

GUIDELINES CONCERNING THE OBLIGATIONS TO FREEZE ASSETS, E.G. RELATED TO TERRORISM

[“2. Other obligations to freeze and confiscate assets related to terrorism”, on page 2, is updated 19 June 2009 with a new paragraph.]

In the following Kredittilsynet provides some guidelines concerning the obligations to freeze funds, financial assets or financial resources related to terrorism.

The primary purpose of the obligations to freeze assets is to prevent the financing of terrorism. Financing of terrorism is a punishable offence pursuant to section 147 b, cf. section 147 a, of the General Civil Penal Code:

Section 147 b. *Any person who obtains or collects funds or other assets with the intention that such assets should be used, in full or in part, to finance terrorist acts or any other contraventions of the provisions of section 147 a shall be liable to imprisonment for a term not exceeding 10 years.*

Any person who makes funds or other assets, or bank services or other financial services, available to any of the following shall be liable to the same penalty a) a person or enterprise that commits or attempts to commit any offence mentioned in section 147 a,

b) any enterprise owned or controlled by such a person or enterprise as is mentioned in a above, or

c) any person or enterprise that acts on behalf of or at the direction of such person or enterprise as is mentioned in (a) or (b) above.

Any person who aids and abets such an offence shall be liable to the same penalty.

Added by the Act of 28 June 2002 no. 54.

Section 147 a. *Any criminal act mentioned in section 148, 151 a, 151 b first paragraph, cf. third paragraph, 152 second paragraph, 152 a second paragraph, 152 b, 153 first to third paragraphs, 153 a, 154, 223 second paragraph, 224, 225 first or second paragraph, 231, cf. 232, or 233 is considered to be a terrorist act and is punishable by imprisonment for a term not exceeding 21 years when such an act has been committed with the intention of*

a) seriously disrupting a function of vital importance to society, such as legislative, executive or judicial authority, power supply, safe supply of food or water, the bank or monetary system or emergency medical services or disease control,

b) seriously intimidating a population, or

c) unlawfully compelling public authorities or an intergovernmental organization to perform, tolerate or abstain from performing any act of substantial importance for the country or the organization, or for another country or other intergovernmental organization.

No penalty less than the minimum penalty prescribed in the penal provisions mentioned in the first sentence may be imposed.

Any person who, with such intent as is mentioned in the first paragraph threatens to commit such criminal act as is mentioned in the first paragraph under such circumstances that the threat is likely to provoke serious intimidation shall be liable to imprisonment for a term not exceeding 12 years. If the threat has such consequences as are mentioned in the first paragraph (a), (b) or (c), a sentence of imprisonment for a term not exceeding 21 years may be imposed. Any person who aids and abets such an offence shall be liable to the same penalty.

Any person who plans or prepares such terrorist act as is mentioned in the first paragraph by conspiring with another person for the purpose of committing such an act shall be liable to imprisonment for a term not exceeding 12 years.

Added by the Act of 28 June 2002 no. 54, amended by the Act of 20 June 2003 no. 45 (came into force on 1 July 2003 pursuant to the Royal Decree of 20 June 2003 no. 712).

1. Information relating to the Regulations on sanctions against Usama Bin Laden, Al-Qaida and the Taliban of 22 December 1999 no. 1374 (“The Taliban Regulations”)

According to UN Security Council Resolution 1267 (1999) all states are obliged to freeze assets belonging to groups and individuals associated with the Taliban or al-Qaida. Section 1 no. 1 of The Taliban Regulations implements this obligation into Norwegian law with respect to “*Funds and other financial assets or economic resources located in Norway and which belong to these persons, groups, enterprises or entities*” that are listed on the UN’s Sanctions Committee’s list. The UN’s Sanctions Committee’s list “the consolidated list” includes individuals and entities associated with Al-Qaida, Usama bin Laden and/or the Taliban. The consolidated list is included as a hyperlink in the web edition of the text of the Regulations on Lovdata (www.lovdata.no). The Taliban Regulations is consequently always up to date.

Kredittilsynet publishes notifications of amendments to the list, which it receives from the Ministry of Foreign Affairs, on www.kredittilsynet.no under “Lists issued by the UN and FATF and similar announcements”. These will normally be published within days after the actual amendment is made to the consolidated list.

According to Section 1 no. 1 of the Regulations, there is an obligation to immediately freeze the above-mentioned funds and assets, Kredittilsynet would therefore urge the financial institutions to monitor the list from the UN's Sanctions Committee through their electronic monitoring systems. The institutions must also work on developing real-time freezing functionality for transactions linked to persons and entities on the UN list.

Other listings of terrorist organisations received, e.g. from the US authorities and the EU Commission, do not trigger the obligations to automatically and immediately freeze assets pursuant to the Taliban Regulations. Such lists are however important indicators to the institutions that they might be dealing with suspicious transactions that normally would trigger the obligation to investigate and report pursuant to section 7 of the Money Laundering Act¹ and such transactions should as a minimum be subject to further monitoring and scrutiny.

The term “*Funds and other financial assets or financial resources*” in section 1 no. 1 of the Regulation’s text is very broad and Kredittilsynet assumes that in reality it covers all types of assets that are included in transactions executed in relation to customers and third parties. Freezing funds and other financial assets or financial resources is defined as preventing someone from having actual or legal control over assets. Typical examples of this include blocking access to a bank account, managed funds, or not performing or executing the transfer of a payment.

