

# **LAW ON ORGANIZING AFFAIRS OF THE DEFENSE ATTORNEYS**

## **Chapter One General Provisions**

### **Article 1:**

This law has been passed in order to regulate the issues concerning and manner of performance of defense attorneys of Islamic Emirate of Afghanistan.

### **Article 2:**

To defend his/her rights, every person may have a defense attorney.

### **Article 3:**

The Ministry of Justice shall lead and regulate the issues concerning defense attorneys.

### **Article 4:**

A defense attorney shall be a natural person who files a claim and defends the rights of his/her client before a court in accordance with this law.

### **Article 5:**

1. A defense attorney shall be appointed by his/her client through a Shari'a official print form.
2. In cases where rights of relatives (father, grandfather, third degree children, mother, grandmother, brother, sister, spouse, aunt, uncle, father and mother-in-law) are to be defended, the defense attorney shall not be required to obtain the license.
3. The defense attorney mentioned in clause two of this article shall be appointed based on a Shari'a official print form.

## **Chapter Two**

### **Requirements to become defense attorney**

#### **Article 6:**

Any person with the following qualifications may work as defense attorney:

1. be citizen of Afghanistan;
2. not deprived of felony crimes;
3. holder of education degree from any official Afghan or foreign religious schools or from faculties of Shari'a and law or having at least 10 years of professional and practical work experience in any judicial departments or in the Ministry of Justice;
4. be well-known;
5. completed the age of 25;

#### **Article 7:**

1. the following persons may not be allowed to work as defense attorneys:
  - a. Foreign nationals;
  - b. Judge, prosecutor, civil servants, representatives of the Council and employees of the armed forces while currently serving at their jobs;
  - c. If a person mentioned in paragraph 2 of clause 1 of this article has been dismissed from job on order of a court, he/she may not be allowed to continue functioning as defense attorney.

#### **Article 8:**

1. The Ministry of Justice shall issue a license to the persons mentioned in article 6 of this law.
2. The complete bio data of the defense attorney as well as the date of issuance of license shall be both registered in the defense attorneys' book by the relevant authority.

#### **Article 9:**

1. The license for a defense attorney shall be a legal print document whose format and contents be prepared by the Ministry of Justice and shall be issued to the applicant for a specified fee.
2. The fee for the application paper shall be 10,000 Afs.
3. A copy of the license and the application paper set forth in clause 1 and 2 of this article shall be attached to this law.

#### **Article 10:**

The license for the defense attorneys shall be divided into the following degrees in terms of jurisdiction within courts:

1. First degree license;
2. Second degree license;
3. Third degree license;

**Article 11:**

First degree license whose holder may, based on it, defend rights of his/her clients and file a claim shall be issued to those qualified as follows:

1. hold an education degree from any official Afghan religious schools or having at least 20 years of professional and practical work experience in any judicial departments or the Ministry of Justice;
2. hold a higher education degree from law or Shari'a faculties or higher or having at least 15 years of professional and practical work experience in any judicial departments or the Ministry of Justice;
3. offer 300,000 Afs fees for the privilege;

**Article 12:**

Second degree license whose holder may, based on it, defend rights of his/her clients and file a claim in primary and appeal courts shall be issued to those qualified as follows:

1. hold an education degree from any official Afghan religious schools or having at least 15 years of professional and practical work experience in any judicial departments or the Ministry of Justice;
2. hold a higher education degree from law or Shari'a faculties or having at least 10 years of professional and practical work experience in any judicial departments or the Ministry of Justice;
3. offer 200,000 Afs fees for the privilege;

**Article 13:**

Third degree license whose holder may, based on it, defend rights of his/her clients and file a claim in primary branches of appeal courts shall be issued to those qualified as follows:

1. To be graduated from one of the religious schools (*Madrasah*) or from Shari'a or law faculties, or have five years experience of practical work in judicial field or MoJ.
2. Pay an amount of 150,000 Afs as license fee.

**Article 14:**

Defense attorneys may get promotion under the following circumstances:

1. Must have at least practically worked for four years in degree three and three years in degree two, as defense attorney.
2. Must have submitted activity report to defense attorneys' relevant institutions; the year in which he/she did not submit his/her activity report, it shall not be considered for a step for his/her promotion.
3. Evaluation of report by central association in the Ministry of Justice.

**Article 15:**

- 1) Concerning the requirements set forth in article 14 of this law, a degree three license holder can only be promoted to degree two if he/she has been the winning party in at least two decisions of the court during the promotion period.
- 2) Concerning the requirements set forth in article 14 of this law, a degree two license holder can only be promoted to degree one two if he/she has been the winning party in at least four decisions of the court during the promotion period.

