GOVERNMENT NOTICE NO. 11

FINANCIAL CRIMES ACT

(NO. 14 OF 2017)

FINANCIAL CRIMES (SUPPRESSION OF TERRORIST FINANCING AND PROLIFERATION) REGULATIONS, 2017

IN EXERCISE of the powers conferred by section 144 of the Financial Crimes Act, 2017, I, GOODALL EDWARD GONDWE, Minister of Finance, Economic Planning and Development, make the following Regulations—

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Citation

1. These regulations may be cited as Financial Crimes (Suppression of Terrorist Financing and Proliferation) Regulations, 2017.

Interpretation

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

"Act" means the Financial Crimes Act;

"dealing" in relation to own or other property or funds means receiving, acquiring, transacting, representing, concealing, disposing, converting, transferring or moving, using as security or providing financial services;

"designated person" means a person designated pursuant to these Regulations or the applicable United Nations Security Council Resolutions adopted under Chapter VII of the United Nations Charter;

"designation" or "listing" means the identification of a person or group of persons that is subject to targeted sanctions pursuant to the applicable United Nations Security Council Resolutions;

"domestic list" means the list prepared and approved by the Panel under Regulation 12;

"freeze" means to prevent or restrain specific property from being used, transferred, transacted, converted, altered, concealed, moved or disposed of without affecting the ownership thereof;

"Panel" means the National Counter Terrorism Panel established under Regulation 4;

"property" has the meaning ascribed to it under the Act and includes electronically or digitally evidenced title or interest, bank credits, money orders, shares, securities and letters of credit and cash;

"Resolution 1267" means Resolution 1267 of the Security Council passed on 15th October, 1999 and its successor resolutions;

"Resolution 1989" means Resolution 1989 of the Security Council passed on 11th June 2011 and its successor resolutions;

"Resolution 1373" means Resolution 1373 of the Security Council passed on 28th September, 2001 and its successor resolutions;

"Resolution 1718" means Resolution 1718 of the Security Council passed on 14th October, 2006 and its successor resolutions;

"Resolution 1988" means Resolution 1988 of the Security Council passed on 17th June, 2011 and its successor resolutions;

"Sanctions Committee" means a committee of the Security Council of the United Nations established under a Resolution of the Security Council;

"Security Council" means the Security Council of the United Nations established under Article 7 of Chapter III of the United Nations Charter;

"sanctions list" means the 1989 Al-Qaida sanctions list, the 1988 Taliban sanctions list, the 1718 sanctions list, the 1737 sanctions lists or other similar list issued by the Security Council from time to time;

"terrorist financing" includes the offence specified under section 43 of the Act.

Application

3. These Regulations shall apply to—

(*a*) a person contained in the Consolidated List of the United Nations designated under Resolutions 1989 Sanctions Committee, the 1988 Sanctions Committee, or any other such United Nations Sanctions Committee which may be established under any other United Nations Security Council Resolution;

(*b*) designated persons and entities under Resolution 1373 by a third party, international organization or foreign country;

(*c*) a person designated under Resolution 1718;

(*d*) a person designated under Resolution 1737; and

(*e*) designated persons or entities approved by the Panel under Resolution 1373.

PART II—IMPLEMENTATION MECHANISM

National Counter-Terrorism Panel

4.—(1) There is hereby established a Panel to be known as the National Counter Terrorism Panel.

(2) The Panel shall consist of—

(*a*) the Director-General of the National Intelligence Service, who shall be the chairperson;

(*b*) a senior public officer designated by the Chief Secretary;

(*c*) the Secretary responsible for Home Affairs and Internal Security;

(*d*) the Secretary to the Treasury;

(*e*) the Secretary responsible for Foreign Affairs and International Cooperation;

(*f*) the Attorney-General;

(*g*) the Army Commander;

(*h*) the Inspector-General;

(*i*) the Registrar of financial institutions; and

(*j*) the Director General, who shall be secretary to the Panel.

