

## **LAW ON CAMPAIGN AGAINST FINANCING OF TERRORISM**

### **Chapter 1. General Provisions**

#### **Article 1. Purpose**

This law is adopted pursuant to Article 7 of the Constitution of [Afghanistan] for the purpose of campaigning against the financing of terrorism.

#### **Article 2. Definitions**

For the purposes of this law the following terms shall have the meanings set forth below:

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 that is used or occupied by any employee of a state or an intergovernmental organization or other authorities of a state 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 of this law.
4. "Convention" means the International Convention on the Suppression of the Financing of Terrorism, signed on January 10, 2000.

#### **Article 3. The offense of Financing of Terrorism**

1. Any person commits the offense of financing of terrorism who 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 funds and property [related] 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 with the annexes to the Convention on the Suppression of the Financing of Terrorism, and to which the state 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 paragraphs 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 with full knowledge of the intention of them to commit an offense or when its aim is to facilitate the fulfillment of their purposes.  
of an offense as set forth in paragraph 1 of this Article;
- (d) No consideration of a political, ideological, racial, ethnic, religious, or other similar nature may be taken into account in order to justify the commission of any of the offenses mentioned in this Article.

## **Chapter 2. Penalties and Coercive Measures**

### **Article 4. Penalties Applicable to Real Person**

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. Accomplice, assistant, facilitator, or those who intend an offence of financing terrorism or provide advice to its committer or accomplice are punishable as committer.

### **Article 5. Penalties Applicable to Legal Person**

1. When a terrorism financing offense has been committed by an agent or representative of a legal person,[corporate entity] it 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. Corporate entities of the state shall be exception to this rule.
2. Corporate entities may additionally be:
  - (a) Banned permanently or for a minimum period of five years from directly or indirectly carrying on certain business activities; [or]
  - (b) Ordered to close permanently or for a minimum period of five years their premises that were used for the commission of offenses reference in this law;
  - (c) Dissolved if they were created for the purpose of committing the offense;
  - (d) [Required to] publicize the judgment through mass media.

### **Article 6. Aggravating Circumstances**

Where the offence of financing terrorism is committed by a criminal organization or a legal entity owned or controlled by such organization, it shall be punished as follows:

- a. for natural persons, imprisonment of not less than fifteen years to life imprisonment and a fine of not less than one million Afghani and not more than twelve million Afghani
- b. for corporate entities, a fine not less than 4.5 million Afs to not more than 20 million Afs.

### **Article 7. Mitigating Circumstances**

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

### **Article 8. Confiscation**

1. The following funds and property shall be confiscated by the competent court
  1. Property and funds shall be confiscated if they are used or intended to be used to commit the offense.
  2. Funds and property obtained from the proceeds, derivatives or exchange of the offence.
  3. Funds and property listed in sections 1 and 2 of this paragraph that are transferred to another person, except if the owner of the funds or property proved that it has been transferred to him in exchange of payment of fair price or of equivalent services provided 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, as assessed by court.
  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 of financing terrorism, or funds and property acquired from the person convicted by his spouse or dependent children, unless fair value has been paid for such funds and property.
2. The confiscation order specifies the funds and the amount property concerned.

### **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 document that were prepared for remuneration or free of charge during the lifetime or as an endowment or will before demise, for the custody of funds and property against confiscation shall be void upon the order of court and the purchaser shall be reimbursed for his actual payment.

### **Article 11. Belonging 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. If the court, ruling on an application to set aside such judgment, acquits the person prosecuted, the funds and property confiscated or their value shall be restituted to the owner.

### **Article 12 third person's rights in the confiscated funds and property**

The petitions on rights of third persons in the confiscated funds and property can be filed 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 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 concerning disputes of Freezing Funds and Property**

Any individual or organization whose funds and property have been frozen pursuant to Article 13 may within thirty days of the issuance of an order referred to in Article 13 submit an application of appeal to the Supreme Court of Afghanistan. The Supreme Court decision with respect to this request is final.

