



Contracting In Afghanistan: BSA/SOFA Guidelines

V 2.0

Produced by RS LEGAD,
USFOR-A SJA
and BSA/SOFA Secretariats

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This document is for informational purposes only. Contractors and contractor employees are urged to seek independent advice from appropriate professionals (attorneys, accountants, business experts, etc.) on all subjects relevant to the topics discussed in this document. This document does not constitute legal advice or opinion of any kind. No lawyer-client, advisory, fiduciary or other relationship is created. The U.S. government will not be liable for any damages, losses or causes of action of any nature arising from any use of this document or of the answers contained herein.

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HOW TO USE THIS DOCUMENT

This document is intended as a familiarization tool to assist new or potential contractors with understanding the legal landscape for Department of Defense contractors in Afghanistan. This should not be a primary resource, nor should it take the place of a company performing due diligence in learning the governing laws of Afghanistan.

While the Staff Judge Advocate's office is happy to provide 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 suddenly and this document may not reflect the most current legal or regulatory processes.

Entry Into and Exit From Afghanistan

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

Afghan visa requirements for U.S. and NATO contractors took full effect on 1 September 2015. This means that all U.S. and NATO contractor employees must have a valid national passport and Afghan visa at the time of entry into Afghanistan. Those contractors without visas will

likely be denied entry into Afghanistan. Contractors arriving at a commercial or military airport without a visa are in violation of Afghan law and risk deportation and fines.

Arrival at a Commercial Airport

Upon arrival at a commercial airport, contract employees should have their visas checked and stamped and fingerprints and/or iris scans may be collected. Additionally, Afghan officials may present the individuals with Foreigner Registration Cards. These blue cards are required at departure. Travelers should ensure they collect the cards before they leave the airport.

Arrival at a Military Airport

Afghan Border Police will be present at all SOFA-designated international military Airports no later than 15 March 16. These police officers will conduct visa inspection and apply entry stamps. Entry documents may be checked prior to arriving at a military airport and travelers without the required documents may be denied entry onto their plane with no refund of ticket purchase.

Obtaining an Afghan Visa

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
- Visas are required prior to entry into Afghanistan

The Afghan Ministry of Foreign Affairs (MOFA) is responsible for issuing visas for contractor employees entering Afghanistan. A list of MOFA 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

1. Send an email to MOFA at visa.consular.mfa@gmail.com with the following documents:
 - A. 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.
 - B. A letter of introduction identifying the company employee who will provide the passports to the relevant diplomatic mission.
 - C. The date and location where the company will drop off passports and visa applications.
 - D. 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.

2. At the time identified in the email to MOFA, the designated individual should take the following documents to the identified diplomatic mission:
 - A. Original passports for all employees who are applying for visas.
 - B. Completed visa application forms (contact the appropriate diplomatic mission to determine if the require notarization)*
 - C. One 4 x 5 cm photo per application
 - D. Payment (Fees are set by Afghan law, and vary in price)
3. 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 MOI 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 MOI Passport Office for visas issued after 1 JAN 16 require an entry stamp on the visa. MOI Passport also requires contractor employees to provide the documents identified in 2 above 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 I.D. for each applicant (this should not be military or NATO I.D.s, a company I.D. card is acceptable),
4. A copy of the applicant's official Letter of Affiliation from the DoD or the appropriate NATO contracting agency,
5. If using a third party expediter agency, a letter of introduction from the company to the MOI 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.

I hired an expediter who is now asking for work permits, C.V.s, and school records, what is going on?

Your expediter is seeking to obtain a standard Afghan work visa rather than the 1 year multiple entry visa.

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

There is currently no plane-side visa procedure in Afghanistan, nor is there any established procedure for in-country visa issue.

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

Please email 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. You may arrange with the Ministry of Foreign affairs for a short-duration visa, however in stead of the 1 year multi-entry visa

Obtaining an Afghan Business License

Quick Facts

- AISA licenses are required to operate a business in Afghanistan
- AISA requires a \$90 processing fee for a 3 year 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. Licenses are valid for three years and the cost varies is based on the type and size of the contractor's business.

Procedures for Obtaining an AISA Business License*

Applications should include the following:

- A. A notarized 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.
- B. Original passport and visas of the authorized individual applying for the contractor.
- C. Original Tazkera IDs of the president, vice president, and equity partner; if they are Afghanistan citizens.
- D. Three color copies of the passport and visas of the contractor company's president, vice president, and equity partners – or their legal representative.

