

Unofficial Initial First Hand Translation of Draft

Assets (Money) Laundering Prevention (Freezing of Properties and Funds of Designated Person, Group and Organization) Rules, 2013

Date of Approval: 6th Oct. 2013

In exercise of the power under Section 46 of Asset (Money) Laundering Prevention Act, 2008, the Government of Nepal has formulated the following Rules.

Chapter 1

Preliminary

1. Short Name and Commencement: (1) These Rules shall be cited as "Assets (Money) Laundering Prevention (Freezing of Properties and Funds of Designated Person, Group and Organization) Rules, 2013.

(2) This Rules shall be effective immediately.

2. Definition: Unless the subject or context otherwise requires, in this rules,-

- a. "Act" means the Assets Laundering Prevention Act, 2064
- b. "Ministry" means the Ministry of Home Affairs.

Chapter 2

Listing, Freezing, Defreezing and other Provisions

3. Listing and Freezing Order: (1) The Ministry of Foreign Affairs (MOFA) shall without delay provide the updated **list with the name, address and other related documents** of person, group or organization designated under the resolution of the UN Security Council pursuant to section 29E. of the Act to the Ministry.

(2) The Ministry, upon the availability of the updated list pursuant to sub-rule (1), shall immediately issue a freezing order against the properties or funds of such person, group or organization and keep it in its website for public information.

(3) The Ministry shall make an inquiry on the following matters if it receives a request for freezing the properties or funds of a person, group or organization from a foreign Government through the MOFA, pursuant to subsection (1) of section 29F. of the Act.

(a) Whether the request is compatible with the laws of the requesting country

(b) Whether any reference/fact is disclosed about the existence or availability of such person, group or organization, or properties or funds of such person, group or organization in Nepal,

(c) Whether the request is compatible with prevailing Nepalese laws

(d) Whether the person, group or organized related with properties or funds requested to freeze does exist or not in Nepal.

(4) The Ministry shall complete its inquiry to be made pursuant to sub-rule (3) within three days of receipt of such request, in maximum.

(5) The Ministry shall make an inquiry on the following matters before enlisting a person, group or organization in the domestic designation list by itself to be issued pursuant to sub-section (3) of section 29F of the Act:

(a) Whether terrorist act or terrorist financing pursuant to this Act or prevailing laws has occurred or reasonable grounds exist that such acts may happen or be committed,

(b) Whether there is affiliation with such person, group or organization has or reasonable grounds exist that there may be such affiliation with the person, group or organization mentioned in sub-clause (a)

(6) The Ministry, if it finds that such person, group or organization is involved or reasonable grounds exists to believe that they are related with section 29F of the Act in its inquiry made pursuant to sub-rule (3) or (5), shall submit its proposal to the Council of Ministers, the Government of Nepal to enlist such person, group or organization in the designation list of subsection (3) of the section 29F. of the Act and to freeze their properties or funds.

(7) The Ministry shall immediately issue a freezing order against the properties or funds of a person, group or organization and keep it in its website for public information in the format given in schedule 1 if the Council of Ministers, the Government of Nepal decides to enlist such person, group or organization in the designation list and freeze their properties or funds pursuant to sub rule (6).

4. Recommendation for Designation: (1) Any person, institution or agency, if it finds an information in the course of its business or has reasonable grounds to believe that, a person, group or organization deserves designation in the list pursuant to chapter 6B. of the Act, shall immediately pass confidential information to the Ministry.

(2) The Ministry, based upon the information received pursuant to sub rule (1) or from its own or other sources or upon the inquiry made pursuant to sub rule (1), shall submit its proposal to the Council of Ministers, the Government of Nepal to enlist person, group or organization in the designation list pursuant to chapter 6B. of the Act.

(3) The Ministry shall carry out the following functions if the Council of Ministers, the Government of Nepal, decides to enlist a person, group or organization in the designation list and freeze their properties or funds pursuant to the chapter 6B. of the Act as per the proposal submitted under sub rule (2):

(a) To request related agency under UNO through the MOFA, if decision is made to enlist under the UN designation list,

(b) To request foreign country through the MOFA, if decision is made to enlist under the designation list of foreign country,

(c) To publish in its website, if decision is made to enlist in the domestic designation list.

5. Delisting: (1) A person, group or organization enlisted in the designation list pursuant to chapter 6B of the Act may submit an application for delisting to the Ministry in the format prescribed in Schedule 2 if he has substantial grounds to request so.

