

Statutory Instrument No. 13 of 2022

FINANCIAL INTELLIGENCE ACT
(Cap. 08:07)

**FINANCIAL INTELLIGENCE (IMPLEMENTATION OF UNITED NATIONS
SECURITY COUNCIL RESOLUTIONS) REGULATIONS, 2022**
(Published on 25th February, 2022)

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IN EXERCISE of the powers conferred on the Minister of Finance and Economic Development by section 63 of the Financial Intelligence Act, the following Regulations are hereby made —

Citation **1.** These Regulations may be cited as the Financial Intelligence (Implementation of United Nations Security Council Resolutions) Regulations, 2022.

Interpretation **2.** In these Regulations, unless the context otherwise requires —
 “applicable resolutions” means the current United Nations Security Council Resolutions and future successor Resolutions relating to —
 (a) the prevention and suppression of terrorism;
 (b) countering financing of terrorism;
 (c) countering financing of proliferation; and
 (d) any other threat to international peace and security as determined by the United Nations Security Council,
 issued under Chapter VII of the United Nations Charter, including but not limited to the following Resolutions —
 (i) Resolution 1267 of 1999;
 (ii) Resolution 1373 of 2001;
 (iii) Resolution 1718 of 2006;
 (iv) Resolution 1874 of 2009;
 (v) Resolution 2087 of 2013;
 (vi) Resolution 2094 of 2013;
 (vii) Resolution 2231 of 2015
 (viii) Resolution 2253 of 2015;
 (ix) Resolution 2270 of 2016;
 (x) Resolution 2321 of 2016; and
 (xi) Resolution 2356 of 2017;

“Directorate” means Directorate of Intelligence and Security;

“focal point” means the organ established pursuant to the United Nations Security Council Resolution 1730 of 2006 to —

- (a) receive requests for the de-listing of United Nations Security Council listed persons other than persons listed under the ISIL (Da’esh) and Al-Qaida Sanctions regime;
- (b) receive and transmit to the United Nations Security Council ISIL (Da’esh) and Al-Qaida Sanctions Committee communications from individuals who —
 - (i) have been removed from the ISIL (Da’esh) and Al-Qaida Sanctions List, and
 - (ii) claim to have been subjected to the sanctions measures as a result of false or mistaken identification or confusion with individuals listed on the ISIL (Da’esh) and Al-Qaida Sanctions List; and

- (c) receive requests from a listed person, entity or structured group for exemptions from the travel ban and asset freeze for all United Nations Security Council sanctions regimes pursuant to Resolution 2255 of 2015;

“freeze” means to prohibit the transfer, conversion, disposition or movement of any property or economic resources including oil and natural resources that are owned or controlled by a designated person or entity or by a nationally listed person or group, on the basis of, and for the duration of or the validity of an action initiated by a United Nations Security Council, in accordance with the applicable resolution, a competent national authority or a court of competent jurisdiction;

“national list” means the list of names of persons, entities or structured groups declared by the Minister as terrorist or terrorist groups, whom authorities must take action for the prevention and combating of terrorist activities specified in the Counter-Terrorism Act;

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“Office of the Ombudsperson” means the organ established pursuant to the United Nations Security Council Resolution 1904 of 2009 to receive requests from individuals, groups, undertakings or entities seeking to be removed from the ISIL (Da’esh) and Al-Qaida Sanctions List; and

“United Nations Security Council List” means the list of names of persons, entities and groups designated by United Nations Security Council as persons or groups against whom member states must take action for the prevention and combating of any activity specified in the applicable Resolution.

3. These Regulations shall apply to —

Application

- (a) a designated person, entity or group;
- (b) a nationally listed person, entity or structured group;
- (c) a specified party;
- (d) a supervisory authority;
- (e) an accountable institution;
- (f) a relevant Government agency or department; and
- (g) any person in Botswana including a person who is not a citizen of Botswana.

PART II — Listing and De-Listing

4. (1) The Director General of the Directorate shall submit information in relation to a person, entity or structured group to the Committee, in writing where —

National listing

- (a) a person, entity or structured group has been convicted of an offence under the Counter Terrorism Act; or
- (b) based on intelligence information, the Directorate has reasonable grounds to believe that the person, entity or structured group —
 - (i) is engaged in terrorism,
 - (ii) is owned wholly or jointly by a nationally listed person, entity or structured group, or designated person, entity or group,
 - (iii) is controlled directly or indirectly by a nationally listed person, entity or structured group, or a designated person, entity or group,
 - (iv) is acting on behalf of a nationally listed person, entity or structured group, or a designated person, entity or group, or

