

**NOTIFICATION BY PRESIDENT IN RESPECT OF
ENTITIES IDENTIFIED BY UNITED NATIONS
SECURITY COUNCIL SECTION 25 OF PROTECTION
OF CONSTITUTIONAL DEMOCRACY AGAINST
TERRORIST AND RELATED ACTIVITIES ACT, 2004
(ACT 33 OF 2004)**

LINKS

To the updated United Nations lists:

<http://www.un.org/Docs/sc/committees/1267/1267ListEng>.

Reporting to the Financial Intelligence Centre:

<http://www.fic.gov.za>

Regulations regarding reporting to Financial Intelligence Centre

**[GO TO GOVERNMENT GAZETTES UNDER LEGISLATION
ON THIS WEBSITE](#)**

Gazette with Proclamation and published list (5 May 2005):

**[GO TO GOVERNMENT GAZETTES UNDER
LEGISLATION ON THIS WEBSITE](#)**

Section 25 of the Protection of Constitutional Democracy against
Terrorist and Related Activities Act, 2004, provides that:

“25. The President must, by Proclamation in the *Gazette*, and
other appropriate means of publication, give notice that the
Security Council of the United Nations, under Chapter VII of the
Charter of the United Nations, has identified a specific entity as
being—

- (a) an entity who commits, or attempts to commit, any
terrorist and related activity or participates in or

facilitates the commission of any terrorist and related activity; or

(b) an entity against whom Member States of the United Nations must take the actions specified in Resolutions of the said Security Council, in order to combat or prevent terrorist and related activities.”.

The President, on 20 May 2005, published a Proclamation in the Gazette with the latest updated (consolidated) list, dated 5 May 2005. The Proclamation in which the President published the notice with the names identified by the United Nations Security Council, is published on this website, as the President determined in the Proclamation that the Proclamation and list be published on this website: see under **Government Gazettes- see Gazette of 20 May 2005.**

The list is updated from time to time by the United Nations and the updated list can be consulted by clicking on the link hereunder. The list is available on both the pdf- and html- format. Any financial institution or person acting upon the list, should preferably consult the list through the link in order to ensure that action is taken on the latest available information. The Internet link to the updated United Nations Security Council List is: :

<http://www.un.org/Docs/sc/committees/1267/1267ListEng>.

Names that are in future added or removed from the list will be published by the President by Proclamation in the *Gazette* once notified thereof by the Security Council of the United Nations. There might be a time delay in the publication of names removed or placed on the list, in view of the fact that

once the list is updated by the United Nations a new Proclamation needs to be processed for signature by the President and publication in the Gazette. The updated (consolidated) list will also be published in the Gazette annually. However, the list that can be accessed through the link above will always reflect the latest available list.

The names on the lists are relevant to the Act with reference to the definition of “**entity**” in the Act, as well as to certain offences and obligations in the Act.

“**Entity**” is defined as:

““**entity**”, with reference to sections 3, 4, and 14 (in so far as it relates to the aforementioned sections), 22, 23 and 25, means a natural person, or a group of two or more natural persons (whether acting in the furtherance of a common purpose or conspiracy or not), or a syndicate, gang, agency, trust, partnership, fund or other unincorporated association or organisation, or any incorporated association or organisation or other legal person, and includes, where appropriate, a cell, unit, section, sub-group or branch thereof or any combination thereof; ”

Section 3 of the Act provides that:

“**3.** (1) Any person who—

- (a) does anything which will, or is likely to, enhance the ability of any entity to engage in a terrorist activity, including to provide or offering to provide a skill or an expertise;

- (b) enters or remains in any country; or
- (c) makes himself or herself available,

for the benefit of, at the direction of, or in association with any entity engaging in a terrorist activity, and who knows or ought reasonably to have known or suspected, that such act was done for the purpose of enhancing the ability of such entity to engage in a terrorist activity, is guilty of the offence associated with a terrorist activity.