Functions

5.—(1) The functions of the Panel shall be to—

(*a*) facilitate implementation of Resolution 1267, 1373, 1718, 1737 and 1988 and all successor resolutions relating to the suppression of terrorist financing and the prevention, suppression and disruption of the proliferation of, and financing of, dealings with weapons of mass destruction and such other related resolutions in accordance with these Regulations;

(*b*) formulate and supervise the implementation of the National Strategy and Action Plan on Counter Terrorism Financing; and

(*c*) perform any other functions as may be conferred on it by a written law.

(2) The Panel may, in carrying out its functions, co-operate with any person for the purposes of—

(*a*) identifying persons for the purpose of designation;

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

(*c*) considering requests for the de-listing of a designated person under Resolution 1373; and

(*d*) the performance of its functions under these Regulations.

(3) The Panel shall, in carrying out its obligations under Resolution 1267, 1373, 1718, 1737, 1988 and all successor resolutions relating to the banning of travel, granting of visas and purchase of arms and related resolutions, cooperate with any person for the purposes specified under subregulation (2).

Powers

6.—(1) Subject to a written law, the Panel shall have all the powers necessary for the performance of its functions under these Regulations.

(2) Without prejudice to the generality of paragraph (1), the Panel shall have the powers to—

(*a*) issue guidelines or instructions as it may consider necessary for the effective implementation of these Regulations; and

(*b*) set criteria, on the basis of reasonable grounds, for designating persons in line with Resolution 1373.

(3) The Panel shall determine its own procedure and the procedure of committees established under these Regulations.

(4) A member of the Panel or any other person shall not, without the consent of the Panel, in writing, publish or disclose to any person other than in the course of his duties, the contents of any document, communication or information which relates to, and which has come to his knowledge in the course of his duties under these Regulations.

(5) A person who contravenes subregulation (4) commits an offence and shall on conviction be liable to imprisonment for three years and a fine of K5,000, 000.

Committees

7.—(1) The Panel may, from time to time, establish committees as it may consider necessary for the effective discharge of its functions under these Regulations.

(2) The Panel may co-opt into a committee established under paragraph (1) any person whose presence, participation, knowledge or skills is necessary for the proper performance of the functions of the Panel.

(3) A person co-opted under paragraph (2) may attend the meetings of the Panel and participate in its deliberations but shall have no right to participate in the making of any decision of the Panel at the meeting.

PART III—PROCEDURES FOR IMPLEMENTATION

Domestic List

8.—(1) The Panel shall, at a meeting, receive proposals for the declaration of a person as a designated person in accordance with the criteria set out in Resolution 1373.

(2) Where the Panel designates a person, it shall forthwith direct the Secretary of the Panel to prepare a list of designated persons and disseminate the list of designated persons to all reporting institutions.

(3) The Authority shall disseminate the designated names to the United Nations Sanctions Committee and all diplomatic representatives in Malawi and the submission shall state the reasons for the designation.

(4) The domestic list prepared under subregulation (2) shall include, where applicable, the following information—

(*a*) name and an alias or title;

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

(*c*) sex;

(*d*) original or acquired nationality;

(*e*) passport numbers, identity card numbers or registration number;

(*f*) physical and postal addresses;

(*g*) occupation;

(*h*) telephone number;

(*i*) an explanation of how the person meets the designation criteria; and

(*j*) any other information which the Panel may consider relevant.

(5) The Authority shall, in exercise of powers under the Act, issue a provisional freezing order prohibiting any person from disposing of, or dealing with, any interest in the property specified in the order.

(6) A person who is aggrieved by the decision of the Panel under this Regulation may, upon giving notice to the Authority, appeal to the court.

United Nations Consolidated List

9.—(1) The Authority shall—

(*a*) receive all designations made by the Security Council and any sanctions list or other similar list issued in connection therewith; and

(*b*) without delay, submit all designations to the Panel.