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- (v) is acting at the direction of a nationally listed person, entity or structured group, or a designated person, entity or group.
- (2) The information pertaining to a person, entity or structured group for purposes of subregulation (1) shall include, where available, the —
 - (a) name of the person, family and pseudo names, any alias, including any alternative names and spelling, and titles of the person or group;
 - (b) place and date of birth or if —
 - (i) a company, the name of the company, the names of its directors, shareholders and beneficial owners, the date of registration or incorporation including the registration number and any other entity identification information, or
 - (ii) a trust, or other legal arrangement, the registered name of the trust or legal arrangement, the names of trustees or persons exercising ultimate control of the trust or legal arrangement and beneficial owners of the trust or legal arrangement, the date of registration or incorporation of the trust or legal arrangement, including the registration number and any other entity identification information;
 - (c) nationality, or address of the registered office;
 - (d) passport number, identity card number or registration number;
 - (e) gender;
 - (f) physical, postal and electronic mail addresses;
 - (h) occupation; and
 - (i) any other information which the Committee considers relevant.
- (3) Upon receipt of a signed copy of a judgment convicting a person, entity or structured group of an offence under the Counter Terrorism Act, the Committee shall, without delay, make a recommendation to the Minister to declare the person, entity or structured group as a terrorist or a terrorist group.
- (4) Upon receipt of a recommendation from the Committee relating to a convicted person, entity or structured group, the Minister shall declare the person, entity or structured group a terrorist or terrorist group.
- (5) Where the Committee is in receipt of information referred to in subregulation (1) (b), the Committee shall, if satisfied that the information meets the criteria for declaring a person, entity or structured group as a terrorist or terrorist group, make a recommendation to the Minister to declare the person, entity or structured group as a terrorist or terrorist group.
- (6) Upon receipt of a recommendation from the Committee based on intelligence information, the Minister may, if satisfied that the recommendation meets the designation criteria, declare the person, entity or structured group a terrorist or terrorist group.

Request for national listing by foreign country
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5. (1) Where a request for national listing is made by a foreign country, the request shall be submitted to the Director of Public Prosecutions in accordance with the Mutual Assistance in Criminal Matters Act.

(2) Notwithstanding the provisions of the Mutual Assistance in Criminal Matters Act, upon receipt of a request from a foreign country, the Director of Public Prosecutions shall immediately forward the request to the Chairperson of the Committee or any member of the Committee authorised in writing by the Chairperson of the Committee for that purpose.

(3) The request for national listing by a foreign country referred to in subregulation (1) shall follow the process for national listing in regulation 4.

6. (1) Where the Minister nationally lists a person, entity or structured group, under regulation 4 or 5, the Chairperson of the Committee or any other member of the Committee, authorised in writing by the Chairperson of the Committee for that purpose, shall, without delay, cause a police officer or Director of Public Prosecutions to make an *ex parte* application to a court, for a freezing Order, in terms of section 17 or 18 of the Counter-Terrorism Act.

Freezing of property held by nationally listed person, entity or structured group

(2) The Chairperson of the Committee or any other member of the Committee, authorised in writing by the Chairperson of the Committee for that purpose, shall on receipt of the freezing Order, without delay, circulate or cause to be circulated through electronic mail, surface mail or any other means available, a copy of the freezing Order to —

- (a) supervisory authorities;
- (b) specified parties;
- (c) accountable institutions;
- (d) relevant Government agencies or departments; and
- (e) any other person.

(3) The Agency or the Directorate shall on receipt of the freezing Order —

- (a) ensure that a specified party, accountable institution, Government agency or department, or any other person takes necessary action; and
- (b) provide guidance, where necessary, to the specified party accountable institution, Government agency or department, or any other person, holding funds, property or other economic resources of a nationally listed person, entity or structured group in relation to their obligations under these Regulations.

(4) A specified party, accountable institution, relevant Government agency or department, and any other person shall on receipt of the freezing Order, without delay and without prior notification to the listed person, entity or structured group, identify and freeze all —

- (a) property or economic resources that are owned or controlled by a nationally listed person, entity or structured group and not just those that can be tied to a particular terrorist act, plot or threat;
- (b) property or economic resources that are wholly or jointly owned or controlled, directly or indirectly, by a nationally listed person, entity or structured group;
- (c) property or economic resources derived from or generated by property or economic resources owned or controlled directly or indirectly by a nationally listed person, entity or structured group;
- (d) property or economic resources of a person, entity or structured group acting on behalf of a nationally listed person, entity or structured group; and
- (e) property or economic resources of a person, entity or structured group acting at the direction of a nationally listed person, entity or structured group.

