

Namibia

Prevention and Combating of Terrorist and Proliferation Activities Act, 2014

Regulations relating on Implementation of Security Council Decisions, 2014

Government Notice 163 of 2014

Legislation as at 15 November 2017

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Republic of Namibia
Annotated Statutes

Prevention and Combating of Terrorist and Proliferation Activities Act, 2014

Regulations relating on Implementation of Security Council Decisions, 2014

Government Notice 163 of 2014

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[\[Note: The version of this legislation as at 15 November 2017 was revised and consolidated by the Legal Assistance Centre and the Government of the Republic of Namibia. All subsequent amendments have been researched and applied by Laws.Africa for Namibia.\]](#)

[The title of the regulations should be “Regulations relating to Implementation of Security Council Decisions” to be grammatically correct. The Government Notice which publishes these regulations notes that they were made after consultation with the Minister of Finance.](#)

[It also repeals the regulations in \[GN 196/2013\]\(#\) \(GG 5250\), which were issued under the previous Prevention and Combating of Terrorist and Proliferation Activities Act \[12 of 2012\]\(#\).](#)

1. Definitions

- (1) In these regulations, a word or expression defined in the Act has that meaning, and unless the context otherwise indicates-
 - “**Financial Intelligence Act**” means the Financial Intelligence Act, 2012 (Act [No. 13 of 2012](#));
 - “**High Court**” means the High Court of Namibia as defined in section 1 of the High Court Act, 1990 (Act [No. 16 of 1990](#)) and includes any judge of that court;
 - “**Minister**” means the Minister responsible for safety and security;
 - “**petitioner**” means a requester making an application in terms of these regulations;
 - “**territory**” means the territory of the Republic of Namibia described in terms of article 1(4) of the Namibian Constitution;
 - “**the Act**” means the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 (Act [No. 4 of 2014](#)); and
 - “**without delay**” for the purpose of these regulations means within 48 hours.

2. Publication of sanctions list and issuance of freezing orders in respect of persons or organisations designated by Security Council

Every person, body, authority, or institution referred to in section 24(2) of the Act must inform the Centre within 24 hours of any asset freeze or action taken in terms of a freezing order issued under section 23(1)(b) of the Act.

3. Freezing of funds and assets

- (1) Every person and institution referred to in sections 24(2) or 45(5) of the Act who has frozen assets or has taken any action in terms of a freezing order issued under section 23(1)(b) or section 45(1) of the Act may apply-
 - (a) to the High Court for the appointment of a *curator bonis* to do, subject to the directions of the High Court, any one or more of the following on behalf of the person against whom the freezing order has been made:
 - (i) to assume control over the funds or assets;
 - (ii) to take care of the funds or assets;
 - (iii) to administer the funds or assets and to do any act necessary for that purpose; and
 - (iv) where the funds or assets is a business or undertaking, to carry on, with due regard to any applicable law regarding the business or undertaking; and
 - (b) for an order requiring any person holding funds or assets subject to the freezing order to surrender as soon as possible, or within such period as the court may determine, such funds or assets into the custody of the *curator bonis*.
- (2) In circumstances where action in terms of subregulation (1) is not necessary, the person or institution referred to in sections 24(2)(a) to (e) or 45(5) of the Act may-
 - (a) assume control over the funds or assets;
 - (b) take care of the funds or assets;
 - (c) administer the funds or assets and to do any act necessary for that purpose; and
 - (d) where the funds or assets is a business or undertaking carry on, with due regard to any applicable law, the business or undertaking.

4. Request for delisting by person or organisation designated by Security Council

- (1) For purposes of a request to be delisted as provided for in section 29 of the Act, a person or organisation listed pursuant to Security Council Resolutions 1267 (1999) and 1989 (2011), must complete the appropriate delisting application forms set out in Form 1 and the Act and address such request to-

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Room DC2-2286

United Nations

New York, NY 10017

United States of America

Tel: Skype +1 212 963 2671

E-mail: ombudsperson@un.org.

