Justice.

Timeline for submitting proposal of Legal act

Article 8:

The agencies are responsible to send their initial draft legal act, along with the proposal of its processing to the Minister of Justice, at least three months before the end of the calendar year.

The content of explanatory reasons

Article 9:

- (1) The explanatory reasons of proposed draft legal act shall contains the following:
 - (1) Need and objective of enacting of legal act.
 - (2) The effect of proposed legal act on enforced legal act and existing economic, social, political, legal and culture situation.
 - (3) List of enforced legal acts relating the drafting of legal act, which further processing is proposed.
 - (4) To mention the financial costs and financial sources for the implementation of the legal act.
 - (5) To determine the tentative timeline for presenting the draft legal act to the council of the minister;
- (2) The explanatory reasons stated in paragraph (1) of this article shall not exceed three pages.

Request for Additional clarifications

Article 10:

- (1) The Ministry of Justice is authorized to, prior to including the initial draft legislative document into the Legislative Work Plan, seek in writing and verbal additional

information and explanation from the requesting agency relating the need of legislative document for ratification, amendment, annexing or cancelling the legislative document.

- (2) If the Ministry of Justice consider that proposed legal act is not necessary to be included into the draft Legislative Work Plan, it will provide its justification verbally or in written to the relevant agency .

Preparing Draft Legislative Work Plan

Article 11:

- (1) The draft Legislative Work Plan shall be prepared by the Institute and after the endorsement of the Scientific Council of the Institute it will be presented by the Minister of Justice to the Council of the Ministers for approval, ten days prior to the end of the calendar year.
- (2) The Implementation of the Legislative Work Plan is the responsibilities of the Institute.

Specifications of the Legislative Work Plan

Article 12:

The Legislative Work Plan will have the following specifications:

1. The title of the draft legislative document
2. The name of the entity proposing the initial draft legal act.
3. Scope of the implementation of the legal act.
4. The estimate time period of submitting the final draft of a legal act to the Council of the Ministers.
5. The agency endorsing or approving the final draft legal act.

Amendment of the Legislative Work Plan

Article 13:

The Legislative Work Plan may be amended as required during the year, based on the suggestion of the Minister of Justice and approval of Council of the Ministers or directly by the Council of Ministers.

Extraordinary process for legal act

Article 14:

- (1) The initial draft legal act could be processed in an extraordinary manner (out of the Legislative Work Plan), based on instructions of the president and or the Council of the Ministers,
- (2) The initial draft legal act which are not of public nature or its amendment, addition, omission and suspension of some articles of an enforced legal act or its annexes which are not included in the legislative plan, shall be processed based on the request of the relevant agency and agreement of the Minister of Justice.

Chapter 3

The procedure of preparing and drafting of legal acts

Establishment of the commission

Article15:

- (1) The in charges of the agencies are responsible while preparing and drafting the initial draft of legal act, to establish a competent commission, comprised from authorized and experienced officials of the agency, and professionals and experts of related fields.
- (2) if the implementation of a legal act linked to the several agencies ,in order to prepare the initial draft, based on the joint decision of the responsible agencies, a joint commission comprised from those persons mentioned in the paragraph (1) of this article, shall be established.
- (3) The agency which has the more responsibility in comparison to others in the implementation of legal act, shall guide and coordinate activities of the commission set forth in paragraph (2) of this article.
- (4) The president or the Council of Minsters may establish a competent committee for preparing and drafting of the initial draft of a legal act, which is of a general nature and is very important.
- (5) The Institute can draft, Scrutinize, and process the initial draft of a legal act which is of a general nature.

References of legal act

Article16:

The Commissions mentioned in this regulation and the Institute have to start the work of preparing and drafting of the initial draft of a legal act in question taking in account the following resources:

1. The Principles of Islamic Sharia.
2. The Afghanistan constitution.
3. The Enforced related legal acts.

4. The essential outlines of the country policy.
5. The treaties and international conventions that Afghanistan is a signatory to which.
6. The Similar legal acts of other countries and the experiences gained from them.
7. The sound custom of the society.
8. The published comments and suggestions of the professionals and researchers of the related scientific-research organizations.
9. Other required resources.

Observing completion of legal system in drafting of legal act

Article 17:

- (1) To prevent further amendments and annexes to a legal act, the drafter mentioned in this regulation have to consider the needs of completion of the legal system and its stability, while preparing and drafting the initial draft of a legal act.
- (2) The drafters have to analyze and realize the expected results of implementation of a legal act while they are preparing and working on its initial draft.

Correction of errors

Article 18:

The commissions set forth in this regulation and the Institute required, while preparing the initial draft of a legal act, to provide the provisions in a manner which prevent gaps, inconsistency, uncertainties and other errors exist in the enforced legal act.

Inviting of representatives

Article 19:

In order to make further review and evaluate an initial draft of a legal act and improve it, the administrative bodies in addition to the representatives and professionals of the relevant agencies, can invite the competent representatives from academic-research institutions, civil society and mass media.

