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Government Notice

MINISTRY OF SAFETY AND SECURITY

No. 196

2013

PREVENTION AND COMBATING OF TERRORIST ACTIVITIES REGULATIONS: PREVENTION AND COMBATING OF TERRORIST ACTIVITIES ACT, 2012

Under section 55 of the Prevention and Combating of Terrorist Activities Act 2012, (Act No. 12 of 2012), and after consulting the Minister of Finance, I make the regulations set out in the Schedule.

I. NGATJIZEKO

MINISTER OF SAFETY AND SECURITY

Windhoek, 11 July 2013

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Definitions

1. (1) In these regulations, unless the context otherwise indicates, a word or expression defined in the Act has that meaning, and -

“Financial Intelligence Act” means the Financial Intelligence Act, 2012 (Act No. 13 of 2012);

“territory” means the territory ascribed to it in terms of article 1(4) of the Namibian Constitution;

“the Act” means the Prevention and Combating of Terrorist Activities Act, 2012 (Act No. 12 of 2012);

Application for rescission or variation of freezing order

2. (1) The Minister or any party to the proceedings against whom a freezing order is made, may at any time after an order is made in terms of section 24(1), bring an application on affidavit to a judge in camera and set out the reasons for the application to rescind or vary such an order.

(2) The judge may on hearing of such application -

- (a) rescind or vary the order where he or she is satisfied that reasonable grounds referred to in section 24(1) ceased to exist;
- (b) give directions and extensions of time as may be necessary in regard to the order granted in terms of section 24(1); or
- (c) make any other order considered appropriate in the circumstances.

(3) Where the rescission or variation is sought on the ground that it is unlawful or is obtained by fraud or mistake, application may be made not later than twelve months after the applicant first had knowledge of such voidness, fraud or mistake.

Freezing order by Court

3. (1) The Minister may bring an *ex parte* application before a Judge of the High court in terms of section 24 of the Act.

(2) Where the High Court has been satisfied that the list provided for in section 24, is a list issued in terms of Chapter VII of the United Nations Charter by the Security Council listing a person or organisation against whom a member state of the United Nations must take action to combat or prevent any terrorist activity, the presiding Judge must make an order in the following terms:

- (a) freeze with immediate effect the funds of a person or organisation whose name appear on the list;
- (b) prohibit a person or organisation from engaging in any conduct; or oblige a person or organisation to cease any conduct concerning funds in respect of which there are reasonable grounds that the fund is owned or controlled by or on behalf of or at the direction of a person or organisation, or a person or organisation as being a person or organisation associated with that person or organisation as being a person or organisation listed by the Security Council of the United Nations;
- (c) appoint a suitable person or organisation to take control of and to manage or deal with the whole or part of the funds in terms of the direction of the court;
- (d) order a person or organisation to give full control of the funds to a suitable person or organisation appointed in terms of subregulation (d);
- (e) prevent access to funds by a listed person or organisation or any other associated person or organisation; or
- (f) direct that the order by the court be circulated by electronic mail, facsimile or any other expeditious means to –
 - (i) a person or organisation who in the opinion of the court must be notified of the order;
 - (ii) all accountable institutions listed in Schedule 1 of the Financial Intelligence Act 2012;
 - (iii) all supervisory bodies listed in Schedule 2 of the Financial Intelligence Act, 2012;
 - (iv) all reporting institutions listed in Schedule 3 of the Financial Intelligence Act, 2012;
 - (v) all regulatory bodies listed in Schedule 4 of the Financial Intelligence Act, 2012; or
 - (vi) all competent authorities who in the opinion of the court must be notified of such an order.

(3) On the return date of an interim order issued in terms of section 24(3) the court may, confirm the interim freezing order in relation to the said frozen funds.

(4) An order made in terms of section 24(3) of the Act may be served on -

- (a) a person who in the opinion of the Court must be notified of such order;
- (b) an organisation who in the opinion of the Court must be notified of such order;
- (c) all accountable institutions listed in Schedule 1 of the Financial Intelligence Act, 2012;
- (d) all supervisory bodies listed in Schedule 2 of the Financial Intelligence Act, 2012;
- (e) all reporting institutions listed in Schedule 3 of the Financial Intelligence Act, 2012;
- (f) all regulatory bodies listed in Schedule 4 of the Financial Intelligence Act, 2012; or
- (g) all competent authorities who in the opinion of the Court should be notified of such an order.

