

Statutory Instrument No. 9 of 2020

COUNTER-TERRORISM ACT
(Cap. 08:08)

**COUNTER-TERRORISM (IMPLEMENTATION OF UNITED NATIONS
SECURITY COUNCIL RESOLUTIONS) REGULATIONS, 2020**
(Published on 27th January, 2020)

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IN EXERCISE of the powers conferred on the Minister for Presidential Affairs, Governance and Public Administration by section 44 of the Counter-Terrorism Act, the following Regulations are hereby made —

PART I — *Preliminary*

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| Citation | 1. These Regulations may be cited as the Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations, 2020. |
| Interpretation | 2. In these Regulations, unless the context otherwise requires — |
| Cap. 08:07 | <p>“accountable institution” has the same meaning assigned to it under the Financial Intelligence Act;</p> <p>“applicable resolutions” means the current United Nations Security Council Resolutions and future successor Resolutions related to combating and preventing terrorism, terrorist financing or the proliferation of weapons of mass destruction issued under Chapter VII of the United Nations Charter, including but not limited to the following Resolutions —</p> <ol style="list-style-type: none"> (a) Resolution 1267 of 1999; (b) Resolution 1373 of 2001; (c) Resolution 2253 of 2015; (d) Resolution 1718 of 2006; (e) Resolution 1874 of 2009; (f) Resolution 2087 of 2013; (g) Resolution 2094 of 2013; (h) Resolution 2231 of 2015; (i) Resolution 2270 of 2016; (j) Resolution 2321 of 2016; and (k) Resolution 2356 of 2017; <p>“beneficial owner” has the same meaning assigned to it under the Financial Intelligence Act;</p> <p>“Committee” means the National Counter-Terrorism Committee established under section 12A of the Act;</p> <p>“competent United Nations body” means —</p> <ol style="list-style-type: none"> (a) the Security Council Sanctions Committee established pursuant to the following Resolutions — <ol style="list-style-type: none"> (i) Resolution 1267 of 1999, (ii) Resolution 1989 of 2011, and (iii) Resolution 2253 of 2015; |

- (b) the Security Council Sanctions Committee established pursuant to Resolution 1988 of 2011;
- (c) the Security Council Sanctions Committee established pursuant to Resolution 1718 of 2006; and
- (d) the Security Council when it acts under Chapter VII of the Charter of the United Nations in adopting targeted financial sanctions related to the prevention, suppression, disruption and financing of the proliferation of weapons of mass destruction;

“designated person” means any person, entity or group that has been designated by a competent United Nations body as a person, entity or group against whom member states must take action for the prevention and combating of any activity specified in the applicable resolution;

“engaged in terrorism” means to have committed or attempted to commit acts of terrorism or participated in or facilitated the commission of acts of terrorism;

“financial offence” has the same meaning assigned to it under the Financial Intelligence Act;

“focal point” means the organ established pursuant to Security Council Resolution 1730 of 2006 to receive and consider requests for the delisting of United Nations listed persons other than those listed under Resolution 2253 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 competent United Nations body in accordance with the applicable resolution or by a competent national authority;

“nationally listed person” means a person, entity or structured group declared as a terrorist or terrorist group by the Minister under section 12 (1) of the Act or a person, entity or structured group listed in accordance with a request made by a foreign country in terms of regulation 5;

“Office of the Ombudsperson” means the organ established pursuant to Security Council Resolution 1904 of 2009 to receive and consider requests for the delisting of persons listed by the Security Council Sanctions Committee established pursuant to Resolution 2253 of 2015;

“specified party” has the same meaning assigned to it under the Financial Intelligence Act;

“supervisory authority” has the same meaning assigned to it under the Financial Intelligence Act; and

“United Nations List” means the list of names of persons, entities or groups designated by a competent United Nations body as persons, entities 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 a —

- (a) a designated person, under the applicable United Nations Resolution;
- (b) a nationally listed person;
- (c) a specified party;
- (d) a supervisory authority;
- (e) an accountable institution; and
- (f) any person in Botswana including a citizen of Botswana.

Application

PART II — *Listing and De-Listing*National
listing

4. (1) The Minister may nationally list a person, entity or structured group upon receipt of information from the Committee or at the request of a foreign country.

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

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

(3) 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 structured 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,
 - (ii) a trust, or other legal arrangement, the registered name of the trust or legal arrangement, the registered 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;
- (g) occupation; and
- (h) any other information which the Committee considers relevant.

