



Azerbaijan

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QUICK FACTS

Legal forms of philanthropic organizations included in the law: Association, Foundation, Union of Legal Entities.

Five main social issues addressed by these organizations: Youth and Family, Housing and Economic Development, Environment, Human Rights, Refugees and Internally displaced persons (IDPs).

Average time established by law to register a philanthropic organization: 31-60 days

By law, the deadlines are within 31-60 days, but in practice, it is very difficult to register a NGO

Average cost for registering a philanthropic organization: US \$7

The state duty for registering a public association is around US \$7. To register foundations, however, a minimum capital of 10,000 AZN (US \$6,060) is needed by law

Government levels primarily regulating the incorporation of philanthropic organizations: Central/Federal Government, Ministry of Justice and its regional offices

Philanthropic Environment Scores:

Year	Ease of Operating	Tax Incentive	Cross-Border Flows	Political Environment	Socio-Cultural Environment	OVERALL SCORE
2018	4.1	2.0	3.5	3.0	4.0	3.31

I. Formation/Registration, Operations, Dissolution of a Philanthropic Organization (PO)

The three questions in this section pertain to the laws and regulations governing philanthropic organizations (POs). The scoring questions for this category cover three aspects of regulations: (A) formation and registration, (B) operations, and (C) dissolution.

Question 1: To what extent can individuals form and incorporate the organizations defined?

Score: 3.7

Freedom of association and assembly are guaranteed by the Constitution of 1995, and any person can establish a non-governmental organization in the form of either a public union or a foundation. Certain restrictions do, however, exist regarding the age of founders (minimum 16 for youth organizations and 18 for others) and the citizenship of founders (a requirement of permanent residence for a foreigner or a stateless person).

There is no requirement to register or incorporate a NGO once it is established, nor is there a sanction for its operation without such registration (except for foreign NGOs). However, the law does not allow non-registered groups to open bank accounts, and, thus, they cannot receive grants that are wired, nor can they receive donations exceeding 200 AZN (US \$120).

The registration process is cumbersome and almost insurmountable for human rights groups, despite judicial guarantees and several cases against Azerbaijan, as ruled by the European Court of Human Rights, most notably Ramazanova v. Azerbaijan. The list of documents for the registration seems to be reasonable; however, in some cases, the Ministry of Justice (MoJ) requires the submission of support letters from other state bodies, including the Ministry of Education, the Ministry of Health, and the Council on State Support to NGOs under the President. Problematically, NGOs cannot obtain these letters if they have no personal contacts in the government or if they have had no activity since their establishment. Despite the law containing only limited grounds for denial during registration, in practice, the MoJ returns the documents for even minor deficiencies in the statutory documents. The fee for the registration is rather small, only 11 AZN (US \$7). However, for foundations, a nominal capital of 10,000 AZN (US \$6,060) is necessary, a discouraging requirement, which was introduced into the legislation in 2009.

Question 2: To what extent are POs free to operate without excessive government interference?

Score: 3.5

The law allows for sufficient discretion in setting the structure and governance of POs, although there are certain restrictions on the activities that a PO may engage in (most notably those for political or religious purposes). POs are totally free to contact and cooperate with colleagues in civil society, business, and government sectors, both within and outside of the country. POs are permitted to participate in networks and to use the Internet and all forms of social media. Unfortunately, POs are subject to heavy reporting requirements, the fulfillment of which requires significant attention and resources from POs. Any failure to comply with the reporting obligations is punished with harsh penalties, including financial penalties, suspensions of activity, or even dissolution in court.

Question 3: To what extent is there government discretion in shutting down POs?

