

(Legislative Supplement No. 87)

LEGAL NOTICE NO. 189

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)

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 proliferation 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 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

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. 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” has the meaning assigned to it under section 2 of the Act;

“Committee” has the meaning assigned to it under section 2 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;

“DPRK” means Democratic People’s Republic of Korea;

“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;

“electronic means” means, in relation to technology, having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities and includes any form of communication that is broadcast, transmitted, stored or viewed using electronic media;

“Financial Reporting Centre” has the meaning assigned to it under section 2 of the Act;

“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” means 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 the 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 sanctions list or any list issued pursuant to UNSCR 2231 or other similar lists issued by Security Council.

“Secretary of the Committee” means the Director-General of the Financial Reporting Centre as provided for under section 40D(2)(j) of the Act;

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

“Self-regulatory body” has the meaning assigned to it under section 2 of the proceeds of Crime and Anti-Money Laundering Act, 2009;

“Supervisory body” has the meaning assigned to it under section 2 of the proceeds of Crime and Anti-Money Laundering Act, 2009;

“Targeted Financial Sanctions” means both asset freezing and prohibitions to prevent funds or other assets from being made available, directly or indirectly, for the benefit of designated persons and entities; and

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

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) and its successor Resolutions 1874(2009), 2087(2013), 2094(2013), 2270(2016), 2321(2016) and 2356(2017) and any future successor Resolutions;

(b) UNSCR 2231(2015) and successor Resolutions; and

(c) any future UNSCR Resolutions which impose targeted financial sanctions in the context of financing of proliferation of weapons of mass destruction.

PART II— IMPLEMENTATION OF UNITED NATIONS SECURITY COUNCIL RESOLUTIONS RELATING TO PROLIFERATION FINANCING

4. The Counter Financing of Terrorism Inter- Ministerial Committee shall be responsible for implementation of targeted financial sanctions relating to prevention, suppression and prevention of proliferation financing.

5. (1) For the purpose of timely implementation of UN Resolution 1718 and 2231 and successor Resolutions, the Committee hereby designates the Secretary to the Committee to receive and circulate all designations made by the Security Council and any Sanctions List or other similar list issued in connection therewith.

(2) For the purpose of sub-regulation (1), the Secretary of the Committee shall, on a daily basis, monitor the Sanctions Lists.

(3) Upon designation by the UN Security Council, the Secretary of the Committee shall circulate the Sanctions List, including through electronic means, to—

(a) reporting institutions under the Proceeds of Crime and Anti-Money Laundering Act, 2009;

Application.

Obligation to implement.

Designation of the Secretary to the Committee and circulation of United Nations sanctions list.

- (b) supervisory bodies and self-regulatory bodies specified under the Proceeds of Crime and Anti-Money Laundering Act, 2009;
- (c) the national security organs specified under Article 239 of the Constitution;
- (d) such law enforcement agencies as it may consider necessary; and
- (e) any other person so authorised—
 - (i) to detect, freeze or seize the funds or the property of a designated entity; or
 - (ii) to take such action as may be necessary to give effect to Resolution 1718, 2231 or successor Resolutions.

(4) In circulating the sanctions list under this regulation, the Secretary of the Committee shall provide clear guidance on freezing to all persons and competent parties that may be holding targeted funds or other assets.

(5) Any implementation action undertaken by the Secretary of the Committee under this regulation shall be subject to the provisions of regulation 7 to these Regulations.

6. All persons including reporting institutions within Kenya shall, without prior notice, and subject to regulation 7—

Freezing of funds and assets of designated persons or entities.

- (a) freeze 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;
- (b) freeze the funds or other assets of a designated person or entity including—
 - (i) those funds or other assets that are wholly or jointly owned or controlled, directly or indirectly, by designated persons or entities;
 - (ii) 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
 - (iii) funds or other assets of persons and entities acting on behalf of, or at the direction of designated persons or entities; and
- (c) take such action as may be necessary to give effect to Resolutions to which these Regulations apply.

7. The implementation of the provisions of Regulations 5 and 6 shall be undertaken without delay.

Implementation timeframe.

8. (1) A person or reporting institution shall, immediately, verify whether the details of a designated person or entity match with

Reporting obligation.

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 to these Regulations.

(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 Financial Reporting Centre.

(4) A person or reporting institution that fails to comply with sub-regulations (2) and (3) shall be liable, upon conviction to a fine—

- (a) in case of a natural person, not exceeding five million shillings; and
- (b) in case of a legal person, not exceeding twenty-five million shillings.

9. 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.

Ongoing monitoring of transactions.

10. (1) No person within Kenya shall make available any funds or other assets 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.

Prohibition to making funds and other assets available.

(2) A person who contravenes the provisions of sub-regulation (1) commits an offence and shall be liable, on conviction—

- (a) in case of a natural person, to imprisonment for a term not exceeding twenty years; and
- (b) in case of a legal person, to a fine not exceeding twenty million shillings.

11. (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.

Rights of bona fide third parties.

