

**Process for the freezing of resources for the implementation of
sanctions imposed by international organizations
(process of asset freezing of funds)**

I. Introduction

This manual provides a description of the procedure for the freezing of resources of individuals and organizations, known or suspected by the United Nations to be involved in terrorism or its financing.

Curaçao is, moreover, obligated, for the implementation of resolution 2001/1373, to adopt measures for the designation of individuals and organizations established in Curaçao, who may belong to the circle of individuals referred to in said Resolution.

Pursuant to Article 12 of the Sanctions Decree Al-Qaida c.s., the Taliban of Afghanistan c.s., ISIL c.s., ANF c.s.¹ the Minister of General Affairs has the authority to establish procedures for the realization of a designation as referred to in Articles 2, subsection d, 3, subsection d and 4, subsection d of the aforesaid National Decree. The term designation is understood to mean a decree whereby it is established that an individual or organization established in Curaçao, belongs to the circle of individuals referred to in the aforementioned UN Resolution.

The purpose of this manual is to provide information to all financial institutions and other organizations 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 said organizations will hereinafter be referred to as supervisory organization.

This manual will be placed in "*De Curacaosche Courant*".

II. Basis for the freezing of resources

- **Freezing of resources of (suspected) terrorists and individuals or organizations that in any way support or facilitate their activities**²

Funds, assets, capital or other financial and economic resources of (suspected) terrorists or individuals and organizations that in any way support or facilitate their

¹ Off. Gaz. 2015, 29

² The list of individuals and entities as drawn up and kept by the UN Sanctions Committees and the national list have been drawn up and kept by the Minister of General Affairs in concord with the Minister of Finance and the Minister of Justice, of individuals, business undertakings and/or groups that, based on the goals aimed by them or by their activities, give rise to serious suspicion that they are involved in terrorism, terrorist financing and/or terrorist acts in or from Curaçao, and are not included on the UN list.

activities, are frozen by virtue of a resolution of the Security Council of the United Nations (Resolution 1267, October 15, 1999), known as the UN list, or Resolution 1373 (September 28, 2001), known as the national list.

As laid down in UN Resolution 1373 (September 28, 2001) every country can decide on the manner in which it shall give substance to the obligation for the freezing of resources of (suspected) terrorists or individuals who, in one way or the other, support or facilitate such terrorists.

In Curaçao a decision (resolution) of the Security Council is carried out by enactment of a sanctions decree (national decree providing for general measures) or a sanctions decree (ministerial order with a general effect), stipulated by virtue of Article 2, respectively Article 7, of the Sanctions National Ordinance³

In Curaçao the designation of individuals and organizations that (presumptively) carry out activities in or from Curaçao, which, pursuant to a resolution of the Security Council, are considered as activities within the framework of the commission or preparation of a terrorist offense, and, of which resources must be frozen, is regulated in Articles 2, subsection d, 3, subsection d, and 4, subsection d, read in conjunction with Article 12 of the Sanctions Decree Al-Qaida c.s., the Taliban of Afghanistan c.s., Osama bin Laden c.s., ISIL c.s., ANF c.s. ⁴

Pursuant to Article 2, subsection d, 3, subsection d and 4, subsection d, of the Sanctions Decree Al-Qaida c.s., the Taliban of Afghanistan c.s., Osama bin Laden c.s., ISIL c.s. ANF c.s., the Minister of General Affairs, in concord with the Minister of Justice and the Minister of Finance, is authorized to designate individuals or organizations established in Curaçao, who, in their opinion, belong to the circle of individuals and organizations referred to in Resolution 1373, as belonging to the circle of individuals referred to in UN Resolution 1373. A designation shall be published in "*De Curaçaosche Courant*".

The circle of individuals is composed of :

- a. individuals who commit terrorist acts or make attempts thereto, or participate therein or who facilitate the commission of such acts;
- b. groups and entities that are owned, respectively, or are directly or indirectly controlled by said individuals;

³ Off. Gaz. 2014, 55 (GT)

⁴ Off. Gaz. 2015, 29. In this context the official short title is used as laid down in Article 14 of the decree. The designation of the short title in the heading is incorrect. Superfluously, it is observed that the decree does not relate to the local designation of individuals and organizations.

- c. individuals, groups and entities that act on behalf of or under the leadership of said individuals or entities.

The Committee for the designation of individuals and organizations⁵ is charged with the advising and otherwise supporting and assisting of the Minister of General Affairs, the Minister of Finance and the Minister of Justice in the execution of the joint authority to issue a designation order 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., providing for the designation of individuals, deemed by said Committee, to belong to the circle of individuals or organizations, referred to in the Resolution, and also in regard to all matters relating thereto.

The Committee shall establish its own guidelines. In doing so, the Committee shall apply the guidelines set by the Security Council. The Committee shall advise the Minister in regard to the designation of an individual or organization if there are sufficient indications that said individual or organization belongs to the circle of individuals as described hereinabove.

There are sufficient indications in, for example, the following cases:

- a. the instituting of an inquiry or prosecution by a competent agency on account of a terrorist act or attempt at the commission of such an act or the participating in or the facilitating of such an act;
 - b. a conviction for the abovementioned acts;
 - c. a report from the Curaçao Security Service containing credible indications of involvement of a person or organization in a terrorist act or attempt at committing such an act or the participating in or the facilitating of such an act.
- **Freezing of resources within the framework of non-proliferation of (nuclear) weapons or restoration of the international rule of law**

Funds, assets, capital or other financial and economic resources of states, territories, individuals, groups as well as organizations can also be frozen in pursuance of a resolution of the Security Council of the United Nations within the framework of the non-proliferation of (nuclear) weapons or for the restoration of the international rule of law.