Provided that a person, group or organization designated in the list under section 29E shall submit his application to the Ministry through the MOFA.

(2) The Ministry shall make an inquiry if it receives an application pursuant to sub rule (1):

(a) Whether the name and address match with the designation list

(b) Whether the applicant is related with the designation list

(3) The Ministry shall submit its proposal to the Council of Ministers, the Government of Nepal if it finds reasons and grounds in its inquiry made pursuant to sub rule (2) that the applicant should not be in the designation list.

(4) The Ministry shall carry out the following functions if the Council of Ministers decides to delist a person, group or organization from the designation list pursuant to the proposal submitted under sub rule (3):

(a) To request the related agency under UNO through the MOFA to delist the name, if the applicant is under the UN designation list,

(b) To delist the name from the list and inform it to the foreign country through the MOFA, if listing has been made upon the request of foreign country pursuant to subsection (3) of the section 29F.,

(c) To delist from its own designation list, if the applicant is under domestic list of subsection (3) of the section 29F,

(d) To request foreign country to delist the applicant, if the applicant has been listed in foreign country upon the request of the Government of Nepal, through the MOFA.

(5) Notwithstanding whatever written in this rules elase where, the Ministry shall remove the name from the designation list if it finds that it has by mistake degisgated a person, group or individual in the course of desigantion pursuant to section 29E. and 29F. and also release the properties or funds if frozen.

(6) The Ministry shall immediately publish a notice of delisting in its website if a person, group or organization is delisted pursuant to clause (b) and (c) of sub rule (4).

(7) The Ministry shall make a management for regular review the designation list so as to determine whether a particular person, group or organization requires to be remained in the list or not as per the section 29E. and 29F. of the Act or this Rules.

6. Procedures for Freezing properties or Funds Belonging to Natural Person: (1) Any natural person who comes to know that he has properties or funds related with person, group or organization remained in the designation list pursuant to the Act or this Rules shall immediately and confidentially inform the Ministry or the closest District Administration Office with detail of properties or funds belonging to the person, group or organization remained in the designation list in the format as mentioned in the schedule 3 for the purpose of freezing or seizing.

(2) The District Administration Office shall immediately inform the Ministry if it receives information pursuant to sub rule (1).

(3) The Ministry shall, upon the receipt of application pursuant to sub rule (1) or (2), immediately freeze or seize such properties or funds of such person, group or organization if it is related with them.

7. Liabilities of the Reporting Entities: (1) A reporting entity shall have a system in place that searches and ensures whether any person or group or organization mentioned in the designation list and their associates are into its database immediately after the publication of the list in the website of the Ministry.

(2) Reporting entity shall immediately freeze the properties or funds of person, group or organization or their associates in accordance with section 29H. if it finds so while making search in its database pursuant to sub rule (1).

(3) Reporting entity may take the best international practices into consideration for the effective implementation of the Act, these Rules and management of its functions.

8. Procedures for Defreezing Properties or Funds: (1) The Ministry shall order the concerned agency to defreeze the properties or funds of person, group or organization whose properties or funds were frozen due to the match of name with the designation list issued pursuant to section 29E. 29F., if it finds that they are unrelated person, group or organization in its inquiry made pursuant to sub rules (2) and (3) of rule 5 and publish such information in its website immediately.

(2) All concerned agencies shall immediately defreeze the properties or funds if an order is made pursuant to sub rule (1).

9. Monitoring: (1) Regulators shall make regular inspection, supervision and monitoring of reporting entity to ensure whether functions mentioned under the chapter 6B. of the Act or under this Rules have been complied with.

(2) Concerned Ministries shall make regular inspection, supervision and monitoring of other agencies than reporting entities **to ensure** whether the functions mentioned under the chapter 6B. of the Act or under this Rules have been complied with.

(3) The Ministry shall make a management of regular monitoring of natural person to observe whether the functions mentioned under the chapter 6B. of the Act or under this Rules have been complied with.

(4) Concerned Ministry or Regulator may undertake the said inspection, supervision or monitoring at least once in a year for inspection.

10. Protection of Bona-fide Third Parties: (1) Any bona- fide **third party whose interest has been impaired due to the properties or funds** frozen under the Chapter 6B of the Act may submit his application to the Ministry with a request to defreeze his properties or funds in the format prescribed in schedule 4.