(4) The Committee may invite any person, not being a member of the Committee, who has the necessary expertise in the countering of terrorism and financing of terrorism to assist it with its functions under these Regulations.

(5) The Committee shall review, and where applicable, update the national list annually.

(6) The Committee shall circulate the national list to another state as specified in the relevant Resolution.

Request by
foreign country
Cap. 08:04

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

(2) Upon receipt of the request from the foreign country, the Director of Public Prosecutions shall promptly make a determination as to whether there are reasonable grounds to grant the assistance in accordance with these Regulations.

(3) When reviewing requests from foreign countries, the Director of Public Prosecutions shall consider whether —

- (a) the person, entity or structured group is engaged in terrorism;
- (b) the person, entity or structured group is owned wholly or jointly or is controlled directly or indirectly by a designated person or a person listed by a foreign country; or
- (c) the person, entity or structured group is acting on behalf, or at the direction of a designated person or a person listed by a foreign country.

(4) Where the Director of Public Prosecutions is satisfied that there are reasonable grounds to grant the assistance, he or she shall promptly, submit the request to the Committee.

(5) The Committee shall upon receipt of the request, promptly make a recommendation, to the Minister to make an order to nationally list the person, entity or structured group.

6. (1) A nationally listed person aggrieved by the decision —

Appeals

- (a) of the Minister declaring the person, entity or structured group as a terrorist or terrorist group; or
- (b) of the Committee rejecting an application for de-listing made under regulation 12 (3),

may appeal to the High Court against that decision.

(2) In determining the appeal under this regulation, the High Court may —

- (a) set aside the declaration made by the Minister where the High Court is satisfied that there were no reasonable grounds for the Minister to make the declaration or that the grounds on which the Minister based his or her decision no longer exist; or
- (b) refer the matter back to the Committee where the High Court is satisfied that there were no reasonable grounds for the Committee to reject the application for de-listing or that the grounds for the listing no longer exist.

(3) The High Court shall examine *in camera*, any security or intelligence reports or other information or evidence considered confidential by the Minister or the Committee which formed the basis for the declaration or refusal to delist respectively.

7. (1) Where the Minister makes an order listing 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 cause an investigating officer to make an *ex parte* application to a court for an order in terms of section 17 or 18 of the Act.

Freezing of property held by nationally listed person 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 promptly circulate or cause to be circulated to every supervisory authority, specified party and accountable institution, the information referred to in regulation 4 (3) on the person, entity, structured group.

(3) A specified party, accountable institution and any other person shall on receipt of the freezing order, without delay and without prior notification, identify and freeze all —

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- (a) property or economic resources that are wholly or jointly owned, held or controlled, directly or indirectly by a nationally listed person, including property or economic resources that cannot be tied to a particular act of terrorism, plot or threat;
 - (b) property or economic resources that are wholly or jointly owned or held by an entity acting on behalf of or at the direction of a nationally listed person; or
 - (c) property or economic resources derived from or generated by property or economic resources referred to in paragraphs (a) and (b).
- (4) A supervisory authority shall on receipt of an order listing a person ensure that a specified party under its supervision takes necessary action and where necessary provide guidance to the specified party holding funds, property or other economic resources of a nationally listed person in relation to their obligations under these Regulations.
- (5) The Committee shall promptly after the national listing has taken effect inform in writing or in any other manner it considers appropriate, the nationally listed person of —
- (a) the inclusion on the national list providing explanations and reasons for the inclusion;
 - (b) the implications of the national listing;
 - (c) the procedure for review and information on the de-listing process; and
 - (d) the possibility of utilising part of the frozen property or economic resources in accordance with these Regulations.
- (6) 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;
 - (b) to any entity wholly or jointly owned or controlled, directly or indirectly by a nationally listed person; or
 - (c) persons, entities or groups acting on behalf of or at the direction of a nationally listed person.
- (7) Property or economic resources frozen under this Regulations shall be recorded by persons referred to in subregulation (3) against the names of the owners and beneficial owners for proper management.
- (8) A specified party shall, without delay, inform the Committee of any action taken and the full particulars of any property or economic resources identified and frozen (including transactions and attempted transactions relating to the property or economic resources) and where no such property or economic resources are identified, the specified party shall make a nil report to the Committee.
- (9) The particulars required under subregulation (8) 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 —
 - (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 (6) commits an offence of financing of terrorism and is liable to a penalty specified in the Act.

(11) Where the Minister has reasonable grounds to believe that a nationally listed person has any involvement in a foreign country, the Minister shall cause the Director of Public Prosecutions to promptly forward a copy of the Order referred to in regulation 7 (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.