**Article 16:**

In case the Defense attorney does not submit his/her activity report up to the end of third year, his/her license shall be no more valid.

### **Chapter Three Organization**

**Article 17:**

Defense attorneys shall have an association as envisioned in this law.

**Article 18:**

Central Defense Attorney Association in MoJ shall be consisted of the following people:

1. Justice Minister or his deputy as chairman.
2. Minister's advisor in Prosecution Affairs, as a member.
3. Dean of Faculty of Shari'a of Kabul University as a member.
4. Dean of Faculty of Law and Political Sciences as a member.
5. Deputy Head of Taqin as a member.
6. Head of department of state affairs in MoJ as member.
7. Five of the most senior defense attorneys as recommended by the Justice Minister as members.

**Article 19:**

Administrative affairs of the Central Defense Attorney Association shall be regulated by the department of defense attorneys in MoJ.

**Article 20:**

- (1) The Association shall have its regular session once in every two years in the first month of lunar year.
- (2) The Association may have its extra-ordinary sessions on the request of the Chairman and proposal of the third of the members.

**Article 21:**

Both the regular and extraordinary sessions of the Association may be held with the presence of at least two third of the entire members and the decisions could be made according to Islamic principles by the majority of the present members.

**Article 22:**

At least 15 days prior to convening of both the regular and extra-ordinary sessions of the Association, all of its members, shall be notified in written form, by the department of defense attorney.

**Chapter Four  
Rights and Obligation of Defense Attorneys**

**Article 23:**

Any person, who obtains defense attorney license, shall have the following rights:

1. To defend the rights of his/her client.
2. To establish law firm.
3. To defend a case on behalf of his/her client in court.
4. To participate in all stages of investigation and to reply on behalf of his/her client after the agreement.
5. To get information regarding the investigation process of his/her client and its results.
6. To study his/her client's civil and criminal lawsuits.
7. To visit the client under detention.
8. To provide legal consultations to any legal and real person.
9. To receive fees from the client according to the provisions of law for consultations and other legal services.

**Article 24:**

On the basis of contractual agreement, fee rate for defense attorney, shall be specified as follows:

- (1) Criminal Cases:
  1. In misdemeanor cases, the fee for defense attorney is 80,000 Afs.
  2. In felony cases, the fee for defense attorney is 120,000 Afs.
  
- (2) Civil Cases:
  1. In marriage cases, the fee for defense attorney is 50,000 Afs.
  2. In divorce cases, the fee for defense attorney is 50,000 Afs.
  3. If the value of a disputed property is from 50,000-3,000,000 Afs, the fee for defense attorney shall be 50,000 Afs.
  4. If the value of a disputed property is from 3,000,000 to 10,000,000 Afs, the fee for defense attorney shall be 80,000 Afs.
  5. If the value of a disputed property is from 10,000,000 to 50,000,000 Afs, the fee for defense attorney shall be 120,000 Afs.
  6. If the value of a disputed property is from 50,000,000 to 100,000,000 Afs, the fee for defense attorney shall be 150,000 Afs.
  7. If the value of a disputed property is more than 100,000,000 Afs, the fee for defense attorney shall be 200,000 Afs.
  
- (3) If the value of the disputed property is less than 500,000 Afs, the fee for the defense attorney shall be determined as agreed by the parties.
- (4) The letter of agreement, set forth in this law shall be made in four copies, one of which to the defense attorney, one to the client, one to the directorate of defense attorneys and the other copy shall be sent to the relevant competent court.
- (5) The Office of the Defense Attorneys shall be obliged to provide the ministry of Finance with the activity report of the attorneys for income purposes.

**Article 25:**

A defense attorney shall have the following duties and obligations:

1. to keep job related confidentiality;
2. to perform duties honestly and faithfully and respecting others' prestige;
3. to abide by courts and other offices' order and rules;
4. to participate in judicial sessions on order by courts;
5. to withhold from any type of legal assistance to the other party;
6. to keep all documentation of the client and submit them when figured out;
7. to offer a receipt when any documentation is received or submitted;
8. to avoid propagandizing against other defense attorneys;
9. to avoid any sort of action that hinders research process and court decision.
10. to avoid titling a law firm into another person name.
11. to inform relevant authorities of any change of office location.
12. to extend license within one month of license expiry date.

**Article 26:**

- (1) Based on provisions of this law, defense attorney shall extend the license as follows:
  1. Degree One license to be extended for 150,000 Afs
  2. Degree Two license to be extended for 100,000 Afs
  3. Degree Three license to be extended for 80,000 Afs
- (2) If the license mentioned in clause (10) of this article is not extended on the determined date, it is not valid for the job until obtaining the new license.

