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ANTI-TERRORISM REGULATIONS, 2019

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**OFFICE OF THE ATTORNEY-GENERAL
AND MINISTRY OF LEGAL AFFAIRS**

S.I. No. 9 of 2019

**ANTI-TERRORISM ACT, 2018
(No. 27 of 2018)**

ANTI-TERRORISM REGULATIONS, 2019

The Attorney-General, in exercise of the powers conferred by section 77(1) of the Anti-Terrorism Act, 2018 makes the following Regulations —

PART I - PRELIMINARY

1. Citation.

These Regulations may be cited as the Anti-Terrorism Regulations, 2019.

2. Interpretation.

In these Regulations —

“**the Act**” means the Anti-Terrorism Act, 2018 (*No. 27 of 2018*);

“**the Coordinator**” means the National Identified Risk Framework Coordinator nominated under section 5 of the Proceeds of Crime Act, 2018 (*No. 4 of 2018*);

“**designated entity**” means the identification of a person or entity that is subject to targeted financial sanctions pursuant to —

- (a) United Nations Security Council Resolution 1267 (1999) and its successor resolutions;
- (b) United Nations Security Council Resolution 1373 (2001), and its successor resolutions, including the determination that the relevant sanctions will be applied to the person or entity and the public communication of that determination;
- (c) United Nations Security Council Resolution 1718 (2006) and its successor resolutions;
- (d) United Nations Security Council Resolution 1737 (2006) and its successor resolutions; and
- (e) any future United Nations Security Council resolutions which impose targeted financial sanctions in the context of the financing of the proliferation of weapons of mass destruction;

“**enforcement authority**” means in relation to —

- (a) domestic proceedings, the Director of Public Prosecutions, and any person authorised by the Director of Public Prosecutions;
- (b) proceedings undertaken in response to any international request to the Competent Authority, the Attorney-General or any person designated by him to act in those proceedings under this Act;

“entity” has the same meaning ascribed to it under section 2 of the Act;

“facility” has the same meaning ascribed to it under the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*);

“false positive” refers to a situation where accounts or assets are frozen by a financial institution on the basis of information available to it at the time of the freeze action, and upon further inquiry and receipt of additional clarifying information, such freeze action is determined to be the incorrect course of action;

“financial institution” has the same meaning ascribed to it under the Financial Transactions Reporting Act, 2018 (*No. 5 of 2018*);

“FIU” means the Financial Intelligence Unit established under section 3 of the Financial Intelligence Unit Act (*Ch. 367*);

“IRF Steering Committee” means the Identified Risk Framework Steering Committee established under section 6 of the Proceeds of Crime Act, 2018 (*No. 4 of 2018*);

“Interpol” means the International Criminal Police Organization founded in 1923 at Vienna, Austria, for the facilitation of international police force cooperation;

“listed entity” means an entity in respect of which an order under section 45 of the Act has been made;

“Special Notice” means a notice system of Interpol which alerts law enforcement agencies worldwide that a given individual or entity is subject to United Nations sanctions;

“Supervisory Authority” has the same meaning ascribed to it in the Financial Transactions Reporting Act (*No. 5 of 2018*);

“United Nations” or “UN” refers to the intergovernmental organisation founded on 24 October 1945 to promote international cooperation;

“UN Security Council” means the security council established under the Charter of the United Nations;

“UNSC Committee” means the appropriate sanction committees of the United Nations Security Council.

PART II – FOCAL POINTS AND PRIMARY CONTACT POINTS

3. Appointment and function of focal points.

- (1) The following persons shall be focal points for the purposes of the Act —
 - (a) the Director of Legal Affairs;
 - (b) the Director-General of the Ministry of Foreign Affairs;
 - (c) the Permanent Secretary with responsibility for National Security;
 - (d) the Permanent Secretary with responsibility for Tourism and Civil Aviation;
 - (e) the Permanent Secretary with responsibility for Transport;
 - (f) the Director with responsibility for Immigration;
 - (g) the Financial Secretary;
 - (h) the Director of the Financial Intelligence Unit; and
 - (i) the National Identified Risk Coordinator.
- (2) Every focal point shall ensure that a current list of both listed entities and designated entities are communicated to the primary contact points.

