



Operational Guidelines for Associations in Afghanistan

Guidelines on the Rights and Obligations of Associations Under the
Law on Associations and Other Relevant Legal Measures

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JANUARY 2021

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Preamble

Afghanistan adopted a new constitution in 2004. The Constitution of Afghanistan introduces the freedom of speech, freedom of association and freedom of peaceful assembly, which are the core freedoms for the development of civil society in a democratic state:

Freedom of expression is inviolable. Every Afghan has the right to express thoughts through speech, writing, or illustration or other means by observing the provisions of this Constitution. Every Afghan has the right to print or publish topics without prior submission to the state authorities in accordance with the law. Directives related to printing house, radio, television, press, and other mass media, shall be regulated by law. (The Constitution of Afghanistan, Article 34)

The citizens of Afghanistan have the right to form social organizations for the purpose of securing material or spiritual aims in accordance with the provisions of law. (The Constitution of Afghanistan, Article 35)

The citizens of Afghanistan have the right to un-armed demonstrations for legitimate peaceful purposes in accordance with the law. (The Constitution of Afghanistan, Article 36)

In September 2013, President Karzai endorsed a new Law on Associations. The new Law on Associations replaced the Social Organization Law passed in 2002¹. Endorsement of this new law marked the culmination of one year of intense advocacy efforts by social organizations. Under the new law, associations (social organizations) have the right to pursue any objectives articulated in their governing statutes. Associations have the right to a diverse range of resources, including donations and gifts from domestic and foreign sources. The new Law on Associations regulates the affairs related to the establishment and activities, rights, obligations and dissolution of associations. (*The Law on Associations, Article 1*) The law affirms that the Ministry of Justice is the only registration authority for associations in Afghanistan. Within the Ministry of Justice, the Department of Coordination, Assessment and Registration of Social Organizations and Political Parties is the registration authority for associations. (*The Law on Associations, Article 13.1*) The law requires associations to submit their revenue and expenditure report at the end of their fiscal year to the Ministry of Justice. The fiscal year for associations is the Afghan calendar year, which begins and ends on March 20. (*The Law on Associations, Article 18*) In addition to the Law on Associations, associations must also observe the provisions of the Afghan Constitution and other applicable legislation in fulfillment of their goals. (*The Law on Associations, Article 3*)

¹ Official gazette No. 804, January 12, 2003.

According to Article 13.2 of the Law on Associations, the establishment criteria and registration procedures of associations are regulated through a separate regulation, the Regulation on Procedure of Establishment and Registration of Associations, passed in 2014, Official Gazette numbered 1138.

In December 2017, President Ashraf Ghani endorsed some amendments to the Law on Associations after adopted by the National Assembly. The amendments addressed issues related to the establishment, registration, monitoring and evaluation, reporting and sources of income of associations.

The adopted amendments provided that both real persons and corporate entities can establish associations and defined an association as a social non-political and not-for-profit organization of real persons and corporate entities. In addition, several categories of associations were introduced, including community, union, council, assembly, organization, foundation, entity, federation and confederation. *(The Adopted Amendments to Law on Associations – 2017, Article 2)*

The founders of associations, unions, councils, assemblies, foundations, organizations and entities which are established for professional/scholarly purposes must have university (bachelor) degrees. Otherwise, they will not be registered under the law. *(The Adopted Amendments to Law on Associations – 2017, Article 7)* Government ministries and other government entities cannot transfer movable and immovable government properties to associations. *(The Adopted Amendments to Law on Associations – 2017, Article 16)* It is required that associations submit a report of their operations, movable and immovable properties, revenue and expenditure to the Ministry of Justice at the end of their fiscal year. *(The Adopted Amendments to Law on Associations – 2017, Article 18)* If an association fails to submit its operational report within six months after the end of the fiscal year to the Ministry of Justice, then the name of the association will be removed from the registration list, and its registration license will be revoked. *(The Adopted Amendments to Law on Associations – 2017, Article 18)* During monitoring, if it is recognized that the performance of the association is not in conformity with its statute and enacted laws, or that its office does not have a specific location, then the Department of Coordination, Assessment and Registration of Social Organizations and Political Parties of the Ministry of Justice must remove the name of association from the registration list and revoke its registration license. *(The Adopted Amendments to Law on Associations – 2017, Article 23)*

In March 2019, President Ashraf Ghani endorsed new amendments to the Law on Associations. The Ministry of Justice is already enforcing the amendments, although they are pending parliamentary approval under the Afghan legislative procedure.

The new amendments introduced new requirements:

- *The registration fee for an association is 10,000 AFGs. The registration license is valid for only three years, at which time the association must apply for renewal. (The Adopted Amendments to Law on Associations – 2019, Article 13.3)*
- *The Department of Coordination, Assessment, and Registration of Associations and Political Parties within the Ministry of Justice has a supervisory role over the associations' activities and the conformity of their activities with their statute and the enacted laws. (The Adopted Amendments to Law on Associations – 2019, Article 23)*
- *The association must maintain regular office hours and assign a person to the office. (The Adopted Amendments to Law on Associations – 2019, Article 23)*
- *The registration licenses of associations registered before the enforcement of these amendments remain valid until their expiration date. (The Adopted Amendments to Law on Associations – 2019, Article 26)*
- *Associations must submit their performance and financial reports at the end of the fiscal year to the Department of Coordination, Assessment, and Registration of Associations and Political Parties in the capital (Kabul) and to the provincial departments of Ministry of Justice in provinces. The report of tribal councils (a specific category of association), must be verified by the community and aldermen, and approved by the respective authorities, prior to submission to the Department of Coordination, Assessment, and Registration of Associations and Political Parties in the capital (Kabul) and to provincial departments of Ministry of Justice in provinces. (The Adopted Amendments to Law on Associations – 2019, Article 18.1-2)*
- *The name of the association will be removed from the registry if:*
 - (1) *It fails to submit its report within three months after the end of the fiscal year.*
 - (2) *It is determined during monitoring and evaluation that the association's performance contradicts the law's provisions and its respective statute.*
- *Its office doesn't have a specific address. (The Adopted Amendments to Law on Associations – 2019, Article 18.3)*
- *The registration license of an association will be revoked at the suggestion of the Department of Coordination, Assessment, and Registration of Associations and Political Parties and upon approval of the Minister of Justice. (The Adopted Amendments to Law on Associations – 2019, Article 18)*
- *An association must indicate its geographical area of operation in relation to its goals. (The Adopted Amendments to Law on Associations – 2019, Article 10)*

- *Finally, a charity association must deposit two million AFN in its bank account to receive its registration license. (The Adopted Amendments to Law on Associations – 2019, Article 17)*

As of November 2021 associations are regulated by *the Law on Associations - 2013, the Regulation on Procedure of Establishment and Registration of Associations - 2014, the Adopted Amendments to the Law on Associations - 2017, and the Endorsed Amendments to the Law on Associations - 2019.*

In order to enhance understanding of the legal framework governing the “life-cycle” of associations, ICNL has prepared these operational guidelines for associations based on the *Law on Associations, the Regulation on Procedure of Establishment and Registration of Associations, the Adopted Amendments on Law on Associations – 2017 and 2019*, and other related laws and regulations in Afghanistan. The Guidelines seek to explain the relevant laws in a language that is easily understood and provide practical guidance to associations.