8. The Chairperson of the Committee shall, within a matter of hours of receipt of a freezing Order referred to in regulation 7 (1), but in no case before the circulation of the order under regulation 7 (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,
 - (ii) for reasons connected with the prevention and detection of financial offences, or
 - (iii) in the interest of justice.

9. (1) As soon as a change to the United Nations list of designated persons takes effect, the Minister responsible for international affairs shall immediately forward the list 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

(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 immediately upon receipt of the United Nations List referred to in subregulation (1), and in no case later than 16 hours, circulate, through electronic mail, the list to —

- (a) supervisory authorities;
- (b) investigating authorities;
- (c) specified parties; and
- (d) accountable institutions.

(3) A supervisory authority shall on receipt of the United Nations List ensure that a specified party under its supervision takes necessary action and where necessary, provide guidance to the specified party holding funds, property or other economic resources of a designated person or entity in relation to their obligations under these Regulations.

(4) Where the Minister declares a person, entity or structured as a terrorist or terrorist group or the Committee has reasonable grounds to believe the person, entity or structured group meets the designation criteria under the applicable Resolution, the Minister may, through the ministry responsible for international affairs, forward the list of proposed designated persons, entity or structured groups to the relevant United Nations Security Council Sanctions Committee in the form prescribed by the United Nations Security Council and shall —

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

(5) The chairperson of the Committee shall without delay publish the United Nations List in the *Gazette* and a newspaper with national circulation and on such media as the Committee may consider appropriate.

Freezing of
property held
by designated
person or entity

10. (1) A specified party, accountable institution or any other person shall without delay, and in no later than 8 hours, and without prior notice, identify and freeze all —

- (a) property or economic resources that are wholly or jointly owned, held or controlled, directly or indirectly by a designated person, including property or economic resources that cannot be tied to a particular act of terrorism plot or threat;
- (b) property or economic resources that are wholly or jointly owned, held or controlled, directly or indirectly by an entity acting on behalf of or at the direction of a designated person; or
- (c) property or economic resources derived from or generated by such property or economic resources.

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

(3) Property or economic resources frozen under this Regulation shall be recorded by persons referred to in subregulation (1) against the names of the owners and beneficial owners for proper management.

(4) Subject to the provisions of these Regulations or the applicable Resolution, a specified party, accountable institution 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;
- (b) any entity or group wholly or jointly owned or controlled directly or indirectly by a designated person; or
- (c) persons, entities or groups acting on behalf of, or at the direction of a designated person.

(5) A specified party, accountable institution or any other person shall without delay, inform the Committee of the full particulars of any property or economic resources identified and frozen (including transactions and attempted transactions relating to the funds, property or economic resources) and where no such property or economic resources are identified, the specified party, accountable institution or person shall make a nil report to the Committee.

- (6) The particulars required under subregulation (5) 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;
- (b) in relation to any other specified party, accountable institution or a 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.
- (7) A person who knowingly contravenes subregulation (4) commits an offence of financing of terrorism and is liable to a penalty specified in the Act.
- (8) Any action taken under this regulation shall be communicated by the Minister through the ministry responsible for foreign affairs to the relevant Sanctions Committee.
- (9) The Chairperson of the Committee shall, after the United Nations List has taken effect, as soon as practicable inform in writing, the designated person or entity of the —
- (a) inclusion in the United Nations List;
 - (b) implications of the United Nations listing;
 - (c) procedure for review and information on de-listing process including the availability of the office of the Ombudsperson; and
 - (d) the possibility of utilising part of the frozen property or economic resources in accordance with these Regulations.
- 11.** (1) A person, who claims to have a *bona fide* right, title or interest to property or economic resources frozen in accordance with regulation 7 or 10, may where the freezing relates to regulation 7, apply to the court that issued the freezing order or where the freezing relates to regulation 10, to the Minister for exclusion of that person's right, title or interest from the freezing order. Claim by third party
- (2) The 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;
 - (c) any additional information relevant to the application.
- 12.** (1) A nationally listed person may apply to the Committee, in writing, for de-listing. National 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,
- (iv) any other information which can help to identify the individual; or
- (b) in the case of a structured group or entity —
 - (i) the full name of the structured 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) The Committee shall consider an application for de-listing within 15 working days of receipt of the application for de-listing and notify the person, entity or structured group of the Committee's decision within 48 hours of taking the decision.