Implementation of United Nations Security Council Resolutions issued under Chapter VII of United Nations Charter

4. (1) In giving effect to the implementation of Namibia's obligations under binding resolutions of the United Nations Security Council with regard to prevention and combating of terrorist activities, the Security Commission must, when assessing the list in terms of section 21 of the Act, only assess whether the list has been issued in terms of Chapter VII of the United Nations Charter by the United Nations Security Council and make a determination.

(2) Upon receipt of the list referred to in subregulation (1) the Security Commission must instruct the Minister within 24 hours or as soon as is reasonably possible but not later than 48 hours from time of receipt of the list to take steps set out in section 24 and to ensure -

- (a) the freezing of the funds of listed individuals or organisations, including funds derived from property owned or controlled directly or indirectly by such individuals or organisations, or persons acting on their behalf or at their direction;
- (b) that neither these nor any other funds are made available, directly or indirectly for such persons for the benefit of Namibian nationals, persons within the territory or any other organisation, accountable or reporting institution in terms of Schedules I and III of the Financial Intelligence Act, 2012;
- (c) the immediate publication of the list in the *Government Gazette* or by any other appropriate expeditious means of publication;
- (d) the submission of the list to the Director or his or her authorised representative of the Financial Intelligence Centre, established under section 7 of the Financial Intelligence Act, 2012 to circulate the list with immediate effect but not later than 24 hours from the time of receipt, via electronic mail, facsimile or any other expeditious means of communication to -
 - (i) all accountable institutions listed in Schedule I of the Financial Intelligence Act;
 - (ii) all supervisory bodies listed in Schedule II of the Financial Intelligence Act;
 - (iii) all reporting institutions listed in Schedule III of the Financial Intelligence Act;

- (iv) all regulatory bodies listed in Schedule IV of the Financial Intelligence Act; and
 - (v) any other person, business, public body, office, Ministry, government institution or competent authority as the Security Commission or the Director, considers appropriate;
- (e) that the Minister responsible for immigration and border control take steps in terms of section 21 of the Act;
 - (f) that the Minister responsible for safety and security take steps in terms of section 21 of the Act;
 - (g) that within 72 hours from the time of receipt of the freezing order issued either in terms of section 24 of the Act or regulation 3, a listed person or organisation if found within the territory is informed in terms of the High Court Rules, of the designation and include relevant information as specified under section 21 of the Act;
 - (h) within 30 working days communicate to the United Nations Security Council all actions taken by Namibia in terms of subsection 21 of the Act;
 - (i) that within a period not exceeding seven days, after being so requested, transmit to the United Nations Security Council requests as specified in sections 21(2), 22(2) and 28(2) of the Act;
 - (j) to publish the list in the Gazette within 14 days from the time of receipt of the delisting notification referred to in subsection 21(3) of the Act; and
 - (k) that the Director of the Financial Intelligence Centre, or his or her authorised representative is instructed to, within 48 hours after being so instructed, circulate the delisting particulars via electronic mail, facsimile or any other expeditious means of communication to -
 - (i) all accountable institutions listed in Schedule I of the Financial Intelligence Act;
 - (ii) all supervisory bodies listed in Schedule II of the Financial Intelligence Act;
 - (iii) all reporting institutions listed in Schedule III of the Financial Intelligence Act;
 - (iv) all regulatory bodies listed in Schedule IV of the Financial Intelligence Act; and
 - (v) any other person, business, public body, office, ministry, Government institution or competent authority as the Security Commission or Director or his or her authorised representative considers appropriate.

Application for release of funds on humanitarian and other grounds

5. (1) The Security Commission must in terms of section 28 of the Act within a period not exceeding-

- (a) seven days, transmit the request for the release of funds to the United Nations Security Council; and

(b) 14 days notify the person of the outcome referred to in section 28 (5) of the Act.

(2) Upon receiving a response made in terms of section 28 of the Act the Security Commission must, within 14 days after receiving a response from the United Nations Security Council, notify the person that made the request of the response.