- (2) A person or organisation applying to be delisted as provided for in section 29 of the Act and listed pursuant to Security Council Resolution 1988 (2011), must complete the appropriate delisting application form set out in Form 2 and address such request to-
- Focal Point for Delisting
Security Council Subsidiary Organs
Branch Room DC2 0853B
United Nations
New York, N.Y. 10017
United States of America
Tel. Skype +1 917 367 9448
Fax. +1 212 963 1300
Email: delisting@un.org HYPERLINK "mailto:delisting@un.org".
- (3) A person or organisation applying to be delisted as provided for in section 29 of the Act after being listed pursuant to any other UNSC Resolution, must follow the delisting procedure as provided for in UNSC Resolution 1730 (2006) and address such request to the address provided in regulation (2).
- (4) A request for delisting in terms of subregulation (3) must contain the following identification information for the petitioner-
- (a) in case of an individual-
- (i) full name of the individual including any middle names or initials, parents and grandparents names as may be applicable, as well as any other names or pseudonyms used by the petitioner;
- (ii) date and place of birth;
- (iii) a nationality or if more than one all must be provided;
- (iv) state of current residence; and
- (v) other information which may help to clarify any issues of identity; or
- (b) in the case of an entity-
- (i) full name of the entity including any alternative names used;
- (ii) where applicable the place and date of incorporation or registration;
- (iii) current and any other state of operation; and
- (iv) any other information which may help to clarify issues of identity.
- (5) The request in terms of subregulation (3) must include-
- (a) a detailed statement of the reasons or justification for delisting addressing any specific designating criteria set out in the consolidated list entry or in the narrative summary and include any information or suspicion as to the basis for his or her inclusion on the list and any explanations, arguments or submissions relating to the same;
- (b) where available, copies of any documents or other supporting or explanatory material;
- (c) where applicable, a description of any court proceedings or litigation of relevance to the delisting request;
- (d) where applicable, a reference to any previous request for delisting made by the same petitioner through the focal point or any other way; or

- (e) where the request is by a person acting on behalf of a listed person, the request must be accompanied by a document signed by the requester authorising the person to act on his or her behalf.

5. Communication to Sanctions Committees regarding actions taken in respect of designated or delisted persons or organisations or non-compliance observed

For purposes of implementing section 31 of the Act, the Minister responsible for foreign affairs, assisted by the Security Commission, must communicate all actions taken in terms of designated or delisted persons, organisations or countries, through the Minister responsible for foreign affairs within 14 working days of taking such action to the relevant Security Council 1267 (1999), 1989 (2011), 1988 (2011), 1718 (2006), 1737 (2006) and 1730 (2006) Sanctions Committee.

6. Request to release funds or portion of funds frozen on humanitarian grounds

- (1) If considered favourably, the Minister must in terms of section 32(2) of the Act and within a period not exceeding seven days transmit the request for the release of funds or portion of such funds to the relevant Security Council Sanctions Committee.
- (2) The Minister must upon receiving a response to a request made in terms of regulation (1) the Minister must, within 14 days after receiving a response from the Security Council, notify the person who made the request of the response so received.
- (3) If a request received in terms of section 45(6) of the Act is favourably considered, the Minister must in terms of section 45(7) of the Act and within a period not exceeding seven days, authorise the release of funds or portion of such funds.

