

INSTRUCTION FOR THE IMPLEMENTATION OF THE LAW ON THE FREEZING OF ASSETS WITH THE AIM OF PREVENTING TERRORISM AND FINANCING OF PROLIFERATION, IN TERMS OF PROVISIONS ON TERRORISM FINANCING PREVENTION

The purpose of this Instruction is to contribute to the information campaign for general public on the importance of preventive actions and measures in identifying, detecting and preventing terrorism financing.

Terrorism financing is usually about transactions which include the assets owned by terrorists or that have been used/are intended to be used for facilitation of acts of terrorism. Unlike money laundering, where emphasis is placed on the source of assets originating from illegal activities, that is, where the source of assets matters, in terrorism financing the emphasis is placed on the destination of assets, that is, on the manner the assets are used, whereas they may originate from legal sources.

As a full member of the United Nations, Serbia is obliged to bring its legislation in full compliance with ratified UN Conventions. UN SC has adopted a string of resolutions providing for certain measures against terrorists, terrorist organizations and terrorist financiers. One of the measures is about freezing of assets and funds of these persons and organizations and the countries are obliged to issue regulations on freezing of assets and funds located in their territories. Resolution 1373 (2001) calls upon all member states to work on prevention and suppression of terrorism financing. In line with Resolutions 1267 (1999), 1989 (2011), 2253 (2015) and 1988 (2011), the UN has published names of individuals and organizations subject to UN financial sanctions because of links with Al Qaida, ISIL or the Taliban. Acting under Chapter VII of the UN Charter, member states are obliged to undertake measures for the implementation of UN SC Resolutions.

In line with the aforementioned, Serbia has adopted Law on the Freezing of Assets with the Aim of Preventing Terrorism and Proliferation of Weapons of Mass Destruction, which regulates designation of persons and the procedure of asset freezing.

Designated person

Designated person is a natural or legal person, as well as an entity or association, which has been designated and put on the list of terrorists, terrorist organizations or terrorist financiers on the basis of the following:

1. appropriate UN SC resolutions or acts of international organizations Serbia is a member of;
2. a proposal of relevant state authorities, or
3. a well-explained request of another country.

Designation procedure

UN SC lists are applied automatically and do not require a document to be issued by the Government.

Designation procedure can be based on two different criteria:

1. designation by the Government at the proposal of relevant state authorities, based on a justified belief that a person is a terrorist, terrorist financier, that it is involved in terrorist activities, facilitating a terrorist group or in the commission of a terrorist act.

- A justified belief is a legal standard, entirely separated from criminal standards, which is introduced as a criterion the Government must rely on when issuing a decision of designation. A justified belief is formed on the basis of information on a certain person provided to the Government by a relevant authority (Ministry of Interior, competent prosecutor's office, a security and intelligence authority or FIU)
2. designation of a person at a well explained request of another country, based on UN SC Res 1373, which orders countries to give proper consideration to a request of another country; if there is a justified belief, they will issue a decision on designating certain persons.

Updating and searching the list of designated persons

In line with the Law, lists of designated persons issued by UN SC or other international organizations where Serbia is a member, are downloaded in their original form in English and are published on the website of the Administration. <http://apml.gov.rs/cyr587/toc/ЗАМРЗАВАЊЕ-СРЕДСТАВА---ЛИСТЕ.html>.

On the APML's website there is a search tool for a UN SC List of designated persons (<http://www.unsearch.apml.gov.rs/>). The search tool enables all interested natural and legal persons to check quickly and simply if they have contacts, and/or business cooperation with this category of persons, so that they could undertake actions and measures from the Law in time.

Developing this kind of tool has enabled a direct search of UN SC Designated persons lists, referring to the Resolution 1267 (1999), 1989 (2011) and 2253 (2015) on ISIL, Al-Qaida and related individuals, groups of persons, commercial and other entities; to the Resolution 1718 (2006) and successor resolutions on DPRK, as well as to the Resolution 1988 (2011) on the Taliban and related individuals, groups of persons, commercial and other entities.