Consideration of classification of struggle waged by persons for a legitimate right

6. In assessing and in considering whether an act is regarded as a terrorist activity or an act committed during a struggle waged by people, including any action during an armed struggle waged by people, including any action during an armed struggle in the exercise or furtherance of their legitimate right to national liberation, self determination and independence against colonialism, occupation, aggression or domination by alien or foreign forces, the Government must regard the United Nations Charter and any other applicable instrument issued by the United Nations as principles of public international law.

Decision by United Nations Security Council Resolution to postpone, suspend or cancel adopted resolution

7. The Minister must publish the notice provided for in section 21(6) of the Act within 14 days.

Delisting requests

8. (1) For purposes of a request to be delisted as provided for in section 21(2) and 22 of the Act, a listed person or organisation or the Government of Namibia must complete the appropriate delisting application forms set out in Annexure A or Annexure B.

(2) The Security Commission must notify the person referred to in subregulation (1) of the transmission and outcome of his or her request within seven days of receiving a response from the United Nations Security Council.

United Nations Security Council Resolution 1373 (2001): International Cooperation, Freezing and Restraining of Funds at Request of Third Party

9. (1) The Minister responsible for justice must in terms of section 29(3), within 30 days of receiving a request for assistance and cooperation -

- (a) forward such a request to the Security Commission for its determination; and
- (b) request further particulars from the requesting State.

Proscription and de-proscription by Minister

10. The Minister in terms of section 41 of the Act, within 14 days in the *Gazette* or any other expeditious means must -

- (a) publish a notice of proscription;
- (b) in collaboration with the Security Commission where there is proof that a person or organisation is no longer engaged in terrorist activities, publish a notice of de-proscription; or
- (c) publish an order of revocation.

Authorisation for rendering of foreign military assistance

11. (1) A person making an application to the Minister in terms of section 44 must pay an amount of N\$ 10 million upon lodging such an application.

- (2) An application in terms of section 44(1) must -
- (a) be made in writing;
 - (b) be addressed to the Minister;
 - (c) contain the personal particulars of the applicant;
 - (d) contain the underlying reasons why such foreign military assistance is sought to be rendered;
 - (e) reflect the person's relevant experience in combat activities;
 - (f) provide detailed particulars on the type of foreign military assistance to be rendered;
 - (g) provide detailed particulars of the beneficiary or recipient of the intended foreign military assistance; and
 - (h) provide detailed explanations on how the applicant will ensure Namibia's political relations is safeguarded and not compromised by the rendering of such foreign military assistance.

Offences and penalties

12. A person who or organisation which contravenes these regulations commits an offence and is liable to a fine not exceeding N\$ 4 000 or to imprisonment for a period not exceeding two years, or to both such fine and imprisonment.

ANNEXURE A

**Prevention and Combating of Terrorist Activities Act, 2012: Standard form for the submission of a request to remove the name of an individual or entity from the List maintained by the Security Council Sanctions Committee established pursuant to resolution 1988 (2011)
(Section 22, Regulation 7)**

The use of this form is optional. If used, please complete as many fields as possible.

If the Government of the Republic of Namibia submits a request for de-listing on behalf of a listed petitioner:

Please send the form to the Secretariat of the Committee:

- by mail: 1988 Committee Secretariat

Security Council Subsidiary Organs Branch (Room TB-08040C)

United Nations - New York, N.Y. 10017 - USA

- by fax: +1 212 963 1300/3778

- by email: SC-1988-Committee@un.org

If you are a petitioner (individual, group, undertaking or entity on the 1988 Sanctions List, or a representative thereof) submitting a request for de-listing directly

Please send the form to:

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

I.A - IDENTIFYING INFORMATION FOR INDIVIDUALS

Permanent Reference Number (PRN)					
Full name (as it appears on the List)					
Birth data	Place (locality/area/country):		Day:	Month:	Year:
Male / Female					
Nationality or citizenship(s)	Current				
	Previous (add dates)				
State(s) of residence	Current				
	Previous (add dates)				
Address	Primary address (city/area/country)				
	Other addresses (current/previous)				
Location (if different from address)					

