

Part XIII

Sanctions

Implementing the United Nations Targeted Financial Sanctions under the Al-Qaida and 1988 Sanctions Regimes

Drafting note: These model provisions do not attempt to provide a single model for the implementation of the UN Al-Qaida and 1988 sanctions regimes. Instead they provide guidance on key requirements that UN Member States may wish to consider when designing their national framework for implementing the two UN sanctions regimes. They do not purport to override national authorities.

Background: These model provisions aim to assist UN Member States in designing their national framework for implementing the financial sanctions pursuant to the UN Al-Qaida sanctions regime under United Nations Security Council Resolutions (UNSCRs) 1267 (1999), 1989 (2011) and 2083 (2012) and the 1988 sanctions regime under UNSCRs 1988 (2011) and 2082 (2012).

The 1267 sanctions regime (as it was previously known) was established on 15 October 1999 by the United Nations Security Council (UNSC) with the adoption of UNSCR 1267 for the purpose of imposing sanctions measures on Taliban-controlled Afghanistan for its support of Usama bin Laden. The sanctions regime has been modified and strengthened by subsequent resolutions, including UNSCRs 1333 (2000), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008), 1904 (2009) and 1989 (2011). The table in Annex 1 sets out the major changes brought to the 1267 sanctions regime by the above-mentioned resolutions.

In June 2011, the Security Council, by way of UNSCRs 1988 (2011) and 1989 (2011), split the previous 1267 sanctions regime, concerning Al Qaida, Usama bin Laden, the Taliban and other individuals, groups, undertakings and entities associated with them, into two separate sanctions regimes, namely the Al-Qaida sanctions regime and the 1988 sanctions regime. Consequently, the previous Consolidated List was split into two lists, namely, the Al-Qaida Sanctions List and the 1988 Sanctions List.

Under UNSCR 1989 (2011) and its successor, UNSCR 2083 (2012), the Al-Qaida sanctions regime or 1267/1989 sanctions regime continues to monitor the implementation of the three sanctions measures (assets freeze, travel ban and arms embargo) imposed against Al-Qaida and other individuals, groups, undertakings and entities associated with Al-Qaida as part of the Security

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Council's action against terrorism. The list of such individuals, groups, undertakings and entities is now known as the Al-Qaida Sanctions List.

The Al-Qaida sanctions regime is overseen by the Al-Qaida Sanctions Committee, established pursuant to UNSCR 1267 (1999) and UNSCR 1989 (2011). The Al-Qaida Sanctions Committee is made up of the members of the Security Council.

Background: At the same time, UNSCR 1988 (2011) established the new 1988 sanctions regime, which continues to monitor the implementation of the three sanctions measures (assets freeze, travel ban and arms embargo) imposed against the Taliban, that is persons and entities designated as such prior to the adoption of UNSCR 1988 (2011), and those individuals, groups, undertakings and entities associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan. Accordingly, the names of such individuals, groups, undertakings and entities are now found in a separate list commonly referred to as the 1988 Sanctions List. UNSCR 1988 (2011) and its successor, UNSCR 2082 (2012), reiterate the need to ensure that the sanctions regime contributes effectively to ongoing efforts to combat the insurgency and support the government of Afghanistan's work to advance reconciliation in order to bring about peace, stability and security in Afghanistan.

The 1988 sanctions regime is overseen by the 1988 Sanctions Committee established pursuant to UNSCR 1988 (2011). The 1988 Sanctions Committee is made up of the members of the Security Council.

With respect to measures implementation, paragraphs 43 and 44 of UNSCR 2083 (2012) are worth noting. These paragraphs reiterate the importance of all states (including non-UN Member States) identifying, and where necessary introducing, 'adequate procedures' to fully implement all aspects of the three sanctions measures. The resolution does not specify that these measures should be enshrined in laws, regulations or other enforceable means. However, paragraph 44 of UNSCR 2083 (2012) 'takes note' of the need to have appropriate legal authorities and procedures to apply and enforce targeted financial sanctions that are not conditional upon the existence of criminal proceedings, and to apply an evidentiary standard of proof of 'reasonable grounds' or 'reasonable basis', as well as the ability to collect or solicit as much information as possible from all relevant sources.

The resolution further acknowledges that the FATF standards are useful for implementing the sanctions and as such strongly urges all UN Member States to implement the comprehensive international standards embodied in the FATF's revised 40 Recommendations on Combating Money Laundering and the Terrorism financing and Proliferation, particularly Recommendation 6 on targeted financial sanctions related to terrorism and terrorism financing.