(2) Any person who—

- (a) provides or offers to provide any weapon to any other person for use by or for the benefit of an entity;
- (b) solicits support for or gives support to an entity;
- (c) provides, receives or participates in training or instruction, or recruits an entity to receive training or instruction;
- (d) recruits any entity;
- (e) collects or makes a document; or
- (f) possesses a thing,

connected with the engagement in a terrorist activity, and who knows or ought reasonably to have known or suspected that such weapons, soliciting, training, recruitment, document or thing is so connected, is guilty of an offence connected with terrorist activities.”.

Section 4 of the Act provides that:

“4. (1) Any person who, directly or indirectly, in whole or in part, and by any means or method—

- (a) acquires property;
- (b) collects property;
- (c) uses property;
- (d) possesses property;
- (e) owns property;
- (f) provides or makes available, or invites a person to provide or make available property;
- (g) provides or makes available, or invites a person to provide or make available any financial or other service;
- (h) provides or makes available, or invites a person to provide or make available economic support; or
- (i) facilitates the acquisition, collection, use or provision of property, or the provision of any financial or other service, or the provision of economic support, intending that the property, financial or other service or economic support, as the case may be, be used, or while such person knows or ought reasonably to have known or suspected that the property, service or support concerned will be used, directly or indirectly, in whole or in part—
 - (i) to commit or facilitate the commission of a specified offence;
 - (ii) for the benefit of, or on behalf of, or at the direction of, or under the control of an entity which commits or attempts to commit or facilitates the commission of a specified offence; or

- (iii) for the benefit of a specific entity identified in a notice issued by the President under section 25,

is guilty of an offence.

(2) Any person who, directly or indirectly, in whole or in part, and by any means or method—

(a) deals with, enters into or facilitates any transaction or performs any other act in connection with property which such person knows or ought reasonably to have known or suspected to have been acquired, collected, used, possessed, owned or provided—

- (i) to commit or facilitate the commission of a specified offence;
- (ii) for the benefit of, or on behalf of, or at the direction of, or under the control of an entity which commits or attempts to commit or facilitates the commission of a specified offence; or
- (iii) for the benefit of a specific entity identified in a notice issued by the President under section 25; or

(b) provides financial or other services in respect of property referred to in paragraph (a),

is guilty of an offence.

(3) Any person who knows or ought reasonably to have known or suspected that property is property referred to in subsection (2)(a) and enters into, or becomes concerned in, an arrangement which in any way has or is likely to have the effect of—

- (a) facilitating the retention or control of such property by or on behalf of—
 - (i) an entity which commits or attempts to commit or facilitates the commission of a specified offence; or
 - (ii) a specific entity identified in a notice issued by the President under section 25;
- (b) converting such property;
- (c) concealing or disguising the nature, source, location, disposition or movement of such property, the ownership thereof or any interest anyone may have therein;
- (d) removing such property from a jurisdiction; or
- (e) transferring such property to a nominee,

is guilty of an offence.”.

Section 14 provides that:

“14. Any person who—

- (a) threatens;
- (b) attempts;
- (c) conspires with any other person; or
- (d) aids, abets, induces, incites, instigates, instructs or commands, counsels or procures another person,

to commit an offence in terms of this Chapter, is guilty of an offence.”.

Section 22 provides that:

“22. (1) Whenever the National Director has reason to believe that—

- (a) any person may be in possession of information relevant to—
 - (i) the commission or intended commission of an alleged offence under Chapter 2; or
 - (ii) any property which—
 - (aa) may have been used in the commission, or for the purpose of or in connection with the commission, of an offence under this Act;
 - (bb) may have facilitated the commission of an offence under this Act, or enabled any entity to commit such an offence, or provided financial or economic support to an entity in the commission of such an offence; or
 - (cc) may afford evidence of the commission or intended commission of an offence referred to in subparagraph (i);
- (b) there may be in any building, receptacle or place, or in the possession, custody or control of any entity any property referred to in paragraph (a)(ii); or
- (c) any entity may be in possession, custody or control of any documentary material relevant—
 - (i) to an alleged offence referred to in paragraph (a)(i); or
 - (ii) in respect of any property referred to in paragraph (a)(ii) or (b),

he or she may, prior to the institution of any civil or criminal proceeding, under written authority direct that a Director of Public Prosecutions shall have, in respect of a specific investigation, the power to institute an investigation in terms of the provisions of Chapter 5 of the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), relating to the commission or intended commission of an alleged offence referred to in paragraph (a)(i) or any property contemplated in paragraph (a)(ii), or to any property referred to in paragraph (b), or to the possession, custody or control of any documentary material referred to in paragraph (c).

