

No. S 31

ANTI-TERRORISM ORDER, 2011
(S 45/2011)

ANTI-TERRORISM (TERRORIST FINANCING) REGULATIONS, 2013

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ANTI-TERRORISM ORDER, 2011
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In exercise of the power conferred by section 70 of the Anti-Terrorism Order, 2011, the Minister of Energy in the Office of the Prime Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

PART I

PRELIMINARY

Citation and commencement.

1. These Regulations may be cited as the Anti-Terrorism (Terrorist Financing) Regulations, 2013 and shall commence on the same date as the Anti-Terrorism (Amendment) (No. 2) Order, 2012.

Interpretation.

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

“competent authority” means the authority determined by the Government, to perform the duty referred to, and for the purposes of, regulations 12(1) and 14(a);

“designation” means a designation made by the Minister under regulation 6(1) or 7(1), as the case may be;

“financial services” means any service of a financial nature and includes —

(a) insurance-related services consisting of —

- (i) direct life assurance;
- (ii) direct insurance other than life assurance;
- (iii) reinsurance and retrocession;
- (iv) insurance intermediation, such as brokerage and agency;
- (v) services auxiliary to insurance such as consultancy, actuarial, risk assessment and claim settlement services;

- (b) banking and other financial services consisting of —
- (i) accepting deposits and other repayable funds;
 - (ii) lending including consumer credit, mortgage credit, factoring and financing of commercial transactions;
 - (iii) financial leasing;
 - (iv) payment and money transmission services including credit, charge and debit cards, travellers' cheques and bankers' drafts;
 - (v) providing guarantees or commitments;
 - (vi) financial trading;
 - (vii) participating in issues of any kind of securities including underwriting and placement as an agent, whether publicly or privately, and providing services related to such issues;
 - (viii) money brokering;
 - (ix) asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
 - (x) settlement and clearing services for financial assets including securities, derivative products and other negotiable instruments;
 - (xi) providing or transferring financial information, and financial data processing or related software (but only by suppliers of other financial services);
 - (xii) providing advisory and other auxiliary financial services in respect of any activity listed in sub-paragraphs (i) to (xi) including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy;

“financial trading” means trading for own account or for account of customers, whether on an investment exchange, in an over-the-counter market or otherwise, in —

(a) money market instruments including cheques, bills and certificates of deposit;

(b) foreign exchange;

(c) derivative products including futures and options;

(d) exchange rate and interest rate instruments including products such as swaps and forward rate agreements;

(e) transferable securities;

(f) other negotiable instruments and financial assets including bullion;

“freeze” means to prohibit the transfer, conversion, disposition or movement of property and includes the prevention of the use, alteration, movement, transfer, selling, hiring, mortgaging and access;

“freezable property” means property that is owned or controlled by a designated person;

“frozen account” means an account with a relevant institution which is held or controlled, directly or indirectly, by a designated person;

“List” means the Al-Qaida Sanctions List or the 1988 Sanctions List, as the case may be;

“Resolution 1452” means Resolution 1452 (2002) of the United Nations Security Council adopted on 20th December 2002;

“Resolution 1730” means Resolution 1730 (2006) of the United Nations Security Council adopted on 19th December 2006;

“Resolution 1735” means Resolution 1735 (2006) of the United Nations Security Council adopted on 22nd December 2006;

“Resolution 1904” means Resolution 1904 (2009) of the United Nations Security Council adopted on 17th December 2009;

“United Nations Security Council Sanctions Committee” means the Al-Qaida Sanctions Committee established by Resolution 1267 and Resolution 1989 or the 1988 Sanctions Committee established by Resolution 1988, as the case may be.

PART II

OFFENCES

Provision and collection of property for use by designated persons.

3. No person in Brunei Darussalam and no citizen of Brunei Darussalam outside Brunei Darussalam shall knowingly provide or collect by any means,

directly or indirectly, property with the intention that the property be used, or in the knowledge that the property be used, by a designated person.

Dealings etc. with designated persons.

4. No person in Brunei Darussalam and no citizen of Brunei Darussalam outside Brunei Darussalam shall knowingly —

(a) deal, directly or indirectly, in any property of a designated person, including funds derived or generated from property owned or controlled, directly or indirectly, by that person;

(b) enter into or facilitate, directly or indirectly, any transaction related to a dealing referred to in paragraph *(a)*;

(c) provide any financial service or other related service in respect of the property referred to in paragraph *(a)*; or

(d) make any property or any financial service or other related service available, directly or indirectly, for the benefit of a designated person.