Section 120 Definitions

1988 Sanctions Committee means the committee established pursuant to UNSCR 1988 (2011).

1988 Sanctions List means the UN Sanctions List established and maintained by or under the authority of the UNSC with respect to individuals, groups, undertakings and entities designated as or associated with the Taliban in constituting a threat to the peace, stability and security of Afghanistan.

Affected party means any party against whom a freezing order has been executed in [insert name of jurisdiction], claiming not to be the one against whom the sanction has been imposed.

Assets means funds and other financial assets or economic resources.

Al-Qaida Sanctions Committee means the Committee established pursuant to UNSCRs 1267 (1999) and 1989 (2011).

Al-Qaida Sanctions List means the UN Sanctions List established and maintained by or under the authority of the UNSC with respect to Al-Qaida and individuals, groups, undertakings and entities associated with Al-Qaida.

Delisted party means any individual, group, undertaking or entity whose name has been removed from the relevant UN Sanctions List by or under the authority of the UNSC.

Economic resources means assets of every kind, whether movable or immovable, tangible or intangible, actual or potential, that are not funds but potentially may be used to obtain funds, goods or services and includes:

- (a) land, buildings or other real estate;
- (b) equipment, including computers, computer software, tools and machinery;
- (c) office furniture, fittings and fixtures and other items of a fixed nature;
- (d) vessels, aircraft and motor vehicles;
- (e) inventories of goods;
- (f) cultural goods, works of art, precious stones, jewellery or gold;
- (g) commodities, including oil, minerals or timber;
- (h) arms and related material,
- (i) patents, trademarks, copyrights, trade names, franchises, goodwill and other forms of intellectual property; and
- (j) internet hosting or related services.

Drafting note: The above definition is set out in the Assets Freeze Explanation of Terms Paper (EOT) approved by the Al-Qaida Sanctions Committee, which applies equally to the 1988 sanctions regime. With respect to the freezing action, the UNSCRs refer to ‘funds and other financial assets or economic resources’. The interpretive note to FATF Recommendation 6, however, uses the term ‘funds or other assets’, which is defined in the glossary as follows:

Drafting note: ‘The term *funds or other assets* means any assets, including, but not limited to, financial assets, economic resources, 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 funds or other assets, including, but not limited to, bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets.’ While the above FATF definition refers to the term ‘economic resources’, no attempt is made by the FATF to define the term.

With respect to ‘internet hosting or related services’, refer to paragraph 5 of UNSCR 2082 (2012) and paragraph 4 of UNSCR 2083 (2012).

Extraordinary expenses means categories of expenses other than those falling under ordinary expenses.

Focal point means the focal point established under UNSCR 1730 (2006).

Freeze funds and other financial assets or economic resources includes preventing their use, alteration, movement, transfer or access, unless with the specific authorisation of the relevant Sanctions Committee.

Freeze of economic resources means preventing the use of economic resources to obtain funds, goods, or services in any way, including, but not limited to, by selling, hiring or mortgaging them.

Drafting note: The above definitions are set out in the EOT:

The term ‘freeze’ is also defined in the FATF glossary:-

‘For the purposes of Recommendations 6 and 7 on the implementation of targeted financial sanctions, the term freeze means to prohibit the transfer, conversion, disposition or movement of any funds or other assets that are owned or controlled by designated persons or entities on the basis of, and for the duration

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of the validity of, an action initiated by the UNSC or in accordance with applicable Security Council resolutions by a competent authority or a court ...’

‘... In all cases the frozen property, equipment, instrumentalities, funds or other assets remain the property of the natural or legal person(s) that held an interest in them at the time of the freezing and may continue to be administered by third parties, or through other arrangements established by such natural or legal person(s) prior to the initiation of an action under a freezing mechanism, or in accordance with other national provisions. As part of the implementation of a freeze, countries may decide to take control of the property, equipment, instrumentalities, or funds or other assets as a means to protect against flight.’

Funds and other financial assets include:

- (a) cash, cheques, claims on money, drafts, money orders, bearer instruments, and other payment instruments;
- (b) deposits with financial institutions or other entities and balances on accounts, including but not limited to (1) fixed or term deposit accounts, (2) balances on share trading accounts with banks, brokerage firms or other investment trading accounts;
- (c) debts and debt obligations, including trade debts, other accounts receivable, notes receivable and other claims of money on others;
- (d) equity and other financial interest in a sole trader or partnership;
- (e) publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
- (f) interest, dividends or other income on or value accruing from or generated by assets;
- (g) credit, right of set-off, guarantees, performance bonds or other financial commitments;
- (h) letters of credit, bills of lading, bills of sale; notes receivable and other documents evidencing an interest in funds or financial resources and any other instruments of export financing;
- (i) insurance and reinsurance.