(2) An application referred to in sub regulation (1) shall 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 Committee to make an assessment on the bona fide ownership or interest in the frozen funds;
- (b) certified documents vesting ownership or interest in the assets or funds on the *bona fide* third party.

(3) Upon receipt of the application, the Committee shall within reasonable time determine the application and may accord the applicant an opportunity to make representation.

(4) The powers of the Committee under this regulation may be exercised by a sub-committee constituted under section 40G of the Act.

(5) The decision of the Committee shall be communicated to the applicant within 14 days from the date of the decision and the Committee shall take any further steps to effect its decision.

12. (1) The Financial Reporting Centre, supervisory bodies and self-regulatory bodies shall adopt measures for monitoring and ensuring compliance by reporting institutions with this Act and the Proceeds of Crime and Anti-Money Laundering Act relating to proliferation financing.

Monitoring and compliance.

(2) In monitoring and ensuring compliance by reporting institutions for purpose of Targeted Financial Sanctions, the Financial Reporting Centre, supervisory bodies and self-regulatory bodies shall consider, amongst others—

- (a) maintenance of sanctions list;
- (b) sanctions screening of customers;
- (c) dealing with false positives;
- (d) related parties;
- (e) freezing, blocking and rejecting customers and related parties;
- (f) allowable transactions;
- (g) exemption for basic and extraordinary expenditures;
- (h) exemptions for payments due under existing contracts;
- (i) reporting on positive name match;
- (j) reporting of suspicious transactions on related transactions;
- (k) on name match with other unilateral sanctions lists; and
- (l) imposition of new measures.

(3) In addition, the Financial Reporting Centre, supervisory bodies and self-regulatory bodies shall—

- (a) provide clear guidance to financial institutions, Designated Non-Financial Business and Professions, and other entities on their obligation to take freezing action in accordance with this regulation;
- (b) monitor implementation of freezing obligations to ensure compliance through on-site and off-site inspections;
- (c) identify any funds related to a Listed Person that have been detected and frozen by Financial Institutions and Designated Non-financial Business and Professions, and whether or not relevant reports were submitted to the Committee and the Financial Reporting Centre in line with the provisions of this regulation;
- (d) provide guidance to financial institutions and other persons or entities, including Designated Non-Financial Business and Professions, that may be holding targeted funds or other assets, on their obligations to respect a de-listing or unfreezing action;
- (e) where necessary, impose administrative sanctions against a financial institution, Designated Non-financial Business and Professions, and other entities in breach of freezing obligations.

PART III – DE-LISTING AND UNFREEZING

13. (1) An application for delisting of a designated person or entity who does not meet or no longer meets the criteria for designation may be made to the Focal Point established pursuant to UNSCR 1730.

Application for de-listing.

(2) An application for delisting of a designated person or entity under sub-regulation (1) may be made by—

- (a) the Committee, at any time, to the relevant Sanctions Committee; or,
- (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 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 this regulation 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 this regulation, determine the request in accordance with the applicable guidelines or procedures adopted under the relevant Security Council Resolutions.

14. (1) Upon confirmation that a designated person or entity has been delisted from the Sanctions List, the Committee shall, through a public notice or in any other manner the Committee may specify, notify and provide guidance on unfreezing to all persons and reporting institutions holding targeted funds or other assets of the delisted person or entity.

Communication of delisting.

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

Obligations of persons and reporting institutions.

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

(b) shall be obliged to respect the delisting by the relevant Sanctions Committee.

16. (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.

Unfreezing where funds were frozen in error.

(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.

17. 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—

Exemptions to freezing action.

(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.

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

- (a) to 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) to any interests or other earnings due on those accounts;
- (c) to payments due under contracts, agreements; or
- (d) to obligations that arose prior to the date on which those accounts became subject to the provisions of this Resolution;

Contracts,
Agreements
and other
obligations.

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

19. (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 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.

20. Notwithstanding the provisions of regulation 19(1), a designated person shall not be prevented from entering or transiting through Kenya where—

Exemptions allowed under the travel restrictions.

(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.

21. 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—

Transactions with designated person in relation to arms prohibited.

(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.

22. 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.

Prohibition to carry arms for designated persons and entities

PART V — MISCELLANEOUS PROVISIONS

23. No proceedings shall lie against any person, reporting institution or government entity, in respect of effecting or implementing an order designating a person or an entity or freezing the property or funds of a designated person or entity in good faith under these Regulations.

Protection from liability.

24. A person who obtains information on the breach of any provision of these Regulations where a penalty has not been provided for shall, within forty-eight hours after obtaining such information, inform the Committee or report the breach to the Financial Reporting Centre.

Duty to report violation of Regulations.

25. Except as provided for under these Regulations, a person who is found guilty of contravening the provisions of these Regulations for which no penalty is given, that person is liable to a fine not exceeding three million shillings or to imprisonment for a term not exceeding seven years.

Contravention of these Regulations.

26. 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.

Internal rules.

27. 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.

Powers to issue directives and guidelines.

SCHEDULE

(*r. 13(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 14th November, 2023.

KITHURE KINDIKI,
*Cabinet Secretary for Interior
and National Administration.*