

ASSETS FREEZE: EXPLANATION OF TERMS

Approved by the Al-Qaida Sanctions Committee on 24 February 2015

Objective of the assets freeze

1. The assets freeze, as set out in paragraph 1 (a) of resolution 2161 (2014), applies to individuals, groups, undertakings and entities whose names are referred to in the Al-Qaida Sanctions List of the Al-Qaida Sanctions Committee. It obliges Member States to:

Freeze without delay the funds and other financial assets or economic resources of these individuals, groups, undertakings and entities, including funds derived from property owned or controlled directly or indirectly, by them or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly for such persons' benefit, or by their nationals or by persons within their territory.

2. The purpose of the assets freeze is to deny listed individuals, groups, undertakings and entities the means to support terrorism. To achieve this it seeks to ensure that no funds, financial assets or economic resources of any kind are available to them for so long as they remain subject to the sanctions measures.

Scope of the assets freeze

3. The assets freeze applies to all assets owned or controlled by listed individuals, groups, undertakings and entities. It also applies to the funds that derive from property that they own or control, directly or indirectly, or that are owned or controlled by persons acting on their behalf or at their direction.

Proceeds of crime

4. In paragraph 3 of resolution 2161 (2014), the Security Council noted that such means of financing or support include, but are not limited to, the use of proceeds derived from crime, including the illicit cultivation, production and trafficking of narcotic drugs and their precursors.

5. Member States should be mindful that funds are fungible, and therefore funds raised by listed individuals, groups, undertakings and entities for seemingly legitimate purposes can be redirected to support terrorism.

Exemptions

6. Exemptions to the assets freeze may be granted:

- (i) In accordance with paragraphs 1 and 2 of resolution 1452 (2002), as amended by resolution 1735 (2006). In addition, pursuant to paragraphs 9 and 62 of resolution 2161 (2014) the Focal Point mechanism established in resolution 1730 (2006) may also 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 a listed party for consideration by the Committee provided that the request has first been submitted for the consideration of the State of residence.
- (ii) Pursuant to paragraph 62 of resolution 2161 (2014), the Ombudsperson may also request, with the agreement of the delisting petitioner, that the Committee consider granting exemptions to the assets freeze for the sole purpose of allowing the petitioner to meet travel expenses and travel to another State to be interviewed by the Ombudsperson, in cases in which the Ombudsperson is unable to interview the petitioner in his or her state of residence.

7. The procedures for exemptions are set out in section 11 of the Committee's guidelines and are available on the Committee's website at:

http://www.un.org/sc/committees/1267/pdf/1267_guidelines.pdf.

The Committee has provided further guidance on this point in a fact sheet which can be found on the Committee's website under "Exemptions" at:

http://www.un.org/sc/committees/1267/fact_sheet_assets_freeze.shtml.

8. As confirmed in paragraph 6 of resolution 2161 (2014) all proposed uses of funds or other financial assets or economic resources in connection with the travel of a listed individual, including costs incurred with respect to transportation and lodging, may only be provided in accordance with the exemption procedures set out above.

Definition of the term "freeze"

9. *Freeze* of funds and other financial assets and economic resources includes preventing their use, alteration, movement, transfer or access, unless allowed under the specific exemption procedures under resolution 2161 (2014).

10. *Freeze* of economic resources also includes preventing their use to obtain funds, goods, or services in any way, including, but not limited to, by selling, hiring or mortgaging them.

11. The term "*freeze*" does not mean confiscation or transfer of ownership. Whatever person or State body is 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.

12. 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, Member States should ensure that the listed party is not able to exercise its interest in the asset directly or indirectly, including by issuing instructions regarding any benefit, financial or otherwise, that may accrue from the asset. If an asset is owned or controlled by a listed party and an unlisted party and the interest owned or controlled by the unlisted party cannot be segregated, the entire asset should be subject to the freeze.

13. In cases where an asset owned or controlled in part or in full by a listed party continues to produce benefit, for example in the form of dividends or interest, Member States should ensure that the relevant portion of such benefit is also frozen.

