

LEGAL NOTICE NO. 211

THE PREVENTION OF TERRORISM ACT

(No. 30 of 2012)

THE PREVENTION OF TERRORISM (IMPLEMENTATION OF
THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS
ON SUPPRESSION OF TERRORISM) REGULATIONS, 2013

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THE PREVENTION OF TERRORISM ACT

(No. 30 of 2012)

PREAMBLE

WHEREAS the Republic of Kenya has enacted the Prevention of Terrorism Act, 2012, the Prevention of Organized Crimes Act, 2010 and the Proceeds of Crime and Anti-Money Laundering Act, 2009;

WHEREAS the Constitution recognizes the general rules of international law and treaties or convention ratified by Kenya to be part of the laws of Kenya;

WHEREAS Kenya is a member of the United Nations and as such bound by the decisions and Resolutions of the United Nations Security Council by virtue of Article 41 of the Charter of the United Nations;

WHEREAS the Republic of Kenya has ratified the United Nations Conventions aimed at addressing terrorism and terrorism financing;

WHEREAS Article 41 of the Charter of the United Nations provides that the Security Council may determine the measures not involving the use of armed force that may be employed to give effect to its decisions, and call upon the Members of the United Nations to apply such measures;

NOW THEREFORE, IN EXERCISE of the powers conferred by section 50 of the Prevention of Terrorism Act, 2012, the Cabinet Secretary makes the following Regulations-

THE PREVENTION OF TERRORISM (IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON SUPPRESSION OF TERRORISM) REGULATIONS, 2013

PART 1- PRELIMINARY

1. These Regulations may be cited as the Prevention of Terrorism (Implementation of the United Nations Security Council Resolutions on Suppression of Terrorism) Regulations, 2013.

Citation.

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

Interpretation.

“Act” means the Prevention of Terrorism Act, 2012;

No. 30 of 2012.

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to internal security;

“Centre” means the Financial Reporting Centre established under section 21 of the Proceeds of Crime and Anti-Money Laundering Act, 2009;

No. 9 of 2012

“Committee” means the Counter Financing of Terrorism Inter-Ministerial Committee established under regulation 4;

“competent party” means the relevant regulatory agency, security agency, intelligence agency, law enforcement agency, supervisory body, or administrative agency;

“dealing” in relation to property or funds means receiving, acquiring, transacting, representing, concealing, disposing, converting, transferring or moving, using as security or providing financial services;

“designated entity” means an entity designated pursuant to the Act or the applicable United Nations Security Council Resolutions adopted under Chapter VII of the United Nations Charter;

“designation” or “listing” means the identification of a person, organization, association or group of persons that is subject to targeted sanctions pursuant to the applicable United Nations Security Council Resolutions or an entity specified under section 3 of the Act;

“domestic list” means the list prepared and approved by the Committee under regulation 12;

“economic resources” includes, assets of every kind, whether movable or immovable, tangible or intangible, actual or potential, which are not funds and which may be used to obtain funds, goods or services;

“freeze” means to prevent or restrain specific property or funds from being used, transferred, transacted, converted, altered, concealed, moved or disposed of without affecting the ownership thereof;

“person” means any natural or legal person;

“reporting institution” has the meaning assigned to it under section 2 of the Proceeds of Crime and Anti- Money Laundering Act, 2009;

“Resolution” means a resolution of the United Nations Security Council and includes its successor resolution;

“Resolution 1267” means Resolution 1267 (1999) of the Security Council;

“Resolution 1267/1989 (Al-Qaida)” means Resolutions 1267 (1999) and 1989 (2011) of the Security Council;

“Resolution 1373” means Resolution 1373 (2001) of the Security Council;

“Resolution 1718” means Resolution 1718 (2006) of the Security Council;

“Resolution 1988” means Resolution 1988 (2011) of the Security Council;

“Sanctions Committee” means a committee of the Security Council of the United Nations established under a Resolution of the Security Council;

“Security Council” means the Security Council of the United Nations established under Article 7 of Chapter III of the United Nations Charter;

“sanctions list” means the 1267/1989 Al-Qaida sanctions list and the 1988 sanctions list or other similar list issued by the Security Council;

“terrorism financing” includes the offence specified under section 5 of the Act.