According to Section 1 no. 5 of the regulations, the al-Qaida and Taliban Sanctions Committee may grant exemptions from the obligation to freeze. This is done with regard to basic expenses necessary for subsistence by UN Security Council Resolution 1452.

The exemption for basic expenses includes, inter alia, funds for food, living expenses, medicines or medical treatment, taxes, insurance premiums, public duties, or expenses relating to necessary legal assistance in connection with the asset freezing order. Proposition to the Odelsting no. 61 (2001-2002) pg. 61, first column, stipulates: “*that a decision to freeze a bank account should not prevent the bank from performing ordinary asset management. The purpose of the provision does not necessitate*

¹ This reference refers to the previous MLA. Section 7 of the MLA 2003 correspond to the MLA 2009 Section 17 and 18

precluding the debiting of fees or crediting of interest to the account.”

As far as the scope of the obligations to freeze assets is concerned, it may be natural to seek guidance from Proposition to the Odelsting no. 61 (2001-2002) pg. 59, second column:

“However, the Ministry maintains the proposal that the provisions concerning the freezing of assets ought to be general and not just directed at funds that have links to terrorist activities. Limiting the freezing of assets to apply to funds that are linked to terrorist activities would not be particularly effective because the suspect would then be able to use other assets to achieve the same goal.”

Even though this quote is from the preliminary legislative work on the obligations to freeze assets in chapter 15 b of the Criminal Procedure Act, see below, Kredittilsynet assumes that the same considerations apply here in relation to the obligations to freeze assets in the Taliban Regulations.

In the event of a freeze of assets pursuant to the Taliban Regulations, such measure should immediately be reported to the Ministry of Foreign Affairs, Legal Department, Section for International Humanitarian and Criminal Law. According to a case by case assessment The Financial Intelligence Unit of the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM) can also be notified of this immediately as a suspicious transaction, cf. section 7 of the Money Laundering Act.² Finally, Kredittilsynet should be informed promptly about measures involving the freezing of assets.

The Ministry of Foreign Affairs is responsible for these regulations. Questions concerning the understanding and implementation of the regulations should therefore be directed to the Ministry's, Legal Department, Section for International Humanitarian and Criminal Law.

2. Other obligations to freeze and confiscate assets related to terrorism

Under the UN Convention for the suppression of financing of terrorism and UN Security Council Resolution 1373 (2001) there is an obligation to freeze assets that can be linked to the commission of terrorist acts in general (that are not linked to al-Qaida and the Taliban). This obligation is implemented by chapter 15 b. “Freezing of assets” of the Act relating to legal procedure in criminal cases (“The Criminal Procedure Act”) of 22 May no. 25 1981. Such freezing of assets does not follow from any of the lists mentioned above, but from a special decision, made on a case by case basis, pursuant to section 202 d of the Criminal Procedure Act.

When a freezing decision is taken by the head or deputy head of the Police Security Service, or a public prosecutor, the decision will immediately be communicated to the institution holding the assets. The order to freeze assets is legally binding for all financial and other institutions. The prosecuting authority shall as soon as possible, and not later than seven days after it has made a decision pursuant to section 202 d, bring the case before the District Court, which will by order decide whether the decision shall be affirmed. The institutions will be informed by the prosecuting authority when there is no longer an obligation to keep the assets frozen. The background and rationale behind the freezing obligation is described further in Ot.prp. nr. 61 (2001-2002) chapter 10 (<http://www.regjeringen.no/Rpub/OTP/20012002/061/PDFA/OTP200120020061000DDDPDFA.pdf> – only available in Norwegian).

² This reference refers to the previous MLA. Section 7 of the MLA 2003 correspond to the MLA 2009 Section 17 and 18

3. Other obligations to freeze assets

Pursuant to Act of 7 June 1968 No. 4 relating to the implementation of mandatory decisions of the Security Council of the United Nations and Act of 27 April 2001 No. nr 14 relating to the implementation of other international non-military measures, the Ministry of Foreign Affairs has adopted regulations containing sanctions and restrictive measures. Some of these include obligations to freeze the assets of named persons and entities. An overview of these regulations can be found on Lovdata (www.lovdata.no) under regulations that fall under the Ministry of Foreign Affairs' responsibility.

The institutions are obliged to maintain an overview of the aforementioned obligations to freeze and confiscate, establish systems and routines that identify such transactions, and be able to implement without undue delay the necessary freezing and confiscation measures.

4. Useful background material, including preliminary legislative work, guidelines or the like concerning the obligations to freeze and confiscate assets.

Proposition to the Odelsting no. 61 (2001-2002) (White Paper related to measures against terrorism and terrorist financing).

The Financial Action Task Force (FATF) has stipulated 9 special recommendations on measures against terrorist financing. In this regard we especially refer to recommendation no. III "Freezing and confiscating terrorist assets". FATF has drawn up "International Best Practices" and an "Interpretative Note" for special recommendation no. III.

FATF has also produced the document "Terrorist Financing" dated 29 February 2008. The document contains examples, typologies and trends within terrorist financing.

This material is published on www.fatf-gafi.org.