Publication of initial draft of legal act for comments

Article 20:

- (1) The agencies may, publicize the initial draft of a legal act, if required in their website and through other possible means for the comments of other natural and legal persons.
- (2) For drafts concerning the foreign trade regime of Afghanistan:

- Except in emergency cases, all initial draft Laws, regulations and other legislative documents of the Islamic Republic of Afghanistan shall be published by ministries and state agencies for consultation and public comments prior to finalization.
- The publication of drafts may be posted through the ministry or state agency website or journal and/or national publication (nationwide newspaper) and shall include a reasonable period for commenting (not less than 30 days). It shall indicate the means through which comments may be submitted to the relevant ministry or state agency.
- Ministries and state agencies shall convene working group to discuss received comments including representatives of stakeholders who submitted comments.

Obtaining Agreement

Article 21:

- (1) The administrative bodies have to send the initial draft of a legal act along with reasonable explanatory description to the ministry of finance ,economy and other concerned departments, to obtain their agreement, for the purpose of evaluation stated in paragraphs (1) of article 9 of this regulation.
- (2) The Administrative bodies have to send the initial draft of a legal act, set forth in paragraph (1) of this article to the Ministry of Justice for further process.

Chapter four

Structure and content of the legal act

Title of legislative document:

Article 22:

The legal act will has a short title which describes its basic content.

Classification of legal act taking into account the volume and content

Article 23:

- (1) The materials of the legal act, taking into account, its multiplicity of related issues, from point of view of volume and content, shall be dived in to book, portal, chapter, part, section, topic and subparagraph.
- (2) Book, portal, chapter, part, section, topic and subparagraph shall have a title.

Articles of the legal act

Article 24:

- (1) The legal act contains articles and each article has a title which briefly expresses its contents.
- (2) For better adjustments of legislative ordinance, if required an article can be divided into paragraphs, clause, bands and sub clause, provided that subjects are related to each other, from point of view of content and objective.
- (3) Articles, paragraphs, clauses, parts, and sub clause of legal act shall have a logical sequence which shall be defined by letters and numbers or signs from the beginning up to the end.
- (4) Each article, paragraph, clause, sub clause contains a legislative ordinance which describes a single meaning and purpose.

The classification of Paragraph

Article 25:

The paragraph is the legislative ordinance which has its serial number and sits up between the brackets (XXXXX).

The classification of Clause

Article 26:

The clause is part of a legislative ordinance, which has serial number and classified without bracket.

The band

Article 27:

The bond is part of a legislative ordinance which is classified by dash (-).

Reference of a provision

Article 28:

Reference of an article to another article or argument by an enforced legal act, may be only if there was a mutual relation between the legislative ordinances or to avoid repetition and length.

Specifications of legislative ordinance

Article 29:

- (1) The provisions of a legal act shall be accurate, clear, and short and understandable as much as possible to prevent from additional interpretation and meaning which resulting into wrong implementation of the law.

- (2) Expression in the legal act shall be used in single meaning accepted in legal expression, if an expression has deferent usage, it shall be defined in the legal act.
- (3) The expression come from the foreign language, used in the official language of the Country in a manner which concord with each other, otherwise the same will be used, if its equivalent has not found in the official languages of the country.
- (4) The grammatical rules of the language shall be taken into account in the drafting of the legal act.

Objectives to be observed in legal act

Article 30:

The legal act should ensure the following objectives and wants:

1. Observance of the Islamic Sharia
2. Realization of the text or spirit of the Constitution of Afghanistan.
3. Observance of international treaties and conventions to which Afghanistan is a signatory member and criteria of the human rights.
4. To observe the essential outlines of the Country policy.
5. The day to day economic, social, legal, political and cultural progress of the Country.
6. Strength the rule of law.
7. To protect the rights and freedom of the Country citizens.
8. To observe the sound custom of the society

To prevent the duplication of the same legal acts

Article 31:

- (1) In order to prevent the duplication of the similar legal acts in a specific issue, the government agencies have to prepare the initial draft of a legal act in a manner which contains all related issues.
- (2) If there are several enforced legal acts regarding one specific issue, in the initial draft of legal act, the legal rules (provisions) which usefulness and effectiveness is practically proved shall be provided.

re-process of a legal act

Article 32:

- (1) If the applicable legal act required essential changes from point of view of form or content, that shall reprocessed.

(2) If the applicable legal act is fully maintained its importance and required a slight change, in this case the proposed provisions will be provided as an amendment, addition, deletion, denounce or annexure.

The responsibility of the government agencies and persons towards infringement

Article 33:

The legal act which required to have penalty or curtesy provisions, the extent of the responsibility of the agency and persons by them the legal act shall be implemented, against the infringement of the provisions provided in, shall be specified accurately.

The official names of the ministries and agencies

Article 34:

If it is needed to mention the name of the ministries and agencies, their official names shall be provided.

Table of content of the legal act

Article 35:

The legal act has a table of content which shall be provided at the beginning of the document.

To mention the repealed legal act

Article 36

At the end of the new legal act, the applicable legal act, or chapter, section, article and paragraph or parts of which to be repealed by the new legal act, will be provided simultaneously respectively with the title and the date of the enforcement or publication.

