



CONTRACTING IN AFGHANISTAN BSA/SOFA GUIDELINES

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Afghanistan Investment Support Agency

Ministry of Foreign Affairs

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Resolute Support International Agreements Branch

Resolute Support Legal Advisor

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This document is intended as a familiarization tool to assist new or potential NATO and Department of Defense contractors in understanding the business environment in Afghanistan. While Headquarters Resolute Support / United States Forces-Afghanistan provides the following familiarization, we cannot act as counsel to private entities and our ability to provide additional guidance is limited. Please be aware that laws in Afghanistan can change without notification to NATO and the Department of Defense. This guide should not take the place of a company performing due diligence in learning the governing laws of Afghanistan.

ENTRY INTO AND EXIT FROM AFGHANISTAN

Afghan visa requirements for U.S. and NATO contractors went into effect on 1 September 2015. All U.S. and NATO contractor employees must have a valid national passport and Afghan visa at the time of entry into Afghanistan commercial or military airport without a visa are in violation of Afghan law and risk fines or deportation.

Quick Facts

Contractors are required to have valid passports with an Afghan visa to enter and exit Afghanistan

Contractors entering at military airports are subject to visa inspection by Afghan Border Police

Arrival at a Commercial Airport

Upon arrival at a commercial airport, contract employees should have their visas checked and entry-stamped. Fingerprints and other biometric data may also be collected. Additionally, Afghan officials may present the individuals with Foreigner Registration Cards from the Ministry of Foreign Affairs.

Arrival at a Military Airport

Afghan Border Police have posts at all SOFA-designated military airports. These police officers will conduct visa inspection and apply entry stamps. If the Afghan Border Police are not present at the time of arrival, contractors have 48 hours beyond the arrival date/time on their ticket in which to secure an entry stamp from the Afghan Border Police.

OBTAINING AN AFGHAN VISA

The Afghan Ministry of Foreign Affairs (MoFA) is responsible for issuing visas for contractor employees entering Afghanistan. A list of Afghan Diplomatic Missions can be found at:

<http://mfa.gov.af/en/page/4183/3884>

Processing times may vary and contractors should provide for plenty of time to obtain visas prior to entry into Afghanistan.

Procedures for Obtaining New Visas

Send an email to MoFA at visa.consular.mfa@gmail.com with the following documents:

- 1) A letter from a senior company representative which introduces the company and includes a list of the company's employees applying for visas, the country of citizenship for each employee, and the passport number for each employee. Each applicant will need to produce a Letter of Authorization.
- 2) A Letter of Introduction identifying the company employee who will provide the passports to the relevant diplomatic mission.
- 3) The date and location where the company will drop off passports and visa applications.
- 4) If using a third party to drop off or pick up passports, a power of attorney granting that third party authority to do so. Please allow time for MoFA to validate the request and contact the appropriate diplomatic mission.

At the time identified in the e-mail to MoFA, the designated individual should take the following documents to the identified diplomatic mission:

Quick Facts

New visas may be obtained through Afghan Diplomatic Missions worldwide

Visa renewals may be obtained through the MoI Passport Department in Kabul or Afghan Diplomatic Missions worldwide

Plane-side visas are now available at Hamid Karzai International Airport

According to Afghan Law, a one (1) year multi-entry visa should cost \$800

- 1) Original passports for all employees who are applying for visas.
- 2) Completed visa application forms (contact the appropriate diplomatic mission to determine if they require notarization)*
- 3) One 4 x 5 cm photo per application
- 4) Payment (Fees are set by Afghan law, and vary in price)

Contractors with classified contracts should contact the International Agreements Branch and USFOR-A SJA/RS LEGAD prior to applying for visas.

Renewing Valid Visas

Contractors may renew their valid visas at either the Mol Passport Office in Kabul, or through MoFA diplomatic missions or MoFA HQ in Kabul. Renewals through MoFA follow the same procedures as above. Renewals through the Mol Passport Office for visas issued after 1 January 2016 require an entry stamp on the visa. The Mol Passport Office also requires contractor employees to provide original passports, visa application forms, 4 x 5 photos, and payment, as well as:

- 1) A letter on company letterhead providing the names of those renewing their licenses,
- 2) A copy of their company's AISA license,
- 3) A copy of a photo identification for each applicant (this should not be military or NATO identification card; however a company identification card is acceptable),
- 4) A copy of the applicant's official Letter of Affiliation from the Department of Defense or the appropriate NATO contracting agency,
- 5) If using a third party expediter agency, a letter of introduction from the company to the Mol introducing the expediter and any couriers they will use.