Score: 5.0

The governing body of a PO is able to voluntarily terminate it. For cases of involuntary termination by a government body, there should be at least two warnings or instructions to a PO with indication to eliminate the deficiency. Involuntary termination can only take place through a district court decision, which the PO can appeal. Prior to December 2013, there were no alternative sanctions to involuntarily dissolve a PO that received more than two warnings/instructions from the Ministry of Justice (this was also underlined in the judgment of the European Court of Human Rights case *Tebieti Muhafize Cemiyeti v. Azerbaijan*). A recent, positive change to the legislation introduced a temporary suspension of a PO's activities as an alternative sanction. However, at present, at least two members of a public association who think their rights were violated by the association can initiate a court case to suspend the organization's activities up to one year. This suspension will be lifted once the deficiency is eliminated.

II. Domestic Tax and Fiscal Issues

The two questions in this section pertain to laws and regulations governing the fiscal constraints of giving and receiving donations domestically.

Question 4: To what extent is the tax system favorable to making charitable donations?

Score: 1.0

There are no income tax incentives in the form of credits or deductions for individuals or corporations to donate money or make charitable gifts. Conversely, there are no legal grounds prohibiting charitable contributions to POs by individuals or corporations (including foreign organizations). There are, however, some limitations as to the form and amount of donations, which are described in Indicator Question 5.

Question 5: To what extent is the tax system favorable to POs in receiving charitable donations?

Score: 3.0

The Tax Code of the Republic of Azerbaijan states that the income of charitable organizations is exempt, except for the income, from entrepreneurial activity (Article 106). However, Azerbaijani law does not stipulate any formal procedure for obtaining the status of a charitable organization, making it difficult to determine eligibility to take advantage of such benefit.

Although donations received by philanthropic organizations are free from income tax or VAT, cash donations over 200 AZN (US \$120) are prohibited, and only POs that are established for charitable purpose are allowed by law to receive cash donations over 200 AZN. While other POs cannot receive cash donations, there are no restrictions on the amount of donations received via bank transfers. Donations from foreign source have to be registered with the Ministry of Justice.

III. Cross-Border Philanthropic Flows

The two questions in this section concern laws and regulations governing the fiscal constraints of giving and receiving cross-border donations. The scoring for these questions pertains to the donor and receiving entities.

Question 6: To what extent is the legal regulatory environment favorable to sending cross-border donations?

Score: 3.5

There are no specific rules on sending cross-border donations, with regulations governing the permitted amount found under the general legislation governing money transfers. Azerbaijani legislation does, however, place some limitations on resident and non-resident natural persons transferring money outside Azerbaijan, as resident and non-resident natural persons can only transfer the equivalent of US \$1,000 a day through banks in Azerbaijan. This impediment is somewhat ameliorated by the fact that resident, natural persons can transfer any amount of money in foreign currency to his/her close relatives (father, mother, grandfather, grandmother, wife, husband, son, daughter, brother, sister, adopted children) living abroad, upon submission of the relevant documentation (ID, marriage certificate, etc.).

Similar opportunities are also provided for non-residents. Finally, any person (natural or legal) receiving or sending sums exceeding 20,000 AZN (US \$12,100) or its equivalent in foreign currency is required to inform the Financial Monitoring Service (FMS) of the Central Bank of the Republic of Azerbaijan, either before the transfer or immediately after it, and provide the Service with information on the involved parties and the details of the transfer.

Question 7: To what extent is the legal regulatory environment favorable to receiving cross-border donations?

Score: 3.5

There are no costs or taxes on receiving cross-border philanthropic cash and/or in-kind donations, but approval for receiving a donation from abroad/foreign source is needed. Funds received as grants also have to be registered with the MoJ. The main difference between a grant and donation in Azerbaijani legislation is that a donation cannot be given for a specific purpose. Prohibitions do exist on receiving anonymous donations, as the law requires POs to report the details about the donor in their annual financial reports, which must be submitted to the Ministry of Finance by April 1st. Restrictions on the types of activities include funding political parties, engaging in professional religious activity or conducting unlawful actions (i.e. money laundering, financing terrorism, etc.). While Article 4-1.1 of the Law on Freedom of Religious Belief of Azerbaijan defines “professional religious activity” as “activity aimed at religious education, religious training, meeting religious needs of devout, dissemination of religions... preaching... [etc.],” the Venice Commission of the Council of Europe maintains that this provision introduces an element of vagueness into the legal code.

