

Statutory Instrument No. 134 of 2018.

COUNTER-TERRORISM ACT  
(Cap. 08:08)

**COUNTER-TERRORISM (IMPLEMENTATION OF UNITED NATIONS  
SECURITY COUNCIL RESOLUTIONS) REGULATIONS, 2018**  
(Published on 24th August, 2018)

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IN EXERCISE of the powers conferred on the Minister of Presidential Affairs, Governance and Public Administration by section 44 of the Counter-Terrorism Act, the following Regulations are hereby made —

Citation

1. These Regulations may be cited as the Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations 2018.

Interpretation

2. In these Regulations, unless the context otherwise requires —

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“accountable institution” has the same meaning assigned to it under the Financial Intelligence Act;

“applicable resolutions” means —

- (a) the United Nations Security Council Resolution 1267 of 1999 and any successor resolution;
- (b) the United Nations Security Council Resolution 1373 of 2001 and any successor resolution; and
- (c) the United Nations Security Council Resolution 1540 of 2004 and any successor resolution.

“Committee” means the National Counter-Terrorism Committee established under section 12A of the Act;

“designated person or entity” means any person or entity that has been designated by the United Nations Security Council as a person or entity against whom member states must take action for the prevention and combating of any terrorist activity specified in the applicable resolution;

“freeze” means to prohibit the transfer, conversion, disposition or movement of any funds, property or economic resources that are owned or controlled by a designated person or entity or nationally listed person or group, on the basis of, and for the duration of or the validity of an action initiated by the United Nations Security Council or in accordance with the applicable resolution by a competent authority;

“national listed person or group” means a person or structured group declared as a terrorist or terrorist group by the Minister under section 12 (1) of the Act or a person or entity listed in accordance with a request made by a foreign country in terms of regulation 5;

“specified party” has the same meaning assigned to it under the Financial Intelligence Act;

“supervisory authority” has the same meaning assigned to it under the Financial Intelligence Act; and

“United Nations List” means the list of names of persons and entities designated by the United Nations Security Council as persons or entities against whom member states must take action for the prevention and combating of any terrorist activity specified in the applicable resolution.

3. These Regulations shall apply to a —

Application

- (a) a designated person or entity under the applicable resolutions;
- (b) a nationally listed person or structured group;
- (c) a specified party;
- (d) a supervisory authority; and
- (e) an accountable institution.

## PART II — *Listing and De-Listing*

4. (1) The Minister may nationally list a person or structured group upon receipt of information from the Committee or at the request of a foreign country.

National listing

(2) Where the Committee has reasonable grounds to believe that a person or structured group is engaged in acts of terrorism, or has committed any offence under the Act, it shall make a recommendation, providing information, to the Minister to nationally list that person or structured group.

(3) The information pertaining to a person or structured group for purposes of subregulation (1) shall include, where available, the —

- (a) name of the person, family and pseudo names, any alias, including any alternative names and spelling, and titles of the person or structured group;
- (b) place and date of birth or if a company, the date of registration including the registration number;
- (c) nationality, or address of the registered office;
- (d) passport number, identity card number or registration number;
- (d) gender;
- (e) physical, postal and electronic mail addresses;
- (f) occupation; and
- (h) any other information which the Committee considers relevant.

(4) The Committee may invite any person, not being a member of the Committee, who has the necessary expertise in anti-money laundering and counter-terrorism financing to assist it with its functions under these Regulations.

5. (1) Where a request for national listing is made by a foreign country, the request shall be submitted to the Director of Public Prosecutions in accordance with the Mutual Assistance in Criminal Matters Act.

Request by  
foreign country

(2) When reviewing requests from other countries, the Director of Public Prosecutions shall consider whether —

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- (a) the person or entity committed or attempted to commit acts of terrorism or participated in or facilitated the commission of acts of terrorism;
- (b) the entity is owned or controlled directly or indirectly by any person or structured group designated as a terrorist or terrorist group by a foreign country; or

- (c) the person or entity is acting on behalf, or at the direction of any person or structured group designated as a terrorist or terrorist group by another country.

