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CONTENTS

No. Page

PART C - LEGAL NOTICE

140. The Anti-Money Laundering (United Nations Security Council Resolutions) Regulations, 2016 ..... S1

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PART C

LEGAL NOTICE NO. 140 OF 2016

THE MONEY LAUNDERING (PREVENTION) AND FINANCING OF TERRORISM ACT, 2011
(Act No. 6 of 2011)

THE ANTI-MONEY LAUNDERING (UNITED NATIONS SECURITY COUNCIL RESOLUTIONS) REGULATIONS, 2016
(Under Section 92)

In exercise of the powers conferred by Section 92 of the Money Laundering (Prevention) and Financing of Terrorism Act, 2011, the Minister of Finance makes the following Regulations-

ARRANGEMENT OF REGULATIONS

1. Citation and commencement.

2. Interpretation.

3. Application.

4. United Nations Security Council Resolutions Implementation Committee.

5. Functions of the Committee.

6. Powers of the Committee.

7. Establishment of sub-committees.

8. Establishment of co-ordinating groups.

9. Confidentiality.

10. Circulation of United Nations sanctions list.

11. Authority to freeze.

12. Action to be taken on the receipt of the Sanctions List.

13. Domestic list.

14. Publication of designations.

15. Third party publications.

16. Proposal of Designations to 1267/1989 and 1988 Committees

17. Humanitarian exemption -procedure for claiming.

18. Application for the de-listing of a designated person.

19. Request for de- listing under resolution 1267 or 1989 and 1988.

20. Notices.

21. Duty to report violations of these Regulations.

22. Entry of designated person in Swaziland.

23. Exemptions allowed under the travel restrictions

24. Prohibition of arms transactions with designated persons.

25. Carriage of arms to designated person prohibited.

26. Protection from liability.

27. Penalties.

28. Internal rules.

29. Return.

30. On-going monitoring of transactions.

31. Reports.

32. Powers to issue directives and guidelines.

Schedules.

Citation and commencement.

1. (1) These Regulations may be may be cited as the Anti-Money Laundering (United Nations Security Council Resolutions) Regulations, 2016.

(2) These Regulations shall come into force on such date as the Minster may, by Notice in the Gazette, determine.

Interpretation.

2. In these Regulations, unless the context otherwise requires-

"Committee" means the United Nations Security Council Resolutions Implementation Committee established under regulation 4;

"competent authority" means an entity whether in Swaziland or elsewhere tasked with similar functions to the Committee;

"Ministry" means the Ministry responsible for Finance;

"Principal Secretary" means the Principal Secretary in the Ministry responsible for Finance;

"Resolution" means a resolution of the United Nations Security Council relating to the financing of terrorism and the prevention of the proliferation of weapons of mass destruction;

"Sanctions Committee" means the Sanctions Committee established by the Security Council under Resolution 1267;

"Swaziland Mission" means the Kingdom of Swaziland's representatives offices abroad at Consulate, High Commission, Permanent Mission or Ambassadorial level"

"Swaziland Financial Intelligence Unit" means the Swaziland Financial Intelligence Unit established under section 31 of the Money Laundering and Financing of Terrorism (Prevention) Act, 2011.

Application.

3. These Regulations shall apply to an entity-

(a) designated under Resolution 1267(1989);

(b) designated under Resolution 1373;

(c) designated under Resolution 1718 or 1988;

(d) designated under other Resolutions relating to the prevention, suppression and disruption of the proliferation of and financing of dealings with weapons of mass destruction and other related United Nations Security Council Resolutions in accordance with these Regulations; or

(e) specified under section 28 of the Suppression of Terrorism Act, 2008.

United Nations Security Council Resolutions Implementation Committee.

4. (1) There is established a Committee to be known as the United Nations Security Council Resolutions Implementation Committee.

(2) The Committee shall consist of the -

(a) Principal Secretary in the Ministry responsible for Finance, who shall be the Chairperson;

(b) Principal Secretary in the Ministry responsible for Foreign Affairs;

(c) National Commissioner of Police;

(d) Attorney-General;

(e) Director of Public Prosecutions;

(f) Secretary to Cabinet;

(g) Director of the Intelligence Service; and,

(h) Director of the Swaziland Financial Intelligence Unit.