The Guidelines address the definition of associations; legal existence of associations; structure and governance; prohibition on direct or indirect private benefits; activities of associations; fundraising; reporting and supervision; and tax preferences.

As of December 2020, the Ministry of Justice reported that 3935 associations were registered in its Department of Coordination, Assessment, and Registration of Associations and Political Parties.

ICNL would welcome comments on the content of these Guidelines. Further information on civil society legal issues is available through separate publications, including the Commentary on the NGO Law, NGO Registration Brochure, NGO Reporting Guidelines, Guidelines on Legal Framework Affecting CSOs Funding Sources, Registration Brochure for Associations, Operational Guidelines for NGOs and the Commentary on Law on Associations. For soft copies of these Guidelines and other ICNL publications, please visit our website at www.icnl.org.

CHAPTER ONE:

Associations

Does International Law Protect Associations?

The Universal Human Rights Declaration (UHRD) (1948) and the International Covenant on Civil and Political Rights (ICCPR) recognize the freedom of association. Afghanistan signed and ratified the International Covenant on Civil and Political Rights (ICCPR) on 24 Jan 1983.² The International Covenant on Civil and Political Rights (ICCPR) in Article 22 stipulates that:

- (1) Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.*
- (2) No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (order public), the protection of public health or morals or the protection of the rights and freedoms of others. This Article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.*
- (3) Nothing in this Article shall authorize States Parties to the International Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.*

In addition, *the Universal Human Rights Declaration (UHRD) states in Article 20 that:*

- *Everyone has the right to freedom of peaceful assembly and association.*
- *No one may be compelled to belong to an association.*

Does the Afghan Constitution Recognize Associational Rights?

In accordance with the ICCPR and UHRD, *the Constitution of Afghanistan* passed in 2004 by the Constitutional Loya Jirga³, recognizes the freedom of association in article 35:

The citizens of Afghanistan have the right to form social organizations for the purpose of ensuring material or spiritual aims in accordance with the provisions of law.

²http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en

³Great Assembly of Constitution

Based on this provision of the Afghan Constitution, there are currently two laws which regulate the affairs of civil society organizations: (1) *the Law on Associations (2013)* and (2) *the Law on NGOs (2005)*. Here we focus only on *the Law on Associations*.

What Laws Are Relevant for Associations?

In order to ensure an enabling environment for civil society organizations in Afghanistan, national legislation is necessary to ‘actualize’ the rights contained in the Afghan Constitution and protected by international law. There are a series of laws and regulations that regulate the affairs of associations directly and indirectly. In addition to *the Law on Associations*, *the Regulation on Procedure of Establishment and Registration of Associations*, and *the Amendments to Law on Associations*, associations are subject to some other laws and regulations as well. Here is a list of the key national laws that impact on associations:

- *The Constitution of the Islamic Republic of Afghanistan, Official Gazette no. 818/2004*
- *Law on Associations, Official Gazette no. 2013/1114*
- *Law on Non-Governmental Organizations, Official Gazette no. 857/2005*
- *Regulation on Procedure of Establishment and Registration of Associations, Official Gazette 2014/1138*
- *Income Tax Law, Official Gazette no. 976/2009*
- *Customs Law, Official Gazette no. 1235 of 2016*
- *Labor Law, Official Gazette no. 966/2008*
- *Civil Code of 1977, Madani Qanun Decree no. 1458, issued 1 May 1977*
- *Amendments to Law on Associations, Official Gazette no. 1275/2017*
- *Amendments to Law on Associations, Official Gazette no. 1339 of 2019*

In addition, associations, as legal entities, are subject to all other laws applicable to legal subjects, such as *the Criminal Code* and *Procurement Law*.

Associations shall observe the basic principles of the sacred religion of Islam, provisions of the Constitution, and other enacted laws in the fulfillment of their goals. (The Law on Associations, Article 3)

What Is “Association” in the Law on Associations?

The Adopted Amendments to the Law on Associations provide that both real persons and corporate entities can establish associations and defined an association as a social non-political and not-for-profit organization of real persons and corporate entities. In addition, several categories of associations were introduced including:

- (1) *“Community”, which is a voluntary gathering of real persons and/or corporate entities, established to ensure material and spiritual goals including scientific, literary and vocational goals.*
 - (2) *“Union”, which is a voluntary union of corporate entities organized for ensuring common and lawful professional, corporate and vocational goals.*
 - (3) *“Council”, which is a voluntary union of real persons for ensuring common ethnic, corporate and regional goals.*
 - (4) *“Assembly”, which is a gathering of real persons and/or corporate entities for a common and determined goal.*
 - (5) *“Organization”, which is a voluntary gathering of real persons established to pursue lawful professional, scientific, literature, vocational and/or charity purposes.*
 - (6) *“Foundation”, which is a voluntary gathering of real persons in order to pursue scholarly, literary, technical and charity-related purposes.*
 - (7) *“Entity”, which is an association established in accordance with the law, in order to pursue social activities. This is a catch-all category that addresses lawful registration of all types of associations not indicated in the law.*
 - (8) *“Federation”, which is a voluntary alliance of associations which are established under the Law on Associations.*
 - (9) *“Confederation”, which is the alliance of federations in order to pursue joint purposes.*
- (The Adopted Amendments to Law on Associations – 2017, Article 2)*

CHAPTER TWO:

Legal Existence of Associations

Who Can Establish an Association?

Afghan citizens, who have reached 18 years of age, are not convicted of a felony and are not deprived of civil rights based on the decision of a competent court, may establish associations in accordance with the provisions of *the Law on Associations and Regulation on Procedure of Establishment and Registration of Associations*. (*The Law on Associations, Article 7 and the Regulation on Procedure of Establishment and Registration of Associations, Article 7*)

The law limits eligible founding members to Afghan citizens, and thereby excludes foreigners, refugees, stateless persons and others in Afghanistan from forming associations. In addition, the law restricts the ability of minors to serve as founding members of associations.

How Many People Are Required by Law to Establish an Association?

The Law on Associations does not specify the required minimum number of founders for an association, but *the Regulation on Procedure of Establishment and Registration of Associations* requires the existence of not less than 10 founding members in order to establish an association. (*The Regulation on Procedure of Establishment and Registration of Associations, Article 6.2*)

Who May Serve as a Founder?

The adopted amendments provide that both real persons and corporate entities can establish associations and defined an association as a social non-political and not-for-profit organization of real persons and corporate entities. (*The Adopted Amendments to Law on Associations – 2017, Article 2.1*)

What Documents are Required to Establish an Association?

