

Afghanistan

Current as of June 2014

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I. Summary

The legal framework for not-for-profit organizations (NPOs) in Afghanistan is primarily based on two framework laws: the Law on Associations and the Law on Non-Governmental Organizations.

The Law on Associations was signed into law in September 2013. It supersedes the Law on Social Organizations, which was enacted in November 2002.

The Law on Non-Governmental Organizations (NGOs) was signed into law in June 2005. Proposed amendments to the Law on NGOs are currently undergoing review within the Ministry of Justice.

A. Types of Organizations

Afghanistan has two main categories of registered, non-governmental, not-for-profit organizations with legal entity status:

- Non-governmental Organizations (NGOs), which number 2091 (as of June 2014) and
- Associations, which number 4882 (as of June 2014).

This Note will provide information relating to both organizational forms.

Several other types of NPOs are also largely excluded from this Note. [\[1\]](#)

B. Tax Laws

The Income Tax Law establishes a category of exempt organizations, which includes organizations that meet the following criteria:

- The organization must be established under the laws of Afghanistan;
- The organization must be organized and operated exclusively for educational, cultural, literary, scientific, or charitable purposes; and
- Contributors, shareholders, members or employees either during the operation or upon dissolution of the organization mentioned in sub-paragraphs 1 and 2 of this paragraph must not benefit from the organization.

Qualifying organizations are exempt from taxation on contributions received and on income from “necessary operations.”

The Customs Law does not exempt NPOs per se, but does exempt certain categories of goods, including those imported by private foreign and international relief and development agencies and certain other goods, upon recommendation and approval of the Minister of Finance and the Council of Ministers respectively.

II. Applicable Laws

- [The Constitution of the Islamic Republic of Afghanistan](#), Official Gazette no. 818/2004
- [Law on Associations](#), Official Gazette no. 1114
- [Law on Non-Governmental Organizations](#), Official Gazette no. 857/2005
- Decree on Dissolution Commission
- [Income Tax Law](#), Official Gazette no. 976/2009
- Customs Law, Official Gazette no. 847/2005
- Labor Law, Official Gazette no. 966/2008
- [Civil Code of 1977, Madani Qanun Decree no. 1458, issued 1 May 1977](#)

III. Relevant Legal Forms

A. General Legal Forms

There are two primary forms of registered, not-for-profit organizations in Afghanistan: Non-Governmental Organizations (NGOs) and associations.

NGOs are defined broadly in the 2005 Law on Non-Governmental Organizations (NGO Law) to include both domestic and foreign non-governmental organizations. A domestic NGO is simply "a domestic non-governmental organization which is established to

pursue specific objectives" (NGO Law Article 5(2)). To establish a domestic NGO, the Law requires at least two founders, who may be domestic or foreign, natural or legal persons, at least one of whom has a residence and exact address in Afghanistan (NGO Law Article 11(1)). In order to be registered, NGOs must submit an application to the Ministry of Economy (NGO Law Article 4). As of June 2014 the NGO Department within the Ministry of Economy reported that 2,091 NGOs (including both foreign and domestic) were registered in Afghanistan. [2]

The 2013 Law on Associations addresses a more specific category of organization: As defined by the Law, associations are "communities, unions, councils, assemblies and organizations which are voluntarily established by a group of real or legal persons as non-profit, non-political entities, in accordance with this law" (Law on Associations Article 2(1)). In contrast to NGOs, associations must seek registration with the Ministry of Justice. While the Law on Associations includes no requirement for minimum membership, in practice the Ministry may require that associations consist of no fewer than 11 founding members, as this was the rule under the previous Law on Social Organizations. Foreign citizens, stateless persons, and youth under the age of 18 are restricted from serving as founders of associations (Law on Associations Article 7). The Law on Associations requires first-time applicants to pay a registration fee of 10,000 AFN (approximately USD 180) (Law on Associations Article 13(3)).

