

## **KREDITILSYNET**

### **The Financial Supervisory Authority of Norway**

Translation as of March 2005

Translated by Government Authorised Translator Peter Thomas.

*This translation is for information purposes only. Legal authenticity remains with the official Norwegian version as published in Norsk Lovtidend.*

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Translation of

### **Circular no. 22/2003 from Kredittilsynet**

## **Handling of lists from the UN and FATF and similar announcements – change in Kredittilsynet's practice**

1) Kredittilsynet has revised its practice such that lists from the Ministry of Foreign Affairs relating to the UN's listing of persons associated with terrorism, similar announcements, and lists from the Financial Action Task Force on Money Laundering (FATF) with an overview of countries and territories identified as having deficiencies in their anti-money laundering systems, will now be published on Kredittilsynet's website at [www.kredittilsynet.no](http://www.kredittilsynet.no) under "Lister > Lister fra FN og FATF, samt lignende kunngjøringer" ["Lists > Lists issued by the UN and FATF and similar announcements"]. Entities coming under the money laundering legislation and the prohibition against terrorist financing will accordingly need to keep themselves posted of the website.

2) This circular also contains details of the recently adopted "Regulations on special measures against the Republic of Zimbabwe".

3) The circular also reports a change in the list issued by the UN Sanctions Committee.

### **1. Handling of lists from the UN and FATF and similar announcements – change in Kredittilsynet's practice**

Kredittilsynet receives lists from the Ministry of Foreign Affairs relating to the UN's listing of persons associated with Usama Bin Laden, Al Qaida and the Taliban. In this connection attention is drawn to "Regulations on sanctions against Usama Bin Laden, Al-Qaida and the Taliban (no. 1374 of 22 December 1999)"; see Kredittilsynet's circular no. 24/2001. The consolidated UN list of persons and entities encompassed by the UN sanctions is posted on the UN website. A hyperlink to this list will be found under section 1 of Lovdata's announcement of the above regulations at [www.lovdata.no](http://www.lovdata.no).

Kredittilsynet also handles lists from the Financial Action Task Force on Money Laundering (FATF) of non-cooperating countries, i.e. countries and territories identified as having deficiencies in their anti-money laundering systems. According to section 9 third paragraph of "Regulations on identity verification and measures to combat money laundering (no. 118 of 7 February 1994)", transactions to and from a customer in a country lacking satisfactory measures against the laundering of criminal proceeds may trigger an obligation to make further investigations and, where appropriate, to report to the National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM). Further information on the listing in question is available at the FATF's website at [www.fatf-gafi.org](http://www.fatf-gafi.org) under "NCCT Initiative" (Non-Cooperative Countries and Territories).

Kredittilsynet also receives other announcements on which information is given in the form of circulars, for example circular no. 10/2003 (listing of Ansar al-Islam) and no. 18/2003 (special measures against Burma).

Up to now Kredittilsynet has sent these lists and similar announcements to the following trade organisations – Norwegian Financial Services Association (FNH), Norwegian Savings Banks' Association, Norwegian Stockbrokers' Association and Norwegian Mutual Fund Association – requesting these bodies to forward the material to their member institutions. From now on Kredittilsynet will no longer be sending such lists and announcements to trade organisations with a forwarding request. Lists and other announcements relating to the money laundering legislation and to the prohibition against terrorist financing etc., will now be published on Kredittilsynet's website at [www.kredittilsynet.no](http://www.kredittilsynet.no) under "Lister > Lister fra FN og FATF, samt lignende kunngjøringer" ["Lists > Lists issued by the UN and FATF and similar announcements"]. Entities with a reporting obligation under the money laundering legislation and the prohibition against terrorist financing accordingly need to need to keep themselves posted of Kredittilsynet's website for updates.

## **2. "Regulations relating to special measures against the Republic of Zimbabwe"**

"Regulations relating to special measures against the Republic of Zimbabwe" were adopted on 15 August 2003. Section 3 of the regulations establishes an obligation to freeze assets of persons included in Annex II to the regulations. Making assets available to these persons is prohibited. Any freezing of assets must be immediately brought to the attention of the Ministry of Foreign Affairs and reported to the National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM).