4. Appointment and function of primary contact points.

- (1) Every focal point shall —
 - (a) appoint a primary contact point within thirty days of the commencement of these Regulations; and
 - (b) inform the Coordinator of the appointment under subparagraph (a).
- (2) The focal point of the government body with responsibility for the following agencies shall appoint a primary contact point in accordance with subparagraphs (a) and (b) of paragraph (1), in respect of the following agencies —
 - (a) the Civil Aviation Authority established under the Civil Aviation Act (*No. 22 of 2016*);
 - (b) the Bahamas Customs Department under the Customs Management Act (*No. 30 of 2011*);
 - (c) the Port Authority for New Providence constituted under the Port Authorities Act (*Ch. 269*);
 - (d) The Bahamas Maritime Authority established under The Bahamas Maritime Authority Act (*Ch. 283*);
 - (e) The Royal Bahamas Defence Force established under the Defence Act (*Ch. 211*);

- (f) The Royal Bahamas Police Force continued under the Police Force Act (*No. 3 of 2009*);
 - (g) any Supervisory Authority; and
 - (h) any other law enforcement agency.
- (3) Every person appointed as a primary contact point shall have responsibility —
- (a) to review from time to time, the list of designated entities published on the official webpage of the United Nations Security Council Committees; and
 - (b) to notify the Coordinator of any variation between the list of designated entities as published on the official webpage of the United Nations Security Council and the list provided by the Coordinator in accordance with regulation 7.

PART III – LISTING AND INVESTIGATION OF TERRORIST ENTITY

LISTING OF TERRORIST ENTITY

5. Publication and notice of order.

- (1) Upon receipt of an Order made pursuant to section 45 of the Act, the Attorney-General must —
- (a) immediately publish the Order in accordance with section 45 of the Act; and
 - (b) as soon as practicable, inform the listed terrorist entity or individual, as the case may be, by way of notice of —
 - (i) the designation and its implications, in order to prevent any unintentional breaches on the part of themselves or related third parties;
 - (ii) the review procedure and information on the de-listing process, including a contact point within the government to address any questions regarding the process;
 - (iii) the publicly-releasable information concerning the reasons for designation; and
 - (iv) the procedures to allow approved access to funds or other assets for basic and extraordinary expenses.
- (2) After publication of an order in accordance with paragraph (1), the Attorney-General shall forward a copy of the order to the Coordinator.

6. Listed entity may apply for review of listing order.

- (1) A person or entity, aggrieved by the listing order, may apply to the court within sixty days of publication of the order, for review of the order.
- (2) An application made pursuant to paragraph (1) shall be supported with full details of rational and supporting documents with notification to the Attorney-General.

7. Coordinator to compile and forward list.

- (1) The Coordinator shall compile and keep current, a list of listed entities and designated entities.
- (2) The Coordinator shall forward a copy of the lists referred to in paragraph (1) to —
 - (a) members of the IRF Steering Committee;
 - (b) all Supervisory Authorities; and
 - (c) all focal points,and upon any revision of the list of listed entities or designated entities, the Coordinator shall forward the revised list to the bodies referred to in subparagraphs (a), (b) and (c).

INVESTIGATION OF LISTED OR DESIGNATED ENTITY

8. Scrutiny by financial institution.

- (1) Every financial institution shall —
 - (a) maintain an updated list of designated entities and listed entities in electronic form;
 - (b) regularly review the official webpage of the United Nations Security Council Committees which identifies designated entities;
 - (c) on a regular basis, scrutinise its records, to verify whether a listed entity or designated entity —
 - (i) holds, owns or controls, directly or indirectly, any funds, financial assets or economic resources or related services; or
 - (ii) has any form of relationship with the financial institution.
- (2) If after scrutinising its record in accordance with paragraph (1)(c), the financial institution determines that —
 - (a) funds, financial assets or economic resources or related services held in or through that financial institution are held on behalf of a listed or designated entity; or

- (b) the listed or designated entity has any form of relationship with that financial institution,
the financial institution shall —
 - (i) immediately stop payment or transaction of funds, financial assets or economic resources; and
 - (ii) file a suspicious transaction report with the FIU within the next working day with full particulars of—
 - (aa) the funds, financial assets or economic resources or related services;
 - (bb) related or connected identities,
held or used by the listed entity or designated entity, as the case may be.
- (3) Every financial institution shall —
 - (a) monitor the transactions, accounts and relationships of a designated or listed entity; and
 - (b) notify the FIU of any attempts by or on behalf of the designated or listed entity to carry out transactions.