Drafting note: The above definition is set out in the EOT.

Listing criteria means the criteria, as defined in the applicable UNSCR, that indicate that an individual, group, undertaking or entity is eligible for designation on a UN Sanctions List.

Drafting note: The listing criteria are set out in paragraphs 2, 3 and 5 of UNSCR 2083 (2012) and paragraphs 2, 3 and 4 of UNSCR 2082 (2012).

Listed party means any individual, group, undertaking or entity designated on a UN Sanctions List by or under the authority of the UNSC as being subject to UN sanctions.

Office of the Ombudsperson means the office created by UNSCR 1904 (2009) to review requests from listed parties seeking to be removed from the Al-Qaida Sanctions List.

Ordinary expenses includes funds and other financial assets or economic resources that are:

- (a) basic expenses, necessary for 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 and reimbursement of incurred expenses associated with the provision of legal services, or fees; or
- (c) intended exclusively for the payment of service charges for routine holding or maintenance of frozen funds or other financial assets or economic resources.

Party means any individual, group, undertaking or entity.

Property registries include land and other immovable property registries, motor vehicle registries, ship and aircraft registries, share registries and company registries.

Public sector agencies include national security agencies, national intelligence services, law enforcement bodies, FIU and regulatory authorities.

Regulatory authorities include the banking and non-banking financial services regulators, non-profit organisations regulator and the regulators or oversight bodies of DNFBPs.

Sanctions Committee means a subsidiary organ established by the UNSC for the performance of its functions and includes the Al-Qaida Sanctions Committee and the 1988 Sanctions Committee.

UN sanctions means enforcement measures, not involving the use of arms force, as may be adopted from time to time by the UNSC under Chapter VII of the UN Charter.

UN Sanctions List or Sanctions List means a list established and maintained by or under the authority of the UNSC comprising individuals, groups, undertakings or entities subject to UN sanctions; and includes the Al-Qaida Sanctions List and the 1988 Sanctions List.

Without delay means, ideally, within a matter of hours of a designation by the UNSC or its relevant Sanctions Committee (e.g. the 1267 Committee, the 1988 Committee, the 1718 Sanctions Committee or the 1737 Sanctions Committee) as defined in the FAFT glossary. The phrase ‘without delay’ should be interpreted in the context of the need to prevent the flight or dissipation of funds or other assets that are linked to terrorists, terrorist organisations or those who finance terrorism, and to the financing

of proliferation of weapons of mass destruction, and the need for global, concerted action to interdict and disrupt their flow swiftly.

Section 121 Establishment of the Competent Authority

The [insert name of the Competent Authority] shall be the Competent Authority.

The Competent Authority shall be responsible for the effective implementation of the UN designations and sanctions.

Section 122 Powers and Functions of the Competent Authority

The Competent Authority:

- (1) shall be responsible for the overall administration of UN sanctions measures;
- (2) shall, where appropriate and after consultation with relevant public sector agencies, propose names for designation by the relevant Sanctions Committee;
- (3) may in collaboration with public sector agencies develop such rules and guidance and disseminate other relevant information as may be necessary for the purposes of the effective implementation of the UN sanctions;
- (4) may enter into arrangements for proper co-ordination and co-operation with public sector agencies;
- (5) shall have the power to collect or solicit information from public sector agencies, property registries and any other person who is reasonably believed to have in his or her possession, custody or control the assets of any listed party.

Section 123 Dissemination of the United Nations Sanctions List

- (1) The Competent Authority shall by notice in the *Official Gazette* (or other official means of communication) publish, in a timely manner, the UN Sanctions Lists, including changes that may occur from time to time to the Sanctions Lists.
- (2) A notice in the *Official Gazette* (or other official means of communication) under subsection (1) shall contain an order by the Competent Authority for the freezing of the assets of listed parties in accordance with Section 126.

Section 124 Listing Proposals

- (1) The Competent Authority shall be responsible for identifying and proposing (through diplomatic channels) to the relevant Sanctions Committee names of parties that meet the listing criteria for designation on a UN Sanctions List.

Drafting note: The listing criteria are set out in paragraphs 2, 3 and 5 of UNSCR 2083 (2012) and paragraphs 2, 3 and 4 of UNSCR 2082 (2012).

