

AFGHANISTAN

Counter Financing of Terrorism Law

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THE ISLAMIC REPUBLIC OF AFGHANISTAN
LAW ON COMBATING THE FINANCING OF TERRORISM
LAW NO. 839

CHAPTER 1: GENERAL PROVISIONS

Article 1. Basis

This law is adopted pursuant to Article 7 of the constitution of the Islamic Republic of Afghanistan.

Article 2: Purpose

The purpose of this Law is to:

1. Implement the International Convention for the Suppression of Financing of Terrorism (1999) and its successor conventions.
2. Prevent provision of funds or property for terrorist acts, terrorist organizations, or terrorist/s; and
3. Implement UN Security Council Resolutions on combating financing of terrorism and the financing of proliferation of weapons of mass destructions.

Article 3. Definitions

For the purposes of this law:

1- "Terrorist acts" means :

- a. an act which constitutes an offense within the scope of and as defined in one of the treaties listed in the Annex to the Convention for the Suppression of Financing of Terrorism; and
- b. any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking an active part in the hostilities in a situation of armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel a Government or an international organization to do or to abstain from doing any act.

2- "Terrorist" shall mean any natural person who:

- a. Commits or attempts to commit terrorist acts by any means, directly or indirectly, unlawfully and willfully.
- b. Participates as an accomplice in terrorist acts;
- c. Organizes, leads, or directs others to commit, terrorist acts;
- d. contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the

aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act.

3. "Terrorist organization" means any group of persons who, acting with a common purpose to perform actions set forth under sub paragraph 2.
4. "Non Profit Organization" means any legal person or arrangement or organization that primarily engages in raising or disbursing funds for purposes such as charitable, religious, cultural, educational, social or fraternal purposes.
5. Terminologies such as " Funds and Property", " Reporting Entity", " Proceed of Crimes", " Transaction", " Freeze", " Seize" and " Confiscation" shall have the same meaning as provided in Anti Money Laundering Law.

Article 4. Financing of Terrorism offence

- 1) Any person commits the offense of financing of terrorism who by any means, directly or indirectly, unlawfully and willfully, provides or collects funds or property or attempts to provide or collect funds or property, or provides or attempts to provide financial or other services with the intention that they should be used or in the knowledge that they are to be used, in full or in part:
 - a. in order to carry out a terrorist act; or
 - b. by a terrorist; or
 - c. a terrorist organization.
- 2) An offence under paragraph 1 of this article is considered as committed:
 - a. even if the terrorist act referred to in paragraph 1 of this article does not occur or is not attempted;
 - b. even if the funds or property were not actually used to commit or attempt the terrorist act referred to in paragraph 1 of this article;
 - c. even if the funds or property cannot be linked to a specific terrorist act,regardless of the State or territory in which the terrorist act is intended to or does occur and regardless of the State or territory in which the terrorist or terrorist organization is located.
- 3) Any person also commits an offense if that person:
 - a. Attempts, abets or participates as an accomplice , conspires in an offense as set forth in paragraph 1 and 2 of this Article;
 - b. Organizes, directs or motivates others to commit an offense as set forth in this Article;
 - c. contributes to the commission of one or more offenses as set forth in this Article by a group of persons acting with a common purpose, when this contribution is made intentionally and such contribution is made:

- (i) with full knowledge of the intention of the group to commit an offense as set forth in paragraph 1 of this Article;
- (ii) with the aim of facilitating or furthering the criminal activity or purposes of the group or to serve its purposes, and that activity or purpose involves the commission of an offense as set forth in paragraph 1 of this Article;

4) Knowledge, intent or purpose required as elements of an offence set forth in this article may be inferred from objective factual circumstances.

5) No consideration of a political, philosophical, ideological, racial, ethnic, religious, or other similar nature may be taken into account in order to justify the commission of any of the aforementioned offenses.

6) The financing of terrorism offence is a predicate offence for money laundering.