Functions of the Committee.

5. (1) The functions of the Committee shall be to-

(a) implement Resolutions 1267, 1373, 1718 and 1988 and Resolutions relating to the prevention, suppression and disruption of the proliferation of and financing of dealings with weapons of mass destruction and other related United Nations Security Council Resolutions in accordance with these Regulations; and,

(b) perform such other functions as may be conferred by any other law or by the Minister.

(2) In the performance of its functions the Committee may consult with any competent authority or other person for the purposes of-

(a) identifying persons or entities for the purposes of section 28 and 29 (4) of the Suppression of Terrorism Act;

(b) examining and giving effect upon request by a foreign country to an action initiated under the freezing mechanism of that country and which is consistent with the public interest of Swaziland;

(c) carrying out the obligations under resolutions 1267, 1373, 1718 and 1988 and resolutions relating to the banning of travel, granting of visas and purchase of arms and related resolutions;

(d) considering requests for the de-listing of a designated or specified entity under these Regulations; and,

(e) performance of its functions under these Regulations.

(3) The Committee shall be the competent authority to propose designations to the United Nations 1267/1989 and 1988 Committees.

Powers of the Committee.

6. (1) The Committee shall have such powers as may be necessary for the performance of its functions under these Regulations, including, but not limited to, powers to-

(a) issue directives, guidelines rules or instructions as it may consider necessary for the effective implementation of the Resolutions; and

(b) share information with a relevant national institution or an institution or agency of a foreign State or an international organization established by the Governments of foreign States that has powers and functions similar to those of the Committee.

(2) The Committee shall determine its own procedure for the conduct of its meetings and meetings of its sub-committees established under these Regulations.

Establishment of sub-committees.

7. (1) The Committee may, from time to time, establish such sub-committees as it may deem necessary for the effective performance of its functions under these Regulations.

(2) The Committee may co-opt into the sub-committees established under sub-regulation (1) such other persons whose presence, participation, knowledge or skills are necessary for the proper performance of the functions of the Committee.

(3) A person co-opted under sub-regulation (2) may attend meetings of the subcommittee and participate in the deliberations but shall have no right to vote at any such meeting.

Establishment of co-ordinating groups.

8. (1) The Committee may, from time to time, establish such sector or Resolution specific law enforcement co-ordinating groups as it may consider necessary for the implementation of these Regulations.

(2) A co-ordinating group established under sub-regulation (1) shall consist of such representatives of the institutions set out in Schedule 1 as the Committee may consider necessary for the carrying out of its functions under these Regulations.

(3) The Committee shall designate the chairperson of the co-ordinating group from amongst the members of the co-ordinating group.

(4) A co-ordinating group established under sub-regulation (1) shall be responsible for the day to day implementation of these Regulations in relation to such sector or United Nations Resolution as may be specified by the Committee.

Confidentiality.

9. (1) A member of the Committee, sub-committee, co-ordinating group or any other person shall not, without the consent of the Committee in writing, publish or disclose to any person other than in the course of the duties of that member or other person, the contents of any document, communication or information which relates to, and which has come to the knowledge on the course of the duties of that member or other person under these Regulations.

(2) Information exchanged or shared in pursuance of these Regulations shall be confidential and may not be disclosed by any person to any third party without the expressed consent of the party disclosing the information.

(3) A person who contravenes sub-regulation (1) commits an offence, and shall on conviction, be liable to a fine not exceeding seven (7) thousand Emalangeni or imprisonment for a term not exceeding five (5) years.

Circulation of United Nations sanctions list.

10. (1) The Swaziland Mission to the United Nations shall, without delay, submit to the Ministry, all designations made by the Security Council and any sanctions list or other similar list issued in connection with the designations.

(2) The Ministry shall, immediately upon receipt of a designation or list under sub-regulation (1), submit such designation or sanctions list to the Principal Secretary.

(3) A member of the Committee designated in writing by the Principal Secretary for that purpose shall, immediately upon receipt of the designation or sanctions list under sub-regulation (2), circulate it to the members of the Committee.

