

Foreign funding in Azerbaijan: challenges and perspectives

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Introduction

This article intends to familiarize the reader with the regulation of foreign funding for non-governmental organizations (NGOs) in Azerbaijan, in general, and to help potential donors to better understand the legal framework for grant-making in Azerbaijan, in particular.

Foreign funding was the main source of income for many of the 3,000 NGOs in Azerbaijan for a long time. However, since 2014, changes in the legislation made foreign funding almost non-existent in Azerbaijan.

This article will cover grants, service contract, and donations as the only legitimate options for foreign funding of NGOs in Azerbaijan.

Foreign grants in Azerbaijan

On July 24, 2014 the President of the Republic of Azerbaijan annulled the Rules on registration of grant agreements (decisions) of 2004² and ordered the Cabinet of Ministers to develop new rules.

On October 17, 2014, changes to the Law on Grants³ introduced a requirement for foreign donors to obtain prior government approval to issue grants to NGOs in Azerbaijan.⁴

Following these actions, the implementing regulations necessary to execute any grants were not adopted until December 2015. The lack of implementing regulations created a legal vacuum, paralyzing all grant-making activities and denying NGOs access to an important funding source for over a year. The new Rules on registration of grant agreements (decisions)⁵ (hereinafter – “grant registration rules”) were adopted in June 2015 and the Rules on obtaining the right to provide grants in the Republic of Azerbaijan by foreign donors⁶ (hereinafter – “donor registration rules”) were adopted only in December 2015.

Since foreign donors could not issue grants to NGOs during the above mentioned period, they began supporting NGOs through service contracts or donations. However, the Government of Azerbaijan stopped this trend by introducing new regulations on service contracts and on donations (details follow below).

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² Decree of the President ‘On annulling the Decree of the President on Approval of the Rules for Registration of Grant Agreements (Decisions) dated July 24, 2004’.

³ The Law of the Republic of Azerbaijan on Grants (April 1998), last amended on October 28, 2014.

⁴ Under Article 1 of the Law on Grants, a grant is defined as “assistance rendered pursuant to this Law in order to develop and implement humanitarian, social and ecological projects, works on rehabilitation of destroyed objects of industrial and social purpose, of infrastructure in the territories damaged as a result of the war and disaster, programs in the field of education, health, culture, legal advice, information, publishing, sport, scientific research and design programs as well as other programs being important for the state and public. A grant shall only be provided for a specific purpose (or purposes).”

⁵ Rules on registration of grant agreements (decisions) adopted by the Cabinet of Ministers on June 5, 2015.

⁶ Rules on obtaining the right to provide grants in the Republic of Azerbaijan by foreign donors, adopted by the Cabinet of Ministers on December 4, 2015.

The donor registration rules require foreign donors to obtain registration (pre-approval) from the Azerbaijani government in order to provide grants to NGOs in Azerbaijan. As the Rules do not exclude the projects implemented under international agreements ratified by Azerbaijan, even embassies and intergovernmental organizations (for example, the UN, EU, Council of Europe, and World Bank, among others) are required to obtain prior approval before disbursing grants. In order to obtain the right to issue a grant in Azerbaijan, a foreign donor is required to have a registered office in Azerbaijan.⁷ The registration of an office is an extremely complicated procedure and subject to Government's discretion. In addition, to obtain approval to issue a grant, a foreign donor is required to receive an opinion from the Ministry of Finance (MoF) confirming that the grant is financially and economically expedient ("Opinion of the MoF"). If the foreign donor is successful in obtaining the "opinion of the MoF," the recipient NGO must also register the same grant with the Ministry of Justice (MoJ) according to the new grant registration rules. As a result, every single grant or a change into a grant agreement requires two stages of registration (by the donor and by the NGO recipient). ICNL considers such procedure inefficient because "after giving an approval to a foreign donor to give a grant, the MoJ can still deny the NGO recipient's registration for receiving the grant."⁸

In practice, the MoF has been rather cooperative with applicant foreign donors and has already provided a number of "opinions" within the required 15 day timeframe. With regard to the MoJ, it is well within the timeframes when it comes to registering grants issued by various local sources, but in practice there are delays with registering grants issued by a foreign source. So far, the MoJ has registered a few grants from foreign sources.