Article 5: Scope of the law

1) The provisions of this law are applicable to the offenses indicated under Article 4 when:

1. The offense was committed in the territory of the Islamic Republic of Afghanistan;
2. The offense was committed on board a vessel flying the flag of the Islamic Republic of Afghanistan or an aircraft registered pursuant to its laws or operated by the Islamic Republic of Afghanistan at the time the offense was committed;
3. The offense was committed by a national of the Islamic Republic of Afghanistan;
4. the offense was committed outside its territory by someone now present in its territory, in all cases where the Islamic Republic of Afghanistan does not extradite such a person to a state requesting extradition for the same offense;
5. The offense was directed against a national of the Islamic Republic of Afghanistan;
6. The offense was directed against a government facility of the Islamic Republic of Afghanistan located outside its territory, including its diplomatic or consular premises;
7. the offense was directed to or resulted in the commission of an offense indicated in Article 4, paragraph 2, subparagraph (a) and (b), in an attempt to compel the Islamic Republic of Afghanistan to do or abstain from doing any act;
8. The offense was committed by a stateless person who has his or her habitual residence in the territory of the Islamic Republic of Afghanistan; or

2) The Supreme Court of Afghanistan may establish a specific court for hearing of the cases involving offenses committed outside of the national territory of Afghanistan.

CHAPTER II - INTERNATIONAL COOPERATION

Article 6. Mutual Cooperation

The authorized authority of the Islamic Republic of Afghanistan shall cooperate as widely as possible with those of other states for the purposes of information exchange, investigation, and proceedings, provisional measures, confiscation, production of documents, freezing of funds or property associated with financing of terrorism, for the purposes of extradition, mutual legal assistance, judicial cooperation, requests for investigative measures or requests for provisional measures and the confiscation of and disposal of confiscated funds or property, mutual legal assistance with counterparts and the implementation of related judicial orders .

Article 7. Right of Communication

1) Anyone, not a citizen of the Islamic Republic of Afghanistan or not a resident in Afghanistan, with respect to whom the measures indicated in this law are applied is entitled to:

- a. Communicate without delay with the nearest representative of the state where he or she is a citizen or with someone otherwise qualified to protect his or her rights or, in the case of a stateless person, the country where he or she customarily maintains a residence;
- b. be visited by a representative of that state, where applicable; and
- c. be informed of the rights afforded to him or her under subparagraphs (a) and (b) of this paragraph.

2) When the public prosecutor's office receives the request from a state that has established its jurisdiction over the offense, it shall make the necessary arrangements to ensure that the person detained under this law may be visited by a representative from the International Red Cross, and official representative(S) of the person's country of origin.

Article 8. Notification to Competent States

When the person who is the subject of the investigation indicated in Article 7 has been detained, the public prosecutor's office, through the Government of the Islamic

Republic of Afghanistan, shall immediately inform, directly or through the Secretary General of the United Nations, the states that have established their jurisdiction over the offense and, if deemed appropriate, any other interested states, of the detention as well as of the circumstances justifying the detention. The public prosecutor shall promptly inform said states of the conclusions and indicate to them whether it intends to exercise its jurisdiction.

CHAPTER III- OPERATIONAL MEASURES

Article 9: Seizure and Provisional measures

- 1) The competent court, by its own discretion, or at the request of the public prosecutor's office, may without delay, in relation to terrorist financing:
 1. seize, freeze, restrain, funds or property associated with the offense that is the subject of investigation or subject to confiscation,
 2. identify, trace, evaluate funds or property subject of investigation or subject to confiscation
- 2) Funds or property subject to the measures under paragraph(1) should include:
 1. funds or property used or intended or allocated to be used to commit the offenses referred to in Article 4,
 2. laundered property
 3. funds or property that are the proceeds of these offenses,
 4. Funds or property directly or indirectly derived from the proceeds, including income or other benefits derived from such proceeds,
 5. Instrumentalities used in, or intended for use in the commission of the offense of financing of terrorism,
 6. Property of corresponding value, and
 7. All evidence facilitating their identification.
3. This provision shall apply without prejudice to the rights of third parties acting in good faith.
4. The lifting of these measures can be ordered by the competent court at any time at the request of the public prosecutor's office or, with the consent of the public prosecutor at the request of the owner of the frozen funds or property.

Article 10. Designation Authority

- 1) The Afghanistan National Security Council is responsible for proposing designations and for providing the necessary evidence for such designations to the United Nations Security Council under UNSCRs 1267, and 1988 committees or successor mechanisms through diplomatic channels .

2) The Afghanistan National Security Council shall designate any person, entity or organization as a terrorist or terrorist organization on its own motion and is also authorized to give effect to, promptly and after due examination,, requests for designations by other countries.