(4) The Minister may, on the advice of the Committee, if satisfied on reasonable grounds that a nationally listed person no longer meets the criteria for listing —

- (a) de-list such person, entity or structured group and
- (b) without delay, publish a notice in the *Gazette* and newspaper with national circulation, de-listing of the person, entity or structured group.

(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 within 24 hours of the de-listing, circulate the de-listing notice to the institutions to which a national list was circulated under regulation 7 (2).

(6) A supervisory authority shall notify a specified party of a de-listing and that a person, entity or structured group has ceased to be subject to these Regulations.

(7) Where the name of a nationally listed person has been struck out through a judicial or administrative process or the Minister reasonably believes that a nationally listed person is deceased or the listed entity or structured group has ceased to operate, the Minister shall delete the name and other details of the nationally listed person, entity or structured group from the National list.

(8) The Committee shall notify a foreign State of the de-listing as specified in the applicable Resolution.

(9) Within 8 hours of receipt of a notice to de-list under subregulation (5), institutions to which the national list was circulated under regulation 7 (2) shall unfreeze the property or economic resources of the de-listed person, entity or structured group.

Application for de-listing from United Nations list

13. (1) A designated person or his or her legal representative may make a petition, providing reasons, for de-listing from the United Nations List through the Minister, to the office of the Ombudsperson or to a focal point, in accordance with the de-listing guidelines and procedures provided for in the applicable Resolutions.

- (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,
- (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 List and the person bearing that name has applied to the United Nations Sanctions Committee for de-listing, the Minister may submit to the United Nations Sanctions Committee any additional information necessary to the consideration of the application.

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

(5) Where the Minister reasonably believes that a designated person is deceased, or a designated entity is defunct, the Minister shall request the United Nations Sanctions Committee to remove the name and other details of the designated person or entity from the United Nations List.

14. (1) Where the Minister receives a notice of de-listing of a designated person or entity by the United Nations Security Council Sanctions Committee, the Minister shall immediately transmit the list 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.

Unfreezing of property following de-listing from United Nations List

(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 within 16 hours cause the notice to be circulated to —

- (a) supervisory authorities;
- (b) investigating authorities;
- (c) specified parties; and
- (d) accountable institutions.

(3) A supervisory authority shall on receipt of the notice of a de-listing instruct a specified party or accountable institution which is in custody of the frozen property or economic resources of a de-listed person, entity or group to unfreeze such property or other economic resources within 8 hours of receipt of a notice referred to in subregulation (2).

15. Where property or other economic resources were frozen following a designation or national listing and the designated person or nationally listed person has been de-listed, the property or economic resources shall remain frozen where the Committee reasonably suspects that —

Basis for maintaining property frozen after de-listing

- (a) the property or economic resources will still be used in furtherance of terrorist activities; or
- (b) on application to court, the unfreezing of the property or economic resources is found to be contrary to national security.

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Application to unfreeze where property was frozen in error

16. (1) Where property or other economic resources were frozen as a result of similarity in names or wrong entries on the United Nations list or national list or in the account of a person or entity being investigated, or as a result of any other error, the person affected may apply to the Minister to unfreeze the property or economic resources.

(2) Upon the receipt of the application referred to in subregulation (1), the Minister shall, where the application relates to the —

- (a) United Nations List, submit the request to the relevant United Nations Sanctions Committee and inform the applicant of any decision taken; or
- (b) national list, determine the application not later than 15 working days from the date of receipt of the application after consultation with the Committee.

(3) The Minister shall inform the applicant and relevant authorities of any decision taken on the application in writing.

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

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

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

- (a) to meet the necessary and basic needs and expenses including the amounts required to meet expenditures on food, rental, medical needs and such other general expenses as the Minister may approve, from time to time;
- (b) for reasonable professional fees and settlement of expenses, including legal services, bank and related charges;
- (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; or
- (d) for any other extraordinary expenses not provided for in paragraphs (a) and (b).

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

(3) The Minister shall consider the application to utilise funds within seven days, in consultation with the Committee 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 the specified party or any other person in custody of the frozen property or economic resources to implement the approval and furnish a report to the Committee of the action taken.

18. (1) On receipt of an application to utilise frozen property or economic resources in respect of a designated person, the Minister shall forward the application to the relevant United Nations Security Council Sanctions Committee for approval.

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

(2) Where an approval is obtained from the relevant United Nations Sanctions Committee, for access to frozen property or economic resources for payment of extraordinary expenses or in the absence of a negative decision by the United Nations Sanctions Committee for access to frozen property or economic resources for payment of basic expenses the Minister shall, within 28 hours of notification, direct the specified party or any other person in custody of the frozen property or economic resources in writing to release the property or economic resources and furnish a report to the Minister of the action taken.