3. These Regulations shall apply to –

Application.

- (a) an entity designated under Resolutions 1267/1989 (Al-Qaida);
- (b) an entity designated under Resolution 1373;
- (c) an entity designated under Resolution 1718 or Resolution 1988; and
- (d) a specified entity in respect of which an order has been issued under section 3 of the Act.

PART II – IMPLEMENTATION COMMITTEE

4. (1) There is established a Committee to be known as the Counter Financing of Terrorism Inter-Ministerial Committee.

Counter
Financing of
Terrorism Inter-
Ministerial
Committee.

(2) The Committee shall consist of -

- (a) the Cabinet Secretary responsible for matters relating to internal security who shall be the chairperson;
- (b) the Cabinet Secretary responsible for matters relating to finance;
- (c) the Cabinet Secretary responsible for matters relating to foreign affairs;
- (d) the Attorney-General;
- (e) the Director-General of the National Intelligence Service;
- (f) the Inspector-General of Police;

- (g) the Director-General of the Kenya Citizens and Foreign Nationals Management Service;
- (h) the Governor of the Central Bank of Kenya; and
- (i) the Director of the Centre.

5. (1) The functions of the Committee shall be to –

Functions of the Committee.

- (a) implement Resolution 1267, 1373, 1718 and 1988, resolutions relating to the suppression of terrorism financing and the prevention, suppression and disruption of the proliferation of, and financing of, dealings with weapons of mass destruction and such other related resolutions in accordance with these Regulations;
- (b) formulate and supervise the implementation of the National Strategy and Action Plan on Counter Financing of Terrorism; and
- (c) perform such other functions as may be conferred on it by any other written law.

(2) The Committee may, in carrying out its functions, co-ordinate with the relevant competent party and any other person for the purposes of –

- (a) identifying persons or entities for the purpose of designation;
- (b) examining and giving effect, upon a request by a foreign country, to an action initiated under the freezing mechanism of that foreign country, which is consistent with the public interest of Kenya;
- (c) considering requests for the de-listing of a designated entity under these Regulations; and
- (d) the performance of its functions under these Regulations.

(3) The Committee shall, in carrying out its obligations under Resolution 1267, 1373, 1718 and 1988, the resolutions relating to the banning of travel, granting of visas and purchase of arms and related resolutions, coordinate with the relevant competent party for the purposes specified under paragraph (2).

Powers of the Committee.

6. (1) The Committee shall have all the powers necessary for the performance of its functions under these Regulations.

(2) Without prejudice to the generality of paragraph (1), the Committee shall have the powers to issue such directives, guidelines, rules or instructions as it may consider necessary for the effective implementation of these Regulations.

(3) The Committee shall determine its own procedure for the conduct of its meetings and those of its sub-committees under these Regulations.

Establishment of sub-committees.

7. (1) The Committee may, from time to time, establish such sub-committees as it may consider necessary for the effective discharge of its functions under these Regulations.

(2) The Committee may co-opt into the sub-committees established under paragraph (1) such other persons whose presence, participation, knowledge or skills are necessary for the proper performance of the functions of the Committee.

(3) A person co-opted under paragraph (2) may attend the meetings of the sub-committee and participate in the deliberations but shall have no right to vote at the meeting.

Law enforcement co-ordinating group.

8. (1) The Committee shall constitute such sector specific law enforcement co-ordinating group as it may consider necessary for the implementation of these Regulations.

(2) A co-ordinating group constituted under paragraph (1) shall consist of such representatives of the institutions set out in the First Schedule as the Committee shall consider necessary for the carrying out of its functions under these Regulations.

(3) The Committee shall designate the chairperson of the co-ordinating group from amongst the members of the team constituted under paragraph (1).

(4) Each co-ordinating group constituted under paragraph (1) shall be responsible for the day to day implementation of these Regulations in relation to such sector as may be specified by the Committee.