To establish an association, the founders need to prepare the following documents:

- (1) *Registration application, which has to be signed by all founders, who should not be less than ten people;*
- (2) *The statute of the association, approved and signed by the founders;*
- (3) *The founders' identification chart (should not be less than ten individuals), including a copy of the tazkera (identification card) of each of the founders;*
- (4) *Finance Committee identification chart (at least three individuals), including a copy of the tazkera (identification card) of each of the three finance committee members.*

- (5) *Board members' identification chart (at least three individuals), including a copy of their tazkera (identification card);*
- (6) *A copy of the logo of the association, with a few words of explanation regarding the logo;*
- (7) *The address of the main office of the association with the telephone numbers of the director and deputy of the association;*
- (8) *The logo of association; and*
- (9) *For associations pursuing professional/scholarly purposes: specifically, the founders of associations, unions, councils, assemblies, foundations, organizations and entities should provide a copy of their university bachelor's degrees. (The Adopted Amendments to Law on Associations – 2017, Article 7)*

Note: The board of the association should also include the director, deputy and secretary of association.

(The Regulation on Procedure of Establishment and Registration of Associations, Article 6)

Which Governmental Authority Is Responsible for Registration?

The Ministry of Justice is responsible for the registration of associations in Afghanistan. *(The Law on Associations, Article 13.1)*

The Department of Coordination, Assessment and Registration of Associations and Political Parties reviews the registration application and statute of the association, to ensure their conformity with provisions of Afghanistan Constitution, the Law on Associations and the Regulation on Procedure of Establishment and Registration of Associations and facilitates the affairs related to the registration of associations and issuance of registration licenses. *(The Regulation on Procedure of Establishment and Registration of Associations, Article 4)*

How Can an Association Be Registered?

An association should submit a registration application signed by all founders to the Ministry of Justice in Kabul or to its provincial departments in the provinces. *(The Law on Associations, Article 13.1 and 13.4 and the Regulation on Procedure of Establishment and Registration of Associations, Article 6)*

What Information and Documents Are Required for Registration?

The following documents are required for registration of an association:

- (1) *The registration application to the Ministry of Justice, signed by all founders and approved (signed and stamped) by the Minister of Justice;*

- (2) *The statute approved and signed by the founders;*
- (3) *The founders' identification chart (not less than 10 individuals);⁴*
- (4) *A copy of the tazkera (identification card) of each of the founders;*
- (5) *The finance personnel identification chart (at least 3 individuals);⁵*
- (6) *A copy of the tazkera (identification card) of each of the financial personnel;*
- (7) *The Board members' identification chart (at least three individuals);⁶*
- (8) *A copy of the tazkera (identification card) of each of the board members;*
- (9) *A copy of the logo of the association with a few words of explanation about the logo;*
- (10) *The address of the main office of the association, with the telephone numbers of the director and deputy of the association; and*
- (11) *For associations pursuing professional/scholarly purposes: specifically, the founders of associations, unions, councils, assemblies, foundations, organizations and entities should provide a copy of their university bachelor's degrees. (the Adopted Amendments to Law on Associations – 2017, Article 7)*

(The Regulation on Procedure of Establishment and Registration of Associations, Article 6)

Note: The identification charts of the founders, board members and finance personnel are available at <http://moj.gov.af/fa>.

Are There Any Additional Documents for Associations Established for Scholarly Purposes?

A new restriction was introduced for associations established for professional/scholarly purposes: specifically, the founders of associations, unions, councils, assemblies, foundations, organizations and entities which are established for professional/scholarly purposes must have university bachelor's degrees. Otherwise, they will not be registered under the law. *(The Adopted Amendments to Law on Associations – 2017, Article 7)*

Are There Any Asset Requirements for a New Association?

There is generally no requirement for associations to have assets prior to registration. However, a charity association must deposit two million AFN in its bank account to receive its registration license. *(The Amendments to the Law on Associations – 2019, Article 17)*

⁴http://moj.gov.af/Content/files/jadwal_moseseen.pdf

⁵http://moj.gov.af/Content/files/masoolien_mali.pdf

⁶http://moj.gov.af/Content/files/List_haveat_modeera.pdf

Can A Person Work for More Than One Association as a Director at the Same Time?

The director of an association cannot work as a director of another association at the same time. (*The Regulation on Procedure of Establishment and Registration of Associations Article 17*)

Where Should an Association Submit the Registration Application?

An association should submit a registration application to the Ministry of Justice in Kabul or to its provincial departments in the provinces. (*The Law on Associations, Article 13.1 and 13.4 and the Regulation on Procedure of Establishment and Registration of Associations, Article 6*)

Once the founders receive the registration application approved and signed by the Minister, they should submit all the required documents, explained above, to the Department of Political Parties and Associations within the Ministry of Justice.

The Department of Political Parties and Associations will review the documents and will inform the applicant if there are any problems or concerns with the application.

If the documents are accepted, the Department of Political Parties and Associations will submit two official letters to the founders; one official letter to the Ministry of Finance, Revenue Department in order to secure a Tax Identification Number (TIN) for the association; and another official letter to Attorney General's Office to verify that the founders have a clear background and are not deprived of any social rights.

Once the association has received the Tax Identification Number (TIN) from the Revenue Department of the Ministry of Finance and the official letter signed by the Attorney General's Office, then the applicant must submit both official letters and the TIN to the Department of Political Parties and Associations.

The Department of Political Parties and Associations will then ask all founders to come to this department in order to verify the accuracy of their identification numbers and signatures.

How Long Should the Registration Process Take?

In the Law on Associations, there is no fixed time period within which the government must act on the registration application of an association. According to the Regulation on Procedure of Establishment and Registration of Associations, however, the Ministry of Justice must register an association within 15 days from the date the application is submitted, after reviewing its documents. (*The Regulation on Procedure of Establishment and Registration of Associations, Articles 8.2 and 9.1*)

What Happens if the Registration Application Is Approved?

Once the registration application is approved and all the documents are completed, the association will receive its license and may initiate its work. (*The Law on Associations, Article 14*)

What Happens if the Registration Application Is Refused?

In case the application for establishment and registration is rejected, the Ministry of Justice has to provide written reasons to the applicant. If the applicant is not convinced, he/she can appeal to a competent court. (*The Regulation on Procedure of Establishment and Registration of Associations, Article 11*)

On What Grounds Can the Ministry Deny Registration?

The registration application may only be denied if there is a problem with the name of the association (*The Law on Associations, Article 8*); its founders are deprived of social rights, based on the review of the Attorney General's Office (*The Penal Code, Articles 112 -113*); its statute is not in accordance with the Law on Associations (*The Law on Associations, Articles 4 and 10.2*); or its statute contains goals/activities that violate existing laws (*The Law on Associations, Article 10.2*).

In addition, to allow the applicant to revise defects in the application documents, the Ministry of Justice can reject the application documents in the following cases:

- (1) *Lack of conformity of the goals of association with the Law on Associations;*
- (2) *Mismatch of the name of association with its goals and duties;*
- (3) *Similarity of the name of association with the name of an association already registered; or*
- (4) *Failure to accurately complete the form attached in this regulation.*

(*The Regulation on Procedure of Establishment and Registration of Associations, Article 10.1*)

Once the registration application is rejected, the applicant must revise the documents within 15 days after the date of rejection and submit the revised documents to the Ministry of Justice. Otherwise, the application will be considered rejected.