(3) The Minister shall inform, in writing the designated person or entity or the person or entity's representative of the approval or rejection of the application.

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

19. (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 or nationally listed person except as provided for in these Regulations.

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

(2) Notwithstanding subregulation (1), a person may credit a frozen account of a designated person or nationally listed person with interest or other earnings due on the account provided that any such interest or other earnings are not frozen in accordance with these Regulations.

(3) Any person who credits a frozen account in accordance with subregulation (2) shall without delay inform the Committee.

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

- (a) authorise the addition to frozen accounts of payments due under a contract, agreement or any obligation that arose prior to the date of the designation;
- (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 Resolution 1718 or 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 Resolutions 2231 of 2015, the Committee shall authorise a specified party, accountable institution or other person or entity 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 Resolution 2231 of 2015;

- (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 Annex B of Resolution 2231 of 2015; and
- (c) has submitted to the relevant competent United Nations body, 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 designated person or nationally listed person, commits an offence of financing of terrorism and is liable to a penalty specified in the Act.

(7) For the 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.

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

20. (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 of financing of terrorism and is liable to a penalty specified in the Act.

Prohibition of travel by designated or nationally listed person

21. (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 Sanctions Committee and the decision to exempt is duly notified to the Committee.

(2) A person shall not knowingly provide or facilitate the transportation of a designated person or nationally listed person within or outside Botswana.

(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.

Prohibition of procurement and supply of weapons

22. A person who directly or indirectly —

- (a) facilitates the manufacture, acquisition, possession, sale, supply, development, export, transshipment, brokering, transportation, or transfer of military equipment’s or arms of war and related materials or NBC weapons to any designated person or nationally listed person;

- (b) facilitates the grant, sale, supply or transfer of technical assistance related to military activities and to provisions, manufacture, maintenance and use of arms of war and related materials or NBC weapons to any designated person or nationally listed person;
- (c) does any act calculated to promote the financing or the provision of financial assistance related to military activities and to the provision, manufacture, maintenance and use of arms of war and related materials or NBC weapons to any designated person or nationally listed person; or
- (d) participates, knowingly or intentionally, in activities the object or effect of which is to promote the transactions referred to under these Regulations, from Botswana or elsewhere, being a citizen of Botswana or registered in Botswana or using a Botswana flagged vessel or aircraft registered in Botswana,

commits an offence and is liable to penalties specified in the Act.

23. A person shall not land or take-off an aircraft in Botswana, wherever registered, where the aircraft —

Prohibition of landing and taking off of certain aircrafts

- (a) has taken off from a country designated by the United Nations Security Council; or
- (b) is owned, leased or operated by or on behalf of a designated person or a nationally listed person.

24. 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 Part commits an offence and is liable to penalties specified in the Act.

Circumventing prohibitions

PART V — *Information*

25. (1) The Minister shall through the Committee, circulate the updated lists immediately upon receipt through electronic and surface mails to the relevant law enforcement, regulatory and supervisory authorities, who shall cause same to be circulated immediately to specified parties and accountable institutions in accordance with Regulations 7, 9, 12 and 15 of these Regulations.

Circulation of lists and issuance of guidelines by Minister

(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 circulate the national list and the United Nations List to points of entry and exit of Botswana to ensure that travel bans are effected on the designated person or nationally listed person.

(3) The Commissioner of Police 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 or nationally listed person.

(4) The Committee shall issue guidelines for the purposes of effective implementation of the —

- (a) freezing measures in respect of the property or economic resources of a designated person or nationally listed person;
- (b) prohibition and restriction on travel, visas and purchase of arms as required in the relevant Security Council Resolutions and in any subsequent Resolutions in respect of a designated person or nationally listed person; and

- (c) prohibition of transactions, provision of financial services or the supply of arms or the conduct of training for a designated person or nationally listed person.

(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 List, or on the national list.

Notice of amendment to lists to be given

26. Where any amendment is made to the United Nations list or national list, the Minister shall —

- (a) through the Committee, circulate the amended lists immediately upon receipt, through electronic and surface mail to the relevant law enforcement agencies, supervisory authorities and accountable institutions who shall cause same to be circulated in accordance with regulations 7, 9, 12 and 15 of these Regulations;
- (b) provide the United Nations Sanctions Committee with any additional information available to him or her, including any new information with supporting documents; and
- (c) take appropriate measures to notify a competent supervisory authority in countries concerned of measures taken by him or her under these Regulations including —
 - (i) any decision to freeze property or economic resources,
 - (ii) the inclusion or deletion of names from the national list, or
 - (iii) any additional steps or actions taken to respond to any direction or request made by the United Nations Sanctions Committee.