Confidentiality.

9. A member of the Committee or any other person shall not, without the consent of the Committee in writing, publish or disclose to any person other than in the course of his or her duties, the contents of any document, communication or information which relates to, and which has come to his or her knowledge in the course of his or her duties under these Regulations.

(2) A person who contravenes paragraph (1) commits an offence.

PART III - RULES ON DESIGNATIONS

Circulation of United Nations sanctions list.

10.(1) The Kenyan Mission to the United Nations shall, without delay, submit to the Ministry responsible for matters related to foreign affairs, all designations made by the Security Council and any sanctions list or other similar list issued in connection therewith.

(2) The Ministry shall, immediately upon receipt of a designation or list under paragraph (1), submit such designation or sanctions list to the Cabinet Secretary.

(3) The Cabinet Secretary or any member of the Committee designated in writing by Cabinet Secretary for that purpose shall, immediately upon receipt of the designation or sanctions list under paragraph (2), circulate it to the members of the Committee.

(4) The Committee shall, upon receipt of the designation or sanctions list under paragraph (3) and without delay, circulate the designation or sanctions list to—

- (a) the supervisory bodies specified under the First Schedule to the Proceeds of Crime and Anti-Money Laundering Act, 2009;¹ No. 9 of 2009.
- (b) the national security organs specified under Article 239 of the Constitution;
- (c) such law enforcement agencies as it may consider necessary; and
- (d) any other person who is authorized —
 - (i) to detect, freeze or seize the funds or the property of a designated entity under any written law; or
 - (ii) to take such action as may be necessary to give effect to Resolution 1267, 1373, 1718, 1988 or such other relevant Resolutions.

(5) A supervisory body shall, upon receipt of the designations or sanctions list submitted to it under paragraph (4) -

- (a) circulate the designations or sanctions list to the reporting institutions under its purview for their information and action;
- (b) where necessary, provide guidance to the reporting institutions holding funds or other assets of a designated person, in relation to their obligations under these Regulations; and
- (c) ensure that the reporting institutions comply with the requirements of these Regulations.

PART IV - AUTHORITY TO FREEZE

11. (1) Subject to these Regulations, the Cabinet Secretary shall, either on his or her own motion or at the request of the Committee, make an order freezing the property or funds of a designated entity, whether held directly or indirectly by the entity or by a person acting

Authority to freeze.

on behalf of or at the direction of the entity, in accordance with these Regulations.

(3) An order to freeze property or funds under paragraph (1) shall include an on-going prohibition against the provision of funds or financial services to the designated entity against which the order is made.

(3) A designation or sanctions list circulated by the Cabinet Secretary or the Committee shall be deemed to authorise a reporting institution and any other institution which holds the property or funds of a designated entity to freeze, until further notice, such property or funds.

12. (1) A person to whom a designation or sanctions list is submitted under regulation 10 shall, where applicable -

Action to be taken on the receipt of the Sanctions List.

- (a) take the necessary measures to freeze the funds owned or controlled by the designated entity without delay and without notice to the entity;
- (b) within twenty hours of detecting the funds and freezing them, file a suspicious transaction report with the Centre in accordance with section 44 of the Proceeds of Crime and Anti- Money Laundering Act, 2009 or in such form as may be prescribed by the Committee; and
- (c) take such other action as may be necessary to give effect to Resolutions 1267, 1373, 1718 and 1988.

No. 9 of 2009.

(2) A person who is required to take action under paragraph (1) shall, without delay, inform the Committee, in writing in the form prescribed by the Committee, of the action taken.

13. (1) The Committee shall compile a domestic list comprising of specified entities under section 3 of the Act.

Domestic list.

(2) The domestic list prepared under paragraph (1) shall include, where available, the following information in relation to a specified entity-

- (a) the name including any alias or title of the entity;
- (b) the place and date of birth, establishment or incorporation;
- (c) the original or acquired nationality;
- (d) passport numbers, identity card numbers or registration number;
- (e) sex;
- (f) physical and postal addresses;

- (g) occupation;
- (h) telephone number; and
- (i) any other information which the Committee may consider relevant.

