

AFGHANISTAN LAW ON COMBATING THE FINANCING OF TERRORISM

CHAPTER 1- GENERAL PROVISIONS

Article 1.Goal

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

Article 2. Definitions

For the purposes of this law:

1. "Funds and Property" means assets of every kind, whether material or immaterial, corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments, including electronic or digital, evidencing title to, or interest in, such assets;
2. " Government buildings and facility" means buildings, movable instruments and any permanent or temporary facility or conveyance that is used or occupied by representatives of a state, members of a government, the legislature or judiciary, or by officials or employees of a state or any other public authority or entity, or by employees or officials of an intergovernmental organization in connection with their official duties.
3. "Proceeds" means any funds and property derived from or obtained, directly or indirectly, through the commission of an offense set forth in Article 3.
4. "Convention" means the International Convention on the Suppression of the Financing of Terrorism, signed on January 10, 2000.

Article 3. Financing of Terrorism

1. Any person commits the offense of the financing of terrorism who by any means, directly or indirectly, unlawfully and willfully, provides or collects funds and property, or tries to provide or collect funds and property, or provides or tries 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, in order to carry out:

(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 on the Suppression of the Financing of Terrorism, and to which the Islamic Republic of Afghanistan is a party; or

(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 abstain from doing any act.

2. For an act to constitute an offense in the sense of paragraph 1, it shall not be necessary that the funds and property were actually used to carry out an offense referred to in paragraph 1, subparagraph (a) or (b).

3. Any person also commits an offense if that person:

(a) participates as an accomplice in an offense as set forth in paragraph 1 and 2 of this Article;

(b) Organizes, directs or motivate 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 with full knowledge of the intention of the group to commit an offense as set forth in paragraph 1 of this Article or when its aim is to facilitate the criminal activity 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;

(D) 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.

CHAPTER II. Penalties and Coercive Measures

Penalties Applicable to actual person

Article 4. Financing of Terrorism

1. The penalty of imprisonment for not less than five years or more than fifteen years and a fine of not less than 250,000 Afghani to 1,500,000 Afghani is imposed on anyone who commits a terrorism financing offense.
2. Complicity in an offense, its organization, orders given and assistance provided for its commission are punishable as if the offense had itself been committed.

Article 5. . Penalties Applicable to Corporate Entities

1. When a terrorism financing offense has been committed by an agent or representative under their management or control, corporate entities, other than corporate entities owned by the Islamic Republic of Afghanistan, 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 as perpetrators or accomplices of the offense.
2. Corporate entities may additionally be:
 - (a) Banned permanently or for a maximum period of five years from directly or indirectly carrying on certain business activities; or
 - (b) Ordered to close permanently or for a maximum period of five years their premises that were used for the commission of the offense;
 - (c) Dissolved if they were created for the purpose of committing the offense;
 - (d) Required to publicize the judgment in the press or any other audiovisual media.

Article 6. Aggravating Circumstances

The penalty imposed under Articles 4 and 5, may be increased to imprisonment of not less than fifteen years to life imprisonment and a fine of not less than one million Afghani and not more than two million Afghani when the offense is perpetrated in the context of a criminal organization.

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Article 7. Mitigating Circumstances

The general system of mitigating circumstances contained in *Afghan* law shall be applicable to the offences provided for under this law.

Article 8. Confiscation

1. The following funds and property may be confiscated by the competent court

1. Property and funds as well as the proceeds of the offense, shall be confiscated if they are used or intended to be used to commit the offense.
2. Funds and property came from the proceeds, derivatives or exchange of the offence.
3. Funds and property listed in paragraph 1 and 2 except if the owner of the funds or property proved that it has been transferred to him in exchange of services provided by a transferee or fair value has been paid for such funds and property or acquired through any other legitimate way and the transferee was not aware of the origin of the funds and property.
4. When the funds and property to be confiscated directly or indirectly are connected to an offence and are mixed with the legitimate funds and property, such funds and property can be confiscated to the extent to equal to the offence committed.
5. When the funds and property to be confiscated cannot be produced, confiscation may be ordered for their value, including but not limited to any funds and property belonging directly or indirectly to a person convicted of an offence referred to in Article 2, or funds and property acquired from the person convicted by his spouse, cohabiter or dependent children, unless fair value has been paid for such funds and property.

2. The confiscation order specifies the funds and property concerned and contains the necessary details to identify and locate them.