7. Security Council Resolution 1373 (2001): International Cooperation, freezing and restraining of funds at request of a third state

- (1) A foreign state, pursuant to Security Council Resolution 1373 (2001) of the Security Council and section 33(1)(a) of the Act, requesting Namibia to designate a person or organisation or persons or organisations associated with such persons or organisation must, for purposes of section 33(1)(b) of the Act, submit such a request via the Ministry of Foreign Affairs to the Centre for mutual legal assistance within the Ministry of Justice, following the same procedures as is applicable to requests for mutual legal assistance.
- (2) The Minister responsible for justice must in terms of section 33(3) of the Act, within 30 days of receiving a request for assistance and cooperation, forward such a request to the Security Commission for its determination.
- (3) The Minister responsible for justice may in terms of section 33(4) of the Act, within his or her discretion, request further particulars from the requesting State thirty days after receiving a request for assistance and cooperation.
- (4) Every person and institution referred to in Schedules I, II, III and IV of the Financial Intelligence Act, must report to the Centre within a period not exceeding seven days, any assets frozen or actions taken in terms of a freezing order made under section 33(5)(b) of the Act.
- (5) Any person who in terms of section 33(8) of the Act claims to have a *bona fide* right to funds or assets frozen in terms of section 33(1) of the Act may within a period not exceeding 14 days apply in writing to the Minister for the exclusion of his or her interest from the freezing order.

8. Prohibition of procuring, supplying, provision, import or export of certain weapons, arms and related materials

- (1) For purposes of notification in terms of section 34(5) of the Act a Customs and Excise officer and any other officer of a competent authority in Namibia must within a period not exceeding seven

days after conducting an action in terms of sections 33(3)(a), (b) and (c) of the Act inform the Minister of such action.

- (2) The Minister must inform the Security Commission and the relevant Committees of the Security Council through the Minister responsible for foreign affairs within a period not exceeding 14 days, upon being notified of the action taken under section 34 of the Act of any action taken under this section.

9. Proscription of persons and organisations

- (1) A person or organisation applying to the Security Commission, in terms of section 44(7) of the Act, for the revocation of an order of proscription made under section 44(1) of the Act must make the application in writing which must-
 - (a) contain a detailed statement of the reasons or justification for revocation of the proscription order, addressing any specific proscription criteria set out in the domestic list entry or in the narrative summary and any additional information or suspicion as to the basis for his or her inclusion on the list including any explanation, argument or submission relating to the same;
 - (b) be accompanied by copies of any documents or other supporting or explanatory material where available;
 - [There is no paragraph (c).]**
 - (d) contain a description of any court proceedings or litigation of relevance to the revocation request;
 - (e) contain a reference to any previous request for revocation made by the same applicant to the Security Commission; or
 - (f) where the request is by a person acting on behalf of a listed person, contain a document signed by the applicant, authorising the person to act on his or her behalf.

10. Issuance of freezing orders in respect of funds belonging to or controlled by proscribed person and organisation

- (1) For purposes of reporting in terms of section 45(2) of the Act a person or an institution referred to in Schedules I, II, III or IV of the Financial Intelligence Act must report to the Centre within a period not exceeding seven days of any asset frozen or action taken in terms of a freezing order contemplated in section 45(1) of the Act.
- (2) A person who or an organisation which has taken any freezing action under section 45 of the Act must ensure the reasonable preservation of funds and other assets, as provided in regulation 3.

11. Circulation of domestic proscription list

- (1) The Security Commission must in terms of section 46(1)(b) of the Act include the following information in a domestic list comprising of persons or organisations proscribed in terms of section 44(2) of the Act:
 - (a) for persons or individuals-
 - (i) family name or surname on original document;
 - (ii) given names, other relevant names on original script;
 - (iii) names he or she is also known as;
 - (iv) title or designation;
 - (v) date of birth;