(3) Where the Director of Public Prosecutions is satisfied that it is desirable and in the interest of justice to grant the assistance, he or she shall without delay, submit the request to the Committee for the Committee to make a recommendation to the Minister to make an order to nationally list the person or entity.

Freezing of funds held by nationally listed person or structured group

6. (1) Where the Minister makes an order listing a person, structured group or entity under regulation 4 or 5, the Committee shall —

- (a) cause an investigating officer to seek an order freezing the funds, property or economic resources of the person, structured group or entity;
- (b) immediately circulate or cause to be circulated to every supervisory authority, financial institution, specified party, non-financial business and profession, the information referred to in regulation 4 (3) on the person, structured group or entity and direct that they immediately freeze funds, property or economic resources belonging to the listed person, structured group or entity; and
- (c) ensure that except as otherwise provided for in these Regulations, frozen funds, property or economic resources are not made available to the listed person, structured group or entity.

(2) The Committee shall as soon as it is practicable after the national listing, inform in writing or in any other manner it considers appropriate, the listed person, structured group or entity of —

- (a) the inclusion on the national list providing explanations and reasons for the inclusion;
- (b) the implications of the national listing;
- (c) the procedure for review and information on the de-listing process; and
- (d) the possibility of utilising part of the frozen funds, property or economic resources in accordance with these Regulations.

(3) For the purposes of international circulation and to request other countries to designate persons or structured groups declared as terrorists or terrorist groups by the Minister, the Director of Public Prosecutions shall forward a copy of the order to the Ministry responsible for international affairs for immediate circulation.

Claim by third party

7. (1) A person who claims to have a *bona fide* right to funds, property or economic resources frozen in accordance with regulation 6, may apply to the court that issued the freezing order for exclusion of that person's interest from the freezing order.

(2) The application referred to in subsection (1) shall be accompanied by a sworn statement setting out —

- (a) the nature and extent of the right, title or interest claimed by the applicant in the funds, property or economic resources concerned;
- (b) the time and circumstances of acquisition of the right, title or interest in the funds, property or economic resources by the applicant;
- (c) any additional information relevant to the application.

Designations made by United Nations Security Council

8. (1) Where the Minister responsible for international affairs receives a notice of United Nations List of designated persons or entities, the list shall immediately be forwarded to the Committee.

(2) The Committee shall immediately upon receipt of the United Nations List referred to in subregulation (1), without delay circulate the list to —

- (a) a supervisory authority;
- (b) an investigating authority;
- (c) an accountable institution; and
- (d) the Financial Intelligence Agency.

(3) A supervisory authority shall on receipt of the United Nations List —

- (a) circulate the list to a specified party under its supervision for its information and action;
- (b) where necessary provide guidance to the specified party holding funds, property or other economic resources of a designated person or entity, in relation to their obligations under these Regulations; and
- (c) ensure that the specified party complies with the requirements of these Regulations.

(4) Where the Committee recommends that a person or structured group be added to the United Nations List, the Minister shall through the ministry responsible for international affairs, forward the list of proposed designated persons or structured groups to the relevant United Nations Security Council Sanctions Committee in the form prescribed by the United Nations Security Council and by stating the reasons for the proposed designation.

9. (1) The Committee shall, instruct a supervisory authority to direct a specified party to immediately or without delay freeze funds, property or economic resources that are owned, held or controlled, directly or indirectly by a designated person or entity.

Freezing of funds held by designated person or entity

(2) For the purposes of subregulation (1), in determining whether funds, property or economic resources are controlled by a designated person or entity, the fact that such funds, property or economic resources are held in the name of an associate or relation is immaterial.

(3) Funds, property or economic resources frozen under these Regulations shall be recorded against the names of the owners and beneficial owners for proper management.

(4) Subject to the provisions of these Regulations, the Committee shall ensure that frozen funds, property or economic resources are not made available directly or indirectly to a designated person or entity.

10. (1) A designated person or entity may make a petition, providing reasons, for de-listing from the United Nations List through the Minister, to the Ombudsperson's office of the United Nations Sanctions Committee in accordance with the de-listing procedures provided for in the applicable Resolutions.