9. FIU analysis.

- (1) When the FIU receives a suspicious transaction report the FIU may —
 - (a) pursuant to section 4(2)(d) of the Financial Intelligence Unit Act (*Ch. 367*), request the financial institution to submit the production of such information excluding information subject to legal professional privilege that the FIU considers relevant to fulfil its functions; and
 - (b) where the financial institution fails to produce the requested information, the FIU may apply to a court for an order to enforce the request.
- (2) If the FIU, after analysis of the suspicious transaction report and information produced pursuant to a request made in accordance with paragraph (1), finds reasonable grounds to suspect that an entity or individual has committed an offence under the Act, the FIU shall, pursuant to section 4(2)(f) of the Financial Intelligence Unit Act (*Ch. 367*), advise the Commissioner of Police of an offence specified in the *Second Schedule* of the Financial Intelligence Unit Act (*Ch. 367*).

10. Law enforcement investigation.

- (1) The Commissioner of Police, upon receipt of information from the FIU shall cause an investigation to be conducted to identify or trace-out any property belonging to or held for the benefit of the listed entity or designated entity, as the case may be.
- (2) The results of an investigation conducted in accordance with paragraph (1) shall be forwarded to the enforcement authority.

11. Application for property freezing or seizure order.

The enforcement authority shall, on receipt of information identifying and verifying property belonging to or held for the benefit of a listed entity or designated entity, as the case may be, apply for a property freezing order or a property seizure order, as may be appropriate, in accordance with Part VI of the Act.

12. Application for forfeiture.

The Attorney-General shall in accordance with Part VI of the Act, apply to the Court, *ex parte* and in writing for the forfeiture of the listed entity's or designated entity's funds and property which are subject to a freeze order.

13. Appointment of person to take care of the frozen, seized or forfeited property.

If any property is frozen, seized or forfeited under this Act, the court may, upon an application of the investigating agency or any person authorized by it, appoint a manager or caretaker of the property to take control, manage, look after or, in any other manner, deal with the total property or any part thereof under such terms and conditions as the court may deem fit.

14. Scrutiny by law enforcement.

- (1) The Director of National Security shall forward the list of designated and listed entities to the primary contact point of all law enforcement agencies with the request to identify and trace out the existence in The Bahamas and any property held by the designated or listed entity.
- (2) If property within The Bahamas is found to be belonging to a designated or listed entity, the primary contact point shall communicate complete particulars of the investigation and its findings within the next working day to —
 - (a) the Director of National Security; and
 - (b) the Director of Legal Affairs to facilitate an application for seizure.

PART IV – COMMUNICATION WITH UNITED NATIONS SECURITY COUNCIL COMMITTEES AND OTHER JURISDICTIONS

15. Report by Attorney-General to UNSC Committee.

Where —

- (a) funds, financial assets or economic resources or related services; or
- (b) real property or any other property,

is identified as belonging to a designated entity in accordance with regulations 8 – 14, the Attorney-General shall make a report of such matters to the appropriate UNSC committee.