(4) The Committee shall, upon receipt of the designation or sanctions list under sub-regulation

(3) and without delay, circulate the designation or sanctions list to-

(a) the Swaziland Financial Intelligence Unit;

(b) the supervisory authorities specified under the Money Laundering and Financing of Terrorism (Prevention) Act, 2011;

(b) the Royal Swaziland Police and the Umbutfo Swaziland Defence Force;

(c) such other law enforcement agencies as it may consider necessary; and,

(d) any other person who is authorized-

(i) to detect, freeze or seize the property of a designated entity under any written law; or,

(ii) to take such action as may be necessary to give effect to Resolution 1267, 1373, 1718, 1988 or such other relevant Resolutions.

(5) The Swaziland Financial Intelligence Unit or a supervisory body, as the case may be, shall, upon receipt of the designations or sanctions list submitted to it under sub-regulation (4)-

(a) circulate the designations or sanctions list to the reporting institutions under its purview for their information and action;

(b) where necessary, provide guidance to the reporting institutions holding funds or other assets of a designated person, in relation to their obligations under these Regulations; and

(c) ensure that the reporting institutions comply with the requirements of these Regulations.

Authority to freeze

11. (1) Subject to these Regulations, the Principal Secretary shall, either on the motion of the Principal Secretary or at the request of the Committee, make an order freezing the property or funds of a designated entity, whether held directly or indirectly by the entity or by a person acting on behalf of or at the direction of the designated entity, in accordance with these Regulations.

(2) An order to freeze property under sub-regulation (1) shall include an ongoing prohibition against the provision of funds or financial services to the designated entity against which the order is made.

(3) A designation or sanctions list circulated by the Principal Secretary or the Committee shall be deemed to authorise a reporting institution and any other institution which holds the property of a designated entity to freeze, until further notice, such property or funds.

Action to be taken on the receipt of the Sanctions List.

12. (1) A person to whom a designation or sanctions list is submitted under regulation 10, shall, where applicable -

(a) take the necessary measures to freeze the funds owned or controlled by the designated entity without delay and without notice to the entity;

(b) within twenty four hours of detecting the funds and freezing the funds, file a suspicious transaction report with the Swaziland Financial Intelligence Unit in such form as may be required under section 12 of the Money laundering and financing of Terrorism (Prevention) Act, 2011, or in such form as may be prescribed by the Committee; and,

(c) take such other action as may be necessary to give effect to Resolutions 1267, 1373, 1718 and 1988 and other related resolutions.

(2) A person who is required to take action under sub-regulation (1) shall, without delay, inform the Committee, in writing in the form prescribed by the Committee, of the action taken.

Domestic list.

13. (1) The Committee shall compile a domestic list comprising of specified entities under section 28 of the Suppression of Terrorism Act.

(2) The domestic list prepared under sub-regulation (1) shall include, where available, in relation to a specified entity, information on -

(a) the name including any alias or title of the entity;

(b) the place and date of birth, establishment or incorporation;

(c) the original or acquired nationality;

(d) passport number, identity card number or registration number;

(e) sex;

(f) physical and postal address;

(g) occupation;

(h) telephone number; and,

(i) any other information which the Committee may consider relevant.

(3) The Committee shall circulate the domestic list compiled under sub-regulation (1) in the same manner as is required for sanctions lists under regulation 10(4).

(4) The Committee shall review and, where applicable, update the domestic list annually.

(5) The Committee shall circulate the domestic list to another State as specified in the relevant Resolution.

Publication of designations.

14. (1) The Swaziland Financial Intelligence Unit shall publish the domestic list on its website and make it available to the public an electronic version of the list.

(2) The Committee may adopt such measures or make such arrangements for the prompt publication and dissemination of the domestic list.

Third party publications.

15. (1) A designation or request for designation made by any other country pursuant to Resolution 1373 shall be transmitted to the Swazi Mission in that country.

(2) Where a Swaziland Mission does not exist in the country making the request, that country shall transmit the request to the Ministry responsible for foreign affairs.