**Article 27:**

Defense attorney shall take the following oath after obtaining license in presence of Defense Attorneys Association and Minister of Justice:

*In the name of God, the Beneficent the Merciful*

*I swear by the Almighty God that I shall perform my job as defense attorney devoutly and honestly, shall not betray my client, keep job confidentiality, respect and observe principles of the holy religion of Islam and legislative documents of Islamic **Emirate** of Afghanistan.*

**Article 28:**

- (1) If the defense attorney, based on reasonable excuse, may not perform the job after signing the agreement with client, he/she can introduce another defense attorney to the client.
- (2) Client can dismiss his/her defense attorney.
- (3) In case of clause (1) and (2) of this article, client and defense attorney shall inform the court.

**Article 29:**

In case of reasonable excuse, defense attorney shall inform the court of his absence at least 24 hours prior to judicial proceeding.

**Article 30:**

- (1) Defense attorney based on provisions of the law shall pay income tax to the Emirate.
- (2) Ministry of Finance shall decide about the amount of defense attorneys' income tax based on Tax Law.

**Article 31:**

Defense attorney shall wear a certain type of clothing, the sample of which is determined by the Ministry of Justice.

**Article 32:**

Defense attorney shall not give his/her seal or other privileges of his law firm to others permanently or temporarily.

**Article 33:**

Defense attorney can not be a witness in a judicial proceeding in which he is defending or providing written consultation.

**Article 34:**

Defense attorney can not consult witness or act as defense attorney for the opposite party of a case, after dismissal or termination of defense.

**Article 35:**

Defense attorney can not defend in a court in which one of the judges is his blood or in-law relative (up to third degree).

**Article 36:**

Defense attorney can not defend the case in which he has formerly acted as judge, prosecuting attorney, interrogator or expert.

**Article 37:**

Defense attorney shall be held responsible for any acts beyond his legal obligations and anything detriment to the client.

**Chapter Five  
Correctional Provisions**

**Article 38:**

- (1) Complaints of client or relevant authorities on defense attorney's duties are presented to Central Association of Defense Attorneys.



- (2) If Central Association of Defense Attorneys finds the complaint against defense attorney as baseless, they will decide about rejection of the complaint.
- (3) If disciplinary measures are deemed appropriate, Association will decide about one of the followings:
  1. Oral Correction
  2. Warning
  3. Closing down the law for no more than 3 months
- (4) If the defense attorney repeatedly violates provisions of this law, closing down of the law firm or disbaring will be decided by the authorized court.

**Article 39:**

- (1) The client can claim through court for any loss (material and spiritual) resulting from defense attorney offence.
- (2) Other offences mentioned in this law will be decided upon by the country's enforced law.

**Article 40:**

The disciplinary measures may be applied to the defense attorney without oral correction and in writing.

**Article 41:**

To take follow-up steps, Office of the defense attorneys shall immediately notify the relevant authorities of Law firm closure.

**Article 42:**

If another person uses the defense attorney's license, he will be prosecuted in accordance with law.

**Chapter Six  
Miscellaneous Provisions**

**Article 43:**

Defense attorney's office can not be located in private residential house.

**Article 44:**

Defense attorney shall not establish agency for his law firm.

**Article 45:**

- (1) Law firm shall have a signboard containing the registration number of the license.
- (2) Law firm shall have a certain seal that will be provided after the approval of Ministry of Justice.

**Article 46:**

The defense attorney's license shall transferable to others due to job abandonment or incapacity of the holder.

**Article 47:**

The case resulting from dispute over the fee between client and defense attorney shall not be heard after one year.

**Article 48:**

The case resulting from dispute over defense attorney's job shall be resolved in authorized court in accordance with law.

**Article 49:**

- (1) If the person who has practiced as a defense attorney before enforcement of this law, meets the requirement set forth in this law, he/she shall obtain the new license within one month after enforcement.
- (2) Based on the Ministry of Justice decision, the Police, Attorney General Office and Municipality both in the capital and provinces may close down unofficial defense attorney offices up to 3 months.

**Article 50:**

On the request of involved parties or defense attorney, attorney General offices and Courts shall provide the relevant files for their study under the supervision of authorities in charge to the documents registration office.

**Article 51:**

Courts and relevant branches shall facilitate defense attorneys' affairs.

**Article 52:**

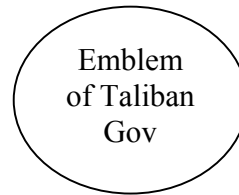
In case of license loss, the License replacement shall be issued subject to the prices mentioned in articles (11-12-13) of this law.