16. Proposal of names to the Security Council.

- (1) When proposing a name in accordance with section 47 of the Act, the Attorney-General shall —
 - (a) follow the procedures and standard forms for designation, as adopted by the UNSC Committee;
 - (b) provide as much relevant information as possible on the name, in particular, sufficient identifying information to allow for the accurate and positive identification of individuals, groups, undertakings, and entities, and to the extent possible, the information required by Interpol to issue a Special Notice;
 - (c) provide a statement of case, which contains as much detail as possible on the basis for the designation, including —
 - (i) specific information supporting a determination that the person or entity meets the relevant criteria for designation;
 - (ii) the nature of the information; supporting information or documents that can be provided; and
 - (iii) details of any connection between the proposed designee and any currently designated person or entity; and
 - (d) specify whether The Bahamas' status as a designating state may be made known.
- (2) Where evidence is found that the name of a listed entity should not have been referred to a UNSC Committee for inclusion on its list, the Attorney-General shall apply to the appropriate UNSC Committee, with supporting details and information, for the removal of the name of the listed entity from the appropriate UNSC Committee list.
- (3) Upon favorable receipt from the appropriate UNSC Committee in respect of a request under paragraph (2), the Attorney-General shall seek

permission to revoke the court order listing the entity and upon receipt of the order for revocation, cause such notification to the entity or its legal representatives or the individual.

- (4) For the purpose of this regulation, a UNSC Committee includes Security Council Committees established pursuant to —
- (a) United Nations Security Council Resolution 1267 (1999); and
 - (b) United Nations Security Council Resolution 1989 (2011).

17. Requesting enforcement of order in another jurisdiction.

Where the Attorney-General makes an application in accordance with section 45 (14) of the Act for the enforcement of an order in another jurisdiction, the Attorney-General must provide as much detail as possible —

- (a) on the name, in particular, sufficient identifying information to allow for the accurate and positive identification of persons or entities; and
- (b) specific information supporting a determination for the enforcement of the order in that jurisdiction.

PART V – PREVENTION OF TRAVEL AND TRAFFICKING

PREVENTION OF ENTRY INTO AND REFUSAL OF PERMISSION TO LAND IN THE BAHAMAS

18. Prevention of entry into or transit through The Bahamas.

- (1) The —
- (a) Department of Immigration;
 - (b) Customs Department; and
 - (c) other appropriate law enforcement agency,
- shall take such measures to prevent the entry into or transit through The Bahamas of a designated or listed entity.
- (2) The primary contact point of —
- (a) the Department of Immigration;
 - (b) the Bahamas Customs Department; and
 - (c) The Royal Bahamas Defence Force,
- shall —
- (i) take appropriate border control measures to ensure strict compliance of this regulation; and

- (ii) communicate the details of entry or transit through The Bahamas of any designated entity or listed entity to their respective focal points.
- (3) Where a designated entity or listed entity attempts to enter into or transit through The Bahamas and is prevented from entering or transiting, such attempt and prevention shall be reported, within the next working day, to —
 - (a) the Director of National Security;
 - (b) the Director with responsibility for Immigration;
 - (c) the Financial Secretary;
 - (d) the Director-General of Foreign Affairs; and
 - (e) the Director of Legal Affairs.
- (4) The Director-General of Foreign Affairs shall forward the list of designated or listed entities to its consulates, embassies and high commissions abroad and direct that no consulate, embassy or high commission shall issue a visa of any kind to a designated or listed entity.

19. Refusal of permission to land or travel through Bahamian airspace.

- (1) The Civil Aviation Authority, shall take reasonable appropriate measures to prevent the landing, take-off or travelling through Bahamian airspace of aircraft suspected of being owned, leased or operated by or on behalf of a designated entity.
- (2) Where an aircraft is refused permission to land, take off or travel through Bahamian airspace the primary contact point of the Civil Aviation Authority shall inform —
 - (a) the Permanent Secretary with responsibility for the Ministry of Tourism and Civil Aviation;
 - (b) the Financial Secretary;
 - (c) the Director of National Security;
 - (d) the Director of Legal Affairs; and
 - (e) the Attorney-General, who shall communicate the particulars of all such incidents and any investigations and findings related thereto to the appropriate UNSC Committee.