(3) Upon receipt of a request under sub-regulation (2), the Swazi Mission or the Ministry shall, without delay, submit the request to the Principal Secretary for the consideration of the Principal Secretary.

(4) The Principal Secretary shall, upon receipt of a request under sub-regulation (3) and without delay, submit the request to the Committee for a determination as to whether there are reasonable grounds to designate the entity in accordance with the Suppression of Terrorism Act, 2008 and these Regulations.

(5) Where the Committee determines that there are reasonable grounds to designate that entity, the Principal Secretary shall, without delay-

(a) make an order designating the entity;

(b) make an order freezing the assets of the entity; and,

(c) circulate the order in accordance with regulation 10(4).

Proposal of Designations to 1267/1989 and 1988 Committees

16. (1) The Committee shall determine whether there are reasonable grounds to propose to the UNSCRs 1267/1989 Sanctions Committee a person or entity which -

(a) participates in the financing, planning, preparing or perpetuating of acts or activities by in conjunction with, under the name of, on behalf of, or in support of, supplying, selling or transferring arms and related materials to, recruiting for, or otherwise supporting acts or activities of Al-Quaida, or any cell, affiliate, splinter group or derivative; or,

(b) is owned or controlled, directly or indirectly, by, or otherwise supporting any person or entity designated in terms of paragraph (a) or by a person acting on the behalf or at the direction of a person or entity designated in terms of paragraph (a).

(2) The Committee shall determine whether there are reasonable grounds to propose to the UNSCR 1988 Sanctions Committee a person or entity which –

(a) participates in the financing, planning, preparing or perpetuating of acts or activities by, in conjunction with, under the name of, on behalf of, or in support of, supplying, selling or transferring arms and related materials to, recruiting for, or otherwise supporting acts or activities of those designated and other individuals, groups, undertakings and entities associated with the Taliban in constituting a threat to peace, stability and security of Afghanistan; or,

(b) is owned or controlled, directly or indirectly, by, or otherwise supporting any person or entity designated in terms of paragraph (a)

(3) Upon determination that there are reasonable grounds to believe that a person or entity meets the designation criteria set out in UNSCR 1267/1989 or UNSCR 1988 and successor resolutions, the Committee, acting through the Chairperson, shall propose the name of the person or entity to the respective sanctions committee through the Swaziland Permanent Mission to the United Nations.

Humanitarian exemption -procedure for claiming.

17. (1) Where an order has been made freezing the property of an entity, such entity shall not withdraw any monies or deal with such property unless-

(a) the property are necessary to cover the basic and necessary expenses or extraordinary expenses of the entity; and

(b) the entity has applied for, and obtained an authorization from the Principal Secretary in accordance with this regulation.

(2) An entity under sub-regulation (1) which requires funds to cover its basic and necessary expenses may make an application for that purpose to the Principal Secretary.

(3) The Principal Secretary shall, subject to sub-regulation (4), consider an application submitted under sub-regulation (2) within seven days from the date of receipt of the application.

(4) The Principal Secretary shall, subject to sub-regulation (5)-

(a) where an order freezing the property of the person is made pursuant to a resolution of the Sanctions Committee;

(b) where the Principal Secretary finds merit in the application made under sub-regulation (2); and,

(c) prior to authorizing the withdrawal of monies requested under the application, notify the appropriate Sanctions Committee of the application and request the Sanctions Committee to submit to the Principal Secretary, its recommendations on the matter.

(5) The Principal Secretary may, within ten days from the date of notification of the Sanctions Committee under sub-regulation (4) and in the absence of negative recommendations from the Sanctions Committee, authorize the withdrawal of such monies as the Principal Secretary may consider reasonable to cover the basic and necessary expenses of the entity.

(6) In authorizing the withdrawal of monies under sub-regulation (5), the Principal Secretary shall take into account the recommendations of the appropriate Sanctions Committee and shall not authorize such withdrawal where the Sanctions Committee makes a negative recommendation in relation to the application for withdrawal.