(2) The Director General shall,without delay, circulate the designation or sanctions list under subregulation (1) and to—

(*a*) members of the Panel;

(*b*) supervisory authorities which are not members of the Panel;

(*c*) national security organs which are not members of the Panel;

(*d*) other law enforcement agencies, as it may consider necessary;

(*e*) any institution which is authorized to—

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

(*ii*) take any reasonable action as may be necessary to give effect to Resolution 1267, 1373, 1718, 1783, 1988 or such other relevant Resolutions.

(3) A supervisory authority shall, upon receipt of the designations or sanctions list submitted to it under this Regulation—

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

(*b*) where necessary, provide guidance to the reporting institutions holding funds or other property of a designated person, in relation to their obligations under these regulations.

(4) Where a supervisory authority fails to comply with subregulation (3), the Authority shall impose a penalty of K20,000,000 for each case of non-compliance.

Designations by third parties

10.—(1) Any country which, pursuant to Resolution 1373 makes or requests designation of a person shall give details of the designation to an accredited diplomatic representative of Malawi in that country or in the absence of a diplomatic representative, the Ministry responsible for foreign affairs in that country.

(2) Upon receipt of the request under subregulation (1), the diplomatic office or the Ministry responsible for foreign affairs in that country shall send

the request to the Authority, through the Secretary responsible for Foreign Affairs and International Cooperation in Malawi.

(3) The Authority shall, upon receipt of the request under subregulation (2), forthwith submit to the Attorney General for a determination as to whether there are sufficient grounds to designate the person in accordance with these Regulations.

(4) When considering the request for designation, the Attorney General shall have regard to the following evidential criteria, whether any person—

(*a*) has committed or attempted to commit a terrorist act or participated in or facilitated the commission of a terrorist act, or

(*b*) has been owned or controlled directly or indirectly by a person designated by a foreign country; or by Malawi.

(*c*) has acted on behalf, or at the direction of any person designated by another country on the basis of the criteria set in Resolution .

(5) If the Attorney General has determined that there are reasonable grounds to designate the person, he shall inform the Director General who shall without delay, inform the Panel and request it to—

(*a*) make a provisional determination designating the person;

(*b*) disseminate the name of the designated person to supervisory authorities and reporting institutions.

Freezing of property

11.—(1) A designation or a consolidated list circulated by or through the Authority shall be deemed to immediately authorize a reporting institution or any other institution which holds the property of a designated person to freeze, until further notice, the property whether—

(*a*) held by the designated person;

(*b*) wholly or jointly held or controlled directly or indirectly by the designated person;

(*c*) property derived or generated from assets owned or controlled directly by the designated person.

(*d*) property of a person acting on behalf of or at the direction of a designated person.

(*e*) the property in question was used or intended to be used for a particular terrorist or proliferation act or plot.

(2) For purposes of subsection (1), in determining whether the property is controlled by a designated person, the fact that the property is held in the name of an associate or a relation of the person shall be immaterial.

(3) A person to whom a designation or United Nations Consolidated Sanctions List is submitted shall, where applicable—

(*a*) take the necessary measures to freeze the property owned, held or controlled by the designated person, without delay and without notice to the entity;

(*b*) within twenty-four hours of detecting the property and freezing it, file a suspicious transaction report with the Authority; and

(c) take any other action as may be necessary to give effect to Resolutions 1267, 1373, 1718,1783 and 1988.

(4) The reporting institution shall inform the Authority of the accounts identified and frozen duly indicating the account balances.

(5) An order to freeze property under paragraph (1) shall include an on-going prohibition against the provision of funds or financial services to the designated individual or entity against which the order is made.

(6) Subject to the provisions of these regulations,—

(a) detained property under Resolution 1267, 1373, 1718 1783 and 1988 shall be held indefinitely until the relevant United Nations Sanctions Committee de-lists the person;

(b) the designated person under Resolution 1267, 1373, 1718, 1783 and 1988 shall be prohibited from accessing the property or being provided with financial services except with the approval of the United Nations Sanctions Committee;

(c) detained property under Resolution 1373 shall not be released without authorization from the Panel and the designated person shall be prohibited from accessing the property or financial services until the designation has been lifted.

(7) Detention or freezing of property shall be without prejudice to the rights of third parties acting in good faith.