(5) Subject to the provisions of these Regulations, no person shall, unless authorised under these Regulations, make property or economic resources or financial or other related services available directly or indirectly to —

- (a) a nationally listed person, entity or structured group;
- (b) any entity wholly or jointly owned by a nationally listed person, entity or structured group;
- (c) any person, entity or structured group controlled directly or indirectly by a nationally listed person, entity or structured group;

- (d) any person, entity or structured group acting on behalf of a nationally listed person, entity or structured group; or
 - (e) any person, entity or structured group acting at the direction of a nationally listed person, entity or structured group.
- (6) A person referred to under subregulation (3) shall record property or economic resources frozen under this regulation, against the names of the owners and beneficial owners for proper management.
- (7) A specified party, accountable institution, Government agency or department, or any other person shall, without delay, and in writing inform the Chairperson or any member of the Committee authorised in writing by the Chairperson for that purpose —
- (a) of any action taken; and
 - (b) of the full particulars of any property or economic resources identified and frozen (including transactions and attempted transactions relating to the property or economic resources).
- (8) Where a specified party, accountable institution, Government agency or department, or any other person searches their database and does not identify any property or economic resources, the specified party, accountable institution, government agency or department, or any other person shall make a nil return report, in writing, to the Chairperson or any member of the Committee authorised in writing by the Chairperson for that purpose.
- (9) The particulars required under sub-regulation (7) (b) shall include —
- (a) in relation to a specified party that is a financial institution —
 - (i) the account number,
 - (ii) the name of the account holder,
 - (iii) the time of the freezing of the account,
 - (iv) the balance of the account at the time of freezing of the funds, property or economic resources,
 - (v) the related accounts, if any, including the balance of property or economic resources in the accounts at the time of freezing; and
 - (vi) an explanation as to the grounds for the identification of the related accounts; and
 - (b) in relation to any other specified party, accountable institution, Government agency or department, or any other person —
 - (i) the nature and description of the property or economic resources,
 - (ii) the name of the owner or holder of the property or economic resources,
 - (iii) the mode and date of acquisition of the property or economic resources,
 - (iv) the location of the property or economic resources, and
 - (v) the transactions relating to the property or economic resources.
- (10) A person who knowingly contravenes subregulation (5) commits an offence of financing of terrorism and is liable to a penalty specified in section 5 (1) of the Counter-Terrorism Act.
- (11) Where the Minister has reasonable grounds to believe that a nationally listed person has property or any involvement in a foreign country, the Minister shall, without delay, cause the Director of Public Prosecutions to forward a copy of the declaration made by the Minister referred to in subregulation (1) to the Ministry responsible for international affairs to request the foreign country to freeze the property or economic resources of the listed person providing —

- (a) as much information as possible to allow for identification of the nationally listed person; and
- (b) information containing as much detail as possible on the reasons or basis for the listing.

7. A nationally listed person, entity or structured group aggrieved by the decision of the Minister declaring the person, entity or structured group as a terrorist or terrorist group may make an application to the High Court for a review of the decision.

Application for review

8. (1) The Chairperson of the Committee shall, without delay, upon receipt of a freezing Order referred to in regulation 6 (1), but in no case before the circulation of the freezing Order under regulation 6 (2), publish a national listing in the *Gazette* or such media as the Committee may consider appropriate, unless the Committee —

Publication of national listing

- (a) believes that a listed person is an individual under the age of 18 years; or
- (b) considers that the national listing should be restricted —
 - (i) in the interest of national security or justice, or
 - (ii) for reasons connected with the prevention and detection of financial offences.

(2) The Chairperson of the Committee shall, after the national list has taken effect, immediately inform, in writing, the nationally listed person, entity or structured group of —

- (a) their inclusion in the national list;
- (b) the implications of the national listing;
- (c) the procedure for review and information on de-listing process;
- (d) the possibility of making request for utilising part of the frozen property or economic resources in accordance with these Regulations; and
- (e) the possibility of making a request for a travel ban exemption.

(3) For purposes of subregulation (2) (b), the implications of national listing refer to the imposition of an asset freeze, arms and travel embargo.

(4) The Committee shall maintain a list of persons, entities and structured groups who have been declared as terrorists or terrorist groups.

9. Where the Minister declares a person, entity or structured group as a terrorist or terrorist group and the person, entity or structured group has property or any involvement in a foreign country, the Minister shall, through the ministry responsible for international affairs, immediately forward a proposal for the inclusion of such person, entity or structured group in the United Nations Security Council List in the form prescribed by the United Nations Security Council and shall —

Proposing names for designation to the United Nations Security Council

- (a) provide as much relevant information as possible to allow for identification of the nationally listed person, entity or structured group;
- (b) provide a statement of case containing as much detail as possible on the basis for the proposed designation; and
- (c) specify whether the status of Botswana as designating state be made known.