Causing, assistance in and promotion of prohibited activities.

5. No person in Brunei Darussalam and no citizen of Brunei Darussalam outside Brunei Darussalam shall knowingly do anything that causes, assists or promotes, or is intended to cause, assist or promote, any of the offence provided under regulation 3 or 4 unless the person has been issued with a certificate under regulation 18(1).

PART III

DESIGNATION

Designation pursuant to Resolution 1373.

6. (1) The Minister may, by an order, designate any person as a person mentioned in paragraph 1(c) of Resolution 1373, if he is satisfied that the person fulfils the requirements provided under that paragraph.

(2) Any person may be designated under sub-regulation (1) whether or not —

(a) the person;

(b) the property owned or controlled, directly or indirectly, by the person; or

(c) the property derived or generated from any property of the kind referred to in paragraph *(b)*,

is in Brunei Darussalam.

Designation pursuant to application made to Minister.

7. (1) The Minister may, by an order, designate any person, other than those who have been designated under regulation 6(1) or declared by the Minister under section 65, upon receiving an application to do so, if he is satisfied that the application is supported by reasonable grounds or a reasonable basis to suspect or believe that such person is –

(a) a terrorist;

(b) a terrorist entity; or

(c) a person who finances terrorism.

(2) Where the Minister agrees to designate such person, the Authority shall cause to be published a notice available to the public on the internet and any newspaper distributed in Brunei Darussalam to ensure that the property of the designated person is frozen without delay.

(3) For the purposes of sub-regulation (2), “without delay” means within a matter of hours of a designation by the relevant United Nations Security Council Sanctions Committee or upon having reasonable grounds, or a reasonable basis, to suspect or believe that a person is a terrorist, a terrorist entity or a person who finances terrorism, as the case may be.

Duration of designation.

8. (1) A designation expires at the end of the period of 3 years from the date on which it takes effect, unless it is earlier renewed by an order of the Minister under sub-regulation (2) or otherwise varied or revoked by the Minister under sub-regulation (3).

(2) The Minister may, by order, renew a designation for a further period of 3 years if the requirements provided in regulation 6(1) or 7(1), as the case may be, continue to be met.

(3) The Minister may vary or revoke a designation at any time.

(4) An application may be made to the Minister to revoke an order made in respect of a person designated under regulation 6(1) or 7(1) by –

(a) that person, or any member of that class of person; or

(b) any other person affected by the designation.

Notice of designation by Minister.

9. (1) Where the Minister designates a person under regulation 6(1) or 7(1) or renews such designation, the Authority shall —

(a) immediately give written notice of the designation to the designated person; and

(b) take such necessary steps to publicise the designation.

(2) Where a designation expires, the Authority shall —

(a) immediately give written notice of that fact to the designated person; and

(b) take reasonable steps to bring that fact to the attention of any other persons informed of the designation.

(3) Where a designation is varied or revoked, the Authority shall —

(a) give written notice of the variation or revocation to the designated person; and

(b) take reasonable steps to bring the variation or revocation to the attention of any other persons informed of the designation.

(4) No designation is invalid merely for the following reasons —

(a) the person concerned was not, prior to the making of the designation, given notice that it may be made, or a chance to comment on whether it should be made; or

(b) the making of the designation has not been notified or notice of the making of the designation has not been given, in the manner or form required by these Regulations.

Application by designated person to revoke designation.

10. (1) An application may be made by a designated person to the Minister to revoke a designation made under regulation 6(1) or 7(1).

(2) The Minister may form a committee, consisting of members appointed by the Minister as he thinks fit, to hear and consider an application made under sub-regulation (1).

(3) The Minister shall, of his own accord or upon the recommendation of the committee, after giving an applicant under sub-regulation (1) and any interested parties a reasonable opportunity to be heard, make a decision to retain or revoke the designation.

(4) The Minister or the committee, as the case may be, may receive into evidence anything that, in its opinion, is reliable and appropriate, even if it would not otherwise be admissible under the laws of Brunei Darussalam, and may make a decision based on that evidence.

(5) Nothing in these Regulations prevents a designated person from making a further application under sub-regulation (1) to revoke a designation in the event that his earlier application is unsuccessful:

Provided that there has been a material change in circumstances.

Inclusion of name in List.

