

# Legislative Analysis

## Circular No. 208 by the Ministry of Economy on Non-Emirate Organizations' Operations

### I. Title of the Document

[Circular No. 208: Guidance of Minister of Economy for Provincial Directorates of Economy and Non-Emirate Organizations to Explain Their Duties.](#)

### II. Introduction

**Summary of the Legislative Document:** This document, issued by the De Facto Authorities (DFA) Ministry of Economy, outlines some guidelines aimed at enhancing transparency, efficiency, and accountability in the activities of non-governmental (referred to as "non-emirate") organizations operating at the provincial level. It emphasizes the alignment of projects with societal needs, rigorous monitoring, and adherence to legal procedures for project approval and implementation.

**Legal Basis for the Document:** The circular is rooted in the authority of the Ministry of Economy to regulate and monitor the activities of non-emirate organizations in Afghanistan, ensuring their contributions align with national priorities and legal frameworks.

**Scope of the Document:** Applicable nationwide, it mandates all non-emirate organizations to comply with a series of directives concerning project approval, monitoring, employment practices, and asset management, aiming to integrate these organizations' efforts more closely with the DFA's economic and developmental objectives.

### III. Description and Analysis

#### Definitions:

This section provides definitions for key technical and legal terms used throughout the circular, along with commonly used terms associated with the subject matter. It is important to note that the circular itself does not provide official definitions for these terms. The following definitions are based on commonly accepted meanings and interpretations and are intended to enhance understanding of the circular's content and implications.

- **Non-Emirate Organizations:** Broadly refers to non-governmental organizations (NGOs) and includes any organization or institution operating within Afghanistan that is independent of the DFA. This term encompasses entities engaged in development, humanitarian aid, and social services.

- **Memorandum of Understanding (MoU):** Formal agreements between non-emirate organizations and sectoral authorities. These documents outline the scope, terms, and conditions of projects, ensuring alignment with national priorities and legal requirements.
- **Monitoring and Evaluation (M&E):** A systematic process for tracking and assessing the progress and impact of a project. Monitoring involves regular oversight, while evaluation assesses effectiveness and outcomes against objectives.
- **Provincial Development Council (PDC):** A local governmental body responsible for overseeing and coordinating development efforts within provinces. The PDC ensures projects align with local needs and contribute to broader development goals.
- **Sectoral Authority:** Refers to specific DFA departments or ministries tasked with overseeing activities within particular sectors, such as health or education. Non-emirate organizations must coordinate project approvals through these authorities.
- **Bait al Maal (Public Treasury):** Islamic term for state or public treasury. Assets of non-emirate organizations are considered part of this treasury, emphasizing the need for responsible and coordinated management of resources.
- **Sustainable Development Goals (SDGs):** A set of 17 global objectives established by the United Nations to address poverty, protect the environment, and ensure prosperity for all by 2030. Projects are encouraged to contribute towards achieving these goals.
- **Transparency:** The practice of openly sharing essential information related to operations, decision-making, and finances with the public and stakeholders, ensuring accountability.
- **Accountability:** The obligation of organizations to explain their decisions and actions to stakeholders and to be responsible for the outcomes of their activities.
- **Ethnic, Racial, or Political Activities:** Activities promoting specific ethnic groups, racial identities, or political agendas are prohibited, focusing instead on neutral and inclusive development efforts.
- **Online Registration System:** A digital platform for non-emirate organizations to register projects and comply with administrative requirements, including visa requests and customs exemptions.

- **ANDMA (Afghanistan National Disaster Management Authority):** Now known as the Office of the State Minister for Disaster Management, it coordinates emergency and urgent assistance projects across Afghanistan.
- **TVET (Technical and Vocational Education and Training Authority):** Responsible for overseeing and implementing projects related to technical and vocational training across the country.
- **Organizations:** While primarily referring to NGOs, this term can also encompass a wider range of institutions and entities involved in various developmental, humanitarian, and social welfare activities within Afghanistan.