The Law on Associations implies that registration is mandatory – that is, that associations may not carry out activities as an unregistered group: Specifically, Article 14 states that "[a]n association initiates its work after receiving a registration certificate." Article 13(3) of the Law limits the validity of an association's registration certificate to just three years, at which time it must be extended. [3] As of June 2014 the Ministry of Justice reported that 4,882 were registered in Afghanistan, including 1,400 associations who have renewed their registration under the new law since September 2013. [4]

B. Public Benefit Status

The Law on Non-Governmental Organizations does not create a public benefit status for NGOs. At present, NGOs are able to pursue any legal purpose, whether mutual benefit or public benefit in nature. (See also [Law on NGOs](#) Article 8, which enumerates functions that are prohibited for NGOs.) Similarly, the Law on Associations enables associations to pursue a broad range of purposes, including both mutual benefit and public benefit purposes.

Afghanistan follows the U.S. approach by creating a category of "tax exempt organizations" in the Income Tax Law. Article 10 of the Income Tax Law restricts "exempt organization" status to those organizations "organized and operated exclusively for educational, cultural, literary, scientific, or charitable purposes." Organizations dedicated to these public benefit purposes and meeting other mandatory criteria are exempt from taxation on "contributions received and income from the necessary operations" ([Income Tax Law](#) Article 10).

IV. Specific Questions Regarding Local Law

A. Inurement

NGOs are bound by the non-distribution constraint and by a prohibition against private inurement, as follows:

- An NGO cannot distribute its assets, income or profits to any person, except for the working objectives of the organization ([NGO Law](#) Article 5(5)).
- An NGO cannot use its assets, income or profits to provide private benefits, directly or indirectly, to any founder, member, director, officer, employee, or donor of the organization, or their family members or relatives ([NGO Law](#) Article 5(5)).

Associations are likewise limited to spending assets only for achieving the goals of the organization (Law on Associations Article 16(3)). The Law also prohibits the distribution of assets, upon dissolution, to individual founders, their family members or relatives (Law on Associations Article 22). There is no direct statement prohibiting private inurement more broadly.

B. Proprietary Interest

The Law on NGOs provides that an NGO may use its assets for accomplishing its not-for-profit purposes and goals, and that movable and immovable property shall be registered in the name of the organization. Even more directly, the Law states that the organization's "movable and immovable properties may not be purchased or registered in the name of the founders, board members, employees, or their close relatives" ([NGO Law](#) Article 26(3)).

The Law on Associations does not address the issue of proprietary interest directly, but instead refers to the Civil Code (Law on Associations Article 25). The Civil Code, in turn, requires the association "to deposit cash in the name of the association at a bank or other place upon the permission of the authority concerned" and restricts the use of organizational property "for achieving the definite aims set", but allows "[t]he remaining part" to be "invested in safe areas provided it would not affect its original activities" ([Civil Code](#) Articles 414-415). Moreover, upon leaving the organization, an association member shall be "deprived of the property of the association unless otherwise provided by the law" ([Civil Code](#) Article 407).

C. Dissolution

In the case of dissolution, an NGO's remaining assets "shall be distributed to an organization with similar activities, with the approval of the High Evaluation

Commission. If there are no such organizations, the movable and immovable properties belong to the government" ([NGO Law](#) Article 36.1). The High Evaluation Commission is composed of representatives from the Ministries of Economy, Foreign Affairs, Finance, Justice, and Labor and Social Affairs (NGO Law Article 17). Article 36.2 provides additional protection by prohibiting the remaining assets from being distributed "to any ... founders, members, directors, officers, employees, donors and/or their relatives." In addition, a presidential decree issued in 2005/2006 established a Commission to address the liquidation process of NGOs. Members of the Commission include representatives from the Ministries of Foreign Affairs, Finance, Economy, Interior, Justice, and Labor and Social Affairs; as well as from the Control and Audit Department, Attorney General's Office, Intelligence Department, and the NGO coordination bodies.

According to the Ministry's NGO Department, from 2005 to June 2014, the Ministry has terminated a total of 1,500 local and 130 international NGOs. The main reason for termination and dissolution is the failure to report to the Ministry as required by the NGO Law. In addition, some international NGOs voluntarily terminate operations when their projects end.

In the case of voluntary dissolution of an association, any remaining assets will be transferred to a recipient identified in its governing statute, under the supervision of the Ministry of Justice. Where no recipient is identified, the assets will be transferred to an association with similar goals. Where no such association exists, the assets will be distributed to related ministries and departments (Law on Associations Article 19). In the case of forced dissolution, the court shall assign three persons, including representatives from the Ministries of Finance and Justice and civil society, to handle the liquidation of assets in accordance with the association's governing statute. The court may decide to transfer remaining assets to another association with similar goals, or, if there is no such association, to related ministries (Law on Associations Article 21). The Law also prohibits the distribution of assets, upon dissolution, to individual founders, their family members, or relatives (Law on Associations Article 22).

