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CONTENTS

No.

Page

LEGAL NOTICE

- | | |
|---|--|
| 6 | Money Laundering (Financial Sanctions Related 91
Terrorist Financing of Proliferation) Guidelines, 2022 |
|---|--|

OTHER NOTICES

(See Supplement of the Gazette)

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Money Laundering (Financial Sanctions Related Terrorist Financing of Proliferation) Guidelines, 2022

Pursuant to section 15 of the Money Laundering and Proceeds of Crime Act, 2008¹, I,

JOTHAME PHAKISI

Acting Director of the Financial Intelligence Unit, issue the following guidelines -

Citation and commencement

1. These guidelines may be cited as the Money Laundering (Financial Sanctions Related to Terrorist Financing and Financing of Proliferation) Guidelines, 2022 and shall come into operation on the date of publication in the Gazette.

Interpretation

2. In these guidelines, the words and expressions used shall have the same meaning assigned to them in the Act whereas the following words shall have the meaning ascribed to them -

“accountable institutions” means a FI, DNFBP, Non-Profit Organisation or other entities and businesses listed under in Schedule 1 of the Act;

“Act” means the Money Laundering and Proceeds of Crime Act, 2008;

“asset freezing” means the prohibition to transfer, convert, dispose or move any funds or other assets that are owned or controlled by listed individuals, groups or entities and include the freezing and prevention of the use, alteration, movement, transfer or access of the funds and other financial assets and economic resources; and the freezing of the economic resources includes prevention of their use to obtain funds, goods, services by selling, hiring or mortgaging them;

“Designated individuals, groups and entities” means individuals groups

and entities designated in terms of regulation 27 of the Money Laundering and Proceeds of Crime Regulations, 2019², united Nations Council Security Resolutions 1267(1999), 1989(2011), 1988(2011), 1373(2001), 1450(2004), 1718(2006), 1737(2006),1747(2007), 1803(2008), 1829(2010) and their successor resolutions;

“DNFBPs” means Designated Non-Financial Businesses and Professions;

“FI” means Financial Institutions;

“funds” means assets of any kind and in whatever form, whether tangible intangible, electronic, digital, cryptic, movable or immovable, corporeal or incorporeal, however acquired, and any documents or instruments in any form, including national currency, foreign currencies, documents or deeds establishing ownership of such assets or any associated rights or interest in them, in whatever form, including electronic and digital forms, any interests, profits or income derived or earned from such assets, as well as economic resources considered as assets of any kind and that may be used to obtain any funds, goods or services including internet posting services or related services;

“person” means a natural and legal person;

“prohibition to offer funds and services” means the prohibition to provide funds to, or render financial services or other services related to, any listed individual, group or entity including; opening of the banking subsidiaries in the sanctioned jurisdiction, the provision of financial services or trading in natural resources and providing internet or telecommunication services;

“Regulations” means the Money Laundering and Proceeds of Crime Regulations, 2019;

“targeted financial sanctions” means assets freezing and other financial prohibitions, agreed upon by the UNSC, to prevent funds or other assets from being made available, directly or indirectly, or the benefit of listed individuals, groups and entities;

“UNSC” means the United Nations Security Council;

“UNSCR” means the United Nations Security Council Resolution; and

“without delay” means immediately and within twenty-four hours.

Purpose of targeted financial sanctions

3. The purpose of Targeted Financial Sanctions is to deny certain individuals, groups, organizations, and entities the means to -

- (a) violate international peace and security,
- (b) support terrorism, or
- (c) finance the proliferation of weapons of mass destruction by ensuring that no funds, financial assets, or economic resources of any kind are available to listed actors for so long as they remain subject to the restrictive measures.

ACCOUNTABLE INSTITUTIONS

Sanctions in relation to terrorism and terrorist financing

4. The Accountable Institutions are required to and shall implement these Targeted Financial Sanctions in relation to terrorism and terrorist financing against the following individuals, groups, or entities listed by the UNSC -

- (a) Islamic State in Iraq and the Levant (Da'esh), Al Qaida, and associated individuals, groups, undertakings and entities;
- (b) The Taliban, and associated individuals, groups, undertakings, and entities; and
- (c) any individual or entity included in the Anti-Terrorism Committee pursuant to the Regulations.