### **Key Directives and Their Implications:**

The circular outlines 22 directives for NGOs, covering a wide range of topics related to their operations. These directives address project alignment, transparency, accountability, and procedures, aiming to improve aid delivery and development efforts in Afghanistan. Below are some of the key directives listed in this circular:

1. **Alignment with Societal Needs:** Projects must prioritize societal, sectoral, and sustainable development goals, ensuring resource utilization reflects provincial priorities.
2. **Monitoring and Approval:** Introduces a dual-layer approval process for projects, emphasizing semiannual report submissions with necessary approvals, enhancing accountability.
3. **Prohibition of Unauthorized Activities:** Stipulates that any project lacking a Memorandum of Understanding and approval documentation will be halted, underlining the importance of formal authorization.
4. **Collaboration for Issue Resolution:** Encourages cooperation with sectoral authorities to address project challenges, promoting a collaborative problem-solving approach.
5. **Prohibitions on Discriminatory Activities:** Forbids projects with ethnic, racial, or political objectives, aiming to maintain neutrality and focus on development.
6. **Restrictions on Workshops and Employment Practices:** Limits the organization of events without Ministry approval and imposes guidelines on employment practices to ensure fairness and qualification-based hiring.
7. **Asset Management:** Declares organization assets as part of the public treasury, restricting their transfer or sale without Ministry coordination.

8. **Monitoring and Evaluation:** Mandates cooperation with the Ministry's Monitoring and Evaluation team, underscoring the emphasis on transparency and effective project execution.
9. **Consolidation of Office Rent Expenses:** The circular directs NGOs to avoid including office rent as a cost in multiple project budgets.

## IV. Impacts

The circular presents a mix of potential positive and negative impacts on aid delivery and development efforts in Afghanistan. While seeking to improve accountability and alignment with national priorities, it risks unintended consequences that might hinder the effectiveness of NGOs and negatively affect the Afghan people.

### Potential Positive Impacts

- **Enhanced Alignment and Coordination:** By mandating projects to align with national and provincial priorities, the circular could lead to more targeted interventions that effectively address Afghanistan's critical needs and reduce duplication of effort.
- **Increased Accountability and Transparency:** The introduction of stringent monitoring and reporting requirements aims to enhance the accountability of NGOs and boost public trust in aid delivery, ensuring donor funds are utilized efficiently for the benefit of the Afghan people.
- **National Capacity Building:** Encouraging the employment of Afghan nationals may contribute significantly to skill development and knowledge transfer, promoting long-term self-sufficiency and reducing reliance on international personnel.
- **Promotion of Financial Efficiency:** By directing NGOs to allocate office rent as a cost in only one project budget, the circular aims to eliminate the overstatement of expenses and ensure greater financial accuracy. This approach promotes the responsible use of donor funds, contributing to a more transparent and accountable development sector in Afghanistan.

### Potential Negative Impacts

- **Bureaucratic Obstacles and Delays:** The circular's complex approval and monitoring processes could create delays that hinder timely aid delivery, especially in urgent humanitarian situations.
- **Increased Oversight and Constraints:** While oversight ensures accountability, an overly stringent focus on government control could potentially hinder NGOs' operational dynamism. This might restrict their capacity for

innovation and their ability to swiftly respond to changing community needs, thereby impacting the effectiveness of development projects.

- **Potential for Overreach:** The use of broad and vague terms in the circular could result in interpretative challenges, possibly leading to enforcement overreach. For instance, without specific definitions, the requirement for 'appropriate project monitoring' could vary greatly in interpretation, creating uncertainty for NGOs. This ambiguity may restrict operational freedom, as organizations might hesitate to innovate or adapt, fearing non-compliance with loosely defined regulations.

### Stakeholder-Specific Considerations

- **Impacts on NGOs:** The circular's intricate requirements might introduce additional administrative tasks for NGOs. While intended to enhance oversight, the extensive approval and monitoring framework may inadvertently create operational challenges. These challenges could affect the NGOs' agility and their capacity to swiftly address emergent needs, potentially impacting the efficiency of aid delivery.
- **Impacts on the Afghan People:** The circular's focus on project alignment with national priorities could lead to more effective resource utilization. However, strict enforcement and potential project delays could disrupt the delivery of vital services to Afghanistan's most vulnerable populations who rely heavily on NGO support.
- **Impacts on Donors:** Donors might see the circular's focus on accountability as beneficial for ensuring their contributions are used appropriately. However, the detailed compliance requirements could raise concerns regarding the efficiency and adaptability of project execution. For example, the need for obtaining multiple approvals and coordinating with various ministries for simple activities like workshops could slow down project timelines, impacting donors' willingness to fund future projects. This balance between oversight and operational flexibility is crucial for maintaining donor support.
- **Impacts on the DFA:** The circular outlines a significantly expanded role for the DFA, specifically the Ministry of Economy and its provincial directorates, in the oversight and management of NGO activities. This includes increased responsibilities in project approval, monitoring, employee management oversight, and asset control. While intended to ensure transparency and alignment with national priorities, this expanded oversight framework could potentially create a substantial workload for the DFA, necessitating careful planning and resource allocation to ensure effective implementation.