* Forms may be downloaded from the MoFA website.

** Fees vary based on applicants and application location.

Frequently Asked Visa Questions

My employees are naturalized Americans born in Afghanistan, do they require visas?

If an individual is traveling to Afghanistan using an American passport rather than an Afghan passport or identification card, they should get the appropriate visas.

Can I travel to Afghanistan without a visa and get one upon arrival?

MoFA has established an office at Hamid Karzai International Airport (HKIA) for plane-side visas. These visas should only be purchased for emergencies. Contact visa.consular.mfa@gmail.com at least 24 hours prior to travel to arrange for a MoFA agent to meet you at the security gate.

MoFA is asking for different documents than the ones mentioned in this document, what do I do?

Please e-mail usfora.bsajc@afghan.swa.army.mil and provide copies of what you have already given MoFA and a copy of their demand for additional documents.

I am a contractor doing a site survey at Bagram Airfield. I'll be flying in on a military aircraft, staying for two days, and then flying out on a military aircraft. Do I need a visa?

Yes. ABP will check visas in military terminals beginning in 2016. However, you may arrange with the MoFA for a short-duration visa, instead of the one (1) year multi-entry visa.

OBTAINING AN AFGHAN BUSINESS LICENSE

As of 1 September 2015, all companies operating in Afghanistan are required to have a business license issued by the Afghanistan Investment Support Agency (AISA). Licenses are valid for three (3) years and the cost varies is based on the type and size of the contractor's business.

Quick Facts

AISA licenses are required to operate a business in Afghanistan

AISA requires a \$90 processing fee for a three (3) year license

Procedures for Obtaining an AISA Business License*

Applications should include the following:

- 1) A power of attorney is required for a third-party to act as the company's legal representative if the contractor company's president, vice president, or equity partner is NOT present when submitting the application to AISA in Afghanistan. If the power of attorney is executed outside of Afghanistan, it will have to be authenticated by the Department of State of the nation under whose laws it was executed. The power of attorney must be signed by the President, Vice-President, or an equity partner.
- 2) Original passport and visas of the authorized individual applying for the contractor.
- 3) Original Tazkera IDs of the President, Vice President, and equity partner if they are Afghanistan citizens.
- 4) Three (3) color copies of the passport and visas of the contractor company's president, vice president, and equity partners – or their legal representative.
- 5) Four (4) photos of the contractor company's President, Vice President and/or equity partners (3 x 5 cm).

*Procedures can be found at: <http://www.aisa.org.af/Content/Media/Documents/SpecialProceduresforUnitedStatesandNATOContractors2242015143434474553325325.pdf>

- 6) If the contractor company is located outside of a U.S. or NATO base, an official/stamped contract letter or leasing documents confirmed by area representative (village elder) or property owner.
- 7) If the contractor company is located inside a U.S. or NATO base, an official letter stating that they are located on base (an official of the installation needs to provide this, contracting officers cannot).
- 8) A Ministry of Finance tax clearance letter or renewal letter.*
- 9) Application fee
- 10) Application form (www.aisa.org)
- 11) AND IF APPLYING FOR A BRANCH LICENSE – A notarized board resolution authorizing the parent company to establish an Afghan branch.

Authenticating Applications

Any notarized document not produced in Afghanistan using Afghan laws will need to be authenticated by the Department of State of the nation under whose laws the document was implemented. This will primarily be powers of attorney and Board Resolutions. Instructions for U.S. authentications are located at:

<http://travel.state.gov/content/travel/en/legal-considerations/judicial/authentication-of-documents/office-of-authentications.html>.

Have the entire license application package authenticated by an Afghan embassy/consulate or MoFA in Afghanistan. If using MoFA, the Resolute Support International Agreements Branch (IAB)** will produce a letter introducing the company's legal representative, President, and Vice-President. Please provide IAB with a notarized Board of Directors resolution or similar document identifying the President and Vice-President.