- (2) For the purposes of subsection (1), the Competent Authority shall consult and seek such assistance from relevant public sector agencies as may be necessary to determine whether, on reasonable grounds, there is sufficient evidence to support the listing of a party on a UN Sanctions List.
- (3) Notwithstanding any other enactment, a public sector agency shall furnish to the Competent Authority all such information, including, where relevant, intelligence material, as may be required to assist the Competent Authority in making a determination under subsection (2).
- (4) Notwithstanding any other enactment, where at any time in the course of the exercise of its functions, any public sector agency receives or otherwise becomes aware of, any information relevant to the designation of a party on a UN Sanctions List or a listed party, the public sector agency shall forthwith pass on that information to the Competent Authority.
- (5) When proposing names to the relevant Sanctions Committee, the Competent Authority shall:
 - (a) follow the procedures, including using standard forms for listing, contained in or as may be adopted pursuant to any relevant UNSCR;
 - (b) to the extent possible, provide as much relevant information as possible on the proposed party, including sufficient identifying information and such other relevant information as may be required under any applicable UNSCR;
 - (c) specify if the relevant Sanctions Committee may not make known its status as a designating State.

Drafting note: Paragraphs 10 to 14 of UNSCR 2083 (2012) and paragraphs 12 to 14 of UNSCR 2082 (2012) set out the procedures that a designating State must follow when submitting a proposal for designation. The Committee Guidelines also contain additional procedures that must be followed. It is not intended to cover the procedures in detail in this document.

Paragraph (c) above, relates to paragraph 12 of UNSCR 2083 (2012) which reads as follows:

‘Decides that Member States proposing a new designation, as well as Member States that have proposed names for inclusion on the Al-Qaida Sanctions List before the adoption of this resolution, shall specify if the Committee or the Ombudsperson may not make known the Member State’s status as a designating State.’

- (6) For the purposes of making a determination under this Section, the Competent Authority may consult with such other States or UN entities as may be relevant.

Drafting note: This provision covers the provision of paragraph 18 of UNSCR 2082 (2012):

‘Strongly urges Member States, when considering the proposal of a new designation, to consult with the Government of Afghanistan on the designation prior to submission to the Committee, to ensure coordination with the Government of Afghanistan’s peace and reconciliation efforts, and encourages all Member States considering the proposal of a new designation to seek advice from UNAMA, where appropriate;’

- (7) Any information given under this Section may be given subject to conditions restricting the use and disclosure of the information imparted.

Drafting note: For the Al-Qaida sanctions regime, the provisions of paragraph 18 of UNSCR 2083 (2012), which apply to countries where the individual or entity is believed to be located and, in the case of individuals, the country of which the person is a national, provide as follows:

‘Reaffirms further the provisions in Paragraph 17 of UNSCR 1822 (2008) regarding the requirement that Member States take all possible measures, in accordance with their domestic laws and practices, to notify or inform in a timely manner the listed individual or entity of the designation and to include with this notification the narrative summary of reasons for listing, a description of the effects of designation, as provided in the relevant resolutions, the Committee’s procedures for considering delisting requests, including the possibility of submitting such a request to the Ombudsperson in accordance with paragraph 21 of UNSCR 1989 (2011) and Annex II of this resolution, and the provisions of UNSCR 1452 (2002) regarding available exemptions;’

Paragraph 17 of UNSCR 1822 (2008) reads: ‘Demands that Member States receiving notification as in paragraph 15 above take, in accordance with their domestic laws and practices, all possible measures to notify or inform in a timely manner the listed individual or entity of the designation and to include with this notification a copy of the publicly releasable portion of the statement of case, any information on reasons for listing available on the Committee’s website, a description of the effects of designation, as provided in the relevant resolutions, the Committee’s procedures for considering delisting requests, and the provisions of UNSCR 1452 (2002) regarding available exemptions;’

Paragraph 15 of UNSCR 1822 (2008) reads as follows: ‘Decides that the Secretariat shall, after publication but within one week after a name is added to the Consolidated List, notify the Permanent Mission of the country or countries

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where the individual or entity is believed to be located and, in the case of individuals; the country of which the person is a national (to the extent this information is known) in accordance with paragraph 10 of UNSCR 1735 (2006);’

Paragraph 10 of UNSCR 1735 (2006) reads as follows: ‘Decides that the Secretariat shall, after publication but within two weeks after a name is added to the Consolidated List, notify the Permanent Mission of the country or countries where the individual or entity is believed to be located and, in the case of individuals, the country of which the person is a national (to the extent this information is known), and include with this notification a copy of the publicly releasable portion of the statement of case, a description of the effects of designation, as set forth in the relevant resolutions, the Committee’s procedures for considering delisting requests, and the provisions of UNSCR 1452 (2002);’

There is no corresponding provision in UNSCR 2082 (2012).