Is any entity on the 1988 Sanctions List owned or controlled, directly or indirectly, by, or otherwise supporting, this individual? If so, which one? (please supply PRN)		
Is the individual reconciled? <i>Paragraph 21 (a) of Security Council resolution 1988 (2011) states that delisting requests concerning reconciled individuals should, if possible, include a communication from the High Peace Council through the Government of Afghanistan confirming the reconciled status of the individual according to the reconciliation guidelines, or, in the case of individuals reconciled under the Strengthening Peace Program, documentation attesting to their reconciliation under the previous program.</i>		Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide the relevant documentation
Did the individual hold a position in the Taliban regime prior to 2002? <i>Paragraph 21 (b) of Security Council resolution 1988 (2011) states that delisting requests concerning individuals who formerly held positions in the Taliban regime prior to 2002 who no longer meet the listing criteria outlined in paragraph 3 of the resolution should, if possible, include a communication from the Government of Afghanistan confirming that the individual is not an active supporter of, or participant in, acts that threaten the peace, stability and security of Afghanistan.</i>		Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide details
Is the individual dead? <i>Paragraph 21 (c) of Security Council resolution 1988 (2011) states that delisting requests for deceased individuals should include an official statement of death from the state of nationality, residence, or other relevant state</i>		Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide a death certificate or similar official documentation confirming the death, which should include, to the extent possible, the full name, permanent reference number and date of birth of the individual, and the date and place of death, as well as any further information about the circumstances of the death and see also part III of this form
Other supplementary information		
II - IDENTIFYING INFORMATION FOR GROUPS, UNDERTAKINGS AND ENTITIES		
Permanent Reference Number (PRN)		
Full name (as it appears on the List)		Acronym:
Type of entity		
Registration and other documents or identification numbers if applicable	Registering Government authority	
	Incorporation / Registration location	Country: Province: District:
	Incorporation / establishment date	Day: Month: Year:
	Senior Manager / Owner / Founder / Legal representative / Principal Investor(s) (if applicable)	In original script: Indicate script: If not Latin, name in Latin script:

	Address(es)
Known assets / location of assets / sources of income	
Is the entity owned or controlled, directly or indirectly, by, or otherwise supporting, any listed individual or other listed entity?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Has the entity ceased to exist?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide relevant documentation and other evidence
Other supplementary information	

III. IDENTIFIED FROZEN ASSETS OF DECEASED INDIVIDUALS AND ENTITIES THAT HAVE CEASED TO EXIST

Section 8 (l) of the 1988 Sanctions Committee Guidelines states that the submitting State or the petitioner should also ascertain and inform the Committee whether or not any legal beneficiary of the deceased's estate or any joint owner of his/her assets is on the 1988 Sanctions List, and to the extent possible, inform the Committee about the names of any individuals or entities who would be in a position to receive any unfrozen assets of a deceased individual or defunct entity

For deceased individuals, is any legal beneficiary of the deceased's estate, or any joint owner of his/her assets, on the 1988 Sanctions List?

Yes No (If yes, please provide additional details, in particular permanent reference number of such beneficiary)

For entities that have ceased to exist, is any legal beneficiary of this entity, or any joint owner of its assets, on the 1988 Sanctions List?

Yes No (If yes, please provide additional details, in particular permanent reference number of such beneficiary)

IV. PREVIOUS DELISTING REQUESTS (IF KNOWN)

Has there been any previous request for the de-listing of this individual or entity?

Yes No

If yes, please provide details and date of submission:

V. JUSTIFICATION

As per paragraph 19 of Security Council resolution 1988 (2011) the delisting request should explain how the individual, group, undertaking or entity concerned no longer meets the criteria for listing described in paragraphs 3 and 4 of resolution 1988 (2011). Please indicate what has been done to coordinate this delisting request with the Government of Afghanistan.

VI. SUBMISSION OF DELISTING REQUEST

A request for the de-listing of _____, currently inscribed on the 1988 Sanctions List under

permanent reference number _____, is hereby submitted.

(date and signature/official seal)

(position held)

ANNEXURE B

**Standard form for the submission of requests
to remove a name from the Al-Qaida Sanctions List
maintained by the Security Council Committee pursuant to resolutions 1267 (1999) and 1989
(2011) concerning Al-Qaida and associated individuals and entities
(Section 22, Regulations)**

The use of this form is optional. If used, please complete as many fields as possible.

