



LEGAL NOTICE NO.....

THE PREVENTION OF TERRORISM ACT
(No. 30 of 2012)

THE PREVENTION OF TERRORISM (IMPLEMENTATION OF THE UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON PREVENTION, SUPPRESSION AND DISRUPTION OF PROLIFERATION FINANCING) REGULATIONS, 2023

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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, terrorism financing and proliferation 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 for Interior and National Administration makes the following Regulations—

**THE PREVENTION OF TERRORISM (IMPLEMENTATION OF THE
UNITED NATIONS SECURITY COUNCIL RESOLUTIONS ON
PREVENTION, SUPPRESSION AND DISRUPTION OF PROLIFERATION
FINANCING) REGULATIONS, 2023**

PART I—PRELIMINARY

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| Citation. | 1. These Regulations may be cited as the Prevention of Terrorism (Implementation of The United Nations Security Council Resolutions on Prevention, Suppression and Disruption of Proliferation Financing) Regulations, 2023 |
| Interpretation. | 2. In these Regulations, unless the context otherwise requires— |
| No. 30 of 2012. | “Act” means the Prevention of Terrorism Act, 2012; |

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

“Committee” means the Counter Financing of Terrorism Inter-Ministerial Committee established under section 40D(1) of the Act;

“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 person or entity” means a person or entity designated pursuant to 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;

“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;

“proliferation financing” refers to: the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual-use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations.

“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 1718 (2006), 2231 (2015) and successor Resolutions;

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

“sanctions list” means the 1718(2006) sanctions list and the 2231(2015) sanctions list or other similar list issued by 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;

“without delay” means within twenty-four (24) hours of a designation by the United Nations Security Council or its relevant Sanctions Committee

Application.

3. These Regulations shall apply to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing under -

- (a) UNSCR 1718(2006) on DPRK and its successor Resolutions 1874(2009), 2087(2013), 2094(2013), 2270(2016), 2321(2016) and 2356(2017);
- (b) UNSCR 2231(2015) relating to Iran; and
- (c) any future successor Resolutions

PART II— IMPLEMENTATION OF TARGETED SANCTIONS

Obligation to implement

4. The Counter Financing of Terrorism Inter- Ministerial Committee established under the Act shall be responsible for implementation of Targeted Financial Sanctions relating to prevention, suppression and prevention of Proliferation Financing.

Circulation of United Nations sanctions list.

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

(2) The Ministry shall, upon receipt of a sanction list under sub-regulation (1), submit such sanctions list to the Committee through the Cabinet Secretary without delay.

(3) The Committee shall, upon receipt of the sanctions list under paragraph (2), circulate the sanctions list without delay to —

- (a) supervisory bodies and self-regulatory bodies specified under the First Schedule to the Proceeds of Crime and Anti-Money Laundering Act, 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.

(4) (a) The Committee shall circulate the sanctions list and a clear guidance on freezing to all persons and competent parties under sub-regulation (3) that may be holding targeted funds or other assets through a public notice or such other mechanism as the Committee may deem fit.

(b) A supervisory body and self-regulatory body shall, upon receipt of the communication from the Committee under sub-regulation (4)(a)—

- (a) circulate without delay, the sanctions list and guidance on freezing to reporting institutions under its purview for their information and action;
- (b) where necessary, provide further guidance to the reporting institutions in relation to their obligations under these Regulations; and
- (c) ensure that the reporting institutions comply with the requirements of these Regulations

Freezing of funds and assets of designated persons and entities

6. (1) All persons and reporting institutions shall without delay and without prior notice to the designated person or entity-

- (a) detect, freeze or seize the funds or the property of a designated entity including-

- (i) all funds or other assets that are owned or controlled by the designated person or entity, and not just those that can be tied to a particular act, plot or threat of proliferation;
- (ii) those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities;
- (iii) the funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons or entities; and
- (iv) funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities.

(b) take such action as may be necessary to give effect to Resolution 1718 (2006), 2231 (2015) or such other successor Resolutions.

Reporting
obligation

7. (1) A person or reporting institution shall, immediately, verify whether the details of a designated party or entity match with the particulars of any customer, and if so, identify whether the customer owns any funds or other assets in Kenya, including the funds or other assets referred to under regulation 6(1).