(2) For purposes of subsection (1), a reference in the said Chapter 5 to—

- (a) the “**head of the Directorate of Special Operations**” or an “**Investigating Director**” shall be construed as a reference to a Director of Public Prosecutions authorized under subsection (1): Provided that for purposes of section 28(2)(a) of the said Act, a Director of Public Prosecutions, may only designate a Deputy Director of Public Prosecutions;
- (b) a “**special investigator**” shall be construed as to include a “**police official**”.

(3) If any property, contemplated in subsection (1)(a)(ii), seized under any power exercised under subsection (1), consists of cash or funds standing to the credit of a bank account, the Director of Public Prosecutions who has instituted the investigation under that subsection, shall cause the cash or funds to be paid into a banking account which shall be opened with any bank as defined in section 1 of the Banks Act, 1990 (Act No. 94 of 1990), and the Director of Public Prosecutions shall forthwith report to the Financial Intelligence Centre, established in terms of section 2(1) of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001), the fact of the seizure of the cash or funds and the opening of the account. “.

Section 23 provides that:



“Freezing order

23. (1) A High Court may, on *ex parte* application by the National Director to a judge in chambers, make an order prohibiting any person from engaging in any conduct, or obliging any person to cease any conduct, concerning property in respect of which there are reasonable grounds to believe that the property is owned or controlled by or on behalf of, or at the direction of—

- (a) any entity which has committed, attempted to commit, participated in or facilitated the commission of a specified offence; or
- (b) a specific entity identified in a notice issued by the President under section 25.

(2) An order made under subsection (1) may include an order to freeze any such property.

(3) A High Court may make an interim order under subsection (1) pending its final determination of an application for such an order.”.

AMENDMENTS TO PREVENTION OF ORGANISED CRIME ACT, 1998

The amendments to the Prevention of Organised Crime Act, 1998, in the Schedule to the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004, make the civil asset forfeiture procedure provided for in the Prevention of Organised Crime Act, 1998, applicable to property related to terrorist and related activities.

AMENDMENTS TO FINANCIAL INTELLIGENCE CENTRE ACT, 2001

The insertion of section 28A into the Financial Intelligence Centre Act, places a reporting obligation on accountable institutions:

“28A. (1) An accountable institution which has in its possession or under its control property owned or controlled by or on behalf of, or at the direction of —

- (a) any entity which has committed, or attempted to commit, or facilitated the commission of a specified offence as defined in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; or
- (b) a specific entity identified in a notice issued by the President, under section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004,

must within the prescribed period¹ report that fact and the prescribed particulars to the Centre.

¹ The Regulations in this regard are published in the Gazette. It is also on this website under *Government Gazettes*. Reports to the Financial Intelligence Centre, as well as further information on the Financial Intelligence Centre, can be found on the following website: <http://www.fic.gov.za>

The amended section 34 of the Financial Intelligence Centre Act provides that:

“(1) If the Centre, after consulting an accountable institution, a reporting institution or a person required to make a report in terms of section 28, 28A or 29, has reasonable grounds to suspect that a transaction or a proposed transaction may involve the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities or may constitute money laundering or **[may constitute]** a transaction contemplated in section 29(1)(b) it may direct the accountable institution, reporting institution or person in writing not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period as may be determined by the Centre, which may not be more than five days, in order to allow the Centre—

- (a) to make the necessary inquiries concerning the transaction;
and
- (b) if the Centre deems it appropriate, to inform and advise an investigating authority or the National Director of Public Prosecutions.”.