NGOs are subject to penalties for failure to register a grant with the MoJ⁹ and to implement a grant without a grant contract.¹⁰

Service contracts

NGOs shall obtain registration (pre-approval) from the MoJ for any service contract they sign with a foreign contractor. The procedure for the pre-approval is described in the Rules on Registration of Service Contracts on Provision of Services or Implementation of Works by NGOs as well as by Branches or Representative Offices of Foreign NGOs, from Foreign Sources (hereafter - "the Rules on Registration of Service Contracts") of November 20, 2015.¹¹

The legal regulation of service contracts is somewhat similar to the grant registration rules, with a few differences: The key differences are: 1) the Code on Administrative Offences does not contain a specific penalty against local or foreign NGOs for failure to register a service contract; 2) a foreign contractor is not required to have a registered office in Azerbaijan and to obtain an Opinion of the MoF; and 3) the revenue from the contact is considered a taxable income for NGO contractors.

⁷ The Code on Administrative Offences (2015) envisages a penalty for legal entities in the amount of 5,000-8,000 manat (3,125-5,000 USD) for operation of a foreign NGO without registration with the MoJ (Article 582).

⁸ *Overview of the Rules on Obtaining the Right to Provide Grants in the Republic of Azerbaijan by Foreign Donors*, ICNL, December 9, 2015.

⁹ According to Article 432 of the Code on Administrative Offences, the penalty for legal entities is 5,000-8,000 manat (3,125-5,000 USD).

¹⁰ According to Article 432.3 of the Code on Administrative Offences, the penalty for legal entities is 8,000-15,000 manat (5,000-9,375 USD) with confiscation of all grant assets.

¹¹ Adopted by the Cabinet of Ministers of the Republic of Azerbaijan on October 21, 2015, and entered into force with its publication on November 20, 2015.

Donations

NGOs are also required to obtain registration (pre-approval) from the MoJ for any donations. This procedure is governed by the Rules on Submission of Information about the Amount of Donations Received by NGOs as well as by Branches or Representative Offices of NGOs of Foreign States and about the Donor¹² (hereinafter - “the donation rules”).

Under Azerbaijani law, term “donation” is different from the term “grant.” Specifically, unlike a “grant,” which is always given for a specific purpose, a “donation” cannot be given for a specific purpose. In addition, a donor cannot attach any conditions while giving a “donation.” For example, there shall be no reporting requirements, limitations on its use, or the possibility of recalling a donation by the donor. An NGO recipient can use a donation at its own discretion, in compliance with legislation and its charter.

The procedure for registration of donations is somewhat similar to the grant registration procedure. Nevertheless, there are a few differences between registration procedures for a donation and for a grant.¹³ Specifically, in case of donations, foreign donors are not required to obtain an Opinion of the MoF. It is not required for a foreign donor to have a registered office in Azerbaijan. In addition, a written form of an agreement is mandatory for a grant, but, at least, according to the law (as written), it is not mandatory for a donation. Additionally, donations cannot be given in cash, only through bank transfers.¹⁴ Grants can be given in cash, at least, according to the law, as written.

At present there is no penalty for failure to register a donation with the Ministry of Justice, but there is a penalty for receiving donation in cash.¹⁵ In practice, the bank would not provide an NGO with access to a donation received in its bank account if no registration notice (“notification”) from MoJ is presented.

Conclusion

The procedures for obtaining approvals of the Government of Azerbaijan are quite complex, time-consuming, and allow the authorized government body broad discretion to decide whether to grant or deny approval. Nevertheless, presently in Azerbaijan it is possible to follow these procedures and continue to support Azerbaijani NGOs. Foreign support of Azerbaijani NGOs remains a critically important resource for their activities and survival.

Generally, foreign donors still prefer to support local NGOs through grants due to their exemption from tax, but service contracts also became popular due to low level of the income tax for such agreements. Regardless of the type of agreement, a local bank in Azerbaijan would always ask an NGO to provide documentation from the MoJ on the registration of funding to safeguard itself against penalty for granting access to foreign funds without proper registration with the MoJ.

¹² Adopted by the Cabinet of Ministers of the Republic of Azerbaijan on October 21, 2015, and entered into force with its publication on November 13, 2015.

¹³ *Overview of the Rules on Submission of Information about the Amount of Donations Received by NGOs as well as by Branches or Representative Offices of NGOs of Foreign States and about the Donor*, ICNL, November 16, 2015.

¹⁴ The exception being when the recipient of a cash donation of up to 200 manat (\$125) is a charity. However, the law of Azerbaijan does not establish rules for the registration of charities.

¹⁵ According to Article 466 of the Code on Administrative Offences, the penalty for local NGOs is 3,500-7,000 manat (2,187-4,375 USD), and 7,000-10,000 manat (4,375-6,250USD) for foreign NGOs.