(3) The Committee shall circulate the domestic list compiled under paragraph (1) in accordance with regulation 10(4).

(4) The Committee shall review and, where applicable, update, the domestic list annually.

(5) The Committee shall circulate the domestic list to another State as specified in the relevant Resolution.

Publication of Designation.

14. (1) The Centre shall publish the domestic list on its website and make available to the public, an electronic version of the list.

(2) The Committee may adopt such measures or make such arrangements for the prompt publication and dissemination of the domestic list.

Third Party Requests.

15.(1) A designation or request for designation made by a country pursuant to Resolution 1373 shall be transmitted to the Kenyan Mission in that country.

(2) Where a Kenyan Mission does not exist in the country making the request, the country shall transmit the request to the Ministry responsible for matters relating to foreign affairs in Kenya.

(3) Upon receipt of a request under paragraph (2), the Kenyan Mission or the Ministry shall, without delay, submit the request to the Cabinet Secretary for his or her consideration.

(4) The Cabinet Secretary shall, upon receipt of a request under paragraph (3) and without delay, submit the request to the Committee for a determination as to whether there are reasonable grounds to designate the entity in accordance with the Act and these Regulations.

(5) Where the Committee determines that there are reasonable grounds to designate that entity, the Cabinet Secretary shall, without delay –

- (a) make an order designating the entity;
- (b) make an order freezing the assets of the entity; and
- (c) circulate the order in accordance with regulation 10(4).

16. (1) Where an order has been made freezing the property or funds of an entity, such entity shall not withdraw any monies or deal with such property or funds unless –

Humanitarian exemptions; procedure for claiming.

- (a) the property or funds are necessary to cover the basic and necessary expenses or extraordinary expenses of the entity; and
- (b) the entity has applied for, and obtained an authorization from the Cabinet Secretary in accordance with this regulation.

(2) An entity under paragraph (1) which requires funds to cover its basic and necessary expenses may make an application for that purpose to the Cabinet Secretary.

(3) The Cabinet Secretary shall, subject to paragraph (4), consider an application submitted to him or her under paragraph (2) within seven days from the date of receipt of the application.

(4) The Cabinet Secretary shall, subject to paragraph (5) –

- (a) where an order freezing the property or funds of the person is made pursuant to a resolution of the Sanctions Committee;
- (b) where he or she finds merit in the application made under paragraph (2); and
- (c) prior to authorizing the withdrawal of monies requested under the application,

notify the appropriate Sanctions Committee of the application and request the Sanctions Committee to submit to him or her, its recommendations on the matter.

(5) The Cabinet Secretary may, within ten days from the date of notification of the Sanctions Committee under paragraph (4) and in the absence of negative recommendations from the Sanctions Committee, authorize the withdrawal of such monies as he or she may consider reasonable to cover the basic and necessary expenses of the entity.

(6) In authorizing the withdrawal of monies under paragraph (5), the Cabinet Secretary shall take into account the recommendations of the appropriate Sanctions Committee and shall not authorize such withdrawal where the Sanctions Committee makes a negative recommendation in relation to the application for withdrawal.

(7) Where an application is for the withdrawal of monies to cover extraordinary expenses of the entity, the Cabinet Secretary shall not grant an authorization for the withdrawal of such monies unless he or she has obtained the prior written approval of the relevant Sanctions Committee.

(8) For purposes of this regulation –

“basic and necessary expenses” includes –

- (i) monthly family expenses, payments for foodstuff, rent or mortgage, medicines and medical treatment, taxes, insurances premiums, and public utility charges;
- (ii) reasonable professional fees and reimbursement of expenses related to the provision of legal services; or
- (iii) fees or service charge incurred for the routine holding or maintenance of frozen funds or other financial assets or economic resources;

“extraordinary expenses” means expenses not falling under item (i).

17.(1) A designated entity may make an application for de-listing by filing a petition with the appropriate Sanctions Committee.

Application for the de-listing of a designated person.