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

- E. Four photos of the contractor company's president, vice president and/or equity partners (3 x 5 cm)
- F. 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.
- G. If the contractor company is located inside a U.S. or NATO base, an official letter stating that they are located in base (an official of the installation needs to provide this, contracting officers cannot).
- H. A Ministry of Finance tax clearance letter.*
- I. Application fee
- J. Application form (www.aisa.org)
- K. AND IF APPLYING FOR A BRANCH LICENSE – A notarized board resolution authorizing the parent company to establish an Afghan branch.

Authenticating Applications

- A. 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>
- B. Have the entire license application package authenticated by an Afghan embassy/consulate or Ministry of Foreign Affairs in Afghanistan. If using the Ministry of Foreign Affairs, the Resolute Support International Agreements Branch** will produce a letter introducing the company's legal representative, President, and Vice-President. Please provide them 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

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 IAB at usfora.bsajc@afghan.swa.army.mil

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.

I hired an expediter who said that I didn't need to worry about getting documents authenticated through the Department of State. What gives?

Your expediter may be circumventing requirements or unaware of the rules. Proceed with caution.

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. This should only take a few days. If your application is delayed for more than a few days please contact the International Agreements Branch.

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.

Afghan Taxes and Tax Exemptions

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.

U.S. and NATO contractors in Afghanistan are generally exempt from Afghan taxes. However, contractors will have to 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), they are taxable.

Procedures for Obtaining an Tax Exemption

- A. 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.*
- B. Send the completed Tax Exemption Request Letter to IAB for authentication.*
- C. Take the authenticated Tax Exemption Request Letter, a copy of the relevant contracts with PII redactions, and any other required documents to the Ministry of Finance Exemption Office for approval.

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

Frequently Asked Tax Questions

If I am tax exempt does that mean I don't 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, please contact the International Agreements Branch or RS LEGAD.

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

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

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 off of U.S. or NATO installations. If an exception is granted, the contractor must still obtain a weapons license from Afghanistan.

Contractors work with their DOD chain of command to complete all training and documentation necessary to submit an exception to policy request in accordance

with USFOR-A FRAGO 15-032.

The request is reviewed by the Armed Contractor Oversight Division (ACOD) and forwarded to the approval authority.

If approved, email: usfora.bsajc@afghan.swa.army.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 Afghan Ministry of Interior Affairs Counter Terrorism Division.

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)
- 2 4x5 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 Ministry of Interior Affairs Counter Terrorism Division.

CONTRACTORS ARE SUBJECT TO AFGHAN LAWS

Private Security Contracting in Afghanistan

PD 66 Quick Facts

- PSC may only be hired by contractors under the following condition:
 - Contracted for Guardian Angel Duty
 - Working on an ANDSF Facility
 - Approved by Commander, USFOR-A/COMRS

Private Security Contractors (PSCs) are subject to both Afghan Laws and NATO/USFOR-A regulations. NATO Force Protection SOP#331 currently requires all PSCs to be approved by the Commander of Resolute Support Mission (COMRS). As interpreted by the Afghan

Government, privately hired PSCs are not authorized to operate outside of Afghan or NATO/USFOR-A facilities. The Afghan Public Protection Force (APPF) is an Afghan state-owned enterprise which has the primary responsibility for contractor security outside of NATO/US facilities.

PSC licensing takes weeks to complete. Aside from normal AISA license processes, PSCs need to clear the MOI counter-terrorism office. All PSC employees must obtain an arming authorization from USFOR-A before they may carry a weapon. Applications for arming authorizations must be submitted to the Armed Contractor Oversight Directorate (ACOD).

In order to preserve PD 66, we recommend PSCs require at least 25% of personnel contracted with under PD 66 be Afghans. These Afghan employees can fill a variety of roles to include drivers, interpreters, and office support roles. There is no requirement that these Afghan employees perform armed security services.

Direct questions regarding PSCs to RS/USFOR-A Legal Advisors

PSC CONTRACTORS ARE SUBJECT TO AFGHAN LAWS

POINTS OF CONTACT

The Afghan Ministry of Foreign Affairs (MFA):

Website: www.mfa.gov.af

Telephone: +93 020-210-0372

Address: Malik Azghar Road, Kabul

Email: contact@mfa.gov.af

The Afghan Ministry of Interior (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

Email: invest@aisa.org.af

Resolute Support/USFOR-A Legal Office

Telephone: DSN 318-449-0976

Address: HQ Resolute Support, Kabul

International Agreements Branch

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

Email: usfora.bsajc@afghan.swa.army.mil

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