11. (1) An application to include the name of any person in the List may be submitted by the Government to the relevant United Nations Security Council Sanctions Committee if the person —

(a) participates, by any means, in the financing or support of acts or activities of Al-Qaida and other persons associated with it; or

(b) participates, by any means, in the financing or support of acts or activities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan and other persons associated with it.

(2) A detailed statement of case shall accompany any proposal of names to the relevant United Nations Security Council Sanctions Committee for inclusion to the List.

(3) The application shall comply with the procedure laid out in Resolution 1988 and Resolution 1989 and any subsequent or successor resolutions.

Notice of name included in List.

12. (1) Where a person is designated and his name has been included in the List and notice is received by the competent authority that —

(a) in the case of an individual, the individual is a citizen of Brunei Darussalam or a permanent resident; or

(b) in the case of any other person, the person is believed to be in Brunei Darussalam,

the competent authority shall inform the Minister and the Authority immediately of the designation.

(2) The Authority shall take such necessary steps to notify immediately the designated person of the designation including notice of the following —

(a) a copy of a publicly releasable portion of the statement of case;

(b) any information on reasons for including the name of a designated person as may be available on the relevant United Nations Security Council Sanctions Committee's website;

(c) a description of the effects of designation as provided in the relevant resolutions;

(d) the relevant United Nations Security Council Sanctions Committee's procedures for considering an application referred to in sub-regulation (1) to remove any name from the List; and

(e) the provisions of Resolution 1452 as amended by Resolution 1735 regarding available exemptions.

Removal of name from List.

13. (1) Where any person designated and whose name is included in the List, the name may be removed from such List, by making an application to the relevant United Nations Security Council Sanctions Committee.

(2) Any application to remove any name from the List shall be submitted by, or on behalf of —

(a) in the case of a name in the Al-Qaida Sanctions List —

(i) the person whose name is included in the Al-Qaida Sanctions List; or

(ii) the legal representative or estate of such person, to the Office of the Ombudsperson pursuant to Resolution 1904 (2006), Resolution 1989 (2011) and any subsequent or successor resolutions;

(b) in the case of a name in the 1988 Sanctions List —

(i) the person whose name is included in the 1988 Sanctions List; or

- (ii) the legal representative or estate of such person through the Focal Point mechanism established by Resolution 1730 (2006) pursuant to Resolution 1988 (2011) and any subsequent or successor resolutions.

(3) The Government may submit an application to remove the name of any person from the List to the relevant United Nations Security Council Sanctions Committee, on behalf of a designated person whose name is included in the List, in accordance with the Guidelines of the relevant United Nations Security Council Sanctions Committee, if the designated person is a citizen of Brunei Darussalam.

(4) An application submitted by the Government under sub-regulation (3) shall be made with the approval of the Minister.

Notice of removal of name from List.

14. Where the name of any person referred to in regulation 12(1)(a) or (b) is removed from the List –

(a) the competent authority shall inform the Minister and the Authority of the removal;

(b) the Authority shall immediately take such necessary steps to notify the concerned person of the removal as soon as practicable.

Effect of removal of name from List.

15. Wherever –

(a) the relevant United Nations Security Council Sanctions Committee removes a name of any person from the List; or

(b) a designation is revoked by the Minister,

any property that has been frozen solely as a result of the inclusion of the name to the List shall cease to be subject to a freeze of property.

Consolidated list of designated persons.

16. (1) The Authority shall maintain a document listing out the names of designated persons.

(2) The Authority shall ensure that an electronic version of the document is made available to the public on the internet.

PART IV

AUTHORISED DEALINGS

Interpretation of this Part.

17. (1) In this Part —

“basic expense dealing” means a dealing constituted by —

(a) any payment to —

(i) a designated person;

(ii) a person acting on behalf of, or at the direction of, a designated person; or

(iii) an entity owned or controlled by a designated person; or

(b) a use or dealing with a freezable property,

if it is necessary for basic expenses including the following —

(A) foodstuffs;

(B) rent or mortgage;

(C) medicines or medical treatment;

(D) taxes;

(E) insurance premiums;

(F) public utility charges;

(G) reasonable professional fees;

(H) reimbursement of expenses associated with the provision of legal services;

(I) fees or service charges that are in accordance with national laws for the routine holding or maintenance of frozen assets;