D. Activities

1. General Activities

The NGO Law defines domestic NGOs as those "established to pursue specific objectives" ([NGO Law](#) Article 5.2), and NGOs are generally permitted to undertake any lawful, legitimate activities. Article 8 of the Law, however, lists prohibited activities and notably includes "[p]articipation in construction projects and contracts." Article 8.8 provides an exception to the prohibition: "In exceptional cases, the Minister of Economy may issue special permission at the request of the Chief of the Diplomatic Agency of the donor country." This provision is reportedly being implemented, such that several embassies and donor organizations have concluded a memorandum of understanding with the Ministry of Economy in order to allow for participation in construction projects. Nonetheless, the prohibition has had a definite impact on the

many NGOs engaged in community development projects that include a construction component.

Although the 2005 Law on NGOs is a significant improvement over the previous legal framework, it does allow the Government of Afghanistan to exercise considerable control over the operation of NGOs. For instance, Article 23 requires that NGOs, "prior to the commencement of work," must submit "committed project documents" to the relevant line Ministry for examination and to the Ministry of Economy for verification and registration. This provision is reportedly being implemented.

Associations are permitted by law to pursue a wide range of purposes, including material and spiritual goals; professional, corporate and vocational goals; ethnic, corporate and regional goals; and a common and determined goal (Law on Associations Article 2). Associations may not perform activities that are against the national interest, political activities, or activities that are beyond the scope of their governing statutes (Law on Associations Article 5).

2. Public Benefit Activities

As stated above, NGOs are generally permitted to undertake any legitimate activities, whether mutual benefit or public benefit. The NGO Law does not limit the ability of NGOs to pursue public benefit activities, except to the extent that the prohibition against construction activity (as stated above) may affect community development and other kinds of projects such as building schools and health clinics.

Similarly, the Law on Associations allows associations to pursue any mutual and public benefit activities.

3. Economic Activities

Under the NGO Law, "an organization can perform economic activities to reach the statutory not-for-profit goals of the organization." The Law also specifies that the income derived from the economic activities "may only be used to carry out the specified goals of the organization" ([NGO Law](#) Article 22(1) and 22(2), respectively).

The Law on Associations neither specifically allows nor prohibits the carrying out of economic activities. The Civil Code specifies that an association "may not carry on any financial business" (Civil Code Article 418), which could be interpreted to restrict economic activity for associations. But there is no evidence that such a restriction is being enforced; indeed, in practice, associations are performing economic activities without interference from government.

4. Political Activities

Among the illegal activities listed in Article 8 of the [NGO Law](#) are "(1) Participation in political activities and campaigns" and "(2) Payment to and fundraising for political parties and candidates." Although the Law does not define "political activities," the context suggests that the phrase refers to campaigning and electioneering, as opposed to public advocacy.

Somewhat similarly, Article 5(2) of the Law on Associations restricts associations from performing “political activities,” without further defining what such activities consist of. The expectation is that the phrase is intended to limit campaigning and electioneering and not public advocacy.

E. Discrimination

Article 22 of the Constitution states that "Any kind of discrimination and privilege between the citizens of Afghanistan are prohibited" and that "The citizens of Afghanistan - whether man or woman - have equal rights and duties before the law." No laws, however, address discrimination in private education, and nothing in the NGO Law or Law on Associations specifically addresses discrimination.

F. Control of Organization

Under the [NGO Law](#), it is possible that an NGO may be controlled, perhaps indirectly, by a for-profit entity or by an American grantor charity (which requires that the charity specifically provide as such in the affidavit).

V. Tax Laws

A. Tax Exemptions

Afghanistan’s Income Tax Law, enacted in 1965 and amended in 2005, was modeled on U.S. tax law. [\[5\]](#) The Income Tax Law defines a category of "Tax Exempt Organizations" (Income Tax Law Article 10). To qualify as an exempt organization, an organization must be (1) "established under the laws of Afghanistan," (2) "organized and operated exclusively for educational, cultural, literary, scientific, or charitable purposes," and (3) "[c]ontributors, shareholders, members or employees either during the operation or upon dissolution of the organization ... must not benefit from the organization." The contributions received and income from the necessary operations of qualifying organizations are exempt from taxation ([Income Tax Law](#) Article 10(1)).