10. (1) As soon as a change to the United Nations Security Council List takes effect, the Minister responsible for international affairs shall, without delay, forward the list through electronic mail or any other means available to the Chairperson of the Committee or any member of the Committee authorised in writing by the Chairperson of the Committee for that purpose.

Designations made by United Nations Security Council

(2) The Chairperson of the Committee or any other member of the Committee authorised in writing by the Chairperson of the Committee for that purpose, shall, without delay, upon receipt of the United Nations Security Council List referred to in subregulation (1), and in no case later than 16 hours, circulate, through electronic mail, surface mail or any other means available, the list to —

- (a) supervisory authorities;
- (b) investigatory authorities;
- (c) specified parties;
- (d) accountable institutions;
- (e) Government agencies or departments; and
- (f) any other person.

(3) The Agency or the Directorate shall on receipt of the United Nations Security Council List, without delay, —

- (a) ensure that a specified party, accountable institution, Government agency or department, or any other person takes necessary action; and
- (b) provide guidance, where necessary, to the specified party, accountable institution, Government agency or department, or any other person, holding funds, property or other economic resources of a designated person, entity or group in relation to their obligations under these Regulations.

Freezing of
property held
by designated
person

11. (1) A specified party, accountable institution, relevant Government agency or department, or any other person to whom the United Nations Security Council List has been circulated shall, without delay, without prior notification, and in no later than 8 hours, identify and freeze all —

- (a) property or economic resources that are owned or controlled by a designated person, entity, or group, and not just those that can be tied to a particular terrorist act, plot or threat;
- (b) property or economic resources that are wholly or jointly owned or controlled, directly or indirectly, by a designated person, entity or group;
- (c) property or economic resources derived from or generated by property or economic resources owned or controlled directly or indirectly by a designated person, entity or group;
- (d) property or economic resources of a person, entity or group acting on behalf of a designated person, entity or group; or
- (e) property or economic resources of a person, entity or group acting at the direction of a designated person, entity or group.

(2) For purposes of subregulation (1), in determining whether a designated person, entity or group controls property or economic resources, the fact that such property or economic resources is held in the name of an associate or relation is immaterial.

(3) A person referred to under subregulation (1) shall record property or economic resources frozen under this regulation, against the names of the owners and beneficial owners for proper management.

(4) Subject to these Regulations or the applicable Resolution, a specified party, accountable institution, relevant Government agency or department, or any other person shall not make frozen property, economic resources or financial or other related services available directly or indirectly, for the benefit of —

- (a) a designated person, entity, or group;
- (b) an entity or group that is wholly or jointly owned or controlled, directly or indirectly, by a designated person, entity or group;

- (c) a person, entity or group acting on behalf of a designated person, entity or group; or
 - (d) of a person, entity or group acting at the direction of a designated person, entity or group.
- (5) A specified party, accountable institution, Government agency or department, or any other person shall, without delay, and in writing inform the Chairperson or any member of the Committee authorised in writing by the Chairperson for that purpose —
- (a) of any action taken; and
 - (b) the full particulars of any property or economic resources identified and frozen (including transactions and attempted transactions relating to the property or economic resources).
- (6) Where a specified party, accountable institution, Government agency or department, or any other person searches their database and does not identify any property or economic resource, the specified party, accountable institution, Government agency or department, or any other person shall make a nil return report, in writing, to the Chairperson or any member of the Committee authorised in writing by the Chairperson for that purpose.
- (7) The particulars required under subregulation (5) (b) shall include —
- (a) in relation to a specified party that is a financial institution —
 - (i) the account number,
 - (ii) the name of the account holder,
 - (iii) the time of the freezing of the account,
 - (iv) the balance of the account at the time of freezing of the property or economic resources,
 - (v) the related accounts, if any, including the balance of property or economic resources in the accounts at the time of freezing, and
 - (vi) an explanation as to the grounds for the identification of the related accounts; or
 - (b) in relation to any other specified party, accountable institution, relevant Government agency or department, or any other person —
 - (i) the nature and description of the property or economic resources,
 - (ii) the name of the owner or holder of the property or economic resources,
 - (iii) the mode and date of acquisition of the property or economic resources,
 - (iv) the location of the property or economic resources, and
 - (v) the transactions relating to the property or economic resources.
- (8) The Chairperson of the Committee shall, without delay, upon receipt of a United Nations Security Council List, but in no case before the circulation of the United Nations Security Council List to a specified party, accountable institution, relevant Government agency or department, or any other person under regulation 11(1), publish the United Nations Security Council List in the *Gazette* or such media as the Committee may consider appropriate, unless the Committee —
- (a) believes that a designated person is an individual under the age of 18 years; or
 - (b) considers that the United Nations Security Council List should be restricted —
 - (i) in the interest of national security or justice, or

(ii) for reasons connected with the prevention and detection of financial offences.