## V. Concerns

This section examines potential challenges and consequences arising from certain directives within the circular. The focus is on identifying areas where provisions could

restrict the operational effectiveness and strategic flexibility of NGOs. By highlighting these potential impacts, the goal is to facilitate an informed review of the circular, ensuring its aims are achieved while supporting the essential work of NGOs.

- **Complexity in Compliance:** The detailed and layered approval processes may pose significant administrative challenges for organizations, particularly smaller ones with limited resources.
- **Potential for Arbitrary Enforcement:** The broad scope of some directives might lead to inconsistent interpretation and application, affecting project planning and execution.
- **Overly Restrictive Operating Environment:** The legislation establishes very tight control over NGOs and donors. This level of oversight might discourage foreign aid, stifle innovation, and reduce operational flexibility for essential services and development work.
- **Lack of Clarity and Specificity:** Some of the directives are worded ambiguously. For example, terms like "illegal committees" or "ethnic, racial, and political activities" could be interpreted broadly, hampering legitimate operations and raising due process concerns.
- **Bureaucratic Hurdles:** The multiple layers of approvals and the focus on documentation may lead to delays in implementing crucial projects. Delays can have serious consequences in crisis situations or when addressing urgent needs.
- **Limited Collaboration and Partnership:** The legislation seems to curtail coordination between NGOs and grassroots organizations or other civil society entities. This could undermine the effectiveness and sustainability of projects that require community engagement.
- **Financial Constraints:** Prohibiting the allocation of office space costs to projects could severely limit the operating capacity of many organizations, potentially leading to their closure.

## VI. Recommendations

Considering the challenges identified, this section presents recommendations to enhance the clarity and effectiveness of the circular's implementation. These recommendations aim to address potential obstacles, streamline processes, and foster collaboration between the Ministry of Economy and NGOs. They balance the need for regulatory oversight with the operational flexibility essential for effective aid delivery and development work.

*Enactment of a Comprehensive NGO Law:*

To enhance NGO operations within Afghanistan, it is imperative to consider either reactivating the 2005 NGO Law or formulating a new, comprehensive legal framework. The 2005 law provides a strong foundation for regulating the activities of both domestic and foreign NGOs. Carefully reviewing and potentially updating this law would ensure its alignment with the current government's vision, fostering effective collaboration and compliance within the NGO sector.

### *Streamlined Approval Processes*

1. **Establish a Tiered System of Approvals:** A differentiated approval process, considering the project's scale, associated risk factors, and the implementing organization's track record, could streamline operations. Expedited processes for low-risk projects or those by organizations with a history of compliance would enhance efficiency.
2. **Set Clear Review Timelines:** Defining specific timelines for each approval stage could reduce delays and improve project planning and implementation, ensuring organizations receive prompt feedback.
3. **Central Point of Contact:** A dedicated liaison within the Ministry of Economy could serve as a vital resource, offering guidance, facilitating efficient communication, and clarifying requirements for NGOs.

### *Clarification of Directives*

4. **Comprehensive FAQ and Online Resources:** Developing and disseminating resources, including FAQs and project proposal examples, would help clarify permissible activities and streamline the submission process, addressing potential ambiguities.
5. **Illustrative Examples of Do's and Don'ts:** Publishing clear examples of acceptable and unacceptable projects could provide practical guidance, helping organizations align their initiatives with national priorities.

### *Enhanced Stakeholder Engagement*

6. **Formal Feedback and Consultation Mechanisms:** Structured channels for dialogue between the Ministry and NGOs, like advisory councils or working groups, could ensure that policies reflect real-world conditions and organizational needs.
7. **Regular Assessments and Surveys:** Periodic evaluations to collect feedback from NGOs on the impact of the regulatory environment could identify challenges and areas for improvement, fostering a responsive regulatory framework.

