

# Afghanistan

Current as of January 2014

Comments related to any information in this note should be addressed to [Brittany Gabel](#).

## Table of Contents

- I. [Summary](#)
  - A. [Types of Organizations](#)
  - B. [Tax Laws](#)
- II. [Applicable Laws](#)
- III. [Relevant Legal Forms](#)
  - A. [General Legal Forms](#)
  - B. [Public Benefit Status](#)
- IV. [Specific Questions Regarding Local Law](#)
  - A. [Inurement](#)
  - B. [Proprietary Interest](#)
  - C. [Dissolution](#)
  - D. [Activities](#)
  - E. [Discrimination](#)
  - F. [Control of Organization](#)
- V. [Tax Laws](#)
  - A. [Tax Exemptions](#)
  - B. [Incentives for Philanthropy](#)
  - C. [Customs Duties](#)
  - D. [Knowledgeable Contacts](#)

## 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 approximately 1550; and
- Associations, which number approximately 1700.

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
- Ministry of Justice Proposal, issued 28 October 2006
- [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." (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. (Article 11(1)) To become registered, NGOs must apply to the Ministry of Economy. (Article 4) As of April 2012, the NGO Department within the Ministry of Economy reported that approximately 1,550 NGOs (including both foreign and domestic) were registered in Afghanistan [2].

The Law on **Associations** (September 2013) addresses a more specific category of organization. "Associations refer to 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." (Article 2(1)) Associations must seek registration with the Ministry of Justice. While the Law on Associations includes no requirement for minimum membership, the Ministry, in practice, may require that associations consist of no fewer than 10 founding members, since this was the prior rule under the Law on Social Organizations. Foreign citizens, stateless persons, and youth under the age of 18 are restricted from serving as founders of Associations. (Article 7) The Law on Associations requires first-time applicants to pay a registration fee of 10,000 AFN (approximately 180 USD). (Article 13(3)) Finally, the Law on Associations implies that registration is mandatory – that is, that associations cannot carry out activities as an unregistered group; specifically, Article 14 expressly states that "An association initiates its work after receiving a registration certificate." The Law on Associations, in Article 13(3), limits the validity of an association's registration certificate to just three years, at which time it must be extended. There is concern that upon extension, the association must pay another 10,000 AFN fee for the renewed registration certificate; such a requirement could pose a formidable burden on an association's continuing operations.

## **B. Public Benefit Status**

The Law on Non-Governmental Organizations does not create a public benefit status for NGOs. Instead, NGOs currently are able to pursue any legal purpose (whether mutual benefit or public benefit). (See also [Law on NGOs](#), Article 8: enumerating functions forbidden to 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 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 this issue directly, but instead makes reference 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" ([Civil Code](#), Article 414) and restricts the use of organizational property "for achieving the definite aims set" (Article 415), but allows "[t]he remaining part" to be "invested in safe areas provided it would not affect its original activities" (Article 415). Moreover, upon leaving the organization, a 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, according to a presidential decree issued in 2005/2006, a Commission was established 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; the Control and Audit Department, the Attorney General's Office, the Intelligence Department; and the NGO coordination bodies.

Notably, in May of 2010, the Ministry of Economy terminated the registration of 172 NGOs, along with another 149 NGOs in November 2010, due to the failure of these organizations to submit reports over a two-year period. According to the Ministry's NGO Department, as of April 2012, the Ministry had terminated a total of 847 local and 92 international NGOs.

In the case of voluntary dissolution of an association, 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. (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. (Article 21) The Law also prohibits the distribution of assets, upon dissolution, to individual founders, their family members or relatives (Article 22).

## **D. Activities**

### **1. General Activities**

NGOs are generally permitted to undertake any lawful, legitimate activities. The Law defines domestic NGOs as those "established to pursue specific objectives." ([NGO Law](#), Article 5.2) Article 8, however, lists illegal activities and includes, notably, "Participation in construction projects and contracts." This prohibition has had a definite impact on the many NGOs engaged in community development projects that include a construction component. Article 8.8 provides an escape clause: "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; 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.

Although the 2005 Law on NGOs is a significant improvement over the ambiguity of the prior legal framework, it does allow the Government of Afghanistan to exercise considerable control over the operation of NGOs. In particular, Article 23 requires NGOs, "prior to the commencement of work," to 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 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. (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 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 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. [\[4\]](#) The Income Tax Law defines a category of "Tax Exempt Organizations." (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. [\[5\]](#)

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