Power to request for information

27. (1) Where the Minister believes that it is necessary for the purpose of monitoring compliance with or detecting circumvention of these Regulations, he or she may, through the Committee, request a designated person or nationally listed person to provide information concerning —

- (a) property or economic resources owned, held or controlled by the designated person or nationally listed person;
- (b) any disposal of property or economic resources, whether the disposal occurred before or after the person, entity or group became a designated person or nationally listed person; or
- (c) expenditure by or on behalf of or for the benefit of the designated person or nationally listed person.

(2) The Minister may through the Committee request any person resident in Botswana, to provide such information as the Minister may reasonably require for the purpose of —

- (a) monitoring compliance with, or detecting circumvention of these Regulations;
- (b) obtaining evidence of the commission of an offence under these Regulations; or
- (c) establishing —
 - (i) the nature and amount or quantity of any property or economic resources owned, held or controlled by a designated person or nationally listed person, or
 - (ii) the nature and amount or quantity of any property or economic resources or financial services made available directly or indirectly to or for the benefit of a designated person or nationally listed person, or

- (iii) the nature of any financial services provided to, or financial transactions entered into by a designated person or nationally listed person.

(4) A request for information under this regulation may include a continuing obligation to keep the Committee informed as circumstances change or on such regular basis as the Committee may specify.

28. (1) A request for information under regulation 27 may include a request to produce a document. Production of documents

(2) Where the Minister requests that a document be produced, the Minister may —

- (a) take copies or extracts from the document so produced;
- (b) request any person producing the document to give an explanation of the document; and
- (c) where the person under paragraph (b) is a body corporate, partnership or unincorporated body, request any person to give an explanation of who —
 - (i) in the case of a partnership, is a present or previous partner or employee of the partnership, or
 - (ii) in any other case, is a present or previous director, manager or employee of the body corporate or unincorporated body concerned.

29. A person who —

- (a) without reasonable excuse refuses or fails within the time and in the manner specified, or if no time has been specified, as soon as practicable to comply with any request made under these Regulations;
- (b) knowingly or recklessly gives any information or produces any document which is false in a material particular in response to such a request; or
- (c) with intent to circumvent these Regulations, destroys, mutilates, defaces, conceals or removes any document,

Failure to comply with request for information

commits an offence and is liable to a penalty specified in the Act.

30. The Minister may disclose any information obtained in the exercise of his or her powers under these Regulations, including any document so obtained and any copy or extract made of any document so obtained, to a — Disclosure of information

- (a) relevant authority in Botswana; or
- (b) competent authority in any foreign State concerned with measures taken under these Regulations.

31. (1) A person who in the course of his or her duties, knows or is in possession of any information submitted or exchanged pursuant to these Regulations, shall not disclose such information in any form whatsoever, including the disclosure of the information except for the purpose of implementing these Regulations. Unlawful disclosure of information

(2) The prohibition on disclosure in subregulation (1), shall continue even after the termination of the duties of the person.

PART VI — *General*

32. (1) The Committee shall prepare and submit necessary reports to the Minister who shall forward same to United Nations Sanctions Committee or other authorities through the ministry responsible for international affairs. Channel of Communication with United Nations

(2) The Minister shall prepare and submit necessary reports as requested by relevant United Nations Security Council Sanctions Committee or relevant institutions on the measures taken in Botswana to implement the United Nations applicable resolutions.

C.32

Co-operation
with domestic
or international
investigations

33. The Minister may take such steps as he or she considers appropriate to co-operate with any investigation in Botswana or elsewhere, relating to the funds, property, economic resources or financial transactions of a designated person or nationally listed person.

Offence and
penalty

34. A person who knowingly participates in activities the object or effect of which is directly or indirectly to circumvent, enable or facilitate the contravention of these Regulations commits an offence and is liable to penalties specified in the Act.

Revocation of
S.I. No. 98 of
2019

35. The Counter-Terrorism (Implementation of United Nations Security Council Resolutions) Regulations, 2019 are hereby revoked.

MADE this 24th day of January, 2020.

KABO N. S. MORWAENG,
*Minister for Presidential Affairs, Governance
and Public Administration.*