



ANGUILLA

A BILL FOR

**PROLIFERATION FINANCING (PROHIBITION) ACT,  
2023**

Published by Authority

**PROLIFERATION FINANCING (PROHIBITION) ACT, 2023**

## TABLE OF CONTENTS

## PART 1

## PRELIMINARY

## SECTION

1. Interpretation
2. Meaning of “financial transaction”
3. Application
4. Act to bind the Crown

## PART 2

## PROLIFERATION FINANCING

5. Meaning of proliferation financing
6. Prohibition against proliferation financing

## PART 3

## TARGETED FINANCIAL SANCTIONS

*Designations and Related Matters*

7. Designation by UN Security Council
8. Power of Governor to designate
9. Duration of designation by Governor
10. Revocation, etc. of designation
11. Judicial review of a designation
12. Notification of designations and revocations
13. Notice to designated person or entity

*Prohibitions*

14. Prohibition against dealing with assets
15. Prohibition against making assets available

*Seizure of Frozen Assets*

16. Order for seizure of frozen assets
17. Management of seized assets

## PART 4

## FINANCIAL MEASURES

18. Prohibition on financing
19. Prohibition on financial transactions
20. Prohibition on financial support for trade
21. Prohibition on joint ventures
22. Prohibition on relationships with designated country’s financial institution
23. Prohibition on maintaining offices or accounts in a designated country

24. Prohibition on establishing or maintaining offices and accounts in Anguilla
25. Prohibition relating to professional or commercial activities
26. Prohibition on transactions in real property
27. Prohibition on dealing or insuring flagged vessel
28. Prohibition on insuring other vessels
29. Prohibition on leasing or chartering vessel or aircraft, etc.
30. Prohibition on procuring vessel or crew member

#### PART 5

##### REPORTING OBLIGATIONS

31. Reporting obligations not limited
32. Request to verify suspicion
33. Obligation to report suspicion
34. Reporting suspicious transactions
35. Restriction on disclosure
36. Enhanced reporting obligations

#### PART 6

##### SUPERVISION AND ENFORCEMENT

37. Functions of Agency in relation to proliferation financing
38. Power to require information or document
39. Powers of entry and inspection
40. Power to conduct onsite inspection
41. Restrictions on powers
42. Failure to comply with information requirement
43. Disclosure of information
44. Enforcement measures
45. Power to issue warning
46. Power to impose civil penalty
47. Duty to issue notice
48. Right of appeal
49. Offences
50. Extra-territorial offences
51. Liability of officers of bodies corporate, etc.
52. Proceedings against unincorporated bodies

#### PART 7

##### AUTHORISATIONS

53. Authorisation by the Governor
54. Further authorisation
55. Conditions, etc. in relation to an authorisation
56. Revocation, variation, etc. of authorisation

## PART 8

## MISCELLANEOUS PROVISIONS

57. Claims for indemnity or under contract
  58. Requirement to publish list of designations
  59. Proposal for designation
  60. Application to unfreeze an asset
  61. Report to Parliament
  62. Report to UN Security Council
  63. Monitoring financial institutions and Service provider
  64. Notices
  65. Exercise of powers under this Act
  66. Delegation of authority
  67. Immunity from liability
  68. Power to amend Part 4
  69. Power to amend the Schedules
  70. Regulations
  71. Citation and commencement
- SCHEDULE 1: Controlled Items related to a Designated Country
- SCHEDULE 2: Designated Countries
- SCHEDULE 3: Request to verify suspicion Form
- SCHEDULE 4: Details to be included in Suspicious Activity/ Transaction Reports  
                  regarding Property Owned by or Controlled by Designated Persons or  
                  Entities
- SCHEDULE 5: Offences and Penalties
- SCHEDULE 6: Compliance Reporting Forms for Suspected Sanctions Breaches

I Assent

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Dileeni Daniel-Selvaratnam  
Governor

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Date

ANGUILLA

No. /2023

A BILL FOR

**PROLIFERATION FINANCING (PROHIBITION) ACT, 2023**

[Gazette Dated: , 2023] [Commencement: Section 71]

An Act to make provision for the prevention of the proliferation of weapons of mass destruction and ensure the implementation of financial measures relating to counter-proliferation Resolutions of the United Nations and to provide for other matters connected therewith.

ENACTED by the Legislature of Anguilla

## PART 1

## PRELIMINARY

**Interpretation**

1. (1) In this Act, unless the context otherwise requires

“account” includes—

- (a) any facility or arrangement under which a financial institution—
  - (i) accepts the deposit of an asset,
  - (ii) allows the withdrawal or transfer of an asset;
  - (iii) pays, collects or draws on a bearer negotiable instrument on behalf of another person; or
  - (iv) supplies a safety deposit box or any other form of safe deposit; and

(b) any account that is closed or inactive, or that has a nil balance;

“Agency” means the Financial Intelligence Unit established under section 3 of the Financial Intelligence Unit Act, 2020;

“aircraft” means a fixed wing, swivel wing, rotary wing, tilt rotor or tilt wing, airborne vehicle or helicopter;

“arms or related material” includes—

- (a) weapons;
- (b) ammunition; and
- (c) military vehicles and equipment, including—
  - (i) battle tanks,
  - (ii) armoured combat vehicles,
  - (iii) large calibre artillery systems,
  - (iv) combat aircraft,
  - (v) attack helicopters,
  - (vi) warships; and
  - (vii) missiles and missile systems;
- (d) spare parts and accessories for the items mentioned in paragraphs (a), (b) and (c); and
- (e) paramilitary equipment, including—
  - (i) batons, clubs, riot sticks and similar devices of a kind used for law enforcement purposes,
  - (ii) tear gas and other riot control agents,
  - (iii) body armour, bullet resistant apparel and helmets,
  - (iv) handcuffs, leg-irons and other devices used for restraining prisoners,
  - (v) riot protection shields,
  - (vi) whips,
  - (vii) parts and accessories designed or adapted for use in, or with, equipment mentioned in subparagraphs (i) to (vi); and

- (viii) such other equipment or item as may be designated by the Governor, by an Order published in the *Gazette*, to constitute arms or related material;

“asset” means funds, property, financial resources and economic resources of every kind, whether tangible or intangible, corporeal or incorporeal, moveable or immovable, actual or potential, however acquired, including—

- (a