(7) Where an application is for the withdrawal of monies to cover extraordinary expenses of the entity, the Principal Secretary shall not grant an authorization for the withdrawal of such monies unless the Principal Secretary has obtained the prior written approval of the relevant Sanctions Committee.

(8) For purposes of this regulation-

"basic and necessary expenses" include-

(i) monthly family expenses, payments for foodstuff, rent or mortgage, medicines and medical treatment, taxes, insurances premiums, and public utility charges;

(ii) reasonable professional fees and reimbursement of expenses related to the provision of legal services; and

(iii) fees or service charge incurred for the routine holding or maintenance of frozen funds or other financial assets or economic resources; and,

"extraordinary expenses" means expenses not falling under sub-paragraph (i).

Application for the de-listing of a designated person.

18. (1) A designated entity may make an application for de-listing by filing a petition with the appropriate Sanctions Committee.

(2) An application made under sub-regulation (1) may be made based on the following grounds-

(a) mistaken identity;

(b) relevant and significant change of facts or circumstances including the inclusion of the applicant in a witness protection program;

(c) the death, dissolution or liquidation of a designated entity; or,

(d) any other circumstance which would show that the basis for designation no longer exists.

(3) Where the Sanctions Committee removes the name of an entity appearing on a sanctions list, the Principal Secretary shall, within twenty four hours of the removal, notify the institutions specified under regulation 10(4) of such removal and direct the institutions to remove that name from the list circulated to them.

(4) A direction issued under sub-regulation (3) shall have the effect of revoking the freeze order and other sanctions imposed against the entity whose name is removed from the list.

Request for de- listing under resolution 1267or 1989 and 1988.

19. (1) Notwithstanding regulation 16, an entity designated pursuant to Resolution 1267 or 1989 concerning Al-Qaida or Resolution 1988 may make a request for its de-listing in accordance with sub-regulation (2).

(2) A request made by a person designated-

(a) under the Resolution 1267 or 1989 concerning Al-Qaida shall be submitted to the Office of the Ombudsperson through the address specified under Part A of Schedule 2 or through such other address as may be specified by the Sanctions Committee; or,

(b) under Resolution 1988, shall be submitted to the Focal Point for Delisting through the address specified under Part B of the Schedule 2 or through such other address as may be specified by the Sanctions Committee.

(3) A request for de-listing under sub-regulation (1) may be made on behalf of the designated person by a legal representative of the designated person or estate.

(4) The Office of the Ombudsperson or Focal Point for De-listing shall, upon receipt of a request under sub-regulation (3), determine the request in accordance with the applicable procedures set out under the Security Council Resolutions.

Notices.

20. (1) The Committee shall notify-

(a) the competent parties or entities of-

(i) any amendment to the name of any person on the sanctions list and the domestic list; and

(ii) information required for inclusion in the list; and,

(b) competent authorities or countries of any measures taken by the Committee in accordance with these Regulations.

(2) The Committee shall provide additional information including supporting documents which become available to it in relation to designated persons or entities to the Sanctions Committee.

Duty to report violations of these Regulations.

21. A person who obtains information on the breach of any provision of these Regulations shall, within forty eight hours after obtaining such information, inform the Committee or report the breach to the nearest police station.

Entry of designated person in Swaziland.

22. (1) A person who is designated under these Regulations shall not enter or transit through Swaziland, if the entry or transit would be contrary to a determination of the Security Council made under Article 41 of the Charter of the United Nations.

(2) Notwithstanding the provisions of any other written law, an Immigration Officer shall not grant a visa to a designated person unless that Immigration Officer has obtained the advice of the Principal 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 Immigration Act, 1982 or the Swaziland Citizenship Act, 1992, or their successions.

Exemptions allowed under the travel restrictions.

23. Notwithstanding the provisions of regulation 21(1), a designated person shall not be prevented from entering or transiting through Swaziland where-

(a) the designated person is a citizen of Swaziland;

(b) the entry or transit is necessary for compliance with a judicial process; and,

(c) the Sanctions Committee determines, on a case-by-case basis, that the entry or transit is justified.

Prohibition of arms transactions with designated persons.