**Article 53:**

During judicial proceeding presence of client along with defense attorney is optional. If necessary, court shall call for joint presence of client and defense attorney. In this case client shall be present at the court.

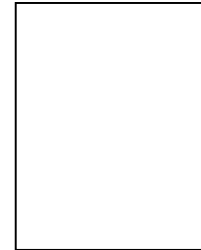
**Article 54:**

This law is enforceable from the date of approval and shall be published in official gazette. Enforcement of this law repeals Law on Defense Attorney published in official gazette number (627) dated 1365.



( Price ) AFs

**Islamic Emirate of Afghanistan  
The Ministry of Justice  
Department of Emirate Affairs  
Directorate of the Defense Attorneys**



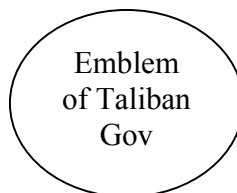
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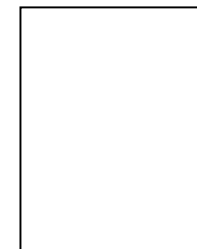
License

Biography of the Applicant for license														
Name and Surname	Father's Name	ID No District	Residence			Education Level	Age	Title of the Defense Attorney	Address	Telephone Number	Grade of the License			Remarks
			Village	District	Province						Grade 1	Grade 2	Grade 3	
Pursuant to article 9 of Defense Attorneys Law , this document has been granted to respectable ( ) son of ( ) who has legal capacity so that he/she can benefit from his/her rights.														
										Signature of the Chairman of Emirate Affairs				
										Stamp of the Defense Attorneys Directorate				

Price (10,000 ) AFs



**Islamic Emirate of Afghanistan  
The Ministry of Justice  
Department of Emirate Affairs  
Directorate of the Defense Attorneys**



License No:

Date: / /

**Biography of the Applicant**

Biography			Residence			Education Level	Age	Title of the Defense Attorney	Address	Telephone Number	Grade of the License			Remarks
Name and Surname	Father's Name	ID No District	Village	District	Province						Grade 1	Grade 2	Grade 3	

This form has been developed pursuant to the first paragraph of article 8 of the Defense Attorneys Law.

Signature of the Defense Attorneys Directorate

<b>Certifying Authorities</b>				
Personnel Department or Department of  (HR Office of the Military Administrations)	Legal Offices  (Legal Responsibility)	Finance Department  (Financial and Civil Responsibility)	Ministry of Education or Ministry of Higher Education  Education Level	Criminal Department, Ministry of Interior  (Criminal Responsibility)



# Islamic Emirate of Afghanistan

## Decree No: 154

Date: 18/7/1419

### Annex (1) to the Law on Organizing Affairs of the Defense Attorneys

As noticed, the Law of Defense Attorneys (those who prepare complaints and defense statements) is not being implemented in the capital and provinces the way it is supposed to; therefore, for full implementation of the provisions of the law, I approve the following points: All the relevant authorities, defense attorneys and those who prepare complaints and defense statements shall be obliged to strictly observe the following:

#### Article 1

The amount of fee for defense attorney (those who prepare complaints and defense statements) shall be determined as following:

- 1- Three hundred thousand Afs for the complaints and defense statements which are free from Inheritance Claims and *Monaasakha* ( a situation in which the division of a death person's estate, before distribution, shall be reconsidered due to the death of another person from his/her family)
- 2- Four hundred thousand Afs for complaints and defense statements which include Inheritance Claim.
- 3- Five hundred thousand Afs for complaints and defense statements which include *Monaasakha*.

#### Article 2

No defense attorney shall take more than the amount of fee, specified in this decree. In case of violation, his/her license shall be canceled, his/her advocacy privilege shall be considered invalid and thus, his/her complaints and defense statements shall not be accepted in the courts.

#### Article 3

In case a defense attorney asks for more than specified amount of fee according to this law, individuals are asked to report to the Ministry of Justice and, when in provinces, to the Office of Governor, or Department of State Cases

#### Article 4



The courts shall not accept complaints and defense statements of individuals who do not have license issued by the Ministry of Justice. This does not include paragraph (3) of article 5 of this law.

**Article 5**

The Ministry of Justice shall issue advocacy licenses to those eligible according to the conditions mentioned in this law.

**Article 6**

Departments of State Cases shall strictly supervise the affairs related to defense attorneys.

**Article 7**

This law shall be applicable after the signature of Amirul Momeneen Mullah Omer (Taliban Supreme Leader) and shall be published in the Official Gazette.

**Regards**

**Amirul Momeneen  
Mullah Omer (Mujahid)**