



Contracting In Afghanistan: BSA/SOFA Guidelines

Produced by RS
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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 USFOR-A 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 not₂ 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 airfields may not be able to obtain an entry stamp
- Visas may be obtained through Afghan diplomatic missions

As of 1 September 2015, Afghan visa requirements for U.S. and NATO contractors took effect. This means that all U.S. and NATO contractor employees should 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. This is true whether the contractor employee is arriving at a commercial or military airport.

Arrival at a Commercial Airport

Upon arrival at a commercial airport, contract employees will have their visas checked and stamped and their biometric information will likely 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. As of 1 September 2015, all forms of Visa Exemption Certificate are invalid. Travelers who attempt to present a VEC to immigration officials will not be allowed to enter without a visa and will likely be subjected to additional administrative scrutiny.

Arrival at a Military Airport

Currently there are no Afghan Border Police at U.S. and NATO military airports. Entry documents will 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. Contractors who choose to arrive at military airports will not receive an entry stamp or Foreigner Registration Card. The lack of these documents will make departure from commercial airports extremely difficult and may limit future travel options.

Obtaining an Afghan Visa

Quick Facts

- New visas may be obtain through Afghan diplomatic missions worldwide
- Visa renewals may be obtained through the MOI Passport Department 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 they require notarization)*
 - C. One 4 x 5 cm photo per application
 - D. Payment (\$360 for one-year, multiple entry visa and an additional \$200 fee for first time applicants)**
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

Contractor employees 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 require 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 expeditor who is now asking for work permits, C.V.s, and school records, what is going on?

Your expeditor is seeking to obtain a standard Afghan work visa rather than the special visa authorized for U.S. and NATO contractors.

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

There are limited procedures for emergency visa issuance upon arrival. The procedures will not be utilized unless they are required based upon rapidly implemented mission essential contractual requirements. In the vast majority of instances, the failure to obtain required visas in time for contract performance does not qualify for use of these procedures. Do not plan on receiving support with obtaining a visa upon arrival unless you have received written confirmation from the USFOR-A SJA office prior to departing for Afghanistan.

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 emailed MOFA but have not heard back, what should I do?

Email them again and ask for confirmation.

I am only going to be in Afghanistan for a few days, do I need a visa?

Yes.

Obtaining an Afghan Business License

Quick Facts

- AISA licenses are required to operate a business in Afghanistan
- AISA licenses can take months to obtain based on the quality of the expeditor used and the amount of outstanding legal issues a company has in Afghanistan

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 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.
- Original passport and visas of the authorized individual applying for the contractor.
- Original Taskera IDs of the president, vice president, and equity partner; if they are Afghanistan citizens.
- 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 (check the website on the previous page)
- 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 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?

Processing times can vary and are largely determined by the contractor's ability to get original copies of appropriately authenticated documents. Plan for a few months at least. Once the materials are presented to AISA, they can issue a license in 48 hours if there are no issues.

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 for 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 operating 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.

Procedures for Obtaining an Tax Exemption

- A. Have the contracting officers for the contracts on which you are seeking a tax exemption complete a DD Form 577 with their commander “appointing” them as the contracting officer. The contracting officer sends the completed form directly to the International Agreements Branch (IAB).*
- B. Have the contracting officer complete a Tax Exemption Request Letter using the format available at:
https://3rdarmy.arcent.army.mil/subordinate_units/cjtsc/policies/CJTSCC_HCA_BULLETINS/Forms/AllItems.aspx?InitialTabId=Ribbon%2EDocument&VisibilityContext=WSSTabPersistence.
- C. Send the completed Tax Exemption Request Letter to IAB for authentication.*
- D. 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.

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.

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.

My contracting officer refuses to complete the DD Form 577, what do I do?

Please contact the International Agreements Branch.*

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 policy that contractors in Afghanistan 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**

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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