“contractual dealing” means a dealing constituted by —

(a) any payment to —

- (i) a designated person;
- (ii) a person acting on behalf of, or at the direction of, a designated person; or
- (iii) an entity owned or controlled by a designated person; or

(b) a use or dealing with a freezable property,

if it is a payment —

- (A) to apply interest or other earnings due on accounts holding freezable property; or
- (B) required under contracts, agreements or obligations made before the date on which those accounts became accounts holding freezable property;

“extraordinary expense dealing” means dealing constituted by —

(a) any payment to —

- (i) a designated person;
- (ii) a person acting on behalf of, or at the direction of a designated person; or
- (iii) an entity owned or controlled by a designated person; or

(b) a use or dealing with a freezable property,

if it is necessary for extraordinary expenses.

(2) In the case of contractual dealings, any property owned or controlled in part or in full by a designated person that continues to produce benefit shall be frozen. Payments may be credited in favour of designated persons to their frozen accounts, so long as the additional amounts are subjected to a freeze.

Release of property of designated persons.

18. (1) The Authority may, on application, grant a person a certificate authorising —

- (a) the property to be made available to a designated person; or
- (b) the use of, or dealing with, freezable property.

(2) For the purposes of sub-regulation (1), an application shall be for a basic expense dealing or an extraordinary expense dealing.

(3) The application shall specify the kind of dealing, as mentioned in sub-regulation (2), for which it is made.

(4) If the application is made for a basic expense dealing by a designated person, whose name is in the List, the Authority, through the Government, shall –

(a) notify the relevant United Nations Security Council Sanctions Committee of the application; and

(b) grant a certificate referred to in sub-regulation (1) –

(i) after 3 working days have passed since the notice was given; and

(ii) the relevant United Nations Security Council Sanctions Committee has not advised against granting a certificate referred to in sub-regulation (1) to the applicant.

(5) If the application is made by a designated person, whose name is in the List, for an extraordinary expense dealing, the Authority, through the Government –

(a) shall notify the relevant United Nations Security Council Sanctions Committee of the application; and

(b) may grant a certificate referred to in sub-regulation (1) after the approval of the relevant United Nations Security Council Sanctions Committee is received.

(6) A certificate referred to in sub-regulation (1) is subject to any conditions as may be specified by the Authority in the certificate.

(7) When the Authority grants a certificate referred to in sub-regulation (1) to any person pursuant to sub-regulation (4) or (5), the Authority shall notify the Minister in writing of the granting of such certificate.

Request to Authority for assistance.

19. (1) A financial institution, designated non-financial business and profession or any other person who holds property that is suspected to be, or may be, freezable property may make an application to request the Authority through the Financial Intelligence Unit to seek assistance to determine whether or not the asset is owned or controlled by a designated person.

(2) The application shall be accompanied by details of the property, and as much information about the property (including information about the owner and controller of the property) as is known to the person making the request.

(3) The Authority shall use its best endeavours to assist any person who has made an application under sub-regulation (1).

(4) As soon as practicable after receiving an application under sub-regulation (1), the Authority shall respond in writing.

(5) The response shall state whether the Authority considers any one or more of the following —

(a) it is likely that the property is owned or controlled by a designated person;

(b) it is unlikely that the property is owned or controlled by a designated person; or

(c) it is unknown whether the property is owned or controlled by a designated person.

(6) In coming to the decision in sub-regulation (5), the Royal Brunei Police Force and the Internal Security Department shall render such assistance upon request by the Authority.

PART V

GENERAL

Reporting obligations of financial institutions and designated non-financial businesses and professions.

20. (1) Any financial institution or designated non-financial business and profession shall inform the Authority as soon as practicable if —

(a) it knows, or has reasonable cause to suspect, that a person —

(i) is a designated person;

(ii) has dealt or is dealing with property owned, held or controlled by a designated person; or

(iii) made or is making property or financial services available (directly or indirectly) to a designated person or for the benefit of a designated person;

(b) the information or other matter on which the knowledge or suspicion is based came to it in the course of carrying on its business.

(2) Where any financial institution or designated non-financial business and profession informs the Authority under sub-regulation (1), it shall state —

(a) the property in question;

(b) the information or other matter on which the knowledge or suspicion is based;

(c) any information it holds about the person by which the person can be identified;

(d) as much information about the property (including information about the owner and controller of the property) as is known;

(e) the nature and amount or quantity of any fund or property held by it for the customer at the time when it first had the knowledge or suspicion; and

(f) the reasons for the suspicion.

