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The Gazette of the Democratic Socialist Republic of Sri Lanka

EXTRAORDINARY

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PART I : SECTION (I) — GENERAL

Government Notifications

L. D. B/2001.

THE UNITED NATIONS ACT, No. 45 OF 1968

REGULATIONS made by the Minister of External Affairs, under Section 2 of the United Nations Act, No. 45 of 1968

Prof. G. L. PEIRIS,
Minister of External Affairs.

Colombo,
13th May, 2012.

Regulations

1. These regulations shall be cited as the United Nations Regulation No. 1 of 2012

2. United Nations Security Council Resolution 1373 (2001), which set out wide-ranging strategies to combat terrorism and in particular the fight against the financing of terrorism, imposes upon the Member States of the United Nations a series of obligations aimed at the suppression of terrorism. The Security Council of the United Nations acting Under Chapter VII of the Charter of the United Nation unanimously adopted this Resolution on September 28, 2001. The objective of these regulations is to facilitate the implementation more specifically of paragraphs (c) and (d) of Article I of this Resolution within Sri Lanka and thereby a means to comply with the aforesaid obligations.

3. There shall for the purpose of these regulations, be a Competent Authority who shall be appointed by the Minister in consultation with the Minister to whom the subject of Defence has been assigned.

4. (1) The Minister, on the recommendation of the Competent Authority shall from time to time, for the purposes of these regulations, either on his own initiative or upon the request of a foreign State, designate -

- (a) natural persons, whom the Competent Authority has reasonable grounds to believe commit or attempt to commit, participate in or facilitate the commission of, terrorist acts within the meaning of these regulations ;
- (b) legal persons, groups or entities, which the Competent Authority has reasonable grounds to believe commit or attempt to commit or participate in or facilitate the commission of, terrorist acts within the meaning of these regulations ;
- (c) legal persons, groups or entities which are owned or controlled directly or indirectly by one or more natural or legal persons, group or entities referred to in (a) and (b) above ; and

(d) natural and legal persons, groups or entities acting on behalf of, or on the direction of, one or more natural or legal persons, groups or entities referred to in (a) and (b) above.

(2) Upon the designation of natural persons, legal persons, groups or entities, the Competent Authority shall compile a List of all Designated Persons (hereinafter referred to as the "List"). The Competent Authority shall cause the List to be published forthwith in the *Gazette*. The List shall come onto operation on the date of the publication of the same in the *Gazette*.

(3) The Competent Authority shall review and amend the List compiled in terms of paragraph (2) in accordance with the provisions hereinafter set out.

(4) A designation by the Minister shall be based upon precise information or material from any relevant source in respect of the persons, groups and entities concerned, irrespective of the existence of a criminal investigation or proceedings pending against such persons, groups and entities concerned.

(5) The Competent Authority shall take all possible steps to ensure that names of natural or legal persons, group or entities which are designated by the Minister, have sufficient particulars appended to permit effective and accurate identification of such natural or legal persons, groups or entities.

(6) The Competent Authority shall cause the List Gazetted in terms of paragraph (2) to be reviewed at regular intervals and at least once every year to ensure that there are grounds for retaining such names on the list.

(7) Where there is a need to include or remove any name or names from the List, it shall be done by way of an amendment to the List which has been published in the *Gazette*, every such amendment shall be published in the *Gazette*.

(8) No person shall at any time prior to the designation provide notice to the person, group or entity that such person, group or entity is being considered for or is being designated.

5. (1) Upon designation in terms of regulation 4 of these regulations, the Competent Authority shall forthwith freeze by an Order made in that behalf all funds, other financial assets and economic resources belonging to or owned or held by a natural or legal person, group or entity. The funds, other financial assets and economic resources shall remain frozen as long as such person, group or entity is designated.

(2) (a) No person shall made available any funds, other financial assets and economic resources and financial or other related services directly or indirectly to, or for the benefit of, a natural or legal person, group or entity designated in terms of regulation 4 of these regulations.

(b) No person shall at any time prior to taking such steps as are necessary to make funds, other financial assets and economic resources of designated person, group or entity unavailable or declining to provide financial or other related services, notify the designated person, group or entity that his or its funds, financial assets, economic resources and other related services are being made unavailable.

(3) No person shall at any stage prior to the designation or to the making of an Order of Freezing in terms of paragraph (1) notify or permit or cause notice to be given to the person, group or entity that an order of freezing may be imposed on the funds, other financial assets and economic resources of such person, group or entity whereby access to such funds, other financial assets and economic resources would thereupon be prohibited.