Section 125 Notification of Listing

- (1) Where a listed party is believed to be a national of or located in [insert name of jurisdiction], the Competent Authority shall by notice in the *Official Gazette* (or other means of official communication) notify the listed party of the designation by or under the authority of the UNSC.
- (2) A notice published in the *Official Gazette* (or other means of official communication) under subsection (1) shall include:
 - (a) the narrative summary of reasons for listing;
 - (b) a description of the effects of designation, as provided in the relevant UNSCR;
 - (c) procedures of the relevant Sanctions Committee for considering delisting requests, including, where applicable, the possibility of submitting such a request to the Office of the Ombudsperson; and
 - (d) the provisions regarding available exemptions.

Section 126 Freezing of the Assets of Listed Parties

- (1) Subject to Section 127, any person who has in his or her possession, custody or control the assets of any listed party shall immediately freeze such assets upon the issue of a freezing order by the Competent Authority, which shall remain in place for as long as the listing remains in place.
- (2) For the purposes of subsection (1), assets includes funds derived from assets owned or controlled, directly or indirectly, by a listed party or by persons acting on his or her behalf or at his or her direction.
- (3) Measures taken under subsection (1) shall be immediately reported to the Competent Authority.

- (4) Any person who makes available, directly or indirectly, any assets for the benefit of a listed party shall commit an offence and shall on conviction be punishable by [insert penalty].

Drafting note: See paragraph 1(a) of UNSCR 2082 (2012) and UNSCR 2083 (2012):

Freeze ‘[...] and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly for such persons’ benefit, by their nationals or by persons within their territory’.

- (5) The measures under this Section also apply to the payment of ransoms to a listed party.

Drafting note: Paragraphs 6 of UNSCR 2082 (2012) and UNSCR 2083 (2012) confirm ‘that the requirements in paragraph 1(a) above shall also apply to the payment of ransoms’ to listed parties.

- (6) Any person who fails to comply with subsection (1) shall commit an offence and shall on conviction be punishable by [insert penalty].

Section 127 Assets Freeze Exemptions

- (1) A listed party may request the Competent Authority to release part of the frozen assets that are necessary for ordinary or extraordinary expenses.
- (2) Having determined that the assets are to be used for the purposes set out in subsection (1) above, the Competent Authority shall notify the relevant Sanctions Committee of its intention to authorise the relevant exemptions.
- (3) In the absence of a negative decision from the relevant Sanctions Committee within three working days of the notification, the Competent Authority shall issue an exemption order authorising the relevant ordinary expenses subject to such terms and conditions as may be appropriate in the circumstances.
- (4) The Competent Authority shall issue an exemption order authorising the relevant extraordinary expenses as soon as it receives the approval of the relevant Sanctions Committee.
- (5) A request for exemption under this Section shall include the following information:
- (a) recipient’s name and address;
 - (b) recipient’s permanent reference number on the relevant Sanctions List;
 - (c) recipient’s bank information, including name and address of bank and account number;

- (d) purpose of payment the expenses and justification for the determination of the expenses falling under ordinary or extraordinary expenses;
- (e) amount of instalment;
- (f) number of instalments;
- (g) payment starting date;
- (h) bank transfer or direct debit;
- (i) interests;
- (j) specific funds being unfrozen;
- (k) any other relevant information.

Drafting note: See Section 12(d) of the Guidelines of the Committee for the Conduct of its Works (adopted by the 1988 Sanctions Committee on 15 April 2013) and Section 11(d) of the Guidelines of the Committee for the Conduct of its Works (adopted by the Al-Qaida Sanctions Committee on 15 April 2013).

Section 128 Exemptions Request to the Al-Qaida Sanctions Committee

Notwithstanding Section 127, a listed party on the Al-Qaida Sanctions List residing in [insert name of jurisdiction] may request the Al-Qaida Sanctions Committee through the focal point mechanism to exempt such frozen assets as may be necessary for ordinary or extraordinary expenses provided that the request has also been submitted to the Competent Authority.