Application for de-listing from United Nations List

(2) An application for de-listing shall contain —

- (a) in case of an individual —
  - (i) the full name, including any middle names, or initials and any other names or pseudonyms,
  - (ii) the date and place of birth,
  - (iii) nationality or nationalities of individual where he or she holds more than one nationality,
  - (iv) any other information which can help to identify the individual; or
- (b) in the case of an entity —
  - (i) the full name, of the entity including any alternative names used,
  - (ii) date of incorporation or registration where applicable,

- (iii) current any other state of operation, and
    - (iv) any other information which can help to identify the entity.
  - (3) Where the Minister has proposed the inclusion of a name on the United Nations List and the person bearing that name has applied to the United Nations Sanctions Committee for de-listing, the Minister may submit to the United Nations Sanctions Committee any additional information necessary to the consideration of the application.
  - (4) Where the Ombudsperson's office of the United Nations Sanctions Committee refers a petition for de-listing from the United Nations List to the Minister for comments, the Minister shall within the time specified by the Ombudsperson's office of the United Nations Sanctions Committee, respond to the request stating reasons for the recommendation for retention or deletion from the United Nations List.
  - (5) Where the Minister reasonably believes that a designated person is deceased, or a designated entity is defunct, the Minister shall request the United Nations Sanctions Committee to remove the name and other details of the designated person or entity from the United Nations List.
- 11. (1) A nationally listed person or structured group may apply to the Committee, in writing, for de-listing.**
- (2) An application for de-listing from the national list shall contain —
    - (a) in case of an individual —
      - (i) the full name, including any middle names, or initials and any other names or pseudonyms,
      - (ii) the date and place of birth,
      - (iii) nationality or nationalities of individual where he or she holds more than one nationality,
      - (iv) any other information which can help to identify the individual; or
    - (b) in the case of a structured group or entity —
      - (i) the full name, of the structured group or entity including any alternative names used,
      - (ii) date of incorporation or registration where applicable,
      - (iii) current any other state of operation, and
      - (iv) any other information which can help to identify the structured group or entity.
  - (3) The Committee shall consider the application for de-listing within five working days.
  - (4) The Minister may, on the advice of the Committee, if satisfied on reasonable grounds that a person or structured group is no longer involved in acts of terrorism or funding thereof —
    - (a) de-list such person or structured group; and
    - (b) without delay, publish a notice in the *Gazette* de-listing such person or structured group.
  - (5) The Committee shall within 24 hours of the de-listing, circulate the de-listing notice to the institutions to which a national list was circulated under regulation 6 (1).
  - (6) A supervisory authority shall notify a specified party of a de-listing and direct the specified party to delete the name of the person or structured group from the national list circulated to the specified party.
  - (7) Where the name of a nationally listed person or structured group has been struck out through a judicial or administrative process or the Minister reasonably believes that a nationally listed person is deceased, the Minister shall delete the name and other details of the nationally listed person.

(8) The Committee shall notify a foreign State of the de-listing as specified in the applicable Resolution.

(9) The de-listing of a person or structured group from the national list shall not automatically result in unfreezing of funds, property or economic resources.

12. (1) A de-listed person or structured group may within 12 months of being de-listed, apply to the Committee for unfreezing of funds, property or economic resources.

Application to unfreeze funds

(2) Where a de-listed person or structured group fails to apply for unfreezing of funds, property or other economic resources within 12 months of de-listing, the Committee may apply for the funds, property or economic resources to be forfeited to the State in accordance with the Proceeds and Instruments of Crime Act.

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13. (1) Where the Minister receives a notice of de-listing of a designated person or entity by the United Nations Security Council Sanctions Committee, the Minister shall immediately transmit the list to the Committee.

Unfreezing of funds following de-listing from United Nations List

(2) The Committee shall immediately cause the notice to be circulated to —

- (a) a supervisory authority;
- (b) an investigating authority; and
- (c) the Financial Intelligence Agency.

(2) A supervisory authority shall circulate the list to a specified party or accountable institution which is in custody of the frozen funds, property or economic resources of the de-listed person and instruct such specified party to unfreeze the funds, property or other economic resources.

14. Where funds, property or other economic resources were frozen following a designation or national listing, the funds, property or economic resources shall remain frozen where the Committee reasonably suspects that —

Basis for maintaining funds freeze after de-listing

- (a) the funds, property or economic resources will still be used in furtherance of terrorist activities; or
- (b) on application to court, the unfreezing of the funds, property or economic resources is found to be contrary to national security.