Obligations of reporting institutions

12.—(1) Every reporting institution shall develop and implement a system to facilitate review of the United Nations Consolidated List and the Domestic List prior to carrying out any transaction or entering into a relationship with any person on an on-going basis to mitigate against the risks of the occurrence of the financing of terrorism.

(2) Where the name of the person is confirmed to be on any list, the reporting institution shall immediately block the property identified as belonging or connected with the person or entity on the list and shall ensure that no transaction is performed in connection with the property and thereafter submit a suspicious transaction report to the Authority, including reports or information on all actions taken.

(3) Upon receipt of the report, the Authority shall inform the Panel accordingly.

(4) Where a reporting institution makes a report to the Authority, it shall state—

(a) the information or other matters on which the knowledge or suspicion is based;

(b) any information it holds about the person;

(c) the nature and amount of property held by the institution for the person at any time up to five years prior to the designation being made.

(5) A reporting institution shall not deal with property owned, held or controlled directly or indirectly by a designated person save as provided for under the Regulations.

(6) For purposes of subregulation (5), 'deal with' means—

(*a*) use, alter, move, allow access or transfer;

(*b*) deal with in any other way that would result in any change in volume, amount, location, ownership, possession, character or destination;

(*c*) make any other change that would enable use, including portfolio management.

(7) A person shall not make available, directly or indirectly,property or financial services to or for the benefit of a designated person.

(8) Any person who, knowingly or having reasonable grounds to suspect that the property was owned, held or controlled by a designated person, contravenes this Regulation, commits an offence and is liable, upon conviction, to a fine of K500,000,000 or twenty years imprisonment.

(9) Any person who knowingly participates in activities, the object or effect of which is directly or indirectly, to—

(*a*) circumvent the prohibitions in this Regulation, or

(*b*) enable or facilitate the contravention of the provisions of the Regulation,

commits an offence and is liable, upon conviction, to a fine of K500,000,000.

PART IV—CONDITIONS AND PROCEDURES FOR UTILIZATION OF FROZEN PROPERTY

Applications under Domestic List

13.—(1) The Panel may, where necessary, approve access to frozen property or part thereof—

(*a*) to meet the basic needs and expenses of a designated person under investigation such as food, rental, medical needs and any other general expenses as the Panel may approve;

(*b*) to meet professional fees and settlement of expenses including legal services, bank and related charges;

(*c*) for any other exceptional services not provided for in paragraphs (*a*) and (*b*) above.

(2) An application to utilize money from the frozen property shall be made to the Panel by a designated person or his authorized representative with supporting documents.

(3) The Panel shall consider the application and grant, refuse or reduce the sum specified in the request made in the application as considered reasonable in the circumstances.

(4) Where approval has been granted, a person in custody of the property shall be informed, in writing,by the Director General, to implement the approval and furnish a report to the Panel of the action taken.

Applications under United Nations' List

14.—(1) A person wishing to access and use frozen property shall submit an application to the Panel, through the Director General, for onward transmission to the United Nations Sanctions Committee stating the purpose for which the property is required and, where applicable, attach supporting documents.

(2) The Director General shall, prior to submitting the application under subregulation (1), inform the Panel.

(3) When a decision is made by the United Nations Sanctions Committee, it shall be transmitted to the Panel, through the Director General, who shall inform the person in custody of the property in writing to implement the decision.

(4) The person in custody of the property shall inform the designated person or his representative of the decision in writing.

(5) A person who is aggrieved with the decision made under this Regulation may appeal to court for redress.

Additional funds

15.—(1) Any property accruing to a frozen account including—

(*a*) interest or other earnings due to the account;

(*b*) payments due under contracts, agreement, or obligations that were concluded or arose before the account became frozen; or

(*c*) funds transferred to the account,

shall be received and credited into an escrow account opened for this purpose and shall constitute part of frozen property and the person in custody of the property shall file a report of receipt of such additional funds with the Authority which shall inform the Panel accordingly.