(9) The Chairperson of the Committee shall, after the United Nations Security Council List has taken effect and where there is a positive return report, without delay, inform in writing, the designated person, entity or group —

- (a) with regard to designations pursuant to United Nations Security Council Resolution 1988, and any other Resolution relating to any threat to international peace and security as determined by the United Nations Security Council issued under Chapter VII of the United Nations Charter the procedures to facilitate review by the 1988 Committee in accordance with any applicable guidelines of procedures adopted by the 1988 Committee, including those of the Focal Point mechanism established under United Nations Security Council Resolution 1730; and
- (b) with regard to designations pursuant to United Nations Security Council Resolution 1267, of the availability of the United Nations Office of the Ombudsperson, pursuant to United Nations Security Council Resolutions 1904, 1989 and 2083 to accept de-listing petitions;

(10) A person who knowingly contravenes subregulation (4) commits an offence of financing of terrorism and is liable to a penalty specified in section 5 (1) of the Counter-Terrorism Act.

Claim by third party

12. (1) A person, entity or structured group who claims to have a *bona fide* right, title or interest in property or economic resources frozen in accordance with regulation 6 or 11, may apply to a court of competent jurisdiction for exclusion of that person's right, title or interest from the freezing Order.

(2) An application referred to in subregulation (1) shall be accompanied by a sworn statement setting out —

- (a) the nature and extent of the right, title or interest claimed by the applicant in the property or economic resources concerned;
- (b) the time and circumstances of acquisition of the right, title or interest in the property or economic resources by the applicant; and
- (c) any additional information relevant to the application.

National de-listing

13. (1) A nationally listed person, entity or structured group may apply to court of competent jurisdiction for de-listing.

(2) An application for de-listing from the national list shall contain —

- (a) in the case of an individual —
 - (i) the full names, including any middle names, or initials and any other names or pseudonyms,
 - (ii) the date and place of birth,
 - (iii) nationality or nationalities of individual where he or she holds more than one nationality, and
 - (iv) any other information which can help to identify the individual; or
- (b) in the case of an entity or structured group —
 - (i) the full name of the group or entity, including any alternative names used,
 - (ii) date of incorporation or registration where applicable,
 - (iii) any other current state of operation, and
 - (iv) any other information which can help to identify the structured group or entity.

(3) Where the Committee reasonably believes that a nationally listed person is deceased or the listed entity or structured group has ceased to operate, the Committee shall make a recommendation to the Minister to revoke the declaration of the person, entity or structured group as a terrorist or terrorist group.

(4) Upon receipt of a recommendation from the Committee under subregulation (3), the Minister may, if satisfied that the nationally listed person is deceased or that the listed entity or structured group has ceased to operate, revoke the declaration of the person, entity or structured group as a terrorist or terrorist group.

(5) The Chairperson of the Committee or any member of the Committee authorised in writing by the Chairperson of the Committee for that purpose shall, within 16 hours of the revocation by court or the Minister, circulate a de-listing notice to the institution to which a national list was circulated under regulation 6 (2).

(6) A specified party, accountable institution, Government agency or department, or any other person shall within 8 hours of receipt of a notice of de-listing under subregulation (5) —

- (a) unfreeze the property or economic resources of the de-listed person, entity or structured group; and
- (b) make a defreezing return report to the Chairperson or any member of the Committee authorised in writing by the Chairperson of the Committee for that purpose.

(7) Where a nationally listed person, entity or structured group whose name has been submitted to a foreign jurisdiction under regulation 6 (11) is de-listed, the Minister shall, without delay, cause the Director of Public Prosecutions to forward a copy of the revocation of the declaration to the foreign jurisdiction, to unfreeze the property or economic resources of a de-listed person, entity or structured group.

14. (1) A designated person, entity or structured group or his or her legal representative may make a petition, providing reasons, for de-listing from the United Nations Security Council List through the Minister, to the office of the Ombudsperson or the Focal Point, whichever is applicable, in accordance with the de-listing guidelines and procedures provided for in the applicable Resolutions.

Application for
de-listing from
United Nations
Security
Council List

(2) An application for de-listing shall contain —

- (a) in the case of an individual —
 - (i) the full names, including any middle names, or initials and any other names or pseudonyms,
 - (ii) the date and place of birth,
 - (iii) nationality or nationalities of individual where he or she holds more than one nationality, and
 - (iv) any other information which can help to identify the individual; or
- (b) in the case of an entity —
 - (i) the full name of the entity, including any alternative names used,
 - (ii) date of incorporation or registration where applicable,
 - (iii) current any other state of operation, and
 - (iv) any other information which can help to identify the entity.