3) Such person, entity or organization may be designated as a terrorist or terrorist organization if the Afghanistan National Security Council finds or has reasonable grounds to believe that such person, entity or organization is

(a) a terrorist or a terrorist organization or

(b) a person, entity or organizations who finance terrorist or terrorist organizations or

(c) a person, entity or organization that is attempting to commit terrorist acts or participating in or facilitating the commission of terrorist acts or

(d) a person, entity or organization owned or controlled directly by such person, entity or organization as set out under paragraph (a)(b) or (c) or

(e) any person, entity or organization acting on behalf of or at the direction of such person, entity or organization as set out under paragraph (a)(b) or (c) .

4) The designations shall be implemented in accordance with related regulations established under this law and conventions Afghanistan is party thereto.

5 The Afghanistan National Security Council shall immediately notify the Attorney General's Office and any other authorized authority of any designations made in accordance with paragraph (2 and 3).

Article 11 Freezing of Funds or Property under United Nations Security Council Resolution

1) The Afghanistan National Security Council shall immediately notify Attorney General's Office of any person, entity and organizations designated under UNSCR 1267 (1999), UNSCR 1988 (2011), and any successor resolutions issued by the United Nations Security Council acting under Chapter VII of the United Nations Charter e.

2) The Attorney General's Office shall, without delay and without prior notice, freeze the Funds or Property of any person, entity and organization designated pursuant to the paragraph 1 of this Article and Article 10.

3) Upon the issuance of an order by Attorney General's Office, pursuant to sub paragraph 2 of this article,

a. All persons, including any reporting entity shall without delay freeze the funds or properties of persons designated as set out in Article 10 or paragraph (1) , and

b. All persons, including any reporting entity are prohibited from making available any such funds or property, economic resources or financial or other related services available directly or indirectly to or for the benefit of designated persons.

4) Any person not in compliance with paragraph (3) of this Article commits an offence and shall be subject to a fine equivalent to funds and properties mentioned under subparagraph 3.a or 3.b.

5) Any reporting entity not in compliance with paragraph (3) shall also be liable to any sanctions that may be applied by the appropriate supervisory authority under Article 24 of the Anti-Money Laundering and Proceeds of Crime Act.

6) Measures stated in subparagraph 3 of this article shall be applied to the following funds or property:

a. Funds or property owned or controlled wholly or jointly, directly or indirectly by individuals and entities referred in paragraph 2.

b. Funds or property derived or generated from the funds or property stated under subparagraph 5.a of this article and funds or properties of individuals and entities acting on behalf of or at the direction of persons referred to subparagraph 5.a

c. When the funds or property to be freeze cannot be presented or is not available for freezing, funds or property of the same kind or of a corresponding value shall be frozen.

7) The Afghanistan National Security Council shall immediately notify Attorney General's Office of any changes in designation of any person, entity and organization who designated based on UNSCR 1267,1988 or successor resolutions as set out in Article 11, domestic designation or designation based on the request of another country under Article 10.

8) The Afghanistan National Security Council or the Attorney General's Office shall issue relevant regulations, as necessary, in their respective areas of competency with respect to

1. proposing designations under UNSCRs 1267, 1988, and successor resolutions as well as domestic designations,
2. obligation to freeze without delay;
3. Communications to private sector;
4. Arrangements for monitoring and ensuring reporting entities' compliance with this Law and regulations', rules and directives issued thereunder;
5. Protection of bona fide third party interests;

6. Procedures for collecting information and evidence related to the identification of persons to be designated or being proposed for designations pursuant to article 10;
7. Publicly known procedures to submit delisting requests of designations made if Afghanistan is of view that criteria for designation is no longer applicable and to delist once freeze ceases;
8. Procedures to review or amend designations by the Attorney General's Office and to unfreeze funds or assets of persons, entities or groups designated domestically if criteria no longer exists/not applicable;
9. Mechanisms to authorize access to funds or assets for basic or other expenses;
10. Mechanisms for designated persons/entities to challenge designations;
11. Procedures to unfreeze assets/funds of persons with same/similar names upon verification that person is not designated person,
12. The regulation making power relating to target financial sanctions in relation to proliferation financing.
13. Other procedures and mechanisms to implement provisions set out in the law.