Drafting note: Paragraph 8 of UNSCR 2083 (2012) ‘Encourages Member States to make use of the provisions regarding available exemptions to the measures in paragraph 1(a) above, set out in paragraphs 1 and 2 of UNSCR 1452 (2002), as amended by UNSCR 1735 (2006), and authorizes the Focal Point mechanism established in UNSCR 1730 (2006) to receive exemption requests submitted by, or on behalf of, an individual, group, undertaking or entity on the Al-Qaida Sanctions List, or by the legal representative or estate of such individual, group, undertaking or entity, for Committee consideration, as described in paragraph 37 below;’

Paragraph 37 (a) of UNSCR 2083 (2012) ‘Decides that the Focal Point mechanism established in UNSCR 1730 (2006) may receive requests from listed individuals, groups, undertakings, and entities for exemptions to the measures outlined in paragraph 1(a) of this resolution, as defined in UNSCR 1452 (2002) provided that the request has first been submitted for the consideration of

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the States of residence, and decides further that the Focal Point shall transmit such requests to the Committee for a decision, directs the Committee to consider such requests, including in consultation with the state of residence and any other relevant states, and further directs the Committee, through the Focal Point, to notify such individuals, groups, undertaking or entities of the Committee's decision;'

Section 129 Additions to Frozen Accounts

The Competent Authority may allow the addition to accounts frozen any payment in favour of a listed party provided that such payments continue to be subject to the freezing order and are frozen.

Drafting note: See paragraphs 7 of UNSCRs 2082 (2012) and 2083 (2012).

Section 130 Mistaken Identity

- (1) An affected party shall apply in writing to the Competent Authority for the unfreezing of his or her assets.
- (2) An application under subsection (1) shall be accompanied by relevant documentation to support the claim of the affected party.
- (3) The Competent Authority shall examine an application received under subsection (1) and may request such additional information as may be necessary from the affected party, any relevant public sector agency or any person who has in his or her possession, custody or control the frozen assets of an affected party to make a determination as to whether the affected party is not the actual listed party.
- (4) Where the Competent Authority establishes that the affected party is not the actual listed party, it shall immediately direct any person who has in his or her possession, custody or control the frozen assets of an affected party to unfreeze the assets of the affected party.
- (5) A direction under subsection (4) shall clearly set out the reasons indicating that the affected party is not the listed party and shall be accompanied by such supporting documentation as may be necessary in the circumstances.
- (6) Any person who has in his or her possession, custody or control the frozen assets of an affected party shall immediately unfreeze such assets, upon the issue of a direction by the Competent Authority.
- (7) Any person who fails to comply with a direction issued under subsection (4) shall commit an offence and shall on conviction be punishable by [insert penalty].

Section 131 Appointment of Administrator

Drafting note: The EOT further clarifies that the term ‘freeze’ does not mean confiscation or transfer of ownership. The person or state body responsible for regulating frozen assets should make reasonable efforts to do so in a manner that does not result in their undue deterioration, provided that this does not conflict with the overall intention behind the freezing action – to deny listed individuals, groups, undertakings and entities the financial means to support terrorism.

In cases where a listed party owns or controls funds or other financial assets or economic resources in which unlisted persons also have a segregable interest, for example as joint owners or employees, the freeze is directed against that share of the asset owned or controlled by the listed party. In such cases, states should ensure that the listed party is not able to exercise his or her interest in the asset directly or indirectly, including by issuing instructions regarding any benefit, financial or otherwise, that may accrue from the asset. In some cases, it might therefore be advisable to appoint an administrator.

- (1) Subject to subsection (2), the Competent Authority may appoint a fit and proper person as an administrator in relation to the whole or part of the assets of a listed party.
- (2) The remuneration payable to an administrator as determined by the Competent Authority shall be reasonable and be recovered from the frozen assets of a listed party as approved by the relevant Sanctions Committee.
- (3) Where the Competent Authority appoints an administrator under subsection (1), it shall, to the extent possible, give notice in writing of the appointment to the listed party.
- (4) The administrator shall manage the whole of the assets entrusted to his or her administration and for the purpose of doing so:
 - (a) shall comply with such directions given to him or her by the Competent Authority under subsection (5); and
 - (b) shall manage the assets honestly and in good faith and shall exercise care, diligence and skill that a reasonable person would exercise in comparable circumstances.
- (5) The Competent Authority may give such directions to the administrator as to his or her powers and duties as it deems desirable in the circumstances of the case.
- (6) The administrator may apply to the Competent Authority for instructions as to the manner in which he or she shall conduct the management of the assets of the listed party under administration or any matter arising in the course of that management.
- (7) The duties of the administrator shall cease upon the delisting of the listed party by the relevant Sanctions Committee and he or she shall use his or her best endeavours to facilitate the return of the management of the assets to the delisted party.

Section 132 State-sponsored Delisting

- (1) Notwithstanding Section 133, a listed party who is a national or resident of or is incorporated or registered in [insert name of jurisdiction] may submit a request to the Competent Authority to take such measures in accordance with the relevant UNSCR for the removal of the name of the listed party from the relevant Sanctions List.
- (2) When submitting a request (through the diplomatic channel) for delisting to the relevant Sanctions Committee, the Competent Authority shall follow such procedures, including using any standard form for delisting, as may be adopted by the Sanctions Committee and the request shall contain the reasons for submitting the delisting request.
- (3) Where relevant, the Competent Authority shall consult with other relevant States or UN entities.