15. (1) Where funds, property or other economic resources were frozen as a result of similarity in names or wrong entries on the United Nations list or national list or in the account of a person or entity being investigated, or as a result of any other error, the person affected may apply to the Minister to unfreeze the funds, property or economic resources.

Application to unfreeze where funds were frozen in error

(2) Upon the receipt of the application referred to in subsection (1), the Minister shall, where the application relates to the —

- (a) United Nations List, submit the request to the relevant United Nations Sanctions Committee and inform the applicant of any decision taken; or
- (b) national list, determine the application not later than 15 working days from the date of receipt of the application after consultation with the Committee.

(3) The Minister shall inform the applicant and relevant authorities of any decision taken on the application in writing.

### PART III — *Condition and Procedure for Utilisation of Frozen Funds*

16. (1) A person or structured group whose funds, property or economic resources have been frozen under a national listing may make an application to the Minister to release those funds, or portion thereof or of the property or other economic resources —

Approval for usage of funds by nationally listed person or structured group

- (a) to meet the necessary and basic needs and expenses including the amounts required to meet expenditures on food, rental, medical needs and such other general expenses as the Minister may approve, from time to time;
- (b) for reasonable professional fees and settlement of expenses, including legal services, bank and related charges; or
- (c) for any other extraordinary expenses not provided for in paragraphs (a) and (b).

(2) An application to utilise frozen funds, property or economic resources shall be accompanied by supporting documents.

(3) The Minister shall consider the application to utilise funds in consultation with the Committee and may grant, reduce or refuse the request made in the application as considered reasonable in the circumstances.

(4) The Committee shall, in writing, where it approves the utilisation of funds, property or economic resources in the case of a nationally listed person or structured group, direct the specified party or any other institution in custody of the frozen funds, property or economic resources to implement the approval and furnish a report to the Committee of the action taken.

Procedure for approval and utilisation of frozen funds of designated person or entity

17. (1) On receipt of an application to utilise frozen funds in respect of a designated person or entity on the United Nations list, the Minister shall forward the application to the relevant United Nations Security Council Sanctions Committee for approval.

(2) Where an approval is obtained from the United Nations Sanctions Committee, the Minister shall on receipt of the approval direct the specified party or any other institution in custody of the frozen funds, property or economic resources in writing to release the funds and furnish a report to the Minister of the action taken.

(3) The Minister shall inform, in writing the designated person or entity or his or her representative of the approval or rejection of the application.

#### **PART IV — Prohibitions and Sanctions in Relation to Designated Persons or Entities or Nationally Listed Persons or Structured Groups**

Prohibition on dealing with funds held by designated or nationally listed person

18. (1) A person shall not deal with funds, property or economic resources owned, held or controlled directly or indirectly by a designated person or entity or nationally listed person or structured group except as provided for in these Regulations.

(2) Any person who knowingly or having reasonable cause to suspect, that the funds, property or economic resources that the person is dealing with are owned, held or controlled by a designated person or entity or nationally listed person or structured group, commits an offence and is liable to a penalty specified in the Act.

(3) For the purposes of this regulation, “deal with” means —

- (a) in relation to funds —
  - (i) use, alter, move, allow access to or transfer,
  - (ii) treat the funds in a way that would result in any change in volume, amount, location, ownership, possession, character or destination, or
  - (iii) make any other change that would enable use, including portfolio management; and

(b) in relation to economic resources, exchange or to use the resources in exchange for funds, goods or services.

**19. (1)** A person shall not directly or indirectly make funds property or other economic resources available, to or for the benefit of a designated person or entity or nationally listed person or structured group.

Prohibition of making funds, etc. available to designated or nationally listed person

(2) A person who contravenes subregulation (1) commits an offence is liable to a penalty specified in the Act.

**20. (1)** A designated person or nationally listed person, not being a citizen of Botswana shall not be allowed to enter into or transit through Botswana unless —

Prohibition of travel by designated or nationally listed person

(a) the entry is necessary for compliance with a judicial process;

(b) the Committee determines that the entry is justified; or

(c) in the case of person on the United Nations List, the travel of such person is exempted by the decision of the United Nations Security Council Sanctions Committee and the decision to exempt is duly notified to the Committee.