Additions to frozen accounts

14. Pursuant to paragraph 8 of resolution 2161 (2014), Member States are permitted to credit payments in favour of listed parties to their frozen accounts, so long as the additional amounts are also subject to the assets freeze.

Unfreezing of assets

15. Should the Committee remove a name from its List, any assets that have been frozen solely as a result of the listing are no longer subject to the assets freeze. However, in accordance with paragraph 57 of resolution 2161 (2014), the unfreezing of any assets that have been frozen as a result of the listing of Usama bin Laden requires prior approval from the Committee. The request from Member States must 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 resolution 1373 (2001). Such assets may only be unfrozen in the absence of an objection by a Committee member within 30 days of receiving the request.

Definition of “funds and other financial assets or economic resources”

16. As confirmed by paragraph 5 of resolution 2161 (2014), the assets freeze applies to “financial and economic resources of every kind including but not limited to those used for the provision of Internet hosting or related services, used for the support of Al-Qaida and other individuals, groups, undertakings or entities included on the Al-Qaida Sanctions List”.

17. *Funds and other financial assets* should be understood to include, but not limited to:

- a. cash, cheques, claims on money, drafts, money orders, bearer instruments, internet-based payment instruments such as virtual currencies 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.

18. *Economic resources* should be understood to include assets of every kind, whether tangible or intangible, movable or immovable, actual or potential, which potentially may be used to obtain funds, goods or services, such as:

- 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. works of art, cultural property, precious stones, jewellery or gold;
- g. commodities, including oil, minerals, or timber;
- h. arms and related materiel, including all items mentioned in the arms embargo at paragraph 1 (c) of resolution 2161 (2014);
- i. raw materials and components that can be used to manufacture improvised explosive devices or unconventional weapons, including but not limited to chemical components, detonating cord, or poisons;
- j. patents, trademarks, copyrights, trade names, franchises, goodwill, and other forms of intellectual property;
- k. internet hosting or related services;
- l. any other assets.

[F]unds derived from property owned or controlled directly or indirectly, by them or by persons acting on their behalf or at their direction

19. Funds or other financial assets or economic resources made available to or for the benefit of a listed party are not always held directly by them; they may be held by others on the listed party's behalf or acting at the listed party's direction. In this case Member States must ensure that any funds or negotiable benefit arising from this property is also frozen. In identifying such funds and benefits, Member States should be alert to the possibility that property owned or controlled indirectly by the listed party may not be immediately visible, and that the listed party may have arranged the indirect ownership or control in order to conceal an interest in the property.

[E]nsure that neither these nor any other funds, financial assets or economic resources are made available, directly or indirectly for such persons' benefit, or by their nationals or by persons within their territory

20. Member States must ensure that neither their nationals, nor anyone within their territory (regardless of nationality), makes any funds, financial assets or economic resources available for the benefit of a listed party, whether directly or indirectly, for so long as the party remains subject to the sanctions measures.

21. This obligation applies to funds or other financial assets or economic resources identified (by the private sector or by regional, national, or local authorities) as directed to, collected for, or otherwise for the benefit of a listed party. This obligation prohibits the transfer of such assets at any time they can be identified as pertaining to a listed party.

22. In this context, Member States should be aware that in paragraphs 7 of resolution 2161 (2014) and 17 of resolution 2170 (2014), the Security Council confirmed that the requirements in paragraph 1 (a) of resolution 2161 (2014) shall also apply to the payment of ransoms to individuals, groups, undertakings or entities on the Al-Qaida Sanctions List regardless of how and by whom the ransom is paid. Under this requirement, the payment of ransom to any listed party should therefore be prohibited. Member States are strongly encouraged to work with the financial sector, in particular with banks and insurance companies, and other relevant stakeholders to effectively implement this requirement.

