



# GOVERNMENT GAZETTE

## OF THE

# REPUBLIC OF NAMIBIA

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## Government Notice

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### OFFICE OF THE PRIME MINISTER

No. 213

2023

#### PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 8 of 2023:    Prevention and Combating of Terrorist and Proliferation Activities  
Amendment Act, 2023.

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Act No. 8, 2023

**PREVENTION AND COMBATING OF TERRORIST AND  
PROLIFERATION ACTIVITIES AMENDMENT ACT, 2023****EXPLANATORY NOTE:**

\_\_\_\_\_ Words underlined with a solid line indicate insertions in existing provisions.

[            ] Words in bold type in square brackets indicate omissions from existing provisions.

**ACT**

**To amend the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014, so as to substitute the definitions of “competent authority” and “organisation”; to provide for the intentional provision of funds or other assets; to provide for the financing of terrorist and proliferation activities; to provide for the designation of certain persons, organisations or countries by the United Nations Security Council; to provide for changes in the implementation of the United Nations Security Council resolutions; and to provide for incidental matters.**

*(Signed by the President on 21 July 2023)*

**BE IT ENACTED** as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

**Amendment of section 1 of Act No. 4 of 2014**

**1.** Section 1 of the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act No. 4 of 2014) (hereafter referred to as “the principal Act”) is amended -

(a) by the substitution for the definition of “competent authority” of the following definition:

““competent authority” means any supervisory body, the Namibian Police Force, the Anti-Corruption Commission, the Namibian Central Intelligence Service, the Prosecutor-General, the Namibia Revenue Agency, the Centre and any other authority that may in terms of any law investigate unlawful activities;”;

(b) by the substitution for the definition of “organisation” of the following definition:

“organisation” means any group of persons, entity or undertaking that -

(a) intentionally, knowingly or negligently, either directly or indirectly, by any means commits or attempts to commit, organises or directs others to commit a terrorist or proliferation activity;

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- (b) intentionally, knowingly or negligently, either directly or indirectly, participates as an accomplice in the commission of a terrorist or proliferation activity by a group of individuals acting with a common purpose where the participation is made intentionally and with the aim of furthering the terrorist or proliferation activity or with the knowledge of the intention of the group to commit a terrorist or proliferation activity;
- (c) intentionally, knowingly or negligently, either directly or indirectly, promotes, facilitates or encourages the commission of any terrorist or proliferation activity;
- (d) is a proscribed organisation;
- (e) is an organisation or individual designated by the Security Council under Chapter VII of the UN Charter and by the relevant sanctions committees operating under the authority of the Security Council;”.

**Amendment of section 2 of Act No. 4 of 2014**

2. Section 2 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) A person or an organisation who or that by any means, in or outside Namibia, directly or indirectly -

- (a) provides, solicits or collects funds or other assets, **[intending, knowing]** intentionally, knowingly or having reasonable grounds to believe that such funds or assets are [is] to be used, in whole or part -

- (i) to carry out or attempt to carry out any terrorist activity; or

- (ii) by an organisation or by an individual terrorist,

even in the absence of a link to a specific terrorist activity, regardless of whether such funds or assets or part thereof were actually used to commit or attempt to commit a terrorist activity by an organisation or individual terrorist;

- (b) finances the travel of any other person to a state other than their state of residence or nationality intentionally, knowingly or having reasonable grounds to believe that such travel is for the purpose of committing, planning, preparation of, participating in, a terrorist activity or providing or receiving of terrorist training; or

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- (c) intentionally, knowingly or negligently contributes to the commission of one or more terrorist financing offences or attempted financing offences, by a group of persons acting with a common purpose,

commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.”.

**Amendment of section 3 of Act No. 4 of 2014**

3. Section 3 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) A person or organisation who or that by any means, in or outside Namibia, directly or indirectly -

- (a) provides, solicits or collects funds or other assets, **[intending, knowing]** intentionally, knowingly or having reasonable grounds to believe that such funds or assets are [is] to be used, in whole or part -

(i) to carry out or attempt to carry out any proliferation activity; or

(ii) by a organisation or by an individual,

even in the absence of a link to a specific proliferation activity, regardless of whether such funds or assets or part thereof were actually used to commit or attempt to commit a proliferation activity by an organisation or individual;

- (b) finances the travel of any other person to a state other than their state of residence or nationality intentionally, knowingly or having reasonable grounds to believe that such travel is for the purpose of committing, planning, preparation of, participating in, a proliferation activity or providing or receiving of proliferation training; or

- (c) intentionally, knowingly or negligently contributes to the commission of one or more proliferation financing offences or attempted financing offences, by a group of persons acting with a common purpose,

commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.”.

**Amendment of section 22 of Act No. 4 of 2014**

4. The principal Act is amended by the substitution for section 22 of the following section:

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**22.** (1) For purposes of this Act a resolution adopted by the United Nations Security Council in terms of Chapter VII of the Charter of the United Nations which designates or lists persons, organisations or countries against whom member states of the United Nations must implement financial sanctions and take other actions as specified in the resolution, becomes immediately effective upon its adoption.