PREVENTION OF TRAFFICKING IN ARMS, NUCLEAR, CHEMICAL AND BIOLOGICAL WEAPONS

20. Prevention of supply, sale or transfer of arms, etc.

- (1) Law enforcement agencies and customs authority shall take reasonable and appropriate measures to identify, trace out or confiscate arms and ammunition and other related items, materials, equipment, goods and technologies belonging to any designated or listed entity.
- (2) The primary contact points of the law enforcement agencies shall inform its respective focal point and the Director of Legal Affairs of all investigations and findings in respect of paragraph (1).
- (3) Where any of the items referred to in paragraph (1) has been identified or confiscated, the particulars thereof shall be communicated by the Attorney-General to the appropriate UNSC Committee.

21. Prevention of illicit trafficking in nuclear, chemical or biological weapons.

- (1) Law enforcement agencies and customs authority shall take reasonable and appropriate measures, including searching cargo, to identify, trace out or confiscate related materials of nuclear, chemical or biological weapons, belonging to designated or listed entities.
- (2) The primary contact points of the law enforcement agencies shall inform its respective focal point and the Director of Legal Affairs of all investigations and findings in respect of paragraph (1).
- (3) Where any of the items referred to in paragraph (1) has been identified or confiscated, the particulars thereof shall be communicated by the Attorney-General to the appropriate UNSC Committee.

PART VI - MISCELLANEOUS

22. Exemptions.

- (1) The Attorney-General may grant, in accordance with this regulation, an exemption of funds, financial assets or economic resources which are subject to a freeze order.
- (2) A designated entity may make a request to the Attorney-General for an exemption for —
 - (a) basic expenses, including —
 - (i) food;
 - (ii) rent or mortgage;

- (iii) medicines and medical treatment;
 - (iv) taxes;
 - (v) insurance premiums;
 - (vi) public utility charges;
 - (vii) payment of reasonable professional fees and reimbursement of incurred expenses associated with the provision of legal services; and
 - (viii) fees or service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources; or
- (b) extraordinary expenses, provided that such determination has been notified to the Committee and has been approved by the Committee;
 - (c) an expense or need which is the subject of a judicial, administrative or arbitral lien or judgement, provided that the lien or judgement —
 - (i) was entered prior to the date of the present resolution;
 - (ii) is not for the benefit of a person referred to in paragraph 8(d) of United Nations Security Council Resolution 1718 (2006); or
 - (iii) an individual or entity identified by the UN Security Council or the Committee, and has been notified by The Bahamas to the Committee.
- (3) The Attorney-General shall notify the appropriate UNSC Committee of a designated entity's request under paragraph (2).
 - (4) The Attorney-General may grant an exemption, in respect of a request made for expenses referred to in subparagraph (2)(a) and (b), in the absence of a negative decision by the appropriate UNSC Committee —
 - (a) within forty-eight hours of notification in the case of the individuals and entities sanctioned under —
 - (i) United Nations Security Council Resolution 1988;
 - (ii) United Nations Security Council Resolution 1267; and
 - (iii) United Nations Security Council Resolution 1989; and
 - (b) within five days of notification in the case of the individuals and entities listed by the UNSC Committee established pursuant to resolution 1718.
 - (5) Where the UNSC Committee makes a decision on the request for exemption —
 - (a) the Attorney-General shall comply with that decision; and

- (b) inform the designated entity of the decision of the UNSC Committee.

23. False positives.

Upon request by any of the designated terrorist entities or individuals, the Attorney-General may allow the funds and other financial assets or economic resources of individuals or entities with the same or similar name as listed entities in the case of a false positive or mistaken identity, to be unfrozen pursuant to Court Order, provided that the Attorney-General is satisfied that the individual or entity is not the actual listed entity.

24. Delisting from list of designated entities.

A designated entity listed under —

- (a) the United Nations Security Council Resolution 1267/1999; and
- (b) the United Nations Security Council Resolution 1988,

may challenge the listing by submitting a delisting petition to the Office of the Ombudsperson of the United Nations.

25. Notification of delisting.

If the Attorney-General receives a notification on the delisting of an entity from —

- (a) the United Nations Security Council Resolution 1267/1989; and
- (b) the United Nations Security Council Resolution 1988,

the Attorney-General shall notify that designated entity of the delisting.

Made this 20th day of February, 2019.

Signed
CARL W. BETHEL
Attorney-General