Drafting note: Paragraph 29 of UNSCR 2083 (2012) ‘Directs the Committee to continue to work, in accordance with its guidelines, to consider delisting requests of Member States for the removal from the Al-Qaida Sanctions List of individuals, groups, undertakings and entities that are alleged to no longer meet the criteria established in the relevant resolutions, and set out in paragraph 2 of the present resolution, which shall be placed on the Committee’s agenda upon request of a member of the Committee, and strongly urges Member States to provide reasons for submitting their delisting requests.’

Subsection (3) above provides for the requirement under paragraph 21 of UNSCR 2082 (2012): ‘Strongly urges Member States to consult with the Government of Afghanistan on their delisting requests prior to submission to the Committee, to ensure coordination with the Government of Afghanistan’s peace and reconciliation efforts;’

Section 133 Non-state-sponsored Delisting

Notwithstanding Section 132, a listed party may submit a petition for delisting directly to the Office of the Ombudsperson or the focal point, as the case may be.

Section 134 Delisting Requests for Dead Individuals and Defunct Entities

Drafting note: Paragraph 30 of UNSCR 2083 (2012) ‘Encourages States to submit delisting requests for individuals that are officially confirmed to be dead, particularly where no assets are identified, and for entities reported or confirmed to have ceased to exist, while at the same time taking all reasonable

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measures to ensure that the assets that had belonged to these individuals or entities have not been or will not be transferred or distributed to other individuals, groups, undertakings and entities on the Al-Qaida Sanctions List;'

- (1) Where a listed party is a national or resident of or is incorporated or registered in [insert name of jurisdiction] and is officially confirmed to be dead or to have ceased to exist, as the case may be, the Competent Authority shall (through the diplomatic channel) submit a request for the delisting of the dead or defunct party.
- (2) When submitting a request for delisting to the relevant Sanctions Committee under subsection (1), the Competent Authority shall follow such procedures, including using any standard form for delisting, as may be adopted by the relevant Sanctions Committee and the request shall contain the reasons for submitting the delisting request.
- (3) The request for delisting shall be accompanied by such additional information as may be required under the applicable UNSCR.

Section 135 Notice of Delisting

Where a delisted party is a national or resident of or is incorporated in or is believed to be located in [insert name of jurisdiction] the Competent Authority shall, in a timely manner, by notice in the *Official Gazette* (or such other means of official communication) notify the listed party that his name has been removed from the relevant Sanctions List.

Drafting note: See Paragraphs 27 of UNSCR 2082 (2012) and 35 of UNSCR 2083 (2012).

Paragraph 27 of UNSCR 2082 (2012) 'Confirms that the Secretariat shall, as soon as possible after the Committee has made a decision to remove a name from the List, transmit the decision to the Government of Afghanistan and the Permanent Mission of Afghanistan for notification, and the Secretariat should also, as soon as possible, notify the Permanent Mission of the State(s) in which the individual or entity is believed to be located and, in the case of non-Afghan individuals or entities, the State(s) of nationality, and recalls its decision that States receiving such notification take measures, in accordance with domestic laws and practices, to notify or inform the concerned individual or entity of the delisting in a timely manner;'

Paragraph 35 of UNSCR 2083 (2012) 'Confirms that the Secretariat shall, within 3 days after a name is removed from the Al-Qaida Sanctions List, notify the Permanent Mission of the State(s) of residence, nationality, location or incorporation (to the extent this information is known), and decides that States receiving such notification shall take measures, in accordance with their domestic laws and practices, to notify or inform the concerned individual or entity of the delisting in a timely manner;'

Section 136 Unfreezing of Frozen Assets

- (1) Where the name of a listed party is removed from the relevant Sanctions List, the Competent Authority shall immediately issue an order to unfreeze the assets of the delisted party.

Drafting note: Paragraph 30 of UNSCR 2083 (2012) ‘Encourages States to submit delisting requests for individuals that are officially confirmed to be dead, particularly where no assets are identified, and for entities reported or confirmed to have ceased to exist, while at the same time taking all reasonable measures to ensure that the assets that had belonged to these individuals or entities have not been or will not be transferred or distributed to other individuals, groups, undertakings and entities on the Al-Qaida Sanctions List;’

- (2) A notice to unfreeze the assets of a delisted party shall be subject to such terms and conditions as the Competent Authority may deem appropriate to ensure that the assets of the delisted party will not be transferred or distributed to another listed party or otherwise be used for terrorist purposes.
- (3) Any person who has in his or her possession, custody or control the frozen assets of any delisted party shall immediately unfreeze such assets upon the issue of an unfreezing order by the Competent Authority.
- (4) Where any assets have been frozen as a result of the listing of Usama bin Laden, the Competent Authority shall:
 - (a) submit a request to the Al-Qaida Sanctions Committee to unfreeze such assets;
 - (b) provide assurances to the Committee that the assets will not be transferred directly or indirectly to a listed party or otherwise used for terrorist purposes; and
 - (c) not issue an unfreezing order without the approval of the Committee.