(*The Regulation on Procedure of Establishment and Registration of Associations, Article 10.2*)

What Happens if There Is Problem with The Statute, Founders and/or Name of the Association?

The application will be rejected where there is a problem with conformity of the goals of the association with the Law on Associations; the name of the association mis-matches its goals and duties; the name of association is similar to the name of

another association registered in Ministry of Justice; and the forms for founders, board members and/or financial committee members are filled out inaccurately.

The applicant must revise the documents within 15 days after the date of rejection and submit the revised documents to the Ministry of Justice. Otherwise, the application will be considered rejected.

(The Regulation on Procedure of Establishment and Registration of Associations, Article 10)

Is There a Registration Fee?

Following approval of the registration application and completion of the registration procedure, the founders must pay 10,000 AFNs for a three-year license. This license is only valid for three years and after three years the association must extend its license. *(The Law on Associations, Article 13.3)* It is worth noting that this 'license extension process' is not an automatic renewal upon payment of the fee; instead, it is a renewed application process.

The fee for extension of the license is a separate requirement. The registration license will be extended 30 days prior to its expiration date upon payment of 5,000 AFN after every three years.

(The Regulation on Procedure of Establishment and Registration of Associations, Article 9.3)

The registration certificate of an association will be issued by the Ministry of Justice and or by a person who is authorized by the Minister. *(The Amendments to the Law on Associations - 2019, Article 13.3)*

What If the Registration License Is Not Extended Within the Required Time Period?

In case the registration license is not extended within three months after the expiration of the time period, the association shall pay an extra amount of 2500 AFN in addition to the 5000 AFN for the license extension. *(The Regulation on Procedure of Establishment and Registration of Associations, Article 9.5)*

What if the Registration License of an Association Is Lost?

In case the registration license of an association is lost, a new registration license will be issued after an announcement in the mass media and upon payment of 10,000 AFN for the rest of licensing period. *(The Regulation on Procedure of Establishment and Registration of Associations, Article 9.8)*

When Does the Association Actually Acquire Legal Entity Status?

The association acquires legal entity status when its statute has been prepared in accordance with the provisions of the Law on Associations and it is registered in the Ministry of Justice. *(The Law on Associations, Article 4)*

Is It Possible for The Public to See Information on a Registered Association?

Information about a registered association is made available by the Ministry of Justice through its website.⁷ The available information includes the name of the association, name of its director, location of the association, the number of its license, and the telephone number of its director.⁸

Can an Association Operate Under a New Name?

Whenever the founders of a registered association want to change the name and/or goals of an association, they have to submit the new statute with the approval of the general assembly and or other authorized bodies of the association to the Ministry of Justice.

The Ministry of Justice will issue a new registration license under the new name in accordance with the provisions of the Law on Associations and the Registration Regulation for Associations for 10,000 AFN.

(The Regulation on Procedure of Establishment and Registration of Associations, Article 15)

Can an Association Bring Amendments to Its Statute?

In case of amendment to the statute, the authorized representatives of the association must submit the amended statute with a copy of the decision of the general assembly and/or other authorized bodies of the association to the Ministry of Justice.

The Ministry of Justice must record the amendment of the statute provided that the amendment does not contradict the provisions of laws and the Registration Regulation for Associations.

(The Regulation on Procedure of Establishment and Registration of Associations, Article 14)

Does the Law Recognize Both Voluntary and Involuntary Dissolution?

The Law on Associations recognizes both voluntary dissolution and involuntary dissolution of associations, which is consistent with good regulatory practice.

Do Associations Have the Rights for Voluntary Dissolution?

The law stipulates that an association can be dissolved by decision of the general assembly in accordance with the provisions of its statute. *(The Law on Associations, Article 19.1)*

⁷<http://moj.gov.af/fa/page/registered-political-parties-and-social-organizations/1701>

⁸This is not a legal requirement.

What Are the Grounds for Involuntary Dissolution?

The name of the association will be removed from the registry if: (1) it fails to submit its report within three months after the end of the fiscal year; (2) it is determined during monitoring and evaluation that the association's performance contradicts the law's provisions and its respective statute; or (3) its office doesn't have a specific address. (*The Adopted Amendments to Law on Associations – 2019, Article 18.3*) The registration license of an association will be revoked at the suggestion of the Department of Coordination, Assessment, and Registration of Associations and Political Parties and upon approval of the Minister of Justice. (*The Adopted Amendments to Law on Associations – 2019, Article 18.4*)

An association will be dissolved per Ministry of Justice recommendation by a competent court in the following circumstances:

- (1) *When the association violates provisions of the legislation of Afghanistan;*
- (2) *When it does not perform its commitments stipulated in its governing statute;*
- (3) *When it performs its activities against the provisions of its governing statute. (The Law on Associations, Article 20.1)*

The Law on Associations stipulates that if an association commits a criminal violation (e.g., such as a violation of the Penal Code of Afghanistan), then the association will be prosecuted by the Attorney General's Office. If the crime is proved, in addition to the punishment of the responsible individuals, the court will rule to dissolve the association. (*The Law on Associations, Article 20.2*)

If, during monitoring, it is recognized that performance of the association is not in conformity with its statute and enacted laws, or that its office does not have a specific location, then the Department of Coordination, Assessment and Registration of Social Organizations and Political Parties of the Ministry of Justice must remove the name of association from the registration list and revoke its registration license. (*The Adopted Amendments to the Law on Associations – 2017, Article 23*)

Can a Dissolved Association Appeal in the Court?

The Law on Associations does not address the ability of a dissolved association to file an appeal. At the same time, according to provisions of *the Criminal Procedure Code*⁹ and *Civil Procedure Code*¹⁰ of Afghanistan, any real or corporate person can file an appeal in case they do not agree with the decision of the primary court.¹¹

⁹ Please see chapters 11 (article 246) and 12 (article 270) of Afghan Criminal Procedure Code, official gazette 2014/1132

¹⁰ Please see article 359 and 436 – 447 of Afghan Civil Procedure Code, official Gazette 1990/722

What Are the Consequences of Dissolution?

After either voluntary or involuntary dissolution of an association and once all debts have been paid, the association's assets will be transferred to a designated recipient stipulated in the statute of the dissolved association under the supervision of the Department of Political Parties and Associations. If there is no provision regarding consequences of the dissolution in its statute, the assets will be given to an association with similar goals. In case there is no association with similar goals, the aforesaid assets shall be distributed to related ministries and departments. (*The Law on Associations, Article 19.2*)

CHAPTER THREE:

Structure and Governance

What Is Internal Governance?

Internal governance is significant for associations. An association is accountable to government, donors, beneficiaries and the general public. Sound internal governance rules help associations develop into mature, self-governed entities, able to respond to the needs of their constituency. Furthermore, sound governance rules support associations to improve their activities, project a better public image, and establish good credibility with government, donors and the public. By contrast, the lack of effective internal governance rules and requirements may lead to abuse and poor performance, which could in turn result in a tarnished public image, and potentially reactionary harsh regulation.