⁵ De Curaçaosche Courant of July 15, 2016

III. Procedure for distribution of information on applicable sanctions

- *UN Sanctions* are applied by means of the implementation of a sanctions decree (national decree providing for general measures), or - in urgent cases ⁶ - a sanctions order (ministerial order with general effect).
 - The implementation is announced by the issue of the Official Gazette (PB) containing the sanctions decree or sanctions order;
 - The Official Gazettes are sent in pdf format by the Bureau of Legalisation and Legal Affairs (WJZ) for further distribution to the supervisory organizations, insofar as such gazettes contain freezing measures. The Official Gazettes are also presented to the Department of Foreign Relations for further notice. ⁷
 - Subsequently the supervisory agencies distribute the Off. Gazettes among the (financial) institutions and organizations falling under their control; alternatively they place the Off. Gazette on their official website. By means of an accompanying letter or in their aml/cft rules, guidelines, rules of procedure or Minimal Internal Control Standards, the supervised institutions and organizations :
 - are informed that they are obliged, *independently*, to keep abreast of the changes that are effected by the respective sanctions committees of the Security Council; this is because the sanctions decrees automatically refer to the decision-making by the Security Council. Ergo, a change of a UN list will not lead to an alteration of the sanctions rule or the sanctions decree;
 - are instructed to place the client-base parallel to the list;
 - are informed that the Minister of General Affairs, acting in concord with the Ministers of Justice and Finance, will periodically and for further notice, issue a consolidated list of designated individuals, as referred to in paragraph 22 of Resolution 1735 (2006).
- The realization of the *national list* as referred to in UN Resolution 2001/1373 will be prepared by the Committee for the designation of individuals and organizations as indicated hereinabove.

⁶ In view of the rule stipulating that freezing measures shall be executed without delay, the general practice is that the authority to issue a ministerial order with general effect, will be utilized.

⁷ The Official Gazettes are dispatched for further and general notice. In addition they are obtainable from the printer's office and are placed on the government's website (www.gobiernu.cw) and the Parliament (www.parlamento.cw).

- Once the Minister of General Affairs has decided upon a designation the Minister of General Affairs will immediately communicate the decision to the supervisory organizations.
- The supervisory organizations will immediately inform the supervised institutions and organizations instructing them to check their client base.
- Subsequently the interested person will be informed, with a statement of the grounds for the designation and the possibility to file an objection.
- The designation will also be published in '*De Curaçaosche Courant*'.

For the furtherance of the implementation, the Committee formed for the designation of individuals and organizations, will periodically provide a consolidated list to the supervisory agencies in digital form.

The latter may distribute the consolidated list among the supervised organizations.

IV. Procedures in case of a match:

- In case a supervised institution or organization discovers that the identity of a client/relation corresponds with a (legal) person or entity on the lists (hereinafter referred to as : match), said institution or organization, acting in pursuance of the Sanctions Ordinance, shall immediately proceed to freezing the resources of the client/relation concerned. In this process account shall be taken of the interests of the third-party interested person who have acted in good faith.
- The supervised institution or organization shall immediately report a match to the supervisory organization concerned. In its reporting, the institution or organization shall also provide data of the identity of said client/relation to the pertinent supervisory organization.
- The supervisory organization shall pass on said information to the Curaçao Security Service.
- The Curaçao Security Service shall investigate whether the identity of the client/relation is identical to the (legal) person or entity on the list (s).⁸
- The results of the inquiry by the Curaçao Security Service shall be relayed to the pertinent supervised institution or organization.

⁸ See Article 3, second paragraph, subsection a, of the National Ordinance on the Curacao Security Service

- In case there is a match the services will be terminated. The resources will remain frozen.
- An institution or organization retaining frozen resources shall inform the pertinent supervisory organization on the type and amount of the frozen resources and on the actions that are being undertaken to implement the sanctions order or sanction decree on the basis of which the resources have been frozen.
- The supervisory organization shall inform the Department of Foreign Relations.

V. Procedure for reviewing a request from a competent foreign agency for the freezing of resources.

- Generally the request is filed by means of a request for legal assistance.
- Irrespective whether any criminal proceedings will be instituted, the Public Prosecutor will inform the Minister of Foreign Affairs that a request for the freezing of resources has been received.
- The Public Prosecutor shall submit the request to the Curaçao Security Service for the inquiry into the identity of the individuals concerned.
- The results of the inquiry of the Curaçao Security Service will be relayed to the Public Prosecutor and the pertinent supervisory organization.
- In case there is a match the supervisory organization will relay the request from the foreign agency as well as the results of the inquiry instituted by the Curaçao Security Service, to the pertinent supervised institution or organization.
- The resources will be frozen and the services will be terminated.
- An institution or organization retaining frozen resources shall inform the pertinent supervisory organization about the type and amount of the frozen resources and actions that are undertaken to implement the sanctions order or the sanctions decree on the basis of which the resources have been frozen.

- The supervisory organization shall inform the Department of Foreign Relations .

Willemstad, Aug. 26, 2016

[signature]

The Minister of General Affairs

The Minister of Justice

[signature]

The Minister of Finance

[signature]