(2) A resolution contemplated in subsection (1) ceases to be in effect upon a decision of the United Nations Security Council to no longer apply that resolution and a person or an institution that upon the issuing of the resolution took a freezing action on targeted funds or other assets is required to apply a de-listing or unfreezing action.”.

**Substitution of section 23 of Act No. 4 of 2014**

**5.** The principal Act is amended by the substitution for section 23 of the following section:

**“Monitoring Updates of the United Nations Security Council Sanctions Lists**

**23.** The Centre must, on a daily basis, monitor the United Nations Security Council Sanctions lists adopted in terms of Chapter VII of the Charter of the United Nations for any updates on designations or sanctions listings contemplated in section 22(1).”.

**Amendment of section 24 of Act No. 4 of 2014**

**6.** The principal Act is amended -

- (a) by the deletion of subsection (1); and
- (b) by the substitution for subsection (2) of the following subsection:

“(2) The Director of the Centre or his or her authorized representative after **[receiving the sanctions list or the designation referred to in subsection (1),]**a designation or listing referred to in section 22, must, without delay, cause the publication of that designation and listing on the website of the Centre and also circulate the list using electronic mail, facsimile or any other expeditious means of communication to -

- (a) all accountable institutions listed in Schedule **[I]** 1 of the Financial Intelligence Act;
- (b) all supervisory bodies listed in Schedule **[II]** 2 of the Financial Intelligence Act;
- (c) all reporting institutions listed in Schedule **[III]** 3 of the Financial Intelligence Act;

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- (d) all regulatory bodies listed in Schedule [IV] 4 of the Financial Intelligence Act; **[and]**
- (dA) the Minister; and
- (e) any other person, business, public body, office, Ministry, government institution or competent authority as the Director, considers appropriate.”.

**Amendment of section 25 of Act No. 4 of 2014**

7. The principal Act is amended by the substitution for section 25 of the following section:

**“Prohibition of making funds available to or on behalf of designated persons, organisations or countries**

**25.** (1) Any person, other than the Minister, or institution referred to under section 24(2), must upon being informed of a designation or listing contemplated in section 22, without delay and without prior notice, freeze -

- (a) any funds, assets or economic resources that are owned or controlled directly or indirectly by the designated or listed persons, organisations or countries, despite such funds or assets not being tied to a particular terrorist act, plot or threat or proliferation activity;
- (b) all funds, assets or economic resources that are wholly or jointly owned or controlled, directly or indirectly, by the designated or listed persons, organisations or countries;
- (c) funds, assets or economic resources derived or generated from funds or other assets owned or controlled, directly or indirectly, by a designated or listed persons, organisations or countries, including interests that may accrue to such funds or other assets;
- (d) funds, assets or economic resources of persons, organisations or countries acting on behalf of, or at the direction of designated or listed persons, organisations or countries; or
- (e) 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 of such account.

(2) All persons, other than the Minister, and institutions referred to in section 24(2) must inform the Centre, without delay, of any assets frozen or actions taken in terms of subsection (1) in compliance with the prohibition requirements of the relevant United Nations Security Council Resolutions, including attempted transactions by designated or listed persons, organisations or countries.

(3) The Centre must without delay, after receipt of information in terms of subsection (2), submit such information to the Minister.

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(4) A person who claims to have a *bona fide* right to funds or assets frozen in terms of subsection (1) may apply to the Minister for the exclusion of his or her interest from the freezing order.

(5) An application referred to in subsection (4) must be accompanied by a sworn statement setting out -

- (a) the nature and extent of the right, title or interest of the applicant in the frozen funds or assets concerned;
- (b) the time and circumstances of the acquisition by the applicant of the right, title or interest in the frozen funds or assets; and
- (c) any additional facts supporting the application, which may assist the Minister to make an assessment on the *bona fide* claim of right or interest in the frozen funds or assets.

(6) A person or an institution which has taken any freezing action under this section must ensure the reasonable preservation of funds and other assets in the prescribed manner.

(7) A person to whom a designation or list has been communicated in terms of section 24(2) or any other person who knows or ought to reasonably know or suspect that he or she either directly or indirectly makes any funds, bulk cash, economic resources or any other assets or financial or related services, directly or indirectly, wholly or jointly available to or on behalf of or for the benefit of -

- (a) a designated or listed person, organisation or country;
- (b) a person, organisation or country controlled or owned directly or indirectly by a person, organisation or country referred to in paragraph (a); or
- (c) a person, organisation or country acting on behalf, or at the direction, of a person, organisation or country referred to in paragraph (a),

commits an offence and is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years, or to both such fine and such imprisonment.”.

**Amendment of section 26 of Act No. 4 of 2014**

8. Section 26 of the principal Act is amended by the substitution for the opening sentence of subsection (1) of the following sentence:

“(1) The Minister [**responsible for foreign affairs**] must, without delay, upon receipt of a designation or sanctions list under section ~~[22]~~ 24, [**submit such designation or sanctions list to the Minister responsible for immigration and border control, who must, without delay,**] cause -”.