(2) An application made under paragraph (1) may be made based on the following grounds-

- (a) mistaken identity;
- (b) relevant and significant change of facts or circumstances including the inclusion of the applicant in a witness protection program;
- (c) the death dissolution or liquidation of a designated entity; or
- (d) any other circumstance which would show that the basis for designation no longer exists.

(3) Where the Sanctions Committee deletes the name of an entity appearing on a sanctions list, the Cabinet Secretary shall, within twenty four hours of the deletion, notify the institutions specified under regulation 10(4) of such deletion and direct the institutions to delete that name from the list circulated to them.

Request for de-listing under resolution 1267/1989 and 1988.

(4) A direction issued under paragraph (3) shall have the effect of revoking the freeze order and other sanctions imposed against the entity whose name is deleted from the list.

18. (1) Notwithstanding regulation 17, an entity designated pursuant to Resolution 1267/1989 (Al-Qaida) or Resolution 1988 may make a request for his or her de-listing in accordance with paragraph (2).

(2) A request made by a person designated -

- (a) under the Resolution 1267/1989 (Al-Qaida) shall be submitted to the Office of the Ombudsperson through the

address specified under Part A of the Second Schedule or through such other address as may be specified by the Sanctions Committee; or

- (b) under Resolution 1988, shall be submitted to the Focal Point for De-listing through the address specified under Part B of the Second Schedule or through such other address as may be specified by the Sanctions Committee.

(3) A request for de-listing under paragraph (1) may be made on behalf of the designated person by his or her legal representative or estate.

(4) The Office of the Ombudsperson or Focal Point for De-listing shall, upon receipt of a request under paragraph (3), determine the request in accordance with the applicable procedures set out under the Security Council Resolutions.

19. (1) The Committee shall notify -

Notices.

(a) the competent parties or entities of -

- (i) any amendment to the name of any person on the sanctions list and the domestic list; and
(ii) information required for inclusion in the list; and

(b) competent authorities or countries of any measures taken by the Committee in accordance with these Regulations.

(2) The Committee shall provide additional information including supporting documents which become available to it in relation to designated persons or entities to the Sanctions Committee.

20. A person who obtains information on the breach of any provision of these Regulations shall, within forty eight hours after obtaining such information, inform the Committee or report the breach to the nearest police station.

Duty to report violation of Regulations.

PART V - RESTRICTIONS ON TRAVEL AND DEALINGS IN ARMS

21.(1) A person who is designated under these Regulations shall not enter or transit through Kenya, if the entry or transit would be contrary to a determination of the Security Council made under Article 41 of the Charter of the United Nations.

Entry of designated persons into Kenya.

(2) Notwithstanding the provisions of any other written law, a Director of the Kenya Citizens and Foreign Nationals Management Service shall not grant a visa under the Kenya Citizenship and Immigration Act, 2011 to a designated person unless he or she has obtained the advice of the Cabinet Secretary that the visa is consistent with the provisions of paragraph (1).

No. 12 of 2011.

to
freeze the funds
or property of a
designated entity,
submit to the

Kenya Subsidiary Legislation, 2013

(3) The provisions of this regulation shall not be construed to vary or waive the requirements imposed under the Kenya Citizenship and Immigration Act, 2011.

22. Notwithstanding the provisions of regulation 21(1), a designated person shall not be prevented from entering or transiting through Kenya where -

- (a) the designated person is a citizen of Kenya;
- (b) the entry or transit is necessary for compliance with a judicial process; and
- (c) the Al-Qaida United Nations Sanctions Committee determines, on a case-by-case basis, that the entry or transit is justified.

23. A person in Kenya or citizen of Kenya in any place outside Kenya shall not, directly or indirectly, enter into or deal in the supply, sale, transfer, carriage, delivery, training in or provision of technical assistance or any deal with any weapons or related materials of any type, knowing that the weapons or materials—

- (a) are intended to be imported by a designated person; or
- (b) are to be supplied or delivered to, or to the order of, a designated person.

24. A person shall not use a ship or aircraft in Kenya or use a Kenyan ship or aircraft in any place outside Kenya for the carriage of weapons or related materials from or to a designated person.