23. In its Presidential Statement (S/PRST/2014/14) dated 28 July 2014, the Security Council reminded all Member States that they are required to ensure that their nationals and any persons within their territory do not engage in any commercial or financial transactions with or for the benefit, directly or indirectly, of the Islamic State in Iraq and the Levant (ISIL) (listed as an a.k.a of Al-Qaida in Iraq (QE.J.115.04)) and Jabhat Al-Nusra (listed as an a.k.a. of Al-Nusrah Front for the People of the Levant (ANF) (QE.A.137.14)), “notably with respect to oil in Syria and Iraq”.

24. Similarly in paragraph 14 of resolution 2170 (2014), the Security Council noted with concern the income generated from “oilfields and related infrastructure controlled by ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida” and condemned “any engagement in direct or indirect trade involving ISIL, ANF and all other individuals, groups, undertakings and entities associated with Al-Qaida”. The Council reiterated that such engagement could constitute financial support for entities designated under 1267/1989 sanctions regime.

25. In paragraph 15 of resolution 2170 (2014) the Security Council also emphasized the importance of all Member States complying with their obligation to ensure that their nationals and persons within their territory do not make donations to individuals and entities on the Al-Qaida Sanctions List or those acting on behalf of or at the direction of designated entities.

Preventative nature of assets freeze

26. Paragraph 31 of resolution 2161 (2014) reiterates that the assets freeze measures are preventative in nature and are not reliant upon criminal standards set out under national law.

Wide circulation of the Al-Qaida Sanctions of the List

27. The common practice amongst most Member States has been to circulate the Al-Qaida Sanctions List to commercial banks for screening against their client databases. Member States should be mindful that the assets freeze measures should be implemented by all natural and legal persons and not just by commercial banks. Therefore, paragraph 13 of resolution 2161 (2014) urges Member States to promote a wider circulation of the List to relevant domestic agencies, the private sector and the general public to ensure effective implementation of the measures. Paragraph 13 also encourages Member States

to urge their respective company, property and other relevant public and private registries to regularly screen their available databases against the Al-Qaida Sanctions List.

FATF Standards

28. The Security Council in paragraphs 10 and 11 of resolution 2161 (2014) strongly urged all Member States to implement the comprehensive international standards embodied in the Financial Action Task Force's (FATF) revised Forty Recommendations on Combating Money Laundering and the Financing of Terrorism and Proliferation¹, particularly Recommendation 6 on targeted financial sanctions related to terrorism and terrorism financing and to apply the elements in FATF Interpretive Note to Recommendation 6 and to take note of related best practices for effective implementation of targeted financial sanctions related to terrorism and terrorist financing.²

Preventing the abuse of non-profit organizations, informal/alternative remittance systems and physical trans-border movement of currency

29. Member States should be mindful that non-profit organizations, informal/alternative remittance systems and the physical trans-border movement of currency may be subject to abuse by and for terrorists. Member States are strongly encouraged to put into place measures to prevent the abuse of these mediums while ensuring that the conduct of legitimate business through these channels is not undermined. In paragraph 12 of resolution 2161 (2014), the Security Council calls upon Member States to move vigorously and decisively to cut the flows of funds and other financial assets and economic resources to individuals and entities on the Al-Qaida Sanctions List, as required by paragraph 1 (a), and *taking into account* relevant FATF Recommendations and international standards designed to prevent the abuse of non-profit organizations, informal/alternative remittance systems and the physical trans-border movement of currency, while working to mitigate the impact on legitimate activities through these mediums.

Designation of national focal points

30. Paragraph 22 of resolution 2161 (2014) encourages all Member States to designate national focal points in charge of liaising with the Committee and the Monitoring Team on issues related to the implementation of the restrictive measures under paragraph 1 of the same resolution.

¹ The FATF Forty Recommendations on Combating Money Laundering and the Financing of Terrorism and Proliferation are available on the FATF website at: <http://www.fatf-gafi.org/>

² In June 2013, the FATF published International Best Practices: Targeted Financial Sanctions Related to Terrorism and Terrorist Financing (Recommendation 6). The publication is available at: <http://www.fatf-gafi.org/documents/documents/bpp-finsanctions-tf-r6.html>