**Amendment of section 27 of Act No. 4 of 2014**

9. Section 27 of the principal Act is amended by the substitution for the opening sentence of subsection (1) of the following sentence:

“(1) The Minister must, **[responsible for foreign affairs must, without delay]** upon receipt of a designation or sanctions list under section **[22] 24**, **[submit such designation or sanctions list to the Minister who]** without delay prevent the direct or indirect supply, sale, brokering or transfer to designated persons, organisations or countries of all types of arms and related materials -”.

**Amendment of section 32 of Act No. 4 of 2014**

10. Section 32 of the principal Act is amended by the substitution for the opening sentence of subsection (1) of the following sentence:

“(1) A person whose funds are **[affected by the freezing order]** **frozen [issued]** in accordance with section **[23] 25(1)** may submit a request to the Minister to have his or her funds or a portion of such funds released to cover the following -”.

**Amendment of section 33 of Act No. 4 of 2014**

11. Section 33 of the principal Act is amended by the substitution for subsection (7) of the following subsection:

“(7) All persons and institutions referred to in Schedules **[I, II, III and IV] 1, 2, 3 and 4** of the Financial Intelligence Act, must without delay report to the Centre, **[within a prescribed period]** any assets frozen or actions taken in terms of a freezing order contemplated in subsection ([1] 5).”.

**Amendment of section 44 of Act No. 4 of 2014**

12. Section 44 of the principal Act is amended by the substitution for subsection (13) of the following subsection:

“(13) Any freezing orders, arms embargoes and travel bans issued in respect of a proscribed person or organisation lapses automatically upon de-proscription and any person or institution that took freezing action and who or which may hold targeted funds or other assets is required to comply with a de-listing or unfreezing action.”.

**Amendment of section 45 of Act No. 4 of 2014**

13. Section 45 of the principal Act is amended -

(a) by the substitution for the opening sentence of subsection (1) of the following sentence:

“(1) **[After]** On the date of publication of the notice of proscription in terms of section 44(3), the Minister must, by notice in the Gazette, [without delay] simultaneously, issue an order for the freezing of -”; and



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(b) by the substitution for subsection (2) of the following subsection:

“(2) A person or an institution referred to in Schedules **[I, II, III or IV]** 1, 2, 3 or 4 of the Financial Intelligence Act must without delay report to the Centre, **[within a prescribed period]** any assets frozen or actions taken in terms of a freezing order contemplated in subsection (1).”.

**Amendment of section 46 of Act No. 4 of 2014**

14. Section 46 of the principal Act is amended -

(a) by the substitution for paragraph (b) of subsection (3) of the following paragraph:

“(b) circulate the list using electronic mail, facsimile or any other expeditious means of communication to -

- (i) all accountable institutions listed in Schedule **[I]** 1 of the Financial Intelligence Act;
- (ii) all supervisory bodies listed in Schedule **[II]** 2 of the Financial Intelligence Act;
- (iii) all reporting institutions listed in Schedule **[III]** 3 of the Financial Intelligence Act;
- (iv) all regulatory bodies listed in Schedule **[IV]** 4 of the Financial Intelligence Act; and
- (v) any other person, business, public body, office, ministry, Government institution or competent authority as the Director, considers appropriate.”;

(b) by the insertion after subsection (3) of the following subsection:

“(3A) All persons or institutions to whom a domestic list has been communicated in terms of subsection (3)(b) must without delay, and without prior notice, freeze -

- (a) any funds, assets or economic resources that are owned or controlled directly or indirectly by a proscribed person or organisation, despite such funds or assets not being tied to a particular terrorist act, plot or threat or proliferation activity;
- (b) all funds, assets or economic resources that are wholly or jointly owned or controlled, directly or indirectly, by a proscribed person or organisation;
- (c) funds, assets or economic resources derived or generated from funds or other assets owned or controlled, directly or indirectly, by a proscribed person or organisation, including interests that may accrue to such fund or other assets;

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- (d) funds, other assets or economic resources of persons or organisations acting on behalf of, or at the direction of proscribed persons or organisations; or
- (e) any funds or assets held in a bank account, as well as any additions that may come into such bank account after the initial or successive freezing.”.
- (c) by the substitution for subsection (8) of the following subsection:
- “8. The Security Commission may also, **[if it thinks appropriate]** if reasonable grounds exist to do so, propose proscribed persons or organisations to the Security Council 1267 (1999) Committee, the 1989 (2011) Committee, the 1988 (2011) Committee, the 1718 (2006) Committee or the 1737 (2006) Committee for designation, in the prescribed form and manner.”.
- (d) by the addition after paragraph (d) of subsection (9) of the following paragraph:
- “(e) must indicate whether Namibia’s status as a designating state must be made known to other United Nations member states.”.

**Amendment of section 59 of Act No. 4 of 2014**

15. Section 59 of the principal Act is amended by the addition after paragraph (f) of the following paragraph -

- “(g) participates or contributes with common purpose to commit.”.

**Short title and commencement**

16. (1) This Act is called the Prevention and Combating of Terrorist and Proliferation Activities Amendment Act, 2023 and comes into operation on a date determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined in terms of subsection (1) in respect of different provisions of this Act.

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