* Instructions on page 10

** usfora.bsajc@afghan.swa.army.mil

BUSINESS LICENSE FEE SCHEDULE

<u>Activity</u>	<u>Sector</u>	<u>Minimum Investment by dollar(\$)</u>		<u>New License Fee</u>	<u>Renewal Fee</u>
Construction and Road Building	Construction	Small Investment	100,000	700	350
		Medium Investment	1,000,000	700	350
		Large Investment	10,000,000	1000	500
Industry	Manufacturing	Small Investment	10,000	50	50
		Medium Investment	50,000	350	175
		Large Investment	1,000,000	350	175
Equipment Production, Consumer goods, cloth and Steel Mills and Steel product	Production	Small Investment	100,000	50	50
		Medium Investment	1,000,000	350	175
		Large Investment	10,000,000	350	175
Production and Process of Agricultural and Animal Products, Bee Farm	Agriculture	Small Investment	100,000	50	50
		Medium Investment	1,000,000	350	175
		Large Investment	10,000,000	350	175
Mining and Quarrying, Storage and Refining of Oil	Mining	Medium Investment	1,000,000	350	175
		Large Investment	10,000,000	350	175
Ground and Air Transport, Freight, Lease and Renting Services	Service	Small Investment	100,000	700	350
		Medium Investment	1,000,000	1000	500
		Large Investment	10,000,000	1000	500
Logistic, Technology, Technical, Exhibition, Cleaning and Hotel Services, Distribution of Oil	Service	Small Investment	50,000	700	350
		Medium Investment	1,000,000	1000	500
		Large Investment	10,000,000	1000	500
Telecommunication & Aviation	Service	Large Investment	10,000,000	2000	1000
Educational, Entertainment, Health, Broadcasting, ISP and Advertisement Services	Service	Small Investment	5,000	100	50
		Medium Investment	100,000	300	150
		Large Investment	1,000,000	500	250
Security Services and Risk Management	Service	Large Investment	1,000,000	5000	5000
Consultancy, Human Resource, Financial, Legal and Insurance Services	Service	Small Investment (Sole Proprietor)	10,000	1000	500
		Medium Investment	50,000	2000	1000
		Large Investment	1,000,000	2000	1000

Frequently Asked Business License Questions

How long does it take to get an AISA license?

AISA has introduced office automations and procedures which have reduced the processing time from months to days. If your AISA license has been delayed for longer than 10 business days, contact the International Agreements Branch.

AISA will not allow us to keep our company name, why?

Afghanistan does not allow companies to have certain names, try to pick a similar name and ensure you document the relationship of that company to the parent organization with AISA (e.g., Acme Company, a branch of Acme American LLC).

The company we are setting up in Afghanistan is a subsidiary of a joint venture to which a contract was novated from the awardee. Are we going to have any issues?

Yes. The more complex your corporate structure the more issues you will have with your AISA license, taxes, and visa requests.

My company was referred to another Ministry for approval, why?

The AISA license replaces many of the professional licenses required under Afghan law. As such, AISA will often send applications to other Ministries for approval. AISA is working with other ministries to set up a “one-stop licensing shop” under the Ministry of Commerce and Industry. This is still several months away.

Are there companies I can hire to assist me?

There are many companies offering to assist with obtaining AISA licenses and visas. Please be careful when choosing one as they vary greatly in skill level. USFOR-A and NATO cannot endorse one expediting company over another.

AFGHAN TAXES AND EXEMPTIONS

Contractors must follow Afghan tax law. The Afghan Revenue Department (ARD) has means to apply serious penalties to companies who do not comply. Unless the ARD violates some article of the U.S.-Afghanistan Bilateral Security Agreement (BSA) or NATO Status of Forces Agreement (SOFA), United States Forces-Afghanistan (USFOR-A) and Resolute Support will not intervene on behalf of a contractor.

Contractors must file annual Afghan tax returns and are responsible for withholding and paying certain taxes for its employees, landlords, and Afghan contractors. In general, if the goods or services directly benefit NATO or USFOR-A, they are tax exempt. If they indirectly benefits NATO/USFOR-A (rental equipment, real estate, etc.) they are taxable.

Procedures for Obtaining a Tax Exemption

- 1) Have the contracting officer complete a Tax Exemption Request Letter. If the contracting officer does not have the format for the tax exemption letter. Have them contact IAB.*
- 2) Send the completed Tax Exemption Request Letter to IAB for authentication.*
- 3) Take the authenticated Tax Exemption Request Letter, a copy of the relevant contracts with redactions for Personally Identifiable Information (PII), and any other required documents to the Ministry of Finance Exemption Office for approval.

Quick Facts

Tax licenses are required to obtain or renew AISA licenses.