(2) Property received or credited into a frozen account shall be subject to the provisions and measures contained in these Regulations.

Application to unfreeze property

16.—(1) Where property was frozen wrongfully as a result of any error, the person affected may apply to the Panel for release of the property.

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

(*a*) where the application relates to the United Nations Consolidated List, shall submit the request to the United Nations Sanctions Committee for determination, and upon receipt of feedback, the Panel shall inform the applicant of the decision taken;

(*b*) assess the application and make a determination and inform the applicant of the decision not later than fifteen working days from the date of receipt of the application.

PART V—RESTRICTIONS ON TRAVEL AND DEALINGS IN ARMS

Travel restrictions

17.—(1) A person designated under the United Nations Sanctions Committee shall not be allowed to enter, transit or remain in Malawi.

(2) Notwithstanding the provisions of Regulation 18(1), a designated person shall not be prevented from entering or transiting through Malawi, where—

(*a*) the designated person is a citizen of Malawi;

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

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

(3) For purposes of subregulation (1), the Minister responsible for Foreign Affairs and International Cooperation shall, upon receipt of a list of designated persons from the United Nations Sanctions Committee, request the Minister responsible for Home Affairs and Internal Security to refuse any application by a designated person for a visa to enter Malawi and all visas previously granted to the designated person shall be cancelled.

(4) Where an international warrant of arrest is issued for the arrest of a designated person who has entered Malawi, the Inspector General shall immediately effect the arrest of the person and communicate the fact to the Authority.

(5) The Chief Immigration Officer shall enforce measures including watch list action to prevent a designated person from entering or escaping from Malawi.

(6) A person, being a Malawian citizen, having become a designated person pursuant to Regulation 9 shall be prevented from leaving Malawi until investigations into the activities that led to his designation have been concluded.

(7) A designated person aggrieved by the implementation of these Regulations shall be entitled to seek legal redress.

Arms embargo

18.—(1) Any person shall not, directly or indirectly, supply, sell, transfer, carry, deliver, train in or provide technical assistance or any deal with any weapons or related materials of any type, knowing that the weapons or materials are—

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

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

(2) A person shall not use a ship or aircraft in Malawi or use a Malawian ship or aircraft in any place outside Malawi for the carriage of weapons or related materials from or to a designated person.

PART VI—APPLICATION FOR DE-LISTING

Application for de-listing

19.—(1) A designated person who wishes to have his name deleted from any list under these Regulations may, in respect of—

(*a*) the Domestic List, submit an application to the Panel; or

(*b*) the United Nations Consolidated List, submit an application through the Authority, to the United Nations Sanctions Committee, stating reasons for the application.

(2) The Panel shall consider the application made under subregulation (1) (*a*) and make a decision within sixty days.

(3) The Authority shall promptly inform the applicant of the decision made by the Panel or the United Nations Sanctions Committee promptly.

Grounds for application

20.—(1) An application made under subregulation (1) (*b*) may be made based on the following grounds—

(*a*) mistaken identity;

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

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

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

(2) Where the United Nations Sanctions Committee has referred an application for removal from the United Nations Consolidated List to the Panel for comments, the Panel shall, within the time specified by the United Nations Sanctions Committee respond to the request stating reasons for the recommendation for retention or removal from the Consolidated List.

(3) Where the United Nations Sanctions Committee has granted leave for the removal of a designated person from the Consolidated List, the Panel shall, within twenty-four hours of the deletion, notify the relevant agencies and reporting institution of the deletion and direct the institutions to delete the de-listed name from any list circulated to them.

Effect of de-listing

21. An approval issued under Regulation 20 shall have the effect of revoking the freezing order and other sanctions imposed against the person whose name is deleted from the list.

Immunity

22. No proceedings shall lie against any person, including reporting institutions and relevant Government agencies, in respect of effecting or implementing an order designating a person or freezing the property or funds of a designated person, in good faith, under these Regulations.

Made this 17th day of February, 2017.

GOODALL E. GONDWE
Minister of Finance, Economic Planning and Development

(FILE NO. SUB. D.8:07)