Article 9. Confiscation of the property and funds of the criminal organization

Funds and property of which the criminal organization has the selling and purchasing authority may be confiscated without considering its link to the offence committed.

Article 10. Invalidity of certain legal documents

Legal documents prepared for the custody of funds and property confiscated under articles 8 and 9 are void, irrespective of, whether the documents were prepared for remuneration, free

of charge or on the basis of the will of a person, provided that a person shall be reimbursed for his actual payment.

Article 11. Disposal of Confiscated Funds and Property

1. Confiscated funds and property accrue to the state. The funds and property remain encumbered, up to their value, by any rights against the property lawfully established in favor of third parties.
2. In cases where confiscation is ordered under a judgment by default, the confiscated funds and property accrue to the state and are realized in accordance with the relevant procedures on the subject. However, if the court, ruling on an application to set aside such judgment, acquits the person prosecuted, it orders restitution of the value of the funds and property confiscated by the state, unless it is established that such property represents the proceeds of a crime or offense.

Article 12 Individual rights in the confiscated funds and property

Any individual or organization who determines that they have rights in the confiscated funds and property can file a petition in the competent court within one year from the date of its confiscation.

Article 13. Freezing of Funds and Property

The President of the Islamic Republic of Afghanistan may, by executive order, direct the freezing of funds and property of individuals and organizations designated by the United Nations Security Council acting under Chapter VII of the United Nations Charter.

Article 14. Procedure for Disputing Administrative Measures to Freeze Funds and property

Any individual or organization whose funds and property have been frozen pursuant to Article 13 and determines that they were included on the list as the result of an error may seek to have their names removed from the list by submitting a request to this effect within thirty days of the publication of the executive order referred to in Article 13 to the Supreme Court of Afghanistan, indicating all factors that could demonstrate the error. The Supreme Court decision with respect to this request is final.

Article 15. On Provisional Measures

1. The competent court may, by virtue of its office, or at the request of the public prosecutor's office, order any provisional measures at state expense, including the freezing of funds and

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property and financial transactions involving assets, regardless of their nature, that can be seized or confiscated.

2. The lifting of these measures can be ordered 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 and property.

Article 16. Seizure

The competent court, by virtue of its office, or at the request of the public prosecutor's office, may seize assets associated with the offense that is the subject of investigation, in particular funds and property used or intended to be used to commit the offenses referred to in Article 3, as well as the proceeds of these offenses, and all evidence facilitating their identification.

CHAPTER III. Jurisdiction of the Courts of the Islamic Republic of Afghanistan

Article 17. Jurisdiction of the Courts

The provisions of this law are applicable to the offenses indicated under Article 3 when:

- (a) The offense was committed in its territory of the Islamic Republic of Afghanistan;
- (b) 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;
- (c) The offense was committed by a national of the Islamic Republic of Afghanistan;
- (d) 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;
- (e) The offense was directed against a national of the Islamic Republic of Afghanistan;
- (f) The offense was directed against a government facility of the Islamic Republic of Afghanistan located outside its territory, including its diplomatic or consular premises;
- (g) the offense was directed to or resulted in the commission of an offense indicated in Article 3, paragraph 1, subparagraph (a) and (b), in an attempt to compel the Islamic Republic of Afghanistan to do or abstain from doing any act;

- (h) The offense was committed by a stateless person who has his or her habitual residence in the territory of the Islamic Republic of Afghanistan;
- (2) The Supreme Court of Afghanistan for hearing of the cases involving offenses committed outside of the national territory of Afghanistan may establish a specific court.

CHAPTER IV. International Cooperation

Article 18. Cooperation

The authorities of the Islamic Republic of Afghanistan agree to cooperate as much as possible with those of other states for the purposes of information exchange, investigation, and proceedings, provisional measures and confiscations of instruments and proceeds associated with financing of terrorism for purposes of extradition as well as purposes of mutual technical assistance.

Article 19. Right of Communication

1. Anyone 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 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.

Article 22. Notification to Competent States

When the person who is the subject of the investigation indicated in Article 19 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 of the investigation and indicate to them whether it intends to exercise its jurisdiction.

Article 21. Purpose of Requests for Judicial Cooperation

1. At the request of a foreign state, requests for judicial cooperation relating to the offenses indicated in this law or law on anti-money laundering shall be executed in the following manner:
 - a) gathering evidence or taking depositions;
 - b) providing assistance to make detained persons or others available to the judicial authorities of the requesting state in order to give evidence or assist in investigations;
 - c) serving judicial documents;
 - d) carrying out searches and seizures;
 - e) examining objects and sites;
 - f) providing information and evidentiary items; and
 - g) Providing originals or certified copies of relevant files and documents, including bank statements, accounting documents, and records showing the operations of a company or its business activities.