Provided however that the Competent Authority shall cause a notice to be given to such person, group or entity once such funds, other financial assets and economic resources have been frozen.

(4) The effect of an order of freezing shall be the prohibition of any move, transfer, alteration, use of or dealing with funds in anyway that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the funds to be used or dealt with, including portfolio management.

Provided that such prohibition shall not apply to the crediting of a frozen account with interest or other earnings due on such account, or payments due under contracts, agreements or obligations that were concluded or arose before the account became a frozen account of funds transferred by a third party to the account, as long as the funds credited are also frozen.

(6) (1) The Competent Authority may in accordance with the provisions of these regulations, grant a specific authorization, under such conditions as he deems appropriate in order to prevent the financing of terrorist act, to permit.

- (a) the use of frozen funds or the provision of other assets for essential human needs of a natural person included in the List referred to in paragraph (2) of regulation 4 or a member of his family, including in particular payments for foodstuffs, medicines, the rent or mortgage for the family residence and fees and charges concerning medical treatment of members of that family.
- (b) payments from frozen accounts or the provision of other assets for the following purposes
 - (i) payment of taxes, compulsory insurance premiums and fees for public utility service such as gas, water, electricity and telecommunications.
 - (ii) payment of charges due to a financial institutions for the maintenance of accounts.
 - (iii) payment for legal fees or for urgent expenses.

(2) A request for an authorization to access funds that is subject to an order of freezing shall be made in writing to the Competent Authority

(3) The Competent Authority shall, upon receipt of a request for an authorization notify in writing the person making the request within thirty days of the receipt of such request, whether or not the Competent Authority intends to grant or reject the request for an authorization. Where the request is granted, the Competent Authority shall set out the conditions subject to which the authorization is so granted being conditions which the Competent Authority considers necessary in order to prevent the financing of terrorist acts.

(4) The Competent Authority may depending on the circumstances in each case, vary or revoke an authorization at any time.

7. (1) Where the Minister has designated any natural or legal person, group or entity and a List of such natural or legal person, group or entity is published in the *Gazette*, the Competent Authority shall take all reasonable steps to notify such natural or legal person, group or entity in writing of such designation.

(2) The written notice shall contain information relating to the reasons for the designation of such natural or legal person, group or entity in terms of these regulations, delisting procedures and the procedures by which the natural or legal person, group or entity can challenge the designation.

(3) the written notice shall be forwarded -

- (a) in the case of a natural person, by posting it to the last known address of such person ; or
- (b) in the case of a legal person or entity, by posting it to its registered or principal office within Sri Lanka or lacking a registered or principal office to its last known address ; or
- (c) in the case of a group, by registered post, personal delivery or by whatever means possible ;

Provided that if the person, group or entity referred to in paragraph (1) is domiciled or located, as the case may be, outside Sri Lanka. The Competent Authority shall forward a copy of the written

notice to the Government of the State where the person, group or entity is domiciled or located and request that service be made at the first available opportunity, If the whereabouts of the person, group or entity referred to in paragraph (1) is unknown, the Competent Authority shall forward a copy of the written notice to the government of the State of which the natural person is a national or where the legal person or entity is registered or where the group is located, and request the government of that State to serve the notice at the first available opportunity.

8. (1) A person, a group or entity designated and included in the List may seek revocation of the designation and request removal from the list, by application in that behalf made to the Competent Authority, The application must be in writing and set forth the reasons in support of the submission.

(2) The Competent Authority shall recommend to the Minister the removal of the names of any person, group or entity designated from the List, The decision of the Minister shall be final.

(3) Any person, group or entity aggrieved by the Decision of the Minister, may apply to the High Court seeking to set aside the decision.

(4) Any person affected by the order of freezing or by the prohibition of making available any funds, other financial assets and economic resources or financial or other related services, may apply to the High Court for relief.

9. (1) Any person, shall as soon as practicable after the List referred to in paragraph (2) of regulation 4 is published in the *Gazette*.