The regulations were adopted on 15 August 2003 pursuant to section 1 of the Act on special measures against the Republic of Zimbabwe (no. 58 of 27 June 2003). The regulations were adopted in light of the regime of political repression introduced by President Robert Mugabe and his ZANU PF party in connection with the presidential election in March 2002. The regime of political repression has continued, and has in some respects increased in force.

Section 3 of the regulations reads:

### Section 3

1. In this section:

"freezing of assets" means: preventing any move, transfer, alteration, use of or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or other change that would enable the use of the funds, including portfolio management.

2. Assets belonging to persons included in Annex II to these regulations shall be frozen. Any freezing of assets must be immediately brought to the attention of the Ministry of Foreign Affairs.

3. Making assets available to persons included in Annex II to these regulations is prohibited.

4. Subsections 2 and 3 do not apply to:

- a) the crediting of frozen accounts on the condition that any additions shall be frozen
- b) the use of frozen funds for:
  - essential needs of a person included in Annex I to these regulations or of the latter's family;
  - payment in Norway of taxes, compulsory insurance premiums and fees for public utility services;
  - payment of charges to a financial institution in Norway for the maintenance of accounts.

The Ministry of Foreign Affairs shall be informed of any amounts credited to frozen accounts pursuant to a) or payments made pursuant to b). It must be demonstrated that the applicable conditions are met.

5. With a view to protecting Norwegian interests, including those of Norwegian citizens and of persons domiciled in Norway, the Ministry of Foreign Affairs may grant authorisations:

- to unfreeze frozen assets
- to make assets available to persons included in Annex II to these regulations.”

According to section 3, assets belonging to the persons referred to in section 2 shall be frozen, and making assets available to these persons is prohibited. Any freezing of assets shall be immediately brought to the attention of the Ministry of Foreign Affairs. The Danish version of Council Common Position 2004/161/CFSP article 4 refers to that which is to be frozen and not made available to certain persons as “funds, other financial assets or economic resources”. Council Regulation (EC) No. 310/2002 article 1, paragraph 1, defines this wording. Based on the definition, there are scarcely any limits to the range of assets encompassed, and no need is seen to define the term “assets” in the regulations.

The term “freezing” is defined in section 3, and corresponds to the term employed i.a. in the Burma regulations; see Kredittilsynet's circular no. 18/2003. In these regulations “freezing of assets” is a civil law remedy that is not to be confused with a restriction order, which is a coercive remedy available under criminal procedure legislation, cf. the Criminal Procedure Act chapter 15 b. The obligation to freeze assets rests with any party whose position in relation to the assets is such that this party is entitled to freeze them. Banks, for example, will be obliged to block access to accounts belonging to the persons in question. Intentional omission to freeze assets or assisting such omission is punishable under section 3 of the Zimbabwe Act with further references. The Criminal Code's general provisions on criminal liability of institutions apply. The obligation to freeze assets and the prohibition against making assets available to certain persons do not prevent the crediting of frozen accounts to meet specified needs. Moreover, the Ministry of Foreign Affairs is empowered to permit the unfreezing of frozen assets and to make frozen assets available to persons included in Annex II to the regulations for the purpose of protecting Norwegian interests.

Any measures instituted under section 3 of the regulations must also be reported to ØKOKRIM's money laundering team, i.e.:

ØKOKRIM v/hvitvaskingsenheten, PB 8193 Dep, N-0034 Oslo.

Telefax: +47 23 29 10 01, e-mail: [okokrim@okokrim.no](mailto:okokrim@okokrim.no).

See the Act on financing activity and financial institutions (no. 40 of 10 June 1988) section 2-17 third and fourth paragraph.

### **3. Further listing – UN sanctions committee**

The following persons have been added to the list:

32. Name: 1: SHAMIL, 2: BASAYEV; see the enclosed list for further information.

A hyperlink to the consolidated UN list, including the listing of no. 32 Shamil Basayev, will be found at [www.lovdato.no](http://www.lovdato.no) under “Regulations relating to sanctions against Usama bin Laden, Al-Qaida and the Taliban (no. 1374 of 22 December 1999).”

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