If you are a representative of a Member State:

Please send the completed form to the Secretariat of the Committee:

- by mail: 1267/1989 Committee Secretariat

Security Council Subsidiary Organs Branch (Room TB-08040C)

United Nations - New York, N.Y. 10017 - USA

- by fax: +1 212 963 1300/3778

- by email: SC-1267-Committee@un.org

If you are a petitioner (individual, group, undertaking or entity on the Al-Qaida Sanctions List, or a representative thereof):

Please refer to the Office of the Ombudsperson for guidance website: <http://www.un.org/en/sc/ombudsperson/>

The use of this form is not required by the Ombudsperson but may be forwarded to her as follows,

- by mail: Office of the Ombudsperson

Room TB-08041D

United Nations - New York, NY 10017, United States of America

- by fax: +1 212 963 1300/3778

- by email: ombudsperson@un.org

The use of this form by no means prejudices the decision of the Committee.

I.FOR AN INDIVIDUAL			
Permanent Reference Number (PRN)			
Full name (in Latin alphabet, as it appears on the List)			
Date of birth	(DD/MM/YYYY)	Day:	Month: Year:
Place of birth (city/area/country)			
Male / Female			
Nationality or citizenship(s)	Current		
	Previous (add dates)		
State(s) of residence	Current		
	Previous (add dates)		
Address	Primary address (city/area/country)		
	Other addresses (current/previous)		
Location (if different from address)	Current		
	Other		

Associated Entity (entities) on the Al-Qaida Sanctions List (cf. paragraph 5 of Security Council resolution 1989(2011))	
Please indicate if the individual is deceased <i>Paragraph 31 of Security Council resolution 1989 (2011) encourages States to submit delisting requests for individuals that are officially confirmed to be dead</i>	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide a death certificate or similar official documentation confirming the death, which should include, to the extent possible, the full name, permanent reference number and date of birth of the individual, and the date and place of death, as well as any further information about the circumstances of the death. See also part III of this form.
Other information	

II. FOR A GROUP, UNDERTAKING OR ENTITY	
Permanent Reference Number (PRN)	
Full name (in Latin alphabet, as it appears on the List)	
Short Name/acronym(s)	
Registration and other identification numbers	
Registered Address	Current
	Previous, if any
Type of entity	
Location	Current
	Previous, if any
Known assets / location of assets / origin of assets	
Please indicate if the entity is reported or confirmed to have ceased to exist <i>Paragraph 31 of Security Council resolution 1989 (2011) encourages States to submit delisting requests for entities reported or confirmed to have ceased to exist</i>	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes, please provide official confirmation. See also part III of this form.
Other information	

III. IDENTIFIED FROZEN ASSETS OF DECEASED INDIVIDUALS OR ENTITIES THAT HAVE CEASED TO EXIST (SECTION FOR REPRESENTATIVES OF MEMBER STATES)
<i>Paragraph 31 of Security Council resolution 1989 (2011) encourages States to take all reasonable measures to ensure that the assets that belonged to these individuals or entities have not been or will not be transferred or distributed to other individuals, groups, Undertakings and entities on the Al-Qaida Sanctions List</i>

For deceased individuals, is any legal beneficiary of the deceased's estate, or any joint owner of his/her assets, on the Al-Qaida Sanctions List?

Yes No (If yes, please provide details)

For defunct entities, is any legal beneficiary of the defunct entity, or any joint owner of its assets, on the Al-Qaida Sanctions List?

Yes No (If yes, please provide details)

IV. PREVIOUS DELISTING REQUESTS (IF KNOWN)

Has a de-listing request pertaining to this individual or entity been submitted before?

Yes No

If yes, please elaborate:

V. JUSTIFICATION

The delisting request should explain why the individual or entity concerned no longer meets the criteria described in paragraphs 4 and 5 of resolution 1989 (2011). Attach documentation where appropriate.

VI. SUBMISSION OF DELISTING REQUEST

A request for the de-listing of _____, currently inscribed on the Al-Qaida Sanctions List of the 1267/1989 Sanctions Committee under permanent reference number _____, is hereby submitted.

(date and signature/official seal)

(capacity in which submitting form)