(2) Where funds or other assets are identified by a person or reporting institution, the person or reporting institution shall make a report within twenty four hours to the Committee in a specified manner on any funds or other assets frozen or action taken in compliance with the prohibition requirements of the relevant United Nations Security Council Resolutions.

(3) Notwithstanding the provisions of sub-regulation (2), a reporting institution shall report any attempted transaction by a designated person or entity, by filing a suspicious transaction report to the Financial Reporting Centre and in such a form as may be specified by the Centre.

(4) A person or reporting institution that fails to comply with sub-regulation (2) and (3) shall be liable to fines in accordance to section 39 of the Proceeds of Crime and Anti- money Laundering Act, 2009 -

- (a) In case of a natural person, is liable to a fine not exceeding five million shillings; and

(b) In case of a legal person, a fine not exceeding twenty –five million shillings

Ongoing monitoring of transactions

8. A reporting institution shall regularly review the sanctions list and monitor transactions in relation to persons or entities specified in the lists on an on-going basis to mitigate against the risks of the occurrence of Proliferation Financing.

Prohibition to making funds and other assets available

9. (1) No person within Kenya shall make available any funds or other assets provided under regulation 6 (1), to or for the benefit of designated persons or entities unless licensed, authorised or otherwise notified in accordance with the relevant United Nations Security Council Resolutions.

(2) A person who contravenes the provisions of regulation 9 (1) shall in accordance to section 30G of the Prevention of Terrorism Act, 2012 be liable upon conviction-

(a) In case of a natural person, is liable to imprisonment for a term not exceeding twenty years; and

(b) In case of a legal person, is liable to a fine not exceeding twenty million shillings.

Rights of *bona fide* third parties

10. (1) A person who claims in good faith to have a bona fide right to funds or other assets frozen under regulation 6 may apply in writing to the Committee through the Cabinet Secretary for the exclusion of his or her interest from the freezing order.

(2) An application referred to in sub regulation (1) must be accompanied by-

(a) a sworn statement setting out—

(i) the nature and extent of the right, title or interest of the applicant in the funds or other assets concerned;

(ii) the time and circumstances of the acquisition by the applicant of the right, title or interest in the funds or other assets; and

(iii) any additional facts supporting the application, which may assist the Cabinet Secretary to make an assessment on the bona fide ownership or interest in the frozen funds.

(b) certified documents vesting ownership or interest on the *bona fide* third party.

Monitoring and compliance

11. (1) The Financial Reporting Centre, supervisory bodies and self-regulatory bodies shall adopt measures for monitoring and ensuring compliance with the Proceeds of Crime and Anti-money laundering Act and Prevention of Terrorism Act relating to Proliferation Financing by reporting institutions

(2) Reporting institutions shall monitor and ensure compliance with the Proceeds of Crime and Anti-money laundering Act and Prevention of Terrorism Act relating to Proliferation Financing.

(3) The Financial Reporting Centre, supervisory bodies and self-regulatory bodies shall impose civil, administrative or criminal sanctions on reporting institutions that fail to comply with the Proceeds of Crime and Anti-money laundering Act and Prevention of Terrorism Act relating to Proliferation Financing.

PART III – DE-LISTING AND UNFREEZING

Application for de-listing

12. (1) Where a designated person or entity does not meet or no longer meets the criteria for designation may make an application for delisting to the Focal Point established pursuant to UNSCR 1730.

(2) An application for delisting of a designated person or entity may be made by-

(a) the Committee, at any time, to the relevant Sanctions Committee.

(b) a designated person or entity who is a citizen or resident of Kenya, or incorporated or registered in Kenya.

(3) A petition to the Focal Point for de-listing established pursuant to UNSCR 1730 requesting for delisting shall contain-

(a) an explanation as to why the designation does not or no longer meets the listing criteria through countering the reasons for listing as stated in the list entry for that particular person or entity;

(b) any documentation supporting the request that can be referred to and attached together with the explanation of its relevance, where appropriate;

(c) a designated person or entity's current occupation and/or activities, and any other relevant information.

(4) The petition shall be submitted to the Focal Point for delisting through the address specified under the Schedule or such other address as may be specified by the Sanctions Committee.