### *Flexibility in Implementation*

8. **Fast-Track Process for Critical Projects:** A streamlined approval mechanism for projects of urgent humanitarian need or significant importance could ensure rapid response, enhancing the sector's agility and effectiveness.
9. **Appeal Mechanism for Project Proposals:** Establishing a formal process for NGOs to appeal decisions on project approvals would promote transparency and fairness, offering a pathway for review and reconsideration.

#### *Additional Considerations*

10. **Capacity Building for NGOs:** Comprehensive training programs for NGO staff on the regulatory framework, project design, and alignment with DFA priorities could strengthen the sector's overall capacity and compliance.
11. **Digital Solutions for Efficiency:** The adoption of secure online platforms for document submission, project tracking, and information exchange could significantly improve operational efficiency and transparency, benefiting both NGOs and the DFA.

## **VII. Conclusion**

Circular No. 208 establishes a comprehensive regulatory framework for non-governmental organizations (NGOs) in Afghanistan. It emphasizes alignment with national priorities, transparency, and accountability. While establishing a foundation for structured development, it also poses potential challenges for NGOs in terms of operational flexibility and administrative burdens. By streamlining approval processes and offering clearer operational guidance, the circular's implementation can be enhanced, addressing these concerns while strengthening its positive impact on Afghanistan's development. Ongoing collaboration between the DFA and NGOs, along with adjustments informed by practical experience, will be crucial to maximizing the benefits of this regulatory initiative.



## VIII. Reference:

For Additional Context on Related Legislation, Please Refer to the Following Resource on the [ARLO](#) Website:

- **[The DFA Procedure on Coordination and Regulation of the Activities of Domestic and International Organisations](#)** dated 22 October 2022: Approved by Prime Minister Mullah Mohammed Hassan Akhund, this Procedure outlines a regulatory framework for both domestic and international NGOs operating in Afghanistan. Key aspects include mandatory NGO registration with the Ministry of Economy, sector-specific project guidelines, and detailed reporting mechanisms. The Procedure addresses challenges like transparency, accountability, and project monitoring, emphasizing the need for coordinated surveys, project implementation in line with sectoral authorities, and adherence to legal frameworks. This document is crucial for understanding the operational landscape for NGOs under the DFA.
- **[Ministry of Foreign Affairs Circular on Health Project Execution Guidelines](#)** dated 09 September 2023: Issued by the Ministry of Foreign Affairs of the DFA, this circular communicates directives from the Ministry of Public Health to United Nations agencies and international organizations in Afghanistan. The mandate, effective from 30 August 2023, stipulates guidelines for health-related projects, including prohibitions on cash disbursements to patients by staff and restrictions against staff visits to civilian residences near project sites. These guidelines aim to ensure compliance and adherence to specific protocols during project implementation, emphasizing the importance of transparency and accountability in health project operations. This circular is essential for international organizations engaged in health projects in Afghanistan, underscoring the need for alignment with the stipulated operational and conduct standards.
- **[The directive from the Deputy Ministry for Finance and Coordination on the Prohibition of Females from Working in NGOs](#)**, dated December 24, 2022: Issued by the Ministry of Economy of the DFA, this directive mandated all national and international NGOs to suspend their female staff from working. The directive addressed concerns about non-compliance with the Islamic Hijab and laws enforced by the DFA by women working in these organizations. The Ministry of Economy, serving as the coordinating body for NGO operations, emphasized its role in enforcing laws and regulations. Failure to comply with this directive could have resulted in the revocation of the NGO's operating license. This directive was crucial for understanding the operational constraints faced by NGOs

at the time, particularly in terms of gender-related workforce policies under the Islamic Emirate of Afghanistan. It reflected the broader legal and regulatory environment influencing NGO operations in the country.

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- The **Cessation of Proposals and Suggestions for Unnecessary Projects (Public Awareness) letter**, issued by the Ministry of Economy of Afghanistan, mandates a significant redirection of donor and NGO activities. Under Directive No. 17, organizations, including international bodies, must shift their focus from public awareness, advocacy, peacebuilding, and dispute resolution to essential humanitarian aid and infrastructure development. This policy, grounded in the Procedure on Coordination and Regulation of NGOs (2022) and specifically under the auspices of the Ministry of Economy, applies to all national and international organizations in Afghanistan. Its main objective is to stabilize society and ensure

effective resource allocation, primarily impacting future projects without retroactively affecting ongoing ones. This directive is pivotal for guiding NGO operations and priorities within Afghanistan, as dictated by the DFA's Ministry of Economy.