The Afghan Ministry of Finance has made available an [Income Tax Manual](#), which provides guidance on application procedures for exempt status, as well as the application form. The Income Tax Manual underscores the fact that it is the Ministry of Finance, and not the organization itself, that determines whether or not the organization qualifies for the exemption. [\[6\]](#)

B. Incentives for Philanthropy

There are currently no tax incentives available for either individual or corporate donors making cash or in-kind contributions to NPOs in Afghanistan.

C. Customs Duties

The Customs Law does not provide for exemptions from customs duties for NPOs per se, but does exempt goods mentioned in Chapter 5, Article 27(2) of the Law. Significantly, the Law offers a blanket exemption for "[g]oods provided for government projects funded by loans or imported into the country by or for public and private foreign and international relief and development agencies approved by the government" (Customs Law Article 27(2)(5)). Thus it appears that the imported goods of many foreign organizations - as private relief and development agencies - may qualify for exemptions.

In addition, NPOs may be able to benefit from a few general exemptions, such as those covering fuel and certain medical goods. Finally, the Law provides the possibility of an exemption to other goods "upon recommendation of Minister of Finance and approval of Council of Ministers as required" (Customs Law Article 27(2)(18)).

IV. Knowledgeable Contacts

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Footnotes

[1] An assessment prepared by Counterpart International, Inc. concluded that, as was the case before the recent legal reforms, two additional, broad categories of civil society organization exist in Afghanistan. The remainder of this Note will not address them, but we list them here: First, "village organizations" are local aid committees formed by donors to advise or oversee the administration of a particular form of assistance. They include community development councils, educational committees, and other development committees. The number of village organizations has increased dramatically in recent years due to the Afghan Government's National Priority Programs. Foremost among the National Priority Programs is the National Solidarity Program, a mechanism intended to provide block grants of up to \$200 per family to communities for infrastructure-related community improvement projects. Applications for the block grants must come through community development councils (CDCs); in response, more than 5,000 CDCs have been created. The CDCs register with the Ministry for Rural Rehabilitation and Development. While this "registration" supports the National Solidarity Program mechanism, the "registration" is not based on specific legislation.

Second, “Shuras” or “Jurgas” are traditional local councils that villages or tribes establish themselves, usually for the purpose of self-government but also to represent a community’s interests to other parts of society. Shuras/Jurgas are local decision-making bodies that are arguably the most traditional building blocks of civil society in Afghanistan. They generally consist of the village elders and operate on an informal basis (that is, as unregistered groups). Any Shura that wants to become eligible for a grant will generally register as a social organization or an NGO under the respective laws. (See *Afghan Civil Society Sector Assessment Report 2005*, prepared by Counterpart International and available on Counterpart’s website.)

This Note also does not address political parties, professional unions, endowments (foundations), and institutes.

[2] The NGO Department within the Ministry of Economy recently established its own website: <http://moec.gov.af/en/page/1209>.

[3] There is some ambiguity as to whether, upon extension, the association must pay another 10,000 AFN fee for the renewed registration certificate; such a requirement could impose a formidable burden on an association’s continuing operations.

[4] Based on a Ministry of Justice “Proposal,” which reportedly does have legal effect, the Ministry of Justice can issue permission for interested foreign social organizations to operate in Afghanistan until such time as the Law on Social Organizations is approved by the Afghan National Assembly. It is important to note that the Ministry Proposal does not apply to foreign individuals but to the ability of foreign social organizations to set up branch offices in Afghanistan. According to information received from the Head of the Department of Political Parties and Social Organizations, no foreign social organization has yet been registered. (<http://www.moj.gov.af>)

[5] For more information, please see the "Summary of Significant Changes with the 2005 Income Tax Law" at <http://www.mof.gov.af/download/en/1203935635.doc>.

[6] The Income Tax Manual is available at <http://www.mof.gov.af/?p=info&nid=10>.

See more at: <http://www.cof.org/content/afghanistan#sthash.et4B7gtx.dpuf>