(2) A person shall not knowingly provide or facilitate the transportation of a designated or nationally listed person within or outside Botswana.

(3) The Minister responsible for immigration shall not grant a visa to a designated person or nationally listed person unless he or she has obtained advice of the Committee that the issuance of the visa is not contrary to these Regulations.

(4) A designated person or nationally listed person who is a citizen of Botswana shall not leave Botswana until investigations into the activities that led to his or her designation or national listing have been concluded.

**21.** A person who directly or indirectly —

Prohibition of procurement and supply of weapons

(a) facilitates the manufacture, acquisition, possession, sale, supply, development, export, transshipment, brokering, transportation, or transfer of military equipment's or arms of war and related materials or NBC weapons to any designated person or entity or nationally listed person or structured group;

(b) facilitates the grant, sale, supply or transfer of technical assistance related to military activities and to provisions, manufacture, maintenance and use of arms of war and related materials or NBC weapons to any designated person or entity or nationally listed person or structured group;

(c) does any act calculated to promote the financing or the provision of financial assistance related to military activities and to the provision, manufacture, maintenance and use of arms of war and related materials or NBC weapons to any designated person or entity or nationally listed person or structured group; or

(d) participates, knowingly or intentionally, in activities the object or effect of which is to promote the transactions referred to under these regulations, from Botswana or elsewhere, being a citizen of Botswana or registered in Botswana or using a Botswana flagged vessel or aircraft registered in Botswana, commits an offence and is liable to penalties specified in the Act.

**22.** A person shall not land or take-off an aircraft, wherever registered, in Botswana where the aircraft —

Prohibition of landing and taking off of certain aircrafts

(a) has taken off from a country designated by the United Nations Security Council; or

Circumventing prohibitions

(b) is owned, leased or operated by or on behalf of a designated person or entity or nationally listed person or structured group.

**23.** Any person who knowingly participates in activities the object or effect of which is directly or indirectly to circumvent, enable or facilitate the contravention of this Part commits an offence and is liable to penalties specified in the Act.

#### PART V – *Information*

Circulation of lists and issuance of guidelines by Minister

**24.** (1) The Minister shall through the Committee, circulate the updated lists immediately upon receipt through electronic and surface mails to the relevant law enforcement, regulatory and supervisory authorities, who shall cause same to be circulated immediately to specified parties.

(2) A supervisory authority shall circulate the national list and the United Nations List to points of entry and exit from Botswana to ensure that travel bans are effected on the designated person or nationally listed person.

(3) The Commissioner of Police shall institute measures to prevent the direct and indirect supply, sale and transfer from Botswana by citizens of Botswana using a Botswana flagged vessel or aircraft registered in Botswana, of arms and related materials, spare parts and technical advice, assistance or training related to military activities to a designated person or entity or nationally listed person or structured group.

(4) The Committee shall issue guidelines for the purposes of effective implementation of the —

- (a) freezing measures in respect of the funds, property or economic resources of a designated person or entity or nationally listed person or structured group;
- (b) prohibition and restriction on travel, visas and purchase of arms as required in the relevant Security Council Resolutions and in any subsequent Resolutions in respect of a designated person or entity or nationally listed person or structured group; and
- (c) prohibition of transactions, provision of financial services or the supply of arms or the conduct of training for a designated person or entity or nationally listed person or structured group.

(5) The Committee may, on request by any interested person, provide information as may be required on the procedure adopted by the Committee, including any review or deletion on the entries made in the United Nations List, or on the national list.

Notice of amendment to lists to be given

**25.** Where any amendment is made to the United Nations list or national list, the Minister shall —

- (a) inform the relevant authorities of the amendment and the effect of such amendment;
- (b) provide the United Nations Sanctions Committee with any additional information available to him or her, including any new information with supporting documents; and
- (c) take appropriate measures to notify a competent supervisory authority in countries concerned of measures taken by him or her under these Regulations including —
  - (i) any decision to freeze funds, property or economic resources,
  - (ii) the inclusion or deletion of names from the national list, or

- (iii) any additional steps or actions taken to respond to any direction or request made by the United Nations Sanctions Committee.