Article 12. Procedure for Disputing Freezing orders

- (1) Any person, entity or organization whose funds or property have been frozen pursuant to designations made by United Nations Security and determines that they were designated as the result of an error or where they are of the view that the designation criteria do not or no longer applies may seek to have their names removed from the sanction lists by submitting a request to this effect to relevant committees of United National Security Council .
- (2) Any person, entity or organization whose funds or property have been frozen pursuant to domestic designation under Article 10, and determines that they were designated as the result of an error or where they are of the view that the designation criteria do not or no longer applies may seek to have their names removed from the sanction lists by submitting a request to this effect to National Security Council .

Article 13. Confiscation

- 1) The following funds or property may be confiscated by the competent court:
 - a. funds or property that are the proceeds of the offense, property used or intended or allocated to be used to commit the terrorist financing offense under Article 4
 - b. Funds or property directly or indirectly derived from the proceeds, including income or other benefits derived from such proceeds

- c. instrumentalities used in, or intended for use in the commission of the offense of financing of terrorism.
- 2) Funds or property listed in paragraph 1- 3 except if the owner of the funds or property proves that he is a bona fide third party acting in good faith or that it has been transferred to him in exchange of services provided by a transferee or fair value has been paid for such funds or property or acquired through any other legitimate way and the transferee was not aware of the origin of the funds or property.
- 3) When the funds or property to be confiscated pursuant to paragraph 1 above are connected to an offence and are mixed with the legitimate funds or property of a bone fide third party, such funds or property can be confiscated to the extent to equal to the offence committed based on a court determination.
- 4) When the funds or property to be confiscated cannot be presented or is not available for confiscation, funds or property of the same kind or of a corresponding value shall be confiscated.
- 5) The amount of the funds or property to be confiscated shall be stated in the confiscation order.

Article 14. Confiscation of the property and funds of the terrorist organization

Funds or property of which the terrorist organization has the authority to dispose of may be confiscated without considering its link to the offence committed.

Article 15. Invalidity of certain legal documents

Any legal instrument, executed free of charge or for a valuable consideration inter vivos or mortis causa, or any other action the purpose of which is to safeguard or prevent funds or property from confiscation, seizure or freeze as provided for in articles 9-14 shall be void based on a court order. In the case of avoidance of a contract involving payment, the buyer shall be reimbursed only for the amount actually paid.

Article 16. Disposal of Confiscated Funds or Property

1. Confiscated funds or property accrue to the state according to relevant regulations, unless any rights of third parties over the funds or property are established. In this case, the funds or property remain encumbered up to their value.
2. In cases where confiscation is ordered under a judgment by default, the confiscated funds or property accrue to the state. However, if the court acquits the person prosecuted, and sets aside the confiscation order, the funds or property confiscated or its corresponding values shall be returned to its owner, unless it is established that such property represents the proceeds of a crime or offense.

Article 17: Third Parties Claims

Any claims of bona fide third parties, acting in good faith, over the confiscated funds or property (or any other provisional measures) can be heard in the competent court within three year from the date of final ruling.

Article 18: Humanitarian exemptions

(1) While freezing the assets of a person, under a domestic designation made pursuant to UNSCR 1373 as set out n Article 10 the following assets could be exempted from asset freeze:

- a. funds necessary for basic expenses, including payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurances premiums, and public utility charges;
- b. Funds intended exclusively for payment of reasonable legal service fees and expenses associated with the provision of such services; or
- c. Funds intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or frozen economic resources.

(2) Humanitarian and other exemption from the freeze order for UNSCR 1267 and 1988 and successor resolutions designations as set out in Article 11 will be handled as set out inby UNSCRs 1452 and 1735.

Article 19: Delisting

1. Individuals, groups, undertakings, companies and entities placed on the Sanctions pursuant to Security Council Resolution 1267 or 1988 and successor resolutions may submit a petition directly to the Office of the ombudspersons of the Security Council's 1267 or 1988 Committee, to take measures conducive to the removal of their names from Taliban Sanctions List

2. Individuals, groups, undertakings, companies and entities placed on the Sanctions pursuant to Security Council Resolution 1267 and successor resolutions, and who are nationals of the Islamic Republic of Afghanistan, or have residence in the Islamic Republic of Afghanistan, or are incorporated/located in the Islamic Republic of Afghanistan, may submit a petition to the National Security Council of Afghanistan to convey such requests to the Office of the Ombudsperson of the Security Council 1267 or 1988 Committee pursuant to paragraph 1.