Sanctions in relation to proliferation of weapons of mass destruction

5. The Accountable Institutions are required to and shall implement these Targeted Financial Sanctions in relation to proliferation of weapons of mass de-

struction against the following individuals, groups, or entities listed by the UNSC -

- (a) Democratic People's Republic of Korea (DPRK) for nuclear-re-lated, other weapons of mass destruction related and ballistic missile-related programmes.
- (b) Islamic Republic of Iran for nuclear programme.

Sanctions in relation to other UN sanctions regimes

6. The Accountable Institutions are required to and shall implement these Targeted Financial Sanctions in relation to other UN sanctions regimes with Targeted Financial Sanctions against the following listed individuals, groups, or entities by the UNSC -

- (a) Somalia;
- (b) Iraq;
- (c) Democratic Republic of Congo (DRC);
- (d) Related to the involvement of terrorist bombing in Beirut (2005) plus restrictive measures in relation to UNSCR 1701 (2006) on Lebanon;
- (e) Libya;
- (f) Central African Republic (CAR);
- (g) South Sudan;
- (h) Mali; and
- (i) Yemen.

Sanctions against the individuals, groups, or entities listed by the UNSC

7. The Accountable Institutions are required to and shall implement these Targeted Financial Sanctions against the individuals, groups, or entities listed

by the UNSC including -

- (a) Any individual, group, or entity listed by the Anti-Terrorism Committee pursuant to the Regulations or listed by the UNSC in its Consolidated Sanctions List;
- (b) Any entity, directly or indirectly owned or controlled by an individual or entity listed under 2.3 above; and
- (c) Any individual or entity acting on behalf of or at the direction of any individual or Entity listed under 2.2 and 2.3 above.

Successor Resolutions

8. These Guidelines are applicable to the Resolutions mentioned in regulation 27 of the Money Laundering and Proceeds of Crime Regulations, 2019 and all their successor resolutions.

United Nations Charter

9. Pursuant to the obligation under Chapter VII of the United Nations Charter Lesotho shall freeze, without delay, all the funds and other financial assets or economic resources of any person, group or entity designated by the UNSC or a relevant UNSC Sanctions Committee pursuant to the relevant UNSC Resolution.

List of Designated Persons or Entities

10. An Accountable Institution is required to acquaint itself with the list of designated persons, groups and entities issued by the UN from time to time.

Matches with Listed Names and Entities

11. Accountable Institutions are required to undertake ongoing and daily checks to the following databases to identify possible matches with names listed in the Sanctions Lists issued out by the UN -

- (a) Existing customer databases;

- (b) Names of parties to any transactions;
- (c) Potential customers;
- (d) Beneficial owners;
- (e) Names of individuals or entities with direct or indirect relationships with them;
- (f) Customers before conducting any transactions or entering a business relationship with any Person; or
- (g) Directors or agents acting on behalf of customers (including individuals with power of attorney).

12. Accountable Institutions shall conduct initial screening prior to the onboarding of a customer or facilitation of an occasional transaction while subsequent screening shall be done daily at the initiative of the institution in accordance with the Sanctions Lists that are continuously updated and available on the UN website online.

13. When identifying the potential match, an Accountable Institution -

- (a) may suspend any transaction until satisfied that it is not an individual or entity subject to Targeted Financial Sanctions or a false positive result;
- (b) taking into consideration the knowledge the Accountable Institution has of the customer, potential customer, beneficial owner, or transaction, through the customer due diligence or using reasonable information, if the Accountable Institution is satisfied that the individual or entity with a potential match is not subject to Targeted Financial Sanctions, the Accountable Institution does not need to implement any measure, but may allow the transaction or business to continue its normal course, and the Accountable Institution is required to maintain evidence of this process in their records; and
- (c) where there is any indication or suspicion that the

potential result may be a confirmed match or there is actually a confirmation that it is a confirmed match, the Accountable Institution must implement the freezing measures.

14. If a match with the UN List is identified -
- (a) an Accountable Institution is obligated to freeze funds and other assets, without delay and without prior notice to the Listed individual or entity; and
 - (b) no person, including an Accountable Institution is permitted to provide funds to or render financial services or other services related to, whether in whole or in part, directly or indirectly, or for the benefit of any listed individual or group on the UN list or listed by the Anti-Terrorism Committee.

15. To determine if there is a match an Accountable Institution shall consider the following principles -

- (a) a potential match is when there is any match between data in the Sanctions Lists with any information in the Accountable Institution's databases;
- (b) a confirmed match is when a potential match has been confirmed to be the individual, group or entity subject to Targeted Financial Sanctions or when there is any doubt, indication, or suspicion that the potential match may correspond to an individual, group or entity subject to Targeted Financial Sanctions; and
- (c) a false positive result is when a potential match was discharged.