**26. (1)** Where the Minister believes that it is necessary for the purpose of monitoring compliance with or detecting circumvention of these Regulations, he or she may, through the Committee, request a designated person or entity or nationally listed person or structured group to provide information concerning —

Power to request for information

- (a) funds, property or economic resources owned, held or controlled by the designated person or entity or nationally listed person or structured group;
- (b) any disposal of funds, funds or economic resources, whether the disposal occurred before or after the person or entity became a designated person or entity or nationally listed person or structured group; or
- (c) expenditure by or on behalf or for the benefit of the designated person or entity or nationally listed person or structured group.

**(2)** The Minister may through the Committee request any person resident in Botswana, to provide such information as the Minister may reasonably require for the purpose of —

- (a) monitoring compliance with, or detecting circumvention of these Regulations;
- (b) obtaining evidence of the commission of an offence under these Regulations; or
- (c) establishing —
  - (i) the nature and amount or quantity of any funds, property or economic resources owned, held or controlled by a designated person or entity or nationally listed person or structured group, or
  - (ii) the nature and amount or quantity of any funds, property or economic resources or financial services made available directly or indirectly to or for the benefit of a designated person or entity or nationally listed person or structured group, or
  - (iii) the nature of any financial services provided to, or financial transactions entered into by a designated person or entity or nationally listed person or structured group.

**(4)** A request for information under this regulation may include a continuing obligation to keep the Committee informed as circumstances change or on such regular basis as the Committee may specify.

**27. (1)** A request for information under regulation 23 may include a request to produce a document.

Production of documents

**(2)** Where the Minister requests that a document be produced, the Minister may —

- (a) take copies or extracts from the document so produced;
- (b) request any person producing the document to give an explanation of the document; and
- (c) where the person under paragraph (b) is a body corporate, partnership or unincorporated body, request any person to give an explanation of who —
  - (i) in the case of a partnership, is a present or previous partner or employee of the partnership, or
  - (ii) in any other case, is a present or previous director, manager or employee of the body corporate or unincorporated body concerned.

Failure to comply with request for information

**28.** A person who —

- (a) without reasonable excuse refuses or fails within the time and in the manner specified, or if no time has been specified, as soon as practicable to comply with any request made under these Regulations;
  - (b) knowingly or recklessly gives any information or produces any document which is false in a material particular in response to such a request; or
  - (c) with intent to circumvent these Regulations, destroys, mutilates, defaces, conceals or removes any document,
- commits an offence and is liable to a penalty specified in the Act.

Disclosure of information

**29.** The Minister may disclose any information obtained in the exercise of his or her powers under these Regulations, including any document so obtained and any copy or extract made of any document so obtained, to a —

- (a) relevant authority in Botswana; or
- (b) competent authority in any foreign State concerned with measures taken under these Regulations.

Unlawful disclosure of information

**30.** (1) A person who in the course of his or her duties, knows or is in possession of any information submitted or exchanged pursuant to these Regulations, shall not disclose such information in any form whatsoever, including the disclosure of the information except for the purpose of implementing these Regulations.

(2) The prohibition on disclosure in subregulation (1), shall continue even after the termination of the duties of the person.

#### PART VI — *General*

Channel of Communication with United Nations

**31.** (1) The Committee shall prepare and submit necessary reports to the Minister who shall forward same to United Nations Sanctions Committee or other authorities through the ministry responsible for international affairs.

(2) The Minister shall prepare and submit necessary reports as requested by relevant United Nations Security Council Sanctions Committee or relevant institutions on the measures taken in Botswana to implement the United Nations Security Council Resolutions and successor resolutions.

Co-operation with domestic or international investigations

**32.** The Minister may take such steps as he or she considers appropriate to co-operate with any investigation in Botswana or elsewhere, relating to the funds, property, economic resources or financial transactions of a designated person or entity or nationally listed person or structured group.

MADE this 20th day of August, 2018.

**NONOFO MOLEFHI,**  
*Minister for Presidential Affairs, Governance  
and Public Administration.*