IV. Political and Governance Environment

The three indicator questions in the next two sections concern the political and governance context, socio-cultural characteristics, and economic conditions that influence the environment for philanthropy.

Question 8: To what extent is the political and governance environment favorable for philanthropy?

Score: 3.0

The government has established a number of public financing mechanisms that financially support the activity of NGOs. At present, there are at least nine state bodies and agencies that provide funding to local NGOs in millions of euro annually. At the same time, nearly all ministries have set-up public councils composed of NGO members and individual. Due to ongoing economic crisis in the country, the sustainability of the sector has weakened. There have also been tensions between the government and NGOs in light of the Arab Spring and Euromaidan events in Ukraine (Ukrainian revolution of 2014, also known as the Euromaidan Revolution).

Question 9: To what extent are public policies and practices favorable for philanthropy?

Score: 3.0

All foreign donors in Azerbaijan must have an in-country representation and sign a special agreement with the MoJ prior to giving a grant to a NGO. Thus, donors and grantees have to be registered by the government. Operations on non-registered grants are prohibited. The government has several public-financing mechanisms for NGOs. There is no separate procedure for obtaining charitable status.

V. Socio-Cultural Environment

Question 10: To what extent are socio-cultural values and practices favorable for philanthropy?

Score: 4.0

Azerbaijani society has always been supportive of donations. For example, when a poor person dies, his relatives or neighbors frequently collect money for the funeral. Similarly, most Azerbaijani help—usually by donating home appliances, furniture or money—if a poor relative or an orphan gets married. Donating is also seen as an individual duty in the religion of Islam. Although Azerbaijan is a secular state, there are many practicing Muslims who contribute different forms of donations such as zakat or fitra, etc. (sometimes called as ‘religious taxes’) as envisaged in the holy book of the Koran.

In general, the Koran encourages people who have money to spend up to 10 percent of their income ‘for the sake of God,’ and to help the poor whether they be a relative, a neighbor, or a stranger in need. During Gourban Bayram (Sacrifice Day), all persons who can afford it are encouraged to

sacrifice an animal (sheep, goat, or cow) and distribute the meat to the poor. However, the culture of donating money to POs is still not sufficiently developed. In 2013, the government introduced a whole set of new rules regulating donations (analyzed further in Indicator Question 3), allegedly because some POs were receiving 'donations' from foreign sources that raised issues of national security. All donations from foreign sources need to be registered with MoJ. While Azerbaijani culture has a rich history of philanthropy, the regulatory infrastructure needed to support it still lags behind.

VI. Future of Philanthropy

These questions are used to provide a general picture of the future of philanthropy in this country as well as recommendations to improve the philanthropic environment.

Current state of the philanthropic sector

NGOs in Azerbaijan depend more on grants than they depend on donations. They still have to learn how to raise funds from the general public. At the same time, the regulations concerning thresholds for cash donations and registrations of donations creates obstacles for the development of this type of income source.

Three major recent events affecting the philanthropic landscape between January 2014 and December 2016

- November 2015, approval by the Cabinet of Ministers of Azerbaijan of the rules on registration of donations; and
- October 2016, approval of the decree for the Simplification of Registration of Foreign Grants in Azerbaijan.

Future development trends in the philanthropic landscape

For 2015-2016, the major trend was the simplification of income registration of NGOs (for example, donor registration, grant registration, donation registration, and registration of service contracts). However, the registration of any income from a foreign source remains to be a problem as of April 2017.

Three key recommendations to improve the environment for philanthropy

- Adopt a law on charity;
- Simplify the registration of grants; and
- Simplify the registration of donations.