Funds and Other Assets Subject to Freezing and Prohibition to Deal Obligations

16. The Targeted financial sanctions require the freezing of all funds and other assets including -

- (a) cash, cheques, claims on money, money orders, bearer instruments, internet - based payment instruments such as virtual currencies and other payment instruments;
- (b) deposits with financial institutions or other entities and balances on accounts, including but not limited to fixed or term deposit accounts;
- (c) equity and other financial interest in a sole trader or partnership;
- (d) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities and debentures;
- (e) interest, dividends or other income on or value accruing from or generated by assets and Insurance;
- (f) land, buildings or other real estate;
- (g) equipment, including computers, computer software, tools, and machinery;
- (h) office furniture, fittings and fixtures and other items of a fixed nature;
- (i) vessels, aircraft and motor vehicles;
- (j) works of art, cultural property, precious stones, jewellery or gold; and
- (k) patents, trademarks, copyrights, trade names, franchises, good will, and other forms of intellectual property, internet hosting or related services.

17. Economic resources subject to sanctions include assets of any kind, whether tangible or intangible, movable, or immovable, actual, or potential, which potentially may be used to obtain funds, goods, or services, such as -

- (a) Land, buildings, or other real estate;

-
- (b) Office furniture, fittings and fixtures and other items of a fixed nature;
 - (c) Inventories of goods;
 - (d) Commodities, including oil, minerals, or timber;
 - (e) Arms and related materiel, including all items mentioned in the arms embargo, included but not limited to: weapons and ammunition, military vehicles and equipment, paramilitary equipment, and spare parts for the aforementioned, and technical advice, assistance, or training related to military activities;
 - (f) Raw materials and components that can be used to manufacture improvised explosive devices or unconventional weapons, including but not limited to chemical components, detonating cord, or poisons; and
 - (g) any other assets.

Ownership or Control of the Assets subject to Freezing and Prohibition of Dealing Obligations

18. Targeted financial sanctions extend to, not only assets that are directly owned by designated persons, groups or entities, but all assets that, either directly or indirectly, are owned or controlled by them or by persons acting on their behalf, and also includes any funds or benefits arising from this property.

19. The freezing obligation also applies to companies that are directly or indirectly controlled but not formally owned by a designated person. The freezing obligations also apply where ownership is maintained indirectly via a complex or opaque ownership structure, aimed at concealing the true ownership of the company. Where such a company produces benefits in the form of dividends, the relevant portion of such a benefit must also be frozen.

20. In cases where the funds and assets are jointly owned, held or controlled by a designated person or entity and a person who has not been designated are subject to the freezing obligation, and the interest owned or controlled by either party cannot be segregated, the entire funds and assets must be frozen.

21. (1) The following criteria may be taken into account when determining the controlling interest of the designated person or entity -

- (a) having the right or exercising the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity;
- (b) having appointed solely as a result of the exercise of one's voting rights a majority of the members of the administrative, management or supervisory bodies of a legal person or entity who have held office during the present and previous financial year;
- (c) controlling alone, pursuant to an agreement with other shareholders in or members of a legal person or entity, a majority of shareholders' or members' voting rights in that legal person or entity;
- (d) having the right to exercise a dominant influence over a legal person or entity, pursuant to an agreement entered into with that legal person or entity, or to a provision in its articles of incorporation, where the law governing that legal person or entity permits its being subject to such agreement or provision;
- (e) having the power to exercise the right to exercise a dominant influence referred to in the point above, without being the holder of that right (including by means of a front company).

(2) The criteria described in guideline 21 is intended to be indicative of the factors leading to control being established and should not be seen as exhaustive.

(3) The freezing obligation also extends to any funds owned, held or controlled by any person who acts on behalf or at the direction of or is owned or controlled directly or indirectly by a designated person, group or entity.

(4) The freezing obligation requires that no funds or other assets are

made available for the benefit of a designated person or entity, whether directly or indirectly, for so long as the party remains subject to the sanctions measures.

Reporting

22. (1) An Accountable Institutions which has frozen the funds or other assets in terms of the provisions of the Money Laundering and Proceeds of Crime Act, 2008 and Money Laundering and Proceeds of Crime Regulations, 2019 shall report the freezing within 2 business days from taking any freezing measure or attempted transactions to the sector supervisor authority and the Financial Intelligence Unit.