(3) Where the Minister has proposed the inclusion of a name on the United Nations Security Council List and the person bearing that name has applied to the United Nations Security Council for de-listing, the Minister may submit to the United Nations Security Council any additional information necessary for the consideration of the application.

(4) Where the Ombudsperson's office refers a petition for de-listing from the United Nations Security Council List to the Minister for comments, the Minister shall within the time specified by the Ombudsperson's office, respond to the request stating reasons for the recommendation for retention or deletion from the relevant United Nations Security Council List.

(5) Where the Minister reasonably believes that a designated person is deceased, or a designated entity or group is defunct, the Minister shall submit a request to the Ombudsperson or to the Focal Point, whichever is applicable, to remove the name and other details of the designated person, entity or group from the United Nations Security Council List.

Unfreezing of property following de-listing from United Nations Security Council list

15. (1) Where the Minister responsible for international affairs receives a notice of de-listing of a designated person, entity or group by the United Nations Security Council, the Minister shall, without delay, transmit the list through electronic mail or any other means available, to the Chairperson of the Committee or any other member of the Committee authorised in writing by the Chairperson of the Committee for that purpose.

(2) The Agency or the Directorate shall, on receipt of a notice of a de-listing, without delay, direct a specified party, accountable institution, Government agency or department, or any other person, in custody of the frozen property or economic resources of a de-listed person, entity or group to unfreeze such property or economic resources.

(3) The Chairperson of the Committee or any member of the Committee authorised in writing by the Chairperson of the Committee for that purpose shall, within 16 hours, cause the de-listing notice to be circulated to the institutions or any other person to which the United Nations Security Council List was circulated to under regulation 10 (2).

(4) A specified party, accountable institution, Government agency or department, or any other person shall within 8 hours of receipt of a notice of de-listing under subregulation (3) —

- (a) unfreeze the property or economic resources of the de-listed person, entity or structured group; and
- (b) make a defreezing return report to the Chairperson or any member of the Committee authorised in writing by the Chairperson of the Committee for that purpose.

Basis for maintaining property freeze after de-listing

16. Where a nationally listed person, entity or structured group is de-listed on the basis that the person is deceased, or the entity or structured group has ceased to operate, the property or economic resources shall remain frozen where the Committee reasonably believes that —

- (a) the property or economic resources will be transferred, directly or indirectly, to a listed person, entity or structured group, or otherwise used for terrorist purposes; or
- (b) on application to court, the unfreezing of the property or economic resources would be found to be contrary to national security.

17. (1) Where property or other economic resources were frozen as a result of similarity in names or wrong entries on the United Nations Security Council List, the person affected may submit a request to the Focal Point to unfreeze the property or economic resources.

Application to unfreeze where property was frozen in error

- (2) Where property or other economic resources were frozen as a result of —
- (a) similarity in names,
 - (b) wrong entries on the national list, or
 - (c) an error,

the person affected may apply to court to unfreeze the property or economic resources.

(3) Notwithstanding the provisions of section 60 of the Act, no administrative, criminal or civil proceedings shall lie against any person, specified party, accountable institution, Government agency or department for effecting a freezing Order on property —

- (a) based on —
 - (i) similarity in names, or
 - (ii) wrong entries on the national list; or
 - (b) as a result of an error,
- in the absence of bad faith, gross negligence or malice.

PART III — *Condition and Procedure for Utilisation of Frozen Property*

18. (1) A person, entity or structured group whose property or economic resources have been frozen under a national listing may make a request to the Committee to release the property, or portion thereof or other economic resources —

Approval of usage of property by nationally listed person, entity or structured group

- (a) to meet the necessary and basic expenses including payment for food stuff, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, public utility charges, or exclusively for payment of professional fees and reimbursement of incurred expenses associated with the provision of legal fees, or fees or service charges;
- (b) necessary for extraordinary expenses not provided for in paragraph (a);
- (c) to make payments due under a contract, agreement or obligation that were concluded or that arose before the person was nationally listed:

Provided the Committee —

 - (i) has made a determination that the contract, agreement or obligation is not related to any activities prohibited under these Regulations, and
 - (ii) has made a determination that the payment is not directly or indirectly received by the nationally listed person, entity or structured group.

(2) A request to utilise frozen property or economic resources referred to in subregulation (1) shall be accompanied by adequate supporting documents.

(3) The Committee shall consider the request to utilise funds within seven days and may grant, reduce or refuse the request made in the application as considered reasonable in the circumstances.