Even with a tax exemption, your company may still be liable for certain taxes.

All contractors must file an annual tax return in Afghanistan.

*usfora.bsajc@afghan.swa.army.mil

Frequently Asked Tax Questions

If I am tax exempt does that mean I do not have to do anything?

No. Your company is responsible for receiving a tax exemption authorization, filing annual tax returns, and paying applicable taxes on good or service which does not directly benefit NATO or USFOR-A. You must have a tax clearance letter in order to renew your AISA license.

If I am tax exempt, why do I have to pay taxes?

Afghanistan collects certain types of taxes by requiring the party purchasing goods or services to withhold a percentage of the payment to pay the tax owed by the seller. This is called a withholding tax and is similar to the withholding of a portion of an employee's salary to pay that employee's income tax. Taxes must generally be withheld for the rent of real property in Afghanistan, salaries for Afghan employees, and contracts with Afghan companies. Contractors should work with Afghan attorneys and tax advisors to determine where withholding taxes apply to them.

My company just received a large tax assessment, what do I do?

If you believe your company has been improperly taxed, first seek the assistance of an Afghan tax attorney. If necessary, contact the International Agreements Branch or the office of the Resolute Support Legal Advisor.

I was assessed taxes, but the assessor said I could settle the debt for half the cost if I paid in cash. Is this legitimate?

No. If this occurs please contact your corporate counsel and report the matter to Afghan and U.S. or NATO officials.

I have a classified contract, can I provide that to the Afghans?

Classified contracts need to be redacted prior to being released to the Afghans. Notify your contracting officer and have them forward the contract to the classification authority for redaction.

CARRYING A WEAPON IN AFGHANISTAN

It is USFOR-A policy that contractors will not be armed. Exceptions to this policy may be granted for contractors who regularly perform contract operations outside of U.S. or NATO installations. If an exception is granted, the contractor must still obtain a weapons license from Afghanistan.

Contractors must work with their Department of Defense chain of command to complete all training and documentation necessary to submit an exception to policy request. The request is reviewed by the Armed Contractor Oversight Division (ACOD) and forwarded to the approval authority.

If approved, e-mail both usfora.bsajc@afghan.swa.army.mil and jeffrey.r.wooden.civ@mail.mil with ARMING LICENSE LETTER OF INTRODUCTION in the Subject line. After receiving all the necessary documentation, a Letter of Introduction will be issued to the Mol Counter-Terrorism Directorate.

Gather the following documents and translate them into Dari:

- Copy Letter of Authorization (LOA)
- Copy of Arming Authorization Letter
- Copy of the AISA business license (company name should match the LOA)
- Two (2) 4 x 5 photos
- Completed Application Form
- Completed Statement of Understanding of Afghan Law
- Copy of passport
- Letter of Introduction

Take the complete application package with payment to the Mol Counter-Terrorism Directorate.

Quick Facts

Contractors are generally not authorized to be armed

Exceptions may be authorized for contractors who regularly perform duties outside of U.S. or NATO installations

A GIRoA license is required

Contractors may not hire Private Security Companies, other than the Afghan Public Protection Force, to operate outside of US/NATO facilities

CONTRACTORS ARE SUBJECT TO AFGHAN LAWS

POINTS OF CONTACT

The Afghan Ministry of Foreign Affairs (MoFA)

Website: www.mfa.gov.af

Telephone: +93 020-210-0372

Address: Malik Azghar Road, Kabul

E-mail: contact@mfa.gov.af or fawadahmmad@gmail.com

The Afghan Ministry of Interior Affairs (Moi): Passport/Visa Department

Website: www.moi.gov.af

Telephone: +93 020-210-2945

Address: Shahre New Road, Kabul

The Afghanistan Investment Support Agency (AISA)

Website: www.aisa.org.af

Telephone: +93 020-210-3404

Address: East Part of Chaman-e-Hozory, Near National Olympic Building, Kabul

E-mail: invest@aisa.org.af or farmanbismil@aisa.org.af

Headquarters Resolute Support Legal Advisor (LEGAD) /USFOR-A Staff Judge Advocate's Office

Telephone: DSN 318-449-0462

E-mail: jacob.r.marshall@afghan.swa.army.mil

International Agreements Branch

Telephone: DSN 318-449-0586; +93 070-797-1092

E-mail: usfora.bsajc@afghan.swa.army.mil

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