25. No proceedings shall lie against any entity, including reporting institutions and relevant government agencies, in respect of effecting or implementing an order designating an entity or freezing the property or funds of a designated entity in good faith under these Regulations.

26. A person or entity that contravenes the provisions of these Regulations commits an offence and shall be liable, on conviction, to a fine not exceeding three million shillings or to imprisonment for a term not exceeding seven years.

27. A competent party and any person concerned with the implementation of these Regulations may prescribe administrative rules in relation to its employees, agents, or staff for the purposes of implementing the obligations imposed under these Regulations.

28. (1) A reporting institution and relevant government agency shall, within twenty four hours of receipt of a notice of an order

Exemptions
allowed under the
travel restrictions.

Transactions with
designated person
in relation to arms
prohibited.

Carriage of arms
to designated
person prohibited.

Protection from
liability.

Penalties.

Internal rules.

Return.

Cabinet Secretary and Centre in writing, a return in the format prescribed by the Centre in consultation with the Cabinet Secretary for that purpose.

(2) A return submitted under paragraph (1) shall include the following information -

- (a) in the case of a reporting institution -
 - (i) the account number;
 - (ii) the name of the account owner or holder;
 - (iii) the time of freezing of all subject accounts;
 - (iv) the balance of the account as at the time of freezing the funds;
 - (v) the related accounts, if any, including the balance of monies in the accounts as at the time of freezing; and
 - (vi) an explanation as to the ground for the identification of related accounts; and
- (b) in the case of a government agency-
 - (i) the nature and description of the property;
 - (ii) the name of the owner or holder of the property;
 - (iii) the mode and date of acquisition of the property by the owner; and
 - (iv) the location of the property.

(3) A reporting institution and relevant government agency shall notify the Cabinet Secretary and the Centre of any attempted dealing with property or funds against which an order freezing such property or funds has been issued, within twenty four hours of such attempt.

29. A reporting institution shall regularly review the domestic or sanctions lists and monitor transactions in relation to entities specified in the lists on an on-going basis to mitigate against the risks of the occurrence of the financing of terrorism.

30. The Cabinet Secretary may issue such instructions, directions, guidelines or rules as he or she may consider necessary for the better carrying out of the provisions of these Regulations.

On-going monitoring of transactions.

Powers to issue directives and guidelines.

FIRST SCHEDULE (r. 8(2))

LAW ENFORCEMENT CO-ORDINATING TASK FORCE

- (a) Ministry of Interior and Co-ordination of National Government
- (b) Ministry of Foreign Affairs
- (c) Asset Recovery Agency
- (d) Central Bank of Kenya
- (e) The National Treasury
- (f) Office of the Attorney General;
- (g) National Intelligence Service;
- (h) Directorate of Criminal Investigations;
- (i) Financial Reporting Centre,
- (j) Kenya Citizens and Foreign Nationals Management Service;
- (k) Kenya Defence Forces;
- (l) National Police Service;
- (m) Kenya Maritime Authority;
- (n) Capital Markets Authority,
- (o) Insurance Regulatory Authority;
- (p) Kenya Revenue Authority;
- (q) Kenya Airports Authority;
- (r) Public Benefits Organizations Authority; and
- (s) such other agency as the Cabinet Secretary may consider necessary.

SECOND SCHEDULE (r. 18(2))

ADDRESSES FOR DE-LISTING REQUESTS

PART A

Office of the Ombudsperson
Room TB-08041D
United Nations
New York, NY 10017
United States of America
Tel: +1 212 963 2671
Fax: +1 212 963 1300/3778
E-mail: ombudsperson@un.org

PART B

Focal Point for De-listing
Security Council Subsidiary Organs Branch
Room TB-08041B
United Nations
New York, N.Y. 10017
United States of America
Tel. +1 917 367 9448
Fax. +1 212 963 1300/3778
Email: delisting@un.org

Dated the 12th November, 2013.

JOSEPH OLE LENKU,
*Cabinet Secretary for Interior
and Co-ordination of National Government.*