(a) inform the Competent Authority or the Financial Intelligence Unit as the case may be, if he knows or suspects that an existing customer, or customer or other person with whom he has done business or other person known to him, is a designated person or is a person acting on behalf of a designated person ;

(b) provide the Competent Authority or the Financial Intelligence Unit as the case may be with information regarding :-

(i) the status of the funds, freezing actions and any other actions taken with respect to the funds ;

(ii) the nature and amount or quantity of any funds, other financial assets and economic resources held by the relevant institution for the designated person or transactions executed, or held by a person for the designated person ; and

(iii) any other information that would facilitate compliance with these regulations ;

(c) cooperate with the Competent Authority or the Financial Intelligence Unit as the case may be, in any verification of this information.

(2) Any information provided or received in accordance with this paragraph shall be used only for the purpose for which it was provided or received, Any information provided to the Competent Authority or the Financial Intelligence Unit in accordance with this paragraph shall not be treated as a breach of any restriction imposed by any written law or otherwise

10. The Competent Authority and the Financial Intelligence Unit may from time to time, exchange information which is within their knowledge, in relation to the commission of offences under these regulations and under the Prevention of Money Laundering Act, No. 5 of 2006 and the Convention on the Suppression of Terrorist financing Act, No. 25 of 2005, for the purpose of effectively discharging their functions in this connection.

11. (1) Any person who fails to comply with the requirements set put in regulation 9 of these regulations shall be guilty of an offence and shall on conviction by the High Court, be liable to imprisonment for a period not exceeding one year or to a fine or to both such fine and imprisonment.

(2) Any person who fails to comply with an order to freeze funds, other financial assets and economic resources, makes funds available or provides financial services, or who contravenes the prohibition in paragraph (4) of regulation 5 and paragraph (8) of regulation 4 shall be guilty of an offence and shall on conviction by the High Court, be liable to imprisonment for a period not exceeding two years or to a fine not exceeding rupees one million or to both such fine and imprisonment.

12. (1) The Competent Authority, Financial Intelligence Unit and the Minister shall refer any matter or information relevant to violation or possible violation of an obligation under these regulations to the appropriate law enforcement agencies and in the case of Institutions, also to their respective supervisory authorities for consideration whether or not the administrative sanctions ought to be imposed.

(2) The Competent Authority shall consult with law enforcement agencies, the Financial Intelligence Unit, supervisory authorities and other appropriate entities and develop a plan that shall be implemented for monitoring compliance and enforcing sanctions related to these regulations.

(3) The Competent Authority may issue directives for the implementation of practices and enforcement of obligations, under these regulations.

13. For the purpose of these regulations :

“controlling a legal person, group or entity” means any of the following

- (a) having the right to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person, group 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, group 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, group or entity, majority of shareholders' or members voting rights in that legal person, group or entity ;
- (d) having the right to exercise a dominant influence over a legal person, group or entity, pursuant to an agreement entered into with that legal person, group or entity, or to a provision in its Memorandum or Articles of Association, where the law governing that legal person, group or entity permits its being subject to such agreement or provisions ;
- (e) having the power to exercise the right to exercise a dominant influence referred to in paragraph (d), without being the holder of that right ;
- (f) having the right to use all or past of the assets of a legal person, group or entity ;
- (g) managing the business of a legal person, group or entity on a unified basis, while publishing consolidated accounts ;
- (h) sharing jointly and severally the financial liabilities of a legal person, group or entity, or guaranteeing them ; or
- (i) otherwise exercising control, including through unlawful means.

“Financial Intelligence Unit” means the Financial Intelligence Unit established under the financial Transactions Reporting Act, No. 6 of 2006

“financial services” means engaging in the activities within the meaning of the expression “finance business” as is defined in the financial Transactions Reporting Act, No. 6 of 2006 ;

“funds, other financial assets and economic resources” shall include assets of every kind, whether tangible or intangible, movable or immovable, however acquired and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers, cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit and includes-

- (i) all funds derived or generated from such funds, assets or economic resources ;
- (ii) indirectly owned funds, assets or economic resources ; and
- (iii) funds, assets or economic resources that are jointly owned or controlled ;

“High Court” means the High Court established under Article 154P of the Constitution, for the Western Province holden in Colombo ;

“Institution” shall have the same meaning as in the Financial Transactions Reporting Act, No. 6 of 2006 ;

“Minister” means the Minister to whom the subject to External Affairs has been assigned under Article 44 of the Constitution.

“owning a legal person, group or entity” means being in possession of fifty per centum or more of the proprietary rights of a legal person, group or entity, or having a majority interest therein ; or

“terrorist act” shall have the same meaning as in the Convention on the Suppression of Terrorist Financing Act, No. 25 of 2005.