What Is a Governing Body?

There are two types of governing bodies required by *the Law on Associations*: (1) the general assembly; and (2) the board of directors. *The Law on Associations* requires the inclusion of the structure of the association, that is, the governing bodies of the association, in the statute of the association. The Ministry of Justice interprets this provision as a requirement to set up a general assembly and a board of directors. (*The Law on Associations, Article 10*)

The typical civil law regulatory approach is to define the general assembly as the highest governing body of a membership organization (e.g., association), and to define the board of directors as the highest governing body of a non-membership organization (e.g., foundation or non-profit company).

What Is the Requirement of Internal Governance by The Law on Associations?

The Law on Associations, in article 10, requires the inclusion of a number of standards in the governing statutes of associations, which are as follows:

- (1) *The title of the association, that is, the given name of the association, and the goals of association, which can be scientific, literary, vocational, professional, corporate, ethnic and/or regional;*
- (2) *The field of work of the association, noting that associations have an express right to include any kind of activity in their statute, but for activities that undermine national interests, fall outside the scope of the registered statute, or constitute political activities;*
- (3) *membership policy of association and the rights and responsibilities of its members;*
- (4) *conditions for the expulsion of members and adopting other disciplinary punishments;*

- (5) *structure of association, that is, the governing bodies of the association (interpreted by the Ministry of Justice as a requirement to set up a general assembly and a board of directors);*
- (6) *date of the general assembly meetings and the procedure for holding these meetings;*
- (7) *procedure for the election of any governing body, such as the board of directors and its authorities;*
- (8) *procedure to control internal activities of the association, that is, the role of the general assembly, the board of directors, and/or the supervisory board; and the internal policies such as procurement policy, employment policy and other kind of governing documents;*
- (9) *income sources of an association and how to supervise the cost and expenses;*
- (10) *procedure to amend the statute and the procedure for joining and merging with other associations;*
- (11) *location of the main office and its branches, noting that the main office of an association must be located inside Afghanistan, as stated in Article 12 of the Law on Associations, and that an association can open branch offices inside Afghanistan and/or abroad);*
- (12) *dissolution procedure of the association and the consequences of dissolution, that is, financial settlement after dissolution (according to Article 21, the distribution of the assets of an association will be in accordance with the provisions of its statute); and*
- (13) *names and surnames of the founders of the association.*

In addition to aforementioned content in its statute under *Article 10*, an association must also indicate its geographical area of operation in relation to its goals in its statute. (*The Adopted Amendments to Law on Associations – 2019, Article 10.14*)

Prior to registration, the founders of association should prepare and approve the statute in accordance with the Law on Associations and other legal requirements in Afghanistan. (*The Law on Associations, Article 10.2*) All the founding members should sign the last page of statute.¹²

What Are the Internal Governing Documents?

The law sets forth the minimum standards for associations' internal governance. *The Law on Associations* defines governing statute as the basic governing document for an association. *Please see above for contents of statute. (The Law on Associations, Article 10)*

¹² not a regulatory requirement.

In practice there are many types of other policy documents associations are using in Afghanistan, including, among others, conflict of interest policy, gender policy, financial policy, recruitment procedure, and administration policy.

What Is the Liability of Founders and Board Members?

A registered association is responsible for its actions, and the founders, officers, board members and other employees are not personally liable for the obligations of the association. An association is subject to dissolution in case it violates provisions of legislation in Afghanistan; fails to perform commitments stipulated in its statute; or performs activities against the provisions of its governing statute. (*The Law on Associations, Article 20.1*)

If an association commits a violation that constitutes a crime under the law, the association shall be introduced to an attorney for prosecution. If the crime is proved, in addition to the punishment of its actors, the court will rule on the dissolution of the association. (*The Law on Associations, Article 20.2*)

The officers and members of the governing bodies of an association are responsible for ensuring that the association is operating in accordance with the laws and regulation in Afghanistan. The law underscores that all associations are subject to the basic principles of Islam, the Afghan constitution, the Law on Associations and other legal requirements. This reflects the fact that all real persons and legal entities in Afghanistan have to observe all the laws and regulations. (*The Law on Associations, Article 3*)

What Employment Rules Apply to Associations?

In the recruitment of employees, an association must observe the labor code and other relevant legislation.

Associations shall observe the basic principles of the sacred religion of Islam, provisions of the constitution, and this law and other enacted laws in the fulfillment of their goals. (The Law on Associations, Article 3)

What Is the Prohibition on Conflicts of Interest?

The Law on Associations recognizes the non-distribution principle and the rule against reversion of assets to the founders. As a not-for-profit entity, the association is appropriately subject to these distribution restraints. The founders of the association may not distribute assets remaining after dissolution to themselves, their family members, or relatives. (*The Law on Associations, Article 22*) In addition, the law requires that the governing statute include the dissolution procedure of the association and the consequences of dissolution, that is, financial settlement after dissolution. According to *Article 21*, the distribution of the assets of an association will be in accordance with the provisions of its statute. (*The Law on Associations, Article 10.1.12*)

According to *Article 21* of the *Law on Associations*, if the court decides to dissolve the association, it has to assign a delegation committee comprised of representatives

from civil society, the Ministry of Finance and the Ministry of Justice for the review of the financial affairs of the association and distribution of its assets after debt settlement and in accordance with its statute. In addition, the law clearly authorizes the court, which rules for the dissolution of an association, to transfer the assets of the dissolved association to an association with the similar goals. If there is no association with similar goals, the assets must be transferred to a related government department. This provision, unfortunately, carries with it no requirement that the government department use the assets for the purpose for which they were intended.

The law also states that the financial sources of an association are open and its assets have to be spent only to achieve its goals stipulated in its statute. This seems to act like a catch-all provision (“the financial sources of an association are open”). In addition, the last clause of the provision (“its assets have to be spent only to achieve its goals stipulated in its statute”), crucially, serves to define the non-profit principle of the law. (*The Law on Associations, Article 16.3*)

CHAPTER FOUR:

Prohibition on Direct or Indirect Private Benefit

What Is Non-Distribution of Profits?

The non-distribution principle is the most important distinguishing feature of associations from the for-profit sector. An association may not distribute any net earnings or profits as such to any person. The assets, earnings, and profits of an association must be used to support the not-for-profit purposes of the organization and may not be used to provide benefits, directly or indirectly, to any founder, director, officer, member, employee, or donor of associations. However, the non-distribution principle does not prevent reasonable compensation for work performed.

The Law on Associations recognizes the non-distribution of profits to specific individuals.

After dissolution of the association and termination of its activity, its founders shall not allocate the assets of the association to themselves, family members or relatives, and shall not include such distribution in its statute. (The Law on Associations, Article 22)

The Law on Associations introduces the non-distribution principle through the rule against reversion of assets to the founders. As a not-for-profit entity, the association is appropriately subject to these distribution restraints. The founders of the association may not distribute assets remaining after dissolution to themselves, their family members, or relatives.