Provided that bona-fide third party who is included in designation list under section 29E and whose properties or funds have been frozen shall submit his application to the Ministry through the MOFA .

(2) Necessary documents and evidences should be attached while submitting an application in accordance with sub rule (1).

(3) The Ministry shall defreeze the properties or funds up to the limit of the interest of the bona-fide third parties if it finds the application made pursuant to sub rules (1) or (2) is true.

(4) The Ministry shall immediately order the concerned agency to defreeze the properties or funds **up to the interest of** the bona-fide third parties if it is so decided pursuant to sub rule (3) and publish this notice in its website.

11. Access to Basic Expenses: (1) A person affected by the freezing of all properties and funds due to his designation in the list made pursuant to section 29E. and 29F. of the Act may submit an application to the Ministry with a request to provide access to the frozen properties or funds required for the basic humanitarian need of his and his family members in the format as prescribed in schedule 5.

(2) The Ministry, if it finds that there is no alternative for basic expenses in its inquiry over the application made pursuant to sub rule (1), may release reasonable and necessary frozen properties or funds for the following purposes:

(a) Expenses for daily foodstuffs, shelter and health,

(b) Expenses for taxes and other fees for electricity, telephone, drinking water to per paid as per the prevailing laws,

(c) Expenses for the education of minors

(d) Expenses for legal protection and judicial proceedings

(e) Expenses for due protection of frozen properties or funds.

(3) Any decision made pursuant to sub rule (2) for a **designee** under the UN Security Council Resolution shall be transmitted to the concerned agency of UN prior to providing access to the properties or funds.

(4) The Ministry, if it receives any direction from the UNO upon its request made pursuant to sub rule (3), shall act accordingly.

(5) The Ministry may release reasonable properties or funds if it did not receive any response from UN O within ten days of receipt of request made pursuant to sub rule (3).

(6) The Ministry shall ensure that expenses provided pursuant to sub rule (4) shall not be used in terrorist act or terrorism financing.

12. Details of Freezing and Defreezing: (1) Any person or agency which freezes or defreezes the properties or funds pursuant to the chapter 6B. of the Act and these Rules shall provide information of freezing or de-freezing to the person concerned in the format prescribed in schedule 6.

(2) Any person or agency which freezes or defreezes the properties or funds pursuant to the chapter 6B. of the Act and these Rules shall provide information of freezing or de-freezing within three days of freezing or defreezing to the Regulator if it is Reporting Entity or to the Ministry of Finance if it is other agency than the RE in the format prescribed in schedule 7, with its copy to Financial Information Unit.

13. Dissemination of Information: If an agency of Nepal receives information about the decision of a foreign jurisdiction or agency in relation to transactions of particular person, group or organization which may have affect in Nepal, such agency of Nepal may disseminate such information to the agencies or institutions under it for pre-caution.

14. Opportunity for Clarification: The Ministry shall give an opportunity for clarification with 15 days time to clarify before it takes any action against a natural person in accordance with subsection (3) of section 29K. of the Act.

15. Report: (1) The concerned ministry and Regulators shall submit their report to the National Coordination Committee within three months of the expiry of each financial year including the details of its activities in regard to the provisions of chapter 6B. of the Act and these Rules.

(2) The NCC shall submit the reports received pursuant to sub rule (1) to the Ministry and MOFA.

(3) The Report to be submitted pursuant to sub rule (1) shall include the matters including the managements of freezing and defreezing, monitoring, analysis, problems and solutions.

16. Capacity Building Program: The Ministry or Regulator **or the Reporting Entity** shall manage necessary capacity building programs to its staffs for the effective implementation of the chapter 6B. of the Act and these Rules.

17. Procedures may be issued: The Ministry or Regulator may issue necessary procedures for the effective implementation of the chapter 6B. of the Act, this Rules and related international standards.

Schedule -1

(Related to sub rule (7) of Rule 3)

The Government of Nepal

Ministry of Home Affairs

Order to freeze properties or Funds

This is informed with the decision of of dated to all related natural person, institution, organization and agencies that the following person, group or organisation have been listed in the designation list made pursuant to section 29E/29F of Assets Laundering Prevention Act, 2008. This freezing order has been issued against the properties or funds of all designated person, group or organization in order to freeze the properties or funds of such person, group or organization and other person, group or organization associated with them without any delay in accordance with section 29G of the Assets Laundering Prevention Act, 2008 and sub rule (2) of the rule 12. It is also requested to provide freezing information to the related agency within three days of such action.

| S.N. | Name of Person, Group or Organization | Description of Freezing |
|------|---------------------------------------|-------------------------|
| 1. | | |
| 2. | | |
| 3 | | |
| 4 | | |
| 5. | | |

Schedule -2

(Related to sub rule (1) of Rule 5)

The Government of Nepal

..... Ministry.