Article 22. Refusal to Execute Requests

1. A request for cooperation may be refused only:
 - (a)) if it was not made by a competent authority according to the legislation of the requesting country or if it was not transmitted in the proper manner; or
 - (b) If the request is not consistent with the normative acts of Afghanistan and execution of request is a threat to the security of country.

- (c) if the offense to which it relates is the subject of criminal proceedings or has already been the subject of a final judgment in the territory of the Islamic Republic of Afghanistan.
 - (d) If required measures are not consistent with the legislative documents of the country or with the applicable law of the country, the request can not be enforced.
 - (e) If the enforcement of the decision of the request is not consistent with the applicable laws of the country.
 - (f) if there are serious grounds for believing that the measures being requested or the decision being sought are directed at the person in question solely on account of that person's race, religion, nationality, ethnic origin, political opinions;
 - (g) if a request for the judicial inquiry of a person relates to a political controversy.
- (2) Bank secrecy may not be invoked as grounds for refusing to comply with the request.
- (3) The public prosecutor's office may appeal a court's decision to refuse compliance within 30 days following such decision.
- (4) The government of the Islamic Republic of Afghanistan shall promptly inform the foreign government of the grounds for refusing to comply with the request.

Article 23. Request for Investigatory Measures

1. Investigatory measures are undertaken in conformity with the legislation of the Islamic Republic of Afghanistan unless the competent foreign authorities have requested that a specific procedure compatible with the legislation of the Islamic Republic of Afghanistan be followed.
2. A judicial officer or public official appointed by the competent foreign authority may attend the execution of the measures, depending on whether they are carried out by a judicial officer or by a public official.

Article 24. Request for Provisional Measures

1. A court that is requested by a competent foreign authority to order provisional measures orders such measures in accordance with the legislation of the Islamic Republic of Afghanistan. It may also take a measure whose effects correspond most closely to the measures sought. If the request is worded in general terms, the court shall order the most appropriate measures provided for under the legislation.
2. Should it refuse to comply with measures not provided for under the legislation of the Islamic Republic of Afghanistan, the court receiving the request to carry out the provisional

measures ordered abroad may replace them with measures provided for under that legislation and whose effects correspond most closely to the measures whose execution is being sought.

3. The provisions relating to the lifting of provisional measures as set forth in Article 15, paragraph 2 of this law are applicable.

VI. Miscellaneous Measures

Article 25. Registration Procedure

Any nonprofit organization that wishes to collect or receive, grant or transfer funds and property must be entered in the registry of nonprofit organizations in accordance with methods and subject to procedures of the law of the country.

Article 26. Donations and gifts

Any donation and gifts made to a non-profit organization indicated in the preceding article in an amount equal to or greater than an amount established by Da Afghanistan Bank 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.

Article 27. Banned Organizations

1. any nonprofit organization that, with full knowledge of the facts, encourages, promotes, organizes, or commits the offenses indicated in Article 2 of this law may cause a temporary ban by a competent prosecution office,
2. the dissolution of any nonprofit organization under paragraph 1 of this article shall be carried by the competent court based on the request of the government prosecutor.

Article 28. Penalties

Any violation of the provisions of this chapter is punishable by one of the following penalties:

- (a) a fine of not less than 5,000 or more than 50,000 Afghani;

(b) a temporary ban on the activities of the organization of no more than six months; and/or

(c) the dissolution of the organization.

Article 29. Information Accompanying Wire Transfers

1. All cross-border wire transfers must be accompanied by precise information on the person ordering the transfer, particularly his or her name, and as applicable, account number. In the absence of an account number, a unique reference number shall accompany the transfer.
2. All domestic wire transfers must include the same information as in the case of cross-border transfers, unless all information concerning the person ordering the transfer can be made available to the financial institutions of the beneficiary and the competent authorities by other means, provided that in such case an account number or unique reference number that will permit the transaction to be traced back to the originator shall accompany the transfer.
3. The methods for implementing this article shall be established by regulation of Da Afghanistan Bank.

Article 34. Entry into Force

This law shall enter into force on the date of signature by the President of the Islamic Republic of Afghanistan and shall be published in the Official Gazette .