(4) The Committee shall, in writing, where it approves the utilisation of property or economic resources under this regulation, direct a specified party, accountable institution, Government agency or department, or any other person in custody of the frozen property or economic resources to —

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Procedure for approval and utilisation of frozen property of designated person, entity or group

- (a) implement the approval; and
- (b) furnish a report to the Committee of the action taken within 24 hours.

19. (1) On receipt of a request to utilise frozen property or economic resources in respect of a designated person, the Committee, shall forward the request to the Focal Point.

(2) The Chairperson of the Committee or any member of the Committee authorised in writing by the Chairperson of the Committee for that purpose shall, in writing, inform the designated person, entity or group or the designated person, entity or group's representative of the approval or rejection of the request.

(3) The Chairperson of the Committee, or a person authorised by the Chairperson in writing for that purpose, shall where approval is obtained from the United Nations Security Council for —

- (a) access to frozen property or economic resources for payment of extraordinary expenses; or
- (b) access to frozen property or economic resources for payment of basic and extraordinary expenses,

direct, in writing, a specified party, accountable institution, Government agency or department, or any other person in custody of the frozen property or economic resources, to release the property or economic resources and furnish a report to the Committee of the action taken.

PART IV — Prohibitions and Sanctions in Relation to Designated Persons, Entities or Groups or Nationally Listed Persons, Entities or Structured Groups

Prohibition on dealing with property held by designated or nationally listed person

20. (1) A person shall not deal with property or economic resources held or controlled directly or indirectly or property owned wholly or jointly by a designated person, entity or group or a nationally listed person, entity or structured group except as provided for in these Regulations.

(2) Notwithstanding subregulation (1), a person may credit a frozen account of a designated person, entity or group or nationally listed person, entity or structured group with interest or other earnings due on the account provided that any such interest or other earnings are frozen in accordance with these Regulations.

(3) Any person who credits a frozen account in accordance with subregulation (2) shall, no later than 8 hours, make a credit return report, in writing, to the Committee or a person authorised by the Chairperson of the Committee for that purpose.

(4) With respect to persons or entities designated pursuant to the United Nations Security Council Resolution 1718 of 2006 or United Nations Security Council Resolution 2231 of 2015, the Committee shall —

- (a) authorise the addition to frozen accounts of interest or other earnings due on those accounts or payments due under a contract, agreement or any obligation that arose prior to the date of the designation provided that any such interest, other earnings and payments continue to be subject to these provisions and are frozen; and
- (b) authorise access to frozen property or economic resources where the Committee is satisfied that the authorisation is in accordance with the procedure set out in United Nations Security Council Resolution 1718 or United Nations Security Council Resolution 2231, respectively.

(5) With respect to persons, entities or groups designated pursuant to the United Nations Security Council Resolution 1737 of 2006 whose designation was continued pursuant to the United Nations Security Council Resolution 2231 of 2015, the Committee shall authorise a specified party, accountable institution, Government agency or department, or any other person holding frozen property or economic resources of a designated person to make any payment due under a contract, agreement or obligation that arose prior to the date of the designation:

Provided that the Committee —

- (a) is satisfied that the contract, agreement or obligation is not related to any of the prohibited items, materials, equipment, goods, technologies, assistance, training, financial assistance, investment brokering or services referred to in the United Nations Security Council Resolution 2231 and any future successor resolution;
- (b) is satisfied that the payment is not received, directly or indirectly by a person, entity or group subject to measures in paragraph 6 of United Nations Security Council Resolution 2231; and
- (c) has submitted to the United Nations Security Council, a prior notification at least 10 working days prior to the authorisation, the Committee's intention to authorise a payment or to unfreeze property or economic resources.

(6) Any person who knowingly or having reasonable cause to suspect, that the property or economic resources that the person is dealing with are held or controlled directly or indirectly or the property or economic resource is wholly or jointly owned by a nationally listed person or person designated under —

- (a) United Nations Security Council Resolutions 1267 of 1999, 1718 of 2006 and 1737 of 2006 commits an offence of financing of terrorism and is liable to a penalty specified in section 5 (1) of the Counter Terrorism Act; or
- (b) Any other applicable resolution dealing with threats to international peace and security as determined by the United Nations Security Council under Chapter VII of the United Nations Charter commits an offence and is liable to a penalty specified in section 63 of the Act.

(7) For purposes of this regulation, “deal with” means —

- (a) in relation to property —
 - (i) use, alter, move, allow access to or transfer,
 - (ii) treat the funds in a way that would result in any change in volume, amount, location, ownership, possession, character or destination, or
 - (iii) make any other change that would enable use, including portfolio management; and
- (b) in relation to economic resources, exchange or to use the resources in exchange for funds, goods or services.

21. (1) A person shall not knowingly, directly or indirectly, make property or other economic resources available to or for the benefit of a designated person or nationally listed person except as provided for in these Regulations or under the applicable Resolution.