- (vi) place of birth;
 - (vii) nationality, or citizenship;
 - (viii) gender;
 - (ix) employment or occupation;
 - (x) state or states of residence;
 - (xi) passport or travel document and national identification numbers;
 - (xii) current and previous addresses;
 - (xiii) current status before law enforcement authorities such as wanted, detained or convicted;
 - (xiv) location; and
 - (xv) any other relevant information.
- (b) for organisations-
- (i) name;
 - (ii) registered name;
 - (iii) short name or acronym;
 - (iv) any other names by which it is known or was formerly known;
 - (v) address;
 - (vi) headquarters;
 - (vii) branches or subsidiaries;
 - (viii) organizational linkages;
 - (ix) parent company;
 - (x) nature of business or activity;
 - (xi) state of main activity;
 - (xii) leadership or management;
 - (xiii) registration or incorporation or other identification number;
 - (xiv) status such as in liquidation or terminated;
 - (xv) website addresses; and
 - (xvi) any other relevant information.
- (2) The Minister must in terms of section 46(7) of the Act, upon instruction of the Security Commission, circulate the domestic proscription list together with the following information and any request which the Security Commission considers relevant, via the Minister responsible for foreign affairs, to another State requesting such State to take the action as specified in the request and in the Security Council Resolution 1373 (2001) and any of its successor resolutions.
- (3) The information referred to in subregulation (1) must contain a statement detailing the facts on which it is reasonably believed that the person or organisation who is associated with such person or organisation, whose funds is to be restrained or who is to be so designated or to whom an arms

embargo and travel ban must apply, is engaged in any terrorist activity, or associated with any terrorist activity and the following:

- (a) a statement detailing the basis on which it is believed that the funds to be restrained are the proceeds of unlawful activity, associated with any terrorist activity or instrumental of intended terrorist activities;
 - (b) the full particulars of the person or organisation affected;
 - (c) sufficient information to establish the identity, location and whereabouts of the person or organisation with reasonable certainty;
 - (d) a reference to that person who may have an interest in the funds and the nature of such interest, where known, as well as particulars pertaining to the identity and location of said person or organisation, where known; and
 - (e) a statement detailing any criminal proceedings concluded, pending or contemplated against the person in the requesting state.
- (4) The Security Commission must in terms of section 46(8) of the Act, where it intends to propose to proscribe a person or organisation to the Security Council 1267 (1999) Committee, the 1989 (2011) Committee, the 1988 (2011) Committee, the 1718 (2006) Committee or the 1737 (2006) Committee for designation,-
- (a) complete the application form in terms of Form 1 to request the listing of a person or individual under United Nations Security Council 1267 (1999) or 1989 (2011);
 - (b) complete the application form in terms of Form 2 to request the listing of an entity or organisation under United Nations Security Council 1267 (1999) or 1989 (2011);
 - (c) complete the application form in terms of Form 3 to request the listing of a person or individual under United Nations Security Council 1988 (2011);
 - (d) complete the application form in terms of Form 4 to request the listing of an entity or organisation under United Nations Security Council 1988 (2011);
 - (e) follow the listing procedure as provided for in the Guideline of the Security Council Committee established pursuant to Resolution 1718 (2006); or
 - (f) follow the listing procedure as provided for in the Guideline of the Security Council Committee established pursuant to Resolution 1737 (2006).

12. Authorisation for rendering of foreign military assistance

- (1) A person who makes an application to the Minister in terms of section 49 of the Act must pay an amount of N\$10 million upon lodging such an application.
- (2) An application in terms of section 49(1) of the Act must-
 - (a) be made in writing;
 - (b) be addressed to the Minister;
 - (c) contain the particulars of the applicant;
 - (d) contain the underlying reason why such foreign military assistance is sought to be rendered;
 - (e) reflect the person's relevant experience in combat activities;
 - (f) provide detailed particulars of the type of foreign military assistance to be rendered;
 - (g) provide detailed particulars of the beneficiary or recipient of the intended foreign military assistance; and

- (h) provide detailed explanation on how the applicant will ensure Namibia's political relations are safeguarded and not compromised by the rendering of such foreign military assistance.

13. Offences and penalties

Any person who contravenes these regulations commits an offence and if found guilty is liable to a fine not exceeding N\$50 million or imprisonment for a period not exceeding 15 years or to both such fine and imprisonment.

ANNEXURES

FORMS

[Editorial note: The forms have not been reproduced.]