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

(6) The Focal Point for de-listing shall, upon receipt of a request under sub-regulation (3), determine the request in accordance with the applicable guidelines or procedures adopted under the relevant Security Council Resolutions.

Communication of delisting

13. (1) The Committee shall, through a public notice, notify and provide guidance on unfreezing to all persons and reporting institutions holding targeted funds or other assets of the deletion of a designated person or entity.

Obligations of persons and reporting institutions

14. A person or reporting institution holding targeted funds or other assets shall upon receiving notification of delisting of a person or entity-

(a) take action, to unfreeze the funds or other assets without delay; and

(b) respect the delisting by the relevant Sanctions Committee.

Unfreezing where funds were frozen in error

15. (1) A person, whose name is similar to that of a designated person or entity, and whose funds have been inadvertently or mistakenly frozen due to the similarity, may apply for unfreezing.

(2) The application under sub-regulation (1) shall be made in writing and reviewed by the Committee.

(3) Unfreezing action under sub regulation (1) shall be upon verification by the Committee, that the person or entity is not the designated person or entity.

Exemptions to freezing action

16. A designated person or entity whose funds have been affected by the freezing order may submit a request in writing to the Committee, to have such funds or part thereof released to cover—

(a) basic expenses;

- (b) extraordinary expenses;
- (c) funds or assets that are subject to judicial, administrative or arbitral lien or judgement;
- (d) funds or assets that are required to carry out activities by the DPRK's mission to the United Nations and its specialized agencies and related organizations or other diplomatic and consular missions of the DPRK;
- (e) funds or assets that the Sanctions Committee determines in advance on a case-by-case basis and which are required for the delivery of humanitarian assistance, denuclearization or any other purposes consistent with the objectives of Resolution 2270 (2016);
- (f) financial transactions with the DPRK Foreign Trade Bank or the Korea National Insurance Corporation if such transactions are solely for the operation of diplomatic or consular missions in the DPRK or humanitarian assistance activities that are undertaken by, or in coordination with, the United Nations.

Contracts,
Agreements and
other obligations.

17.(1) Pursuant to Resolution 1718 or 2231, an order freezing funds or other assets of designated person and entities shall extend to—

- (a) any funds or assets held in a bank account, as well as any additions that may come into such account after the initial or successive freezing;
- (b) any interests or other earnings due on those accounts;
- (c) payments due under contracts, agreements; or
- (d) obligations that arose prior to the date on which those accounts became subject to the provisions of this Resolution;

Provided that any such interest, other earnings and payments continue to be subject to these provisions and are frozen.

(2) A designated person or entity shall not be prevented from making any payment due under a contract entered into prior to the listing of such person or entity under Resolution 1737 and continued by Resolution 2231, or pursuant to Resolution 2231, provided that the Committee has—

- (a) determined that the contract is not related to any prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment, brokering or services referred to in Resolution 2231 and any future successor Resolutions;
- (b) determined that the payment is not directly or indirectly received by a person or entity subject to the measures in paragraph 6 of Annex B to UNSCR 2231; and
- (c) submitted prior notification to the Security Council of the intention to make or receive such payments or to authorise, where appropriate, the unfreezing of funds, other financial assets or economic resources, for this purpose, ten working days prior to such authorization.

PART IV—RESTRICTIONS ON TRAVEL, DEALINGS IN ARMS AND OTHER PROHIBITIONS

Entry of designated persons into Kenya.

18. (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.

(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 sub-regulation (1).

(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.

Exemptions allowed under the travel restrictions.

19. Notwithstanding the provisions of regulation 18(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 United Nations Sanctions Committee determines, on a case-by-case basis, that the entry or transit is justified.

Transactions with designated person in relation to arms prohibited.

20. 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.

Prohibition to carry arms for designated persons and entities

21. 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.

PART V – MISCELLANEOUS PROVISIONS

Protection from liability.

22. No proceedings shall lie against any person, including reporting institutions and competent parties, 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.

Duty to report violation of Regulations.

23. 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.

Contravention of these Regulations

24. A person 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.

Internal rules.

25. 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.

Powers to issue directives and guidelines.

26. 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.

SCHEDULE

(r. 12(4))

ADDRESS FOR DE-LISTING REQUEST

PART A

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

Made on the....., 2023.

Kithure Kindiki,
Cabinet Secretary for Interior and National Administration