23. (2) Any individual or entity, other than the Accountable Institution, shall make a notification referred to in paragraph (1) within 2 business days from taking any freezing measure or attempted transactions to the Anti-Terrorism Committee.

Access to Frozen Assets and Other Assets

24. Subject to the provisions of UN Security Council Resolutions and the Money Laundering and Proceeds of Crime Regulations, 2019, the Minister may grant exemptions in respect of the access to the frozen assets and other assets upon request where it is -

- (a) necessary for basic expenses. Such expenses include payments for foodstuffs, rent or mortgage, medicines and medical treatment, taxes, insurance premiums, and public utility charges;
- (b) intended exclusively for the payment of reasonable professional fees or reimbursement of incurred expenses associated with the provision of legal services; and
- (c) intended exclusively for payment of fees or service charges for routine holding or maintenance of frozen funds or economic resources.

Request to Access Frozen Funds and Other Assets

25. (1) A request to have access to the frozen funds and other assets

shall be submitted to the Committee established in terms of Regulation 26 of the Money Laundering and Proceeds of Crime Regulations, 2019 and the request must be addressed to -

The Principal Secretary Ministry of Finance
Finance House
P O BOX 1387
MASERU 100

TEL: +266 223 11101/316227

FAX: +266 22310157

(2) The request referred to in paragraph (1) shall provide all the necessary details which will enable the committee to reach an appropriate decision, including -

- (a) the full names of the applicant,
- (b) the Accountable Institution where the funds or other assets are held,
- (c) the full description of the funds or other assets which are the subject of the request,
- (d) the connection between the funds or other assets and the applicant,
- (e) the justification for a request to access frozen funds or other assets, and
- (f) any other information that may be requested by the Committee.

(3) The Committee, having considered the request, shall advise the Minister whether to approve or dismiss the request made in terms of paragraph (1) and (2).

Interest or Other Earnings relating to Frozen Funds and Other Assets

26. (1) An Accountable Institutions may credit frozen accounts with in-

terest or other earnings on those accounts or with payments due under contracts, agreements or obligations, provided that any additions to such accounts shall also be frozen.

(2) Accountable Institutions shall inform the Sector Supervisory Authority and the Financial Intelligence Unit about a transactions made in terms of paragraph (1) without delay after the frozen account has been credited.

Procedure to Cancel or Lift the Freezing Measures

27. Where a person or entity has been removed from the designation list and is not subjected to the sanctions and measures in terms of Regulation 33 of the Money Laundering and Proceeds of Crime Regulations, 2019, the Accountable Institutions, upon receipt of the communication from the Minister, shall unfreeze the funds or other assets.

Liability

28. A person shall be exempted from criminal or civil liability if -

- (a) a freezing measure is carried out in good faith and for the purpose of complying with the provisions of the Money Laundering and Proceeds of Crime Act, 2008, Money Laundering and Proceeds of Crime Regulations, 2019 or UN Security Council Resolutions; and
- (b) the freezing measures were taken based on the belief that assets are targeted assets, even if it later turns out that the frozen funds are in fact not funds that are targeted under the relevant sanctions regime.

Sanctions

29. (1) Any person who violates of the provisions of Money Laundering and Proceeds of Crime Act, 2008 and Money Laundering and Proceeds of Crime Regulations, 2019 shall be guilty of an offence, and on conviction, liable to a fine or a term of imprisonment as contained in Money Laundering and Proceeds of Crime Act, 2008 and Money Laundering and Proceeds of Crime Regulations 2019.

(2) Notwithstanding paragraph (1), the sector supervisory authority may also impose appropriate administrative sanctions for any breach of obligations by an Accountable Institution.

30. The Directors, managers, secretaries or other similar officers of body corporate or legal entity found guilty of an offence under the provisions of the Money Laundering and Proceeds of Crime Act, 2008 and Money Laundering and Proceeds of Crime Regulations, 2019, shall be guilty of an offence unless it is proven that the offence was committed without their knowledge and that he exercised due diligence to prevent the commission of the offence.

DATED:

JOTHAME PHAKISI
ACTING DIRECTOR OF THE FINANCIAL INTELLIGENCE UNIT

NOTE

1. Act No. 4 of 2008 as amended
2. L.N. No. 29 of 2019