

July 2016

**Procedures for releasing of the resources when implementing
sanctions of international organizations
(Procedure for the releasing of resources)**

I. Introduction

This manual describes the procedures for the releasing of resources of :

- individuals and organizations that are suspected or known by the United Nations to be involved in terrorism or terrorist financing, or
- individuals or organizations designated by the Minister of General Affairs, in concord with the Minister of Justice and the Minister of Finance, as individuals or organization belonging to the circle of individuals referred to in Resolution 1373/2001.

The releasing of resources is based on various principles. For example, on account of the fact that the individual no longer meets the criteria for designation or the fact that the individual whose resources are frozen, is not the individual that was designated.

Furthermore, access can be granted to the resources, upon request, for the purpose of satisfying basic needs or for complying with certain financial commitments

The purpose of this manual is to provide information to all interested parties whose resources are frozen, as well as interested third parties, and also the financial institutions and other organizations that are supervised by the Central Bank of Curaçao and Sint Maarten, the Financial Intelligence Unit, the Gaming Control Board as well as other supervisory agencies designated by the government. In this manual these organizations are further referred to as supervisory organizations.

The manual makes a distinction between the lifting of a designation, on the one hand, by virtue of Resolution 1267/1999 of the United Nations and on the other hand, by virtue of Resolution 1373/2001 in conjunction with Articles 2, subsection, 3, subsection d, and 4, subsection d, of the Sanctions Decree Al-Qaida c.s., the Taliban of Afghanistan c.s., ISIL c.s., ANF c.s ¹withdrawal of a designation by the Minister of General Affairs (objection).

II. Procedures for the submitting of a proposal for the lifting of a designation in pursuance of Resolution 1267/1999 ²

Every state and also a designated individual may file a petition for withdrawal of the designation. A state may address the petition directly to the Committee. An individual may file a petition with the Ombudsman for the sanctions regime The petition shall be filed on the form established by the Committee.

¹ Off. Gaz. 2015, 29

² See Committee Guidelines https://www.un.org/sc/suborg/sites/www.un.org.sc.suborg/files/1267_guidelines_1.pdf

Before filing a petition with the United Nations through the intermediary of the Permanent Representative of the Kingdom of the Netherlands, the Minister of General Affairs will consult with the state that has recommended the designation, with the state of the nationality of the person, or the state where the individual has his place of residence or is established. The chairman of the Committee may facilitate the aforementioned consultation and circulate the petition.

A petition for lifting a designation comprises :

1. an explanation why the designation no longer satisfies the criteria for designation, whereby each criterion must be addressed;
2. the involved individual's occupation or work/activities, and other relevant information about the individual concerned, including his/her financial position;
3. all documentation that may support the petition for the withdrawal of the designation, with the addition of an interpretation of the relevance of the documentation for the assessment of the petition.

If the designated person is deceased the following shall also be added:

1. death certificate or another official document confirming the death;
2. information whether any parties entitled to the estate have been appointed.

The petition shall be prepared by the Committee for the designation of individuals and organizations.³

III. Objection against a designation by the Minister of General Affairs

A designation of an individual or organization as referred to in Articles 2, subsection d, 3, subsection d, 4, subsection d, of the Sanctions Decree Al-Qaida c.s, the Taliban of Afghanistan c.s., ISIL c.s., ANF c.s. is an order issued by the Minister of General Affairs as referred to in Article 3, first paragraph, of the National Ordinance on Administrative Justice.⁴

This means that an individual or organization having objections against the designation, may file a notice of objection with the Minister of General Affairs or an appeal with the Administrative Court.

³ See Article 2, first paragraph, subsection b, of the Order on the designation of individuals and organizations

⁴ Off. Gaz. 2001, 79

If the Minister of General Affairs or the Administrative Court deem the objection, respectively the appeal, to be well-founded, the designation will be withdrawn after hearing the opinion of the Committee.

In case the individual or the organization is reported to the Sanctions Committee the designation will not be lifted until the Committee has declared that it agrees with the withdrawal.

IV. Procedures for releasing resources after verification of the identity

- In case the inquiry of a possible match following a case reported by a supervised institution or organization, does not lead to a definitive match (the same name, but the identity of the client/relation is not identical to the (legal) person or entity on the lists), the pertinent supervisory organization will immediately be informed by the Minister of General Affairs about the result of the inquiry.
- The Minister of General Affairs shall request the supervisory organization to instruct the supervised institution or organization retaining the frozen resources, to release such resources without delay.

The frozen (financial) resources of individuals or organizations having a name comparable to a (legal) person or entity entered on the lists, which are erroneously frozen, will be released immediately.

V. Procedures for requesting access to the frozen resources

Pursuant to Article 9 of the Sanctions Ordinance the Minister of the Ministers may, upon request, grant exemption or dispensation, in whole or in part, from the rules laid down on the basis of Article 3 of the aforesaid national ordinance.

This authority is further elaborated in Article 10 of the Sanctions Decree Al-Qaida c.s., the Taliban of Afghanistan c.s, ISIL c.s., ANF c.s. Article 10 regulates the cases in which exemption or dispensation can be granted.

With respect to the grounds for the granting of exemption or dispensation reference is made to paragraph 1 of Resolution 1388 (2002), paragraphs 1 and 2, of the Resolution 1452 (2002), as adjusted by paragraphs 15 and 16 of Resolution 1735 (2006), paragraph 5 of Resolution 2160 (2014) and paragraph 6 of Resolution 2161 (2014).

Article 10, second paragraph, provides that a petition shall be filed with the Central Bank of Curaçao and Sint Maarten.

The Minister of General Affairs, acting in concord with the Minister of Finance, upon hearing the advice of the Central Bank of Curaçao and Sint Maarten, shall decide upon the petition. The consultation with the Central Bank is related to the special expertise of said institution in the area of compliance with the international recommendations regarding the prevention and combating of terrorist financing.

The decision on the petition for exemption or dispensation is an order and is therefore subject to legal protection under administrative law.

VI. Procedure for the lifting of resources after the termination of the designation by the Security Council or by the Minister of General Affairs.

- The supervised institutions or organizations are obligated to independently monitor the changes of the consolidated list of the Security Council ⁵
- Upon establishing that an individual or organization is removed from the consolidated list, the supervised institution or organization shall notify the pertinent supervisory organization about the intention to release the resources.
- When reporting the intended act, the institution or organization shall submit the data regarding the identity of said client/relation to the pertinent supervisory organization;
- The supervised institution or organization shall subsequently release the resources and thereof notify the interested party in writing.

[signature]
The Minister of General Affairs

Willemstad, Aug. 26, 2016

The Minister of Justice
[signature]

The Minister of Finance
[signature]

⁵ Article 11 of the Sanctions Decree Al-Qaida c.s., the Taliban of Afghanistan c.s., ISIL c.s., ANF c.s. relates to the governmental organizations charged with the supervision of the compliance, and not the supervised institutions or organizations.