Also, *Article 16.3 of the Law on Associations* states that the financial sources of an association are open and its assets have to be spent only to achieve its goals stipulated in its statute. This seems to act like a catch-all provision (“the financial sources of an association are open”). In addition, the last clause of the provision (“its assets have to be spent only to achieve its goals stipulated in its statute”) crucially serves to define the non-profit principle of the law.

Is There Any Prohibition on Self-Dealing?

The Law on Associations is silent on self-dealing but *Article 16.3 of the Law on Associations* can be interpreted to prohibit directors and employees from carrying out economic transactions with associations.

Financial sources of the associations are open and its assets shall be spent only to achieve its goals. (The Law on Associations, Article 16.3)

Is There Any Prohibition on The Reversion of Assets?

The Law on Associations prohibits the reversion of assets owned by an association. After dissolution of the association and termination of its activity, its founders shall not allocate the assets of the association to themselves, family members or relatives, and shall not include such distribution in its statute. (*The Law on Associations, Article 22*)

If the court decides to dissolve the association, it must assign a delegation committee comprised of representatives from civil society, the Ministry of Finance and the Ministry of Justice for the review of the financial affairs of the association and distribution of its assets after debt settlement and in accordance with its statute. The Law also clearly authorizes the court, which rules for the dissolution of an association, to transfer the assets of the dissolved association to an association with the similar goals. If there is no association with similar goals, the assets must be transferred to a related government department. This provision, unfortunately, carries with it no requirement that the government department use the assets for the purpose for which they were intended. (*The Law on Associations, Article 21*)

CHAPTER FIVE:

Activities of Associations

What Are the Permissible Activities of Associations?

Associations are generally allowed to pursue any non-profit, non-political purpose. Indeed, *the Law on Associations* expressly restricts associations only from conducting activities against the national interest or outside the scope of their registered statutes, and from performing political activities. (*See above, The Law on Associations, Article 5*)

Can Associations Perform Public Benefit Activities?

In Afghanistan associations can pursue both mutual benefit and public benefit purposes, although neither category of purposes is expressly defined in *the Law on Associations*. *The Law on Associations* defines “associations” as communities, unions, councils, assemblies and organizations. Each one of these categories can be mutual and or public benefit entities.

Associations refer to communities, unions, councils, assemblies and organizations which are voluntarily established by a group of real persons and legal persons as non-profit, non-political entities, in accordance with this law. (The Law on Associations, Article 2.1)

Does the Law Introduce Restrictions on Public Policy and Political Activities?

The Law on Associations restricts associations from performing activities that are against Afghan national interests. (*The Law on Associations, Article 5.1*) The language in this article is vague and no specific definition of the national interest in the Afghan legal context is provided. The government can therefore interpret this language subjectively to suspend the activities of associations.

The Law on Associations also restricts associations from carrying out political activities. In addition, it restricts them from including any political issues in their statutes. The term “political” is not defined and could be interpreted in different ways. Interpreted progressively, this restriction would (1) separate associations from political parties and (2) prevent them from nominating presidential and parliamentary candidates for office. But this restriction should not be applied to prevent associations from performing their advocacy campaigns, participating in public policy programs and different kind of political activities that currently they are involved in.

CHAPTER SIX:

Fundraising

What Are Funding Sources of Associations?

The Law on Associations states that associations may receive funds from four sources including (1) entry dues; (2) membership dues; (3) sale of publication; and (4) donations and gifts by citizens and foreigners, but the list fails to include many legitimate and indeed significant sources of income for associations. It would be preferable to include other categories of income in this list, such as grants and contracts, government funding, corporate donations, investment income, and income from economic activities. (*The Law on Associations, Article 16.1*)

Commendably, the law clearly specifies that associations can seek and secure the financial and technical assistance of foreign organizations and associations, provided that they inform the Ministry of Justice. According to this section of the law, associations can receive funding from foreign sources, which presumably include multilateral organizations (e.g., the UN, World Bank), foreign aid agencies (e.g., USAID, AUSAID, DFID, Sida, CIDA) and international organizations (through donations and sub-grants). (*The Law on Associations, Article 16.2*)

As a good regulatory practice, laws often include a catch-all category (i.e., “any other legal source of funding”) in its list of resource possibilities. Notably, *Article 16 (3) of the Law on Associations* states that the financial sources of an association are open and its assets have to be spent only to achieve its goals stipulated in its statute. This seems to act like a catch-all provision (“the financial sources of an association are open”). In addition, the last clause of the provision (“its assets have to be spent only to achieve its goals stipulated in its statute”), crucially, serves to define the non-profit principle of the law.

What Are Permissible Fundraising Activities?

There are no legal or practical barriers to associations engaging in fundraising activities of any kind, including door-to-door, charity boxes, television, sponsorship, campaigns and other fundraising events.

Is Government Support Available?

Government support comes in the form of tax exemptions – in effect, indirect government subsidies – and in the form of direct financing, via budget subsidies, grants for specific purposes, and contracts to perform certain work.

The Income Tax Law is silent about associations. Article 10 of the Income Tax Law refers to NGOs’ tax exempt status but does not apply to associations registered in

the Ministry of Justice. Associations do not have to apply for tax exempt status in the Ministry of Finance. They are considered tax exempt when registered.

The Adopted Amendments on Law on Associations – 2017 introduced a new restriction on government ministries and other government entities from transferring movable and immovable government properties to associations. In practice, this restriction will prevent donations of all movable and immovable properties to associations. This restriction does not appear intended to impede the provision of government grants or contracts to associations. (*The Adopted Amendments to the Law on Associations – 2017, Article 16*)

Is There Any Private Philanthropy for Associations?

In many countries, the most common mechanism for encouraging individuals and corporations to make cash and in-kind donations to CSOs is through tax incentives for donors. Corporate and individual tax incentives for giving to CSOs are commonly available in many countries, and generally in the form of tax deductions. While important, tax incentives are not sufficient to promote corporate philanthropy; donors give based on a variety of motivations, of which tax preferences are only one. The establishment of community foundations in several countries has sought to appeal to a wider spectrum of donor interests in giving. As grant making public charities, community foundations are dedicated to improving the lives of people in a defined local geographic area. They bring together the financial resources of individuals, families, and businesses to support effective nonprofits in their communities. Community foundations vary widely in asset size, ranging from less than \$100,000 to more than \$1.7 billion. Community foundations play a key role in identifying and solving community problems.¹³ Also crucial to CSO sustainability are the donated efforts of volunteers.¹⁴

The legal framework can facilitate – or impede – the various kinds of philanthropic giving. In Afghanistan, there are currently no tax incentives for philanthropy available for either individual or corporate donors making cash or in-kind contributions to associations. A civil society initiative to introduce tax incentives for philanthropy is underway, but it is still under review of civil society and government. Community foundations do not currently exist in Afghanistan. While foundations are permitted to register with the Ministry of Economy as an NGO and or with the Ministry of Justice as an association, the legal framework does not expressly provide for the establishment of foundations. That said, a *draft Law on Foundations* has been prepared; if enacted, it could help encourage the setting up of community foundations. In addition, a cross-sectoral task force on private giving

¹³ <http://www.cof.org/foundation-type/community-foundations>

¹⁴ Laws and other mechanisms for promoting NGO financial sustainability by David Moore

has prepared a draft regulation on volunteerism; if enacted, it could help facilitate and encourage volunteering in Afghanistan.