#### **Article 15. 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, to freeze funds and property and financial transactions.
2. The lifting of these measures can be ordered at any time at the request of the public prosecutor's office or 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, shall seize 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 3. Jurisdiction of the Courts**

#### **Article 17. Existence of Judicial Jurisdiction**

- 1) 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 state of Afghanistan;
  - (b) The offense was committed on board a vessel flying the flag of the state of Afghanistan or an aircraft registered pursuant to currently enacted laws by the country [Afghanistan] at the time prior to when the offense was committed;
  - (c) The offense was committed by a national of Afghanistan;
  - (d) the offense was committed outside its territory by someone now present in its territory, where the state of Afghanistan does not agree to extradite such a person to a state requesting extradition for the same offense;
  - (e) The offense was directed against a national of the state of Afghanistan;
  - (f) The offense was committed in or directed against a government facility of the state of Afghanistan located outside its territory;
  - (g) The offense was directed to in the commission of an offense indicated in Article 3, paragraph 1, subparagraph (a) and (b), in an attempt to compel the state of Afghanistan to do or abstain from doing any act;
  - (h) The offense was committed by a stateless person who has his or her residence in the territory of the state of Afghanistan;
- (2) For hearing of the cases involving offenses committed outside of the national territory of Afghanistan, the Supreme Court of Afghanistan shall establish a specific court.

## **CHAPTER 4. International Cooperation**

### **Article 18. Mutual Cooperation**

Cooperation may be made with other states on a mutual basis for the purposes of effective campaigning against financing of terrorism in the field of information exchange, investigation, proceedings, provisional measures, confiscations of instruments and funds and property associated with financing of terrorism, extradition, and provision of necessary technical assistance

### **Article 19. Right of Communication**

1. Any foreign national or a stateless person resident in Afghanistan, who is under custody or detention due to committing an offence referenced in this law, shall be 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;

(b) be visited by a representative of the state, where a state less person customarily maintains a residence; [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 within the jurisdiction of which the offense has been committed, it shall make the necessary arrangements to ensure that the person detained or brought under custody 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 diplomatic channels of the state of Afghanistan or through the Secretary General of the United Nations,, shall immediately inform, directly the states within the jurisdiction of which the offense has been committed, and if deemed appropriate, any other interested states, of the circumstances justifying the detention and the conclusions of the investigation.

### **Article 21. Requests for Judicial Cooperation**

1. At the request of a foreign state, for judicial cooperation relating to the offenses indicated in this law or law on anti-money laundering, the following shall be executed:

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) sending 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 submitted through a competent authority according to the legislation of the requesting country; [or]

(b) If the request is not consistent with the legislative documents of Afghanistan and execution of request is a threat to the public order and 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 for the same charges.

(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 the measures being requested or the decision being sought are directed at the person in question on account of that person's race, religion, nationality, ethnic origin, political opinions, gender or social status;

(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 with the request within 30 days following such decision.

(4) The state of Afghanistan shall promptly inform the foreign government and state 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 another procedure compatible with the legislation of Afghanistan be followed.

2. A judicial officer or person appointed by the competent foreign authority may attend the investigations to obtain information and get assured about the execution of the measures.

## **Article 24. Request for Provisional Measures**

1. A court that is requested by a competent foreign authority to order provisional measures shall order such measures in accordance with the effective legislation of the state of Afghanistan..

2. Should it refuse to comply with measures not provided for under the legislation 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.

## **Chapter 5. Miscellaneous Measures**

### **Article 25. Registration Procedure**

Any nonprofit organization that wishes to collect or receive, grant or transfer funds and property or donations and gifts must be entered in the registry of nonprofit organizations in accordance with the effective laws 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 containing its full details. The record shall be kept for a period of five years and shall be submitted to the relevant authority for the oversight, 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 3 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 public prosecutor.

**Article 28. Penalties for organizations**

Any violation of the provisions of article 25 and 26 of this law by non profit organizations is punishable as the following:

- (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 the person ordering the transfer on, his or her full name, and account number. In the absence of an account number, a unique reference number shall accompany the transfer.
2. All domestic wire transfers must be subject to the provision of paragraph 1 of this Article, unless the information concerning the person ordering the transfer is 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. Da Afghanistan Bank may enact a specific Procedures to better implement the provisions of this Article.

**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 .