Chapter Five

Scrutinize of the legislative document

Scrutinizing of legal act in accordance of the Legislative Work Plan

Article 37:

- (1) The Institute is bound to scrutinize the initial draft of the legal act in accordance to the Legislative Work Plan.
- (2) The initial draft of the legal act shall be reviewed by the concern department of the Institute and the final draft shall be scrutinized by its executive committee.

Invitation of the representatives

Article 38

- (1) To review and assess accurately the legal act, the Institute may invite the competent representatives of the concern agencies, including advisors and specialists.
- (2) For the purpose of the cooperation and clarification, the concern agencies are bound to introduce and send their competent representatives mentioned in Para (1) of this article, to reflect their specific comments in the legal act through their representatives.

The content of the report of final draft of the legal act

Article 39

- (1) The Institute is bound to prepare the report of the final draft of legal act which includes the following :
 1. The necessity and reasons for enacting legal act.
 2. Brief information about the applicable legal act which relates to the issue.
 3. Short assessment of the content of the legal act and new provisions which entering in the legal system.
 4. The expected result from the implementation and enforcement of the legal act.
 5. To mention the name of the agencies obtained their agreement on the legal act or differences if exist.
- (2) The report provided in Para (1) of this article should not be more than 5 pages.
- (3) If the implementation of the legal act required considerable financial and material costs, the financial source, statistical figures, calculation and other necessary information which justifies the submitted suggestion , with annex of conclusion of the Ministry of Finance.

The authority to which the final draft of legal act shall be submitted

Article 40:

- (1) The Institute shall submit the final draft of the legal act with a written report to the Minister of Justice and after his approval it will eb submit it to the Legislative Committee of the Council of the Ministers through the Office of Administrative Affairs
- (2) The Institute shall submit the final draft of the legal act after approval of the Legislative Committee of Council of Ministers, to the Council of the Ministers through the Office of Administrative Affairs.

Responsible for presenting th report

Article 41

The Minister of Justice shall submit a brief report on the legality and observance of the necessary legislative criteria and the Minister or responsible person of the suggesting authority shall submit a detail report on usefulness and effectiveness of the draft legal act in the areas of economy, social, political, legal and cultural to the Legislative Committee of the Council of the Ministers, to the Council of the Ministers and to the National Assembly.

Chapter six

Approval, ratification and issuance

Approval or ratification authorities

Article 42

- (1) Final draft of legal act in the first stage reviewed and discussed technically by the legislative committee of the Council of Ministers.
- (2) The Final legal act which approved by the legislative committee of the Council of Ministers, shall be presented to the Council of Ministers through office of administrative affairs.
- (3) The draft mentioned in paragraph (2) of this article regarding the laws, international conventions ,treaties, and other legal acts which in accordance of the law required approval or ratification of the National Assembly, shall be submitted to the National Assembly , through the Ministry of Parliamentary Affairs.
- (4) The regulation and by-laws after approval of Council of Ministers will be endorsed by the president.
- (5) The Legislative ordinance or law, however, after the approval and ratification of Council of Ministers and National Assembly, shall be endorsed by the president.

Restitution of the final draft of legal act

Article 43:

- (1) The legislative committee of the Council of Ministers and the Council of Ministers will review and evaluate the final draft of legal act, if they consider that essential changes are needed in the content of the draft legal act, the draft will be returned to the Ministry of Justice for re-scrutinize.
- (2) The Institute, shall review and scrutinize the draft legislative documents set forth in paragraph (1) of this article, taking into account the remarks and decisions made by the legislative committee of the Council of Ministers and the Council of Ministers.

- (3) If the legislative committee of the Council of Ministers considers there are some minor corrections in the content of the final draft of the legal act, the proposed corrections will be incorporated to the draft legal act by the Institute.
- (4) The office of administrative affairs is responsible to submit the legal act, which has been ratified and approved by the Council of Ministers and national assembly and issued by the president, to the Ministry of Justice for publication in the official gazette.

Submission of legal act to the National Assembly

Article 44:

- (1) a legal act, the ratification of which is under the authority of National Assembly, after the approval of Council of Ministers will be prepared in Dari and Pashto languages by the Ministry of Justice and then submitted to National Assembly through ministry of parliamentary affairs.
- (2) A legal act which is ratified or international conventions and treaties which is acknowledged by the National Assembly, that will be submitted as soon as possible along with its resolutions to the president, through Ministry of Parliamentary Affairs for taking decision.
- (3) If the president endorses the legal act set forth in paragraph (2) of this article, the office of the Minister for the Parliamentary Affairs is responsible to send it to the Ministry of Justice for publication in Official Gazette, through the Office of Administrative Affairs.

Chapter seven

Final provisions

Legal Act adverse the provisions of this regulation

Article 45:

The draft legal act which is drafted in contradiction to the provisions of this regulation or not included in the Legislative Work Plan, however, shall be returned to the requesting agency through the Office of Administrative Affairs or the Ministry of Justice.

Date of Enforcement

Article 46:

This regulation shall come into force (30) days after publication in the Official Gazette and upon its enforcement; the Regulation on Procedure of Drafting and Proposing of the Legal Acts, published in Official Gazette No. (787) of the Hijri year 1420 shall be repealed.