(2) A person who contravenes subregulation (1) commits an offence specified at regulation 20 (6) (a) or (b), as the case may be.

Prohibition of making property, etc. available to designated or nationally listed person

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Prohibition of travel by designated or nationally listed person

22. (1) A designated person or nationally listed person, not being a citizen of Botswana, shall not enter into or transit through Botswana unless —

- (a) the entry is necessary for compliance with a judicial process;
- (b) the Committee determines that the entry is justified; or
- (c) in the case of a designated person, the travel of such person is exempted by the decision of the United Nations Security Council and the decision to exempt is duly notified to the Committee.

(2) A person who transports a designated or nationally listed person within or outside Botswana, knowing that the person is a designated or nationally listed person, and with the intention of assisting the designated or nationally listed person to evade the travel embargo imposed on the designated or nationally listed person, commits an offence and is liable to a penalty specified in section 7 of the Counter Terrorism Act.

(3) The Minister responsible for immigration shall not grant a visa to a designated person or nationally listed person unless he or she has obtained advice of the Committee that the issuance of the visa is not contrary to these Regulations.

(4) A designated person or nationally listed person who is a citizen of Botswana shall not be allowed to leave Botswana until investigations into the activities that led to his or her designation or national listing have been concluded.

(5) For purposes of this regulation, “judicial process” includes where the listed person’s presence may be necessary for the purposes of identification, testimony or other assistance relevant to the investigation or prosecution of an offence committed by someone other than that listed individual, or in relation to civil proceedings, and extradition.

Prohibition of landing and taking off of certain aircrafts

23. (1) No person shall grant permission to an aircraft to take off from, land in or overfly Botswana, wherever registered, where the aircraft has taken off from a country designated by the United Nations Security Council except in the case of an emergency landing.

(2) No person shall grant permission for an aircraft wherever registered, take off from, land in or overfly Botswana, where the aircraft is owned, leased or operated by or on behalf of a designated person, entity or group, or a nationally listed person, entity or structured group.

(3) Any person who knowingly participates in activities the object or effect of which is directly or indirectly to circumvent, enable or facilitate the contravention of this regulation commits an offence and is liable to the penalty specified in section 4 of the Counter Terrorism Act.

PART V — Information

Circulation of lists

24. (1) The Minister shall, without delay, through the Committee, circulate the updated United Nations Security Council List or National List upon receipt, through electronic mail, surface mail or any other means available to the relevant law enforcement, regulatory and supervisory authorities.

(2) The investigatory, regulatory and supervisory authorities shall cause the lists referred to in subregulation (1) to be circulated, without delay, to specified parties and accountable institutions in accordance with Regulations 6, 10, 13 and 16 of these Regulations.

(3) The chairperson of the Committee or any other member of the Committee authorised, in writing, by the chairperson of the Committee for that purpose shall circulate, through electronic mail, surface mail or any other means available, the national list and the United Nations Security Council List to points of entry and exit of Botswana to ensure that travel bans are effected on the designated person or nationally listed person.

(4) The Commissioner of Police and the Commissioner General Botswana Unified Revenue Services shall institute measures to prevent the direct and indirect supply, sale and transfer from Botswana using a Botswana flagged vessel or aircraft registered in Botswana, of arms and related materials, spare parts and technical advice, assistance or training related to military activities to a designated person, entity or group or nationally listed person, entity or structured group.

(5) The Committee may, on request by any interested person, provide information as may be required on the procedure adopted by the Committee, including any review or deletion on the entries made in the United Nations Security Council List, or on the national list.

25. Where any amendment is made to the United Nations Security Council List or national list, the Minister shall, without delay, through the Committee, circulate the amended lists upon receipt, through electronic and surface mail to the relevant investigatory agencies, supervisory authorities and accountable institutions who shall cause same to be circulated in accordance with regulations 6, 10, 13 and 16 of these Regulations;

Notice of amendment to lists to be given

PART VI — *General*

26. A specified party, an accountable institution, relevant Government agency or department, or any other person that fails to file a return report under these Regulations or knowingly provides wrong or false information is liable to an administrative fine specified in section 63 of the Act.

Failure to file return report

27. An application made to court under these Regulations shall be dealt with in terms of section 27 of the Counter Terrorism Act.

Applications to Court

28. The Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations, 2020 are hereby revoked.

Revocation of S.I. No. 9 of 2020

29. Any decision made or action taken under the Regulations revoked under regulation 28 are hereby saved and shall be deemed to have been made under these Regulations.

Savings

MADE this 25th day of February, 2022.

PEGGY O. SERAME,
*Minister of Finance and Economic
Development.*