The search tool itself is designed in such a manner that any natural and legal person may enter at least one piece of information that they have and check whether they have a contact with a designated person. At the same time, the one who does the search must select a group of users they belong to (banks, insurance companies, lawyers, notaries, NPO, endowments...). If the search criterion is too broad, the tool will show all the persons included by the search (for example, all the persons with the same name, etc), showing at the same time all available data for those particular persons (name, surname, alias, date of birth, country of origin, date of designation, the Resolution referring to the person).

Data on designated persons is automatically downloaded on a daily basis from relevant UN sanctions list, which produces correct and timely results when using the search tool.

Protection of human rights

For the purpose of protection of human rights, which may be compromised by designation, the Government reviews the justification of its decision on designations at least once a year, which implies that relevant ministries follow UN lists and possible changes, and reviews justification of its belief and changed circumstances which may result in delisting.

Protection of human rights is ensured by serving notification on designation directly to the person involved, in line with general administrative procedure.

Procedure for reporting a designated person

The Law requires any legal or natural person doing any type of business to establish whether it has any relation with a designated person. In case it has, any person is required to freeze the assets of the designated person at the shortest notice and to inform the APML about it within 24 hours at the latest.

Such a notification and information are provided:

- by phone;
- electronically;
- directly and in person, or
- by registered mail.

Notification on a designated person and the person's assets, as well as information relevant for identifying a designated person and the property is provided on the Form for Reporting a Designated Person, which can be found on the APML's website apml.gov.rs/REPOSITORY/1384_obrazac-za-prijavu-oznacenih-lica-sajt-230615.doc).

Notifications and information provided by telephone are confirmed in writing.

Procedure for asset freezing

Freezing of assets means temporary prohibition of transfer, conversion, disposal and movement of assets, or temporary management of such assets based on a decision of the competent state authority.

Assets means financial instruments, assets of any kind, moveable or immovable, tangible or intangible, however acquired, and documents or instruments in any form, evidencing the title to or interest in such funds or assets (e.g. bank loans, traveller and bank cheques, money orders, shares, securities, bonds, bills of exchange, letters of credit, interests, dividends, or any other proceeds collected based on or from such funds or assets, etc.)

A person that notified the APML is required to freeze the assets of a designated person before receiving the decision on freezing or before receiving the notice that no freezing decision has been issued, and is required to do so seven days following the notification sent to the APML at the latest.

A person may not make their own or other person's assets available to a designated person, to a person directly or indirectly owned or controlled by a designated person, as well as to a person acting on behalf of or for a designated person or according to a designated person's instructions. Here a designated person is prevented from using not only his/her assets, but other person's assets as well. All these measures also apply on a person acting for and on behalf of a designated person or acting under the designated person's instructions.

In line with the Law, after notice or information has been provided that a legal or natural person established business cooperation or another similar relation with a designated person, the APML makes a report without delay.

The report contains data on the identity of a reported person and his/her assets, obtained from state authorities, organization and persons entrusted with public powers, as well as conclusion as to whether the person was identified as a designated person and whether the assets are subject to freezing.

APML provides the minister of finance with completed report, without delay. If after receiving the report Minister of finance establishes that the person is actually a designated person and that the assets are subject to freezing, the minister shall order, by issuing a decision, freezing of the person's assets without delay.

The natural or legal person holding the assets is required to freeze the assets based on the decision ordering freezing.

If after receiving the report from the APML Minister of Finance establishes that the person in question is not a designated person and the assets are not subject to freezing, and/or that there are no conditions to freeze the assets, the Minister is required to inform in writing without delay the legal or natural person providing notice that they can proceed with activities they have suspended.

Asset freezing lasts for as long as the person is on designated list, and /or, pending a decision of the relevant court, issued on the basis of the Law.

Management of assets on the basis of the Law is done by the Directorate for Managing Seized Assets, in line with the Law.

Permitted use of a part of assets

The designated person whose assets have been frozen is entitled to institute proceedings before a court with the aim of excluding a part of the assets necessary for basic costs of living (food, rent or home loan installment payments, medical treatment and medications, taxes, insurance premiums, public utility costs, costs for legal services rendered, fee for regular maintenance or keeping of frozen funds or other financial assets or economic resources, if they were generated after the passing of the decision ordering freezing of assets).

Decision-making power in the proceeding for excluding a part of assets lies upon the basic court, in line with the law regulating the competence of courts. The procedure to exclude a part of assets is urgent and handled by the rules of extrajudicial procedure.