CHAPTER IV: PENALTIES

Article 20: Penalties Applicable to natural person

1. Any person who commits a terrorism financing offense as set forth in Article four of this law, shall be sentenced to imprisonment for not less than five years or more than fifteen years and a fine of not less than 400,000 Afghani to 2,000,000 Afghani.
2. Any participants, accessories, providers of facilities, persons intended to commit a crime, and person who provided advices in a crime, and other persons which crime has been committed with their agreement or assistance, shall be punishable as if the offense had been committed by them.

Article 21. Penalties Applicable to Legal Persons

1. When a terrorism financing offense has been committed by an employee, agent or representative of a legal person, the legal person shall be punishable by a fine of not less than 1, 500,000 Afghani and not more than 4,500,000 Afghani, without prejudice to the conviction of those individuals associated to the legal person.
2. In addition to penalties set forth in Paragraph 1 of this article, the legal person may be:
3. Banned permanently or for a maximum period of five years from directly or indirectly carrying on certain business activities; or
4. Ordered to close permanently or for a maximum period of five years their premises that were used for the commission of the offense;
5. Dissolved if they were created for the purpose of committing the offense;
6. Required to publicize the judgment through the mass media.
7. The application of penalties under this Article shall not preclude any other parallel criminal, civil or administrative proceedings with respect to a corporate entity for the offence of financing of terrorism.

Article 22. Penalties Applicable to Non Profit Organizations

1. If a non- profit organization violates the provisions of Articles 25 and 26 of this Law, the non- profit organization shall be subject to one or more of the following penalties:
 - a. A fine of not less than 50000 Afghani and not more than 500000 Afghani
 - b. Being banned temporarily for a period of not more than 6 months.
 - c. Dissolution of the organization.

Article 24. Penalties Applicable to Terrorist Organization

1. When a terrorism financing offense has been committed by a terrorist organization, or by a corporate entity owned or controlled by such organization the penalty applicable in such cases shall be:

a) The natural persons shall be subject to imprisonment for not less 15 years or life imprisonment, and a fine of not less than 1000000 Afghani and not more than 12000000 Afghani,

b) The corporate entity shall be subject to a fine of not less than 4500000 Afghani and not more than 20,000,000 Afghani.

Article 25. Aggravating and mitigating Circumstances

The Aggravating and mitigating circumstances as provided in the Criminal Procedure Code of Afghanistan shall be applicable to the offences provided for under this law.

CHAPTER V. MISCELLANEOUS MEASURES

Article 26. None Profit Organization

Any nonprofits organization operating to collect or receive grants, or transfer funds and property, or gifts and donations are required to align their activities in compliance with provisions of NPO law and other enforced laws.

Article 27. Record keeping and annual financial statements

1. Any donation and gifts made to a non-profit organization indicated in the article 26 of this law in an amount equal to or greater than an amount established by the appropriate supervisory authority shall be recorded in a record maintained for that purpose by the association or organization, containing the full details on the donor, the date, the nature, and the amount of the donation. The record shall be kept for a period of five years and shall be submitted to any authority responsible for the oversight of nonprofit organizations or to any public prosecutor, at their request.

2. Non-profit organizations shall maintain for a period of at least five years, 1) records of domestic and international transactions demonstrating that funds have been spent in a manner consistent with the purpose and objectives of the organization, and

3. issue annual financial statements that provide detailed breakdowns of incomes and expenditures. Non-profit organizations shall make these available to appropriate supervisory authority or any public prosecutor, at his/her request.

Article 28. Ban and dissolution of non-profit organizations

1. When a non-profit organization, with full knowledge of the facts, encourages, promotes, organizes, or commits the offenses indicated in Article 4 of this law, the competent prosecution office shall impose a temporary ban on the activities of such nonprofit organization.
2. Dissolution of the nonprofit organization referred to in Paragraph 1 of this Article, shall be ordered by the court at the request of the persecution office.

Article 29. Entry into Force

This law shall enter into force upon its enactment by president and shall published in the Official Gazette. Upon its enforcement, the Combating of Financing of Terrorism Law published in the official gazette 839 dated 30/7/1383 , shall be considered null and void.