Drafting note: Paragraph 32 of UNSCR 2083 (2012) ‘Decides that, prior to the unfreezing of any assets that have been frozen as a result of the listing of Usama bin Laden, Member States shall submit to the Committee a request to unfreeze such assets and shall provide assurances to the Committee that the assets will not be transferred, directly or indirectly, to a listed individual, group, undertaking or entity, or otherwise used for terrorist purposes in line with UNSCR 1373 (2001), and decides further that such assets may only be unfrozen in the absence of an objection by a Committee member within thirty days of receiving the request, and stresses the exceptional nature of this provision, which shall not be considered as establishing a precedent.’

- (5) Any person who fails to comply with subsections (2) and (3) shall commit an offence and shall on conviction be punishable by [insert penalty].

Section 137 Exchange of Information

- (1) [Insert name of jurisdiction] may enter into an arrangement or agreement with the Office of the Ombudsperson to facilitate the sharing of information, including confidential information.

Drafting note: Paragraph 23 of UNSCR 2083 (2012) ‘Strongly urges Member States to provide all relevant information to the Ombudsperson, including any relevant confidential information, where appropriate, encourages Member States to provide relevant information in a timely manner, welcomes those national arrangements entered into by Member States with the Office of the Ombudsperson to facilitate the sharing of confidential information, encourages Member States’ further cooperation in this regard, and confirms that the Ombudsperson must comply with any confidentiality restrictions that are placed on such information by Member States providing it;’

- (2) Where the Competent Authority receives, or otherwise becomes aware of, any identifying or other information on a listed party, the Competent Authority shall forthwith pass on that information to the relevant Sanctions Committee.

Drafting note: Paragraph 38 of UNSCR 2083 (2012) ‘Encourages all Member States, in particular designating States and States of residence or nationality, to submit to the Committee additional identifying and other information, along with supporting documentation, on listed individuals, groups, undertakings and entities, including updates on the operating status of listed entities, groups and undertakings, the movement, incarceration or death of listed individuals and other significant events, as such information becomes available;’

- (3) Any information given under this Section may be given subject to conditions restricting the use and disclosure of the information imparted.

Section 138 Supervision

- (1) Regulatory authorities may, in collaboration with the Competent Authority, develop such rules and guidance and disseminate other relevant information as may be necessary for the purposes of the effective implementation of the UN sanctions.
- (2) Financial institutions and DNFBPs shall implement internal controls and other procedures to enable them to effectively comply with their obligations under these provisions.
- (3) The regulatory authorities shall supervise and enforce compliance by the persons over whom they exercise regulatory control or oversight with the requirements imposed pursuant to these provisions.

- (4) Where it appears or is represented to any regulatory authority that any person has refrained from complying or negligently failed to comply with the requirements under these provisions, the regulatory authority may take, against the person concerned, any regulatory action that it is empowered to take for failure to have proper systems and controls or not operating in a safe and sound manner, as the case may be.

Section 139 Record-keeping

- (1) The Competent Authority shall keep and maintain a record of:
 - (a) all proposals for designation made;
 - (b) all assets frozen pursuant to these provisions;
 - (c) all exemption orders issued under these provisions; and
 - (d) all delisting petitions received and actions taken.

Section 140 Confidentiality

- (1) Subject to these provisions, the Competent Authority shall not communicate to any unauthorised person any matter relating to this Act.
- (2) For the purposes of this Section an 'unauthorised person' means any person other than:
 - (a) a Sanctions Committee;
 - (b) a public sector agency; and
 - (c) a person with whom the Competent Authority is authorised under these provisions to collaborate, consult, seek advice or request information from or exchange information with.

Section 141 Immunity

- (1) No action shall lie against the Competent Authority for anything done or omitted to be done by the Competent Authority in the performance, in good faith, of its functions or the exercise, in good faith, of its powers under these provisions.
- (2) No action shall lie against any person who has in his or her possession, custody or control the assets of a listed party for anything done by him or her in the performance, in good faith, of its obligations under these provisions.