24. A person in Swaziland or citizen of Swaziland in any place outside Swaziland shall not, directly or indirectly, enter into or deal in the supply, sale, transfer, carriage, delivery, training in or provision of technical assistance or any deal with any weapons or related materials of any type, knowing that the weapons or materials-

(a) are intended to be imported by a designated person; or,

(b) are to be supplied or delivered to, or to the order of, a designated person.

Carriage of arms to designated person prohibited.

25. A person shall not use a ship or aircraft in Swaziland or use a ship or aircraft registered in Swaziland or in any place outside Swaziland for the carriage of weapons or related materials from or to a designated person.

Protection from liability.

26. Proceedings whether civil, criminal or disciplinary, shall not lie against any person or entity, including reporting institutions and relevant government agencies, in respect of effecting or implementing an order designating an entity or freezing the property or funds of a designated entity in good faith under these Regulations.

Penalties.

27. A person or entity that contravenes the provisions of these Regulations commits an offence and shall be liable, on conviction, to a fine not exceeding five hundred thousand Emalangeni or to imprisonment for a term not exceeding seven years or both.

Internal rules.

28. A competent party or 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.

Return.

29. (1) An accountable institution or a relevant Government agency shall, within twenty four hours of receipt of a notice of an order to freeze the funds or property of a designated entity, submit to the Principal Secretary and the Swaziland Financial intelligence Unit in writing, a return in the format prescribed by the Swaziland Financial Intelligence Unit in consultation with the Principal Secretary for that purpose.

(2) A return submitted under sub-regulation (1) shall include information on-

(a) in the case of a reporting institution

(i) the account number;

(ii) the name of the account owner or holder;

(iii) the time of freezing of all subject accounts;

(iv) the balance of the account as at the time of freezing the funds; the related accounts, if any, including the balance of monies in the accounts as at the time of freezing; and,

(v) an explanation as to the ground for the identification of related accounts; and,

(b) in the case of a government agency-

(i) the nature and description of the property;

(ii) the name of the owner or holder of the property;

(iii) the mode and date of acquisition of the property by the owner; and,

(iv) the location of the property.

(3) A reporting institution and relevant government agency shall notify the Principal Secretary, the National Commissioner of Police and the Swaziland Financial intelligence Unit of any attempted dealing with property against which an order freezing such property or funds has been issued, within twenty four hours of such attempt.

On-going monitoring of transactions.

30. A reporting institution shall regularly review the domestic or sanctions lists and monitor transactions in relation to entities specified in the lists on an on-going basis to mitigate against the risks of the occurrence of the financing of terrorism.

Reports

31. (1) The Committee shall, on a monthly basis, report to the Minister on –

(a) the number of designations received;

(b) the number of designations issues; and,

(c) any incidental matter.

(2) The Minister shall on a quarterly basis report to Cabinet on the activities of the Committee.

Powers to issue directives and guidelines.

32. The Principal Secretary may issue such instructions, directions, guidelines or rules as the Principal Secretary may consider necessary for the better carrying out of the provisions of these Regulations.

SCHEDULE 1

LAW ENFORCEMENT CO-ORDINATING TASK FORCE

(a) Ministry of Finance;

(b) Ministry of Foreign Affairs;

(c) Ministry of Justice and Constitutional Affairs;

(d) Ministry of Home Affairs;

(e) Swaziland Revenue Authority;

(f) Central Bank of Swaziland;

(g) Attorney General's Chambers;

(h) Director of Public Prosecutions;

(i) Swaziland Financial Intelligence Unit;

(j) Financial Services Regulatory Authority;

(k) Umbutfo Swaziland Defence Force;

(l) Anti-Corruption Commission;

(m) Royal Swaziland Police; and,

(n) such other Ministry, Department or institutions as the Principal Secretary may consider necessary.

SCHEDULE 2

ADDRESSES FOR DE-LISTING REQUESTS

PART A

Office of the Ombudsperson

Room DC2-2206

United Nations

New York, NY 10017

United States of America

Tel: +1 212 963 2671

E-mail: ombudsperson@un.org

PART B

Focal Point for De-listing

Security Council Subsidiary Organs Branch

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The Government Printer, Mbabane