***Bona fide* third parties.**

21. (1) The provisions of these Regulations shall apply without prejudice to the rights of *bona fide* third parties.

(2) Upon the designation of a person under regulation 6(1) or 7(1), the Authority shall cause to be published a notice available to the public on the internet and any newspaper distributed in Brunei Darussalam calling upon any third party who claims to have any interest in any property belonging to or in the possession of the designated person to show cause as to why the property shall not be frozen.

(3) A third party's lack of good faith may be inferred by the Authority from the objective circumstances of the case.

(4) The Authority shall release the property to the claimant when it is satisfied that —

(a) the claimant has a legitimate legal interest in the property;

(b) no participation, collusion or involvement with respect to the terrorist act or terrorism financing act can be imputed to the claimant;

(c) the claimant lacked knowledge and was not intentionally ignorant of the illegal use of the property, or if he had knowledge, did not freely consent to its illegal use;

(d) the claimant did not acquire any rights in the property from a person proceeded against under circumstances that give rise to a reasonable inference that any right was transferred for the purpose of avoiding the eventual subsequent freezing of the property; and

(e) the claimant did all that could reasonably be expected to prevent the illegal use of the property.

(5) The Authority shall also release the property to the claimant when it is satisfied that —

(a) the claimant has the same or similar name as designated persons; and

(b) the claimant has been confirmed not to be the designated person on the List.

(6) Where a designated person owns or controls property in respect of which persons whose name is not included also have a segregable interest —

(a) the freeze shall be directed only against that share of the property owned or controlled by the designated person; and

(b) the Authority shall ensure where possible that the designated person is not able to exercise his or its interest in the property, directly or indirectly, including by issuing instructions regarding any benefit, financial or otherwise, that may accrue from the property.

Power to request information.

22. (1) The Authority may request a designated person to provide such information and documents concerning —

(a) property owned, held or controlled by or on behalf of the designated person; or

(b) any disposal of such property.

(2) The Authority may request a designated person or any other person to provide such information as the Authority may reasonably require about any property held and expenditure required —

(a) by or on behalf of the designated person; or

(b) for the benefit of the designated person.

(3) Where the Authority requests that documents be produced, it may —

(a) take copies of or extracts from any document so produced;

(b) request any person producing a document to give an explanation of it; and

(c) where that person is a body corporate, partnership or unincorporated body other than a partnership, request any person who is —

(i) in the case of a partnership, a present or former partner or employee of the partnership;

(ii) in any other case, a present or former officer or employee of the body concerned,

to give such an explanation.

(4) Where the Authority request a designated person or any other person to produce documents, that person shall —

(a) take reasonable steps to obtain the documents (if not already in the person's possession or control);

(b) keep the documents under the person's possession or control (except for the purpose of providing them to the Authority or as the Authority may otherwise allow).

(5) The power in sub-regulation (1) or (2) is exercisable only where the Authority believes that it is necessary for the purpose of monitoring compliance with or detecting any contravention of these Regulations.

(6) A request shall include a continuing obligation to keep the Authority informed as circumstances change, or on such regular basis as the Authority may specify.

(7) A person commits an offence against this regulation who —

(a) without reasonable excuse refuses or fails within the time and in the manner specified (or, if no time has been specified, within a reasonable time) to comply with any request made under this regulation;

(b) knowingly or recklessly gives any information, or produces any document, which is false in a material particular in response to such a request;

(c) with intent to contravene the provisions of these Regulations, destroys, mutilates, defaces, conceals or removes any document; or

(d) otherwise intentionally obstructs the Authority in the exercise of their powers under these Regulations.

(8) Where a person commits an offence against this regulation, that person is required to comply with the request within such period as may be specified.

Disclosure of information.

23. The Authority may disclose any information obtained by them in exercise of their powers under these Regulations (including any document so obtained and any copy or extract made of any document so obtained) to —

(a) the Commissioner of Police;

(b) the Director of Internal Security;

(c) any such person as the Authority deems necessary.

Made this 21st. day of Jamadilawal, Hijriah 1434 corresponding to the 2nd. day of April, 2013.

PEHIN DATU SINGAMANTERI COLONEL (R)
DATO SERI PADUKA AWANG HAJI MOHAMMAD YASMIN
BIN HAJI UMAR
Minister of Energy in the Office of the Prime Minister,
Brunei Darussalam.