Dear Sir/Madam,

I/we have found my/our name in the designation list of issued by the Ministry of Home Affairs, the Government of Nepal pursuant to Assets Laundering Prevention Act, 2008. Based on the following documents and evidences, I/we am/are not entitled to be included in the list. Hence, I/we request to delist my/our name from the designation list and defreeze my/our properties or funds.

Documents or evidences included

S.N.

- 1.
- 2.
- 3
- 4
- 5.

Applicant:

Name:

List no.

Schedule -3

(Related to sub rule (1) of Rule 6)

The Government of Nepal

Ministry of Home Affairs/District Administration Office

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Dear Sir/Madam,

I have found the name of in the designation list issued pursuant to Assets Laundering Prevention Act, 2008 on by the Ministry of Home Affairs, the Government of Nepal. I would like to inform that following properties or funds belonging to the name enlisted has remained with me.

Details of properties or funds

S.N.

- 1.
- 2.
- 3.
- 4.

Applicant:

Name:

Schedule -4

(Related to sub rule (1) of Rule 10)

The Government of Nepal

..... Ministry

Dear Sir/Madam,

I/we have found my/our properties or funds frozen stating the reason of the designation list issued on by the Ministry of Home Affairs, the Government of Nepal pursuant to Assets Laundering Prevention Act, 2008 though my/our name is not mentioned in the list. It has affected my/our interests. Hence, based on the following documents and evidences, I/we would like to request to defreeze my/our following properties or funds as bona-fide applicant.

Details of frozen properties or funds

- 1.
- 2.
- 3.
- 4.

Documents and evidences for defreezing

- 1.
- 2.
- 3.
- 4.

Applicant:

Name:

Address:

Schedule -5

(Related to sub rule (1) of Rule 11)

The Government of Nepal

Ministry of Home Affairs.

Dear Sir/Madam,

I have found all my properties or funds frozen due to the inclusion of my name in the designation list issued on by the Ministry of Home Affairs, the Government of Nepal pursuant to Assets Laundering Prevention Act, 2008. I have no alternative financial resources. Hence, I would like to request following expenses for following purposes:

| S.N. | Description | Amount |
|------|--|--------|
| 1 | Expenses for daily foodstuffs, shelter and health | |
| 2 | Expenses for taxes and other fees for electricity, telephone, drinking water as per the prevailing laws, | |
| 3 | Expenses for the education of minors | |
| 4 | Expenses for legal protection and judicial proceedings | |
| 5 | Expenses for due protection of frozen properties or funds. | |

Applicant:

Name:

Address:

List no.

Schedule -6

(Related to sub rule (1) of Rule 12)

Information of Freezing

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It is informed that your following properties or funds have been frozen as per the freezing order of the Ministry of Home Affairs, the Government of Nepal issued pursuant to the sectionof the Assets Laundering Prevention Act, 2008.

| S.N. | Order no of the Ministry, Date and Serial no. | Description of the properties or funds | Name of person entitling, possessing the properties or funds |
|------|---|--|--|
| | | | |
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| | | | |

Officer

Schedule -7

(Related to sub rule (2) of Rule 12)

Information of Freezing/Defreezing

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Subject: Details of Freezing/Defreezing

It is informed that following properties or funds of the following person, group or organization have been frozen/defrozen as per the order of the Ministry of Home Affairs, the Government of Nepal made pursuant to the section of the Assets Laundering Prevention Act, 2008.

Freezing Details:

| S.N. | Order no. of the Ministry and Date | Description of the properties or funds | Name of person entitling, possessing the properties or funds |
|------|------------------------------------|--|--|
| | | | |
| | | | |

De-freezing Details:

| S.N. | Order no. of the Ministry and Date | Description of the properties or funds | Name of person entitling, possessing the properties or funds |
|------|------------------------------------|--|--|
| | | | |
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| | | | |
| | | | |

Officer

CC:

Financial Information Unit, Nepal Rastra Bank.