Can Associations Generate Income Through Economic Activities and Membership Dues?

One of the most significant issues affecting the ability of CSOs to generate their own income is the laws and regulations governing income from economic activities. In nearly all countries, CSOs are able to engage directly in economic activities, within certain defined limitations. Furthermore, in many countries, income from economic activities is exempt from taxation, albeit to a limited extent. Critical to many associations and membership organizations is income from membership dues; such income is exempt from taxation in most countries.¹⁵

The Law on Associations is silent about economic activities, but *Article 15.3* refers to the governing statute of the association and authorizes any other activity assisting in the fulfillment of the objectives of the association, as outlined in its statute. Associations, therefore, have the right to pursue any objectives articulated in their governing statutes. This provision opens the door to several kinds of activities for associations, as it implicitly affirms their right to take part in economic activities, policy making and advocacy programs, provided they are objectives articulated in their governing statutes.

In practice, a high percentage of associations are dependent on self-generated incomes including entry dues, membership dues, the dissemination of publications, and economic activities in Afghanistan.

¹⁵ Laws and other mechanisms for promoting NGO financial sustainability by David Moore

CHAPTER SEVEN:

Reporting and Supervision

What Is the Mandate of the Ministry of Justice?

The Law on Associations affirms that the Ministry of Justice is the only registration authority for associations in Afghanistan. Within the Ministry of Justice, the Department of Coordination, Assessment and Registration of Associations and Political Parties is the registration authority for associations. (*The Law on Associations, Article 13.1*)

In addition, the Department of Coordination, Assessment, and Registration of Associations and Political Parties has a supervisory role over the associations' activities and the conformity of their activities with their statute and the enacted laws. (*Adopted Amendments to Law on Associations – 2019, Article 23.1*)

Under *Article 23.1*, the Ministry of Justice established a Monitoring Board comprised of five (5) members of the Department of Coordination, Assessment, and Registration of Associations and Political Parties. The Monitoring Board is responsible for monitoring associations' performance and the conformity of their activities with their statute and the enacted laws. The Monitoring Board is responsible for traveling to all 34 provinces of Afghanistan and for monitoring the associations selected by the Department of Coordination, Assessment, and Registration of Associations and Political Parties.

In order to be responsive and accountable, the officers and members of associations have to maintain regular office hours and assign a person to the office. (*the Adopted Amendments to Law on Associations – 2019, Article 23.2*)

The Ministry of Justice carries out its regulatory functions under *Articles 13 of the Law on Associations* and *Article 23 of the Amendments to the Law on Associations – 2019* through the Department of Coordination, Assessment and Registration of Associations and Political Parties in Kabul, and through its provincial departments in each of Afghanistan's 34 provinces.

It is important to stress that the Ministry's supervisory duties are limited to the activities of associations. The Department of Coordination, Assessment and Registration of Associations and Political Parties, in carrying out the Ministry's regulatory duties, is not authorized to request information from other civil society organizations (such as NGOs) or from international donors or from foreign governments. The issue is not how foreign donor aid money to Afghanistan is being distributed and spent but more narrowly whether associations are acting in compliance with the law. The successful implementation of law is dependent, in

part, on a clear understanding and respect for the legal mandate of the regulatory agency.

Reporting is one of the most common accountability mechanisms, including 1) internal reporting and supervision; 2) reporting to responsible state authorities; 3) reporting to tax authorities; 4) reporting to sectoral authorities; 5) reporting to donors; and 6) disclosure or availability of information to beneficiaries and public. In this chapter we will focus on reporting to responsible state authorities, which is stipulated in *the Law on Associations*.

What Are the Reporting Requirements Under the Law on Associations?

In nearly all countries, governments require reports from at least certain categories of CSOs. At the same time, however, reporting requirements vary considerably in scope, in the kinds of information required, and in the level of detail required. In a carefully developed system, certain organizations will not be required to file detailed reports on activities and finances. For example, small, mutual-benefit organizations are often not required to file reports, but instead to file only periodic updates of establishment information; these organizations do not have the kind of impact on the public that is needed to trigger the state's regulatory interest. CSOs that are engaged in economic activities, or receiving substantial benefits from the state, or engaged in substantial public fundraising generally, on the other hand, are often required to file reports to various agencies. The key point is that reporting obligations – and indeed, other supervisory measures – should be commensurate with the benefits a CSO obtains from the state.

The common practice in many countries is to require reports on an annual basis, at least for some categories of CSOs, as this provides appropriate assurances of accountability without distracting the organization from its mission activities. In Afghanistan, *the Law on Associations* requires only that an annual report be submitted by associations in the Ministry of Justice.

Associations must submit their performance and financial reports at the end of the fiscal year to the Department of Coordination, Assessment, and Registration of Associations and Political Parties in the capital (Kabul) and to the provincial departments of Ministry of Justice in provinces. The report of tribal councils (a specific category of association), must be verified by the community and aldermen, and approved by the respective authorities, prior to submission to the Department of Coordination, Assessment, and Registration of Associations and Political Parties in the capital (Kabul) and to provincial departments of Ministry of Justice in provinces. (*The Adopted Amendments to Law on Associations – 2019, Article 18.1-2*)

Does the Law Require Annual Report and or Semi-Annual Report?

Associations report annually – not semi-annually – to the Department of Coordination, Assessment, and Registration of Associations and Political Parties in the capital (Kabul) and to the provincial departments of Ministry of Justice in provinces. (*The Adopted Amendments to Law on Associations – 2019, Article 18.1*) The semi-annual report is only a requirement for NGOs registered in Ministry of Economy under *the Law on NGOs* passed in 2005.

Do Associations Have to Inform Ministry of Justice of Foreign Financial Aid?

In order to achieve their goals stipulated in their respective statutes, associations can secure the financial and technical assistance of foreign organizations and associations and inform the Ministry of Justice accordingly. (*The Law on Associations, article 16.2*) The authorized representatives of associations must inform the Ministry of Justice of the technical and financial aid of foreign organizations and associations, prior to receiving them. In addition, they must inform the Ministry of Justice about the type and amount of financial aid. (*The Regulation on Procedure of Establishment and Registration of Associations, Article 13*)

What Are the Supporting Documents Required for the Annual Report?

The Law on Associations is silent about the need for supporting documents attached to the annual report when submitted to the Ministry of Justice.

When Is the Annual Report Due?

The annual report is due within three months after the end of the fiscal year. The fiscal year for associations is the Afghan calendar year, which begins and ends on March 20. (*The Amendments to the Law on Associations – 2019, Article 18.3*)

Where Should the Reports Be Submitted?

Associations must submit their report to the Department of Coordination, Assessment, and Registration of Associations and Political Parties in the capital (Kabul) and to the provincial departments of Ministry of Justice in provinces. (*the Adopted Amendments to Law on Associations – 2019, Article 18.1-2*)

Do Associations Report to Relevant Line Ministries or Departments?

The Law on Associations is silent about the submission of reports to relevant line ministries. Associations do not submit their annual report to line ministries.

How Do Associations Report to Provincial Departments of Ministry of Justice?

If an association is based in Kabul, it will submit its annual report to the Department of Coordination, Assessment and Registration of Associations and Political Parties in Kabul. If an association is based in provinces, it can submit its annual report to the provincial department of the Ministry of Justice where the association is based. (*the Adopted Amendments to Law on Associations – 2019, Article 18.1*)

Do Associations Have to Report to Tax Authorities?

The Income Tax Law is silent about associations. Article 10 of Income Tax Law refers to NGOs' tax exempt status but does not apply to associations registered in the Ministry of Justice.

As a result, there was confusion about the silence of *the Income Tax Law* regarding the tax-exempt status for associations. Problems arose in many provinces, as provincial departments of the Ministry of Finance obliged associations to fill out tax statement forms and pay taxes before March 2017. After ICNL met with the Ministry of Justice on this issue, the Ministry of Justice initiated communication with the Ministry of Finance. Per communication through an official letter between the Ministry of Justice and Ministry of Finance in March 2017, both ministries agreed that associations are considered tax exempt entities and are not obliged to fill out tax statement forms.

Recognition as tax-exempt entities does not absolve these associations from reporting requirements under *the Income Tax Law 2009*, that is, the filing of an income return (*the Income Tax Law, Article 88*), from withholding tax from salary and wages (*the Income Tax Law, article 58*), from rent withholding tax on buildings and houses (*the Income Tax Law, Article 59*), and from preparation and submissions of withholding tax statements (*the Income Tax Law, Articles 61 and 62*).¹⁶

Does the Ministry of Justice Have to Issue Acknowledgment of Receipt?

The Law on Associations is silent about the issuance of an acknowledgement of receipt to associations upon the submission of the report to the Ministry of Justice in Kabul and provinces. In practice, the Ministry of Justice does not there is no requirement to issue acknowledgement of receipt to associations upon submission of report to Ministry of Justice.

What Are the Reporting Languages?

The Law on Associations is silent about the language used for reporting but in practice only two official languages Persian and Pashto are used.

¹⁶<http://www.ard.gov.af/index.php/2012-06-04-16-53-00/taxpayer-guides>

Does Ministry of Justice Require Financial Audits?

The Law on Associations is silent about requirement of a financial audit. In practice, associations are not engaged in big projects as NGOs are. Therefore, *the Law on Associations* doesn't require a financial audit.

Is There Any Obligation for Ministry of Justice to Review Reports?

The Law on Associations is silent about the deadline and obligation of Ministry of Justice to review the reports of associations.

What Are the Consequences of Failure to File Reports or the Filing of a False Report?

The name of the association will be removed from the registry if: (1) it fails to submit its report within three months after the end of the fiscal year; (2) it is determined during monitoring and evaluation that the association's performance contradicts the law's provisions and its respective statute; or (3) its office doesn't have a specific address. (*The Adopted Amendments to Law on Associations – 2019, Article 18.3*) The registration license of an association will be revoked at the suggestion of the Department of Coordination, Assessment, and Registration of Associations and Political Parties and upon approval of the Minister of Justice. (*The Adopted Amendments to Law on Associations – 2019, Article 18.4*)

CHAPTER EIGHT:

Tax Preferences

Does the Law Recognize Income or Profits Tax Exemption for Associations?

The Income Tax Law is silent about associations. *Article 10 of Income Tax Law* refers to NGOs' tax exemption status. This article doesn't apply to associations registered in Ministry of Justice. Associations do not have to apply for tax exemption status in Ministry of Finance. They are considered tax exempted when registered.

Does the Law Introduce Income or Profit Tax Exemption for Donations?

Contributions and income received from the necessary operations of organizations fulfilling the following conditions laid down in *Article 10 (1) of Income Tax Law* are exempt from tax:

- *The organization must be established under the laws of Afghanistan. The relevant statute is the Law on Non-Governmental Organizations (NGOs) notified in Official Gazette No. 857 on 15 Saratan 1384. However, registration under the Law on NGOs does not necessarily confer a right upon the organization to be exempt under Article 10 of the Income Tax Law.*
- *The organizations registered in Ministry of Economy must have been established and operated exclusively for educational, cultural, literary, scientific, or charitable purposes. Article 13.3 of the Law on NGOs makes it obligatory that the application for establishment of an NGO shall contain the "goals and type of activity" of the organization. However, these goals and objectives may not necessarily be in line with the second condition for exemption of the organization under Article 10.1.2 of the Income Tax Law. Therefore, not all NGOs may necessarily qualify for tax exemption.*
- *The contributors, shareholders, members or employees must not benefit from the organization either during its operations or upon its dissolution. This is peculiar feature of not-for-profit organization under the Law on NGOs. For tax exemption these conditions must be fulfilled.*

Note: According to Ministry of Finance, this is the mechanism for NGOs registered in Ministry of Economy. Yet, it is applied for both NGOs and associations.

Does the Law Identify Tax Exemption for Economic Activities?

Just as a government enterprise is not exempt from income taxes, so an established commercial enterprise owned by an organization qualifying for exemption under *Article 10 of the Income Tax Law* is not exempt.

Example 1: An Afghan corporation is formed to operate a school solely for educational purposes. The corporation receives donations and provides education to elementary school children for free, or at substantially low rates. The school happens to own a bookstore which sells books to both students and non-students. The bookstore competes with other bookstores in the surrounding area. The managers of the bookstore seek to operate the bookstore at a profit. Although the operation of the school may be exempt from taxation, the bookstore is not exempt.

Example 2: A charitable institution (tax exempt under *Article 10*) owns most of the shares in an Afghan industrial corporation. Though controlled by the charitable institution, the income of the Afghan industrial corporation is taxable. The dividends received by the charitable institution from the Afghan industrial corporation are also taxable.

Note: According to Ministry of Finance, this is the mechanism for NGOs registered in Ministry of Economy. Yet, it is applied for both NGOs and associations.

Does the Law Introduce Customs Tax Exemption?

The Law on Associations is silent about customs tax exemption. However, according to *the Law on NGOs*, an NGO is exempted from customs duty on imported material and equipment related to and necessary for not-for-profit and charitable purposes. (*Law on NGOs, article 30.1*)

The Customs Law exempts from custom charges "the funded materials to government projects through loans and the donated materials imported by government departments, government organizations and charitable and development NGOs (local, foreign and international), or the material imported for them, after verification by respective departments and organizations." (*The Customs Law, Article 40*) Furthermore, civil society organizations may benefit from a few general exemptions, such as those covering fuel and certain medical goods. Finally, *the Customs Law* provides the possibility of an exemption to other goods "upon recommendation of Minister of Finance and approval of the Council of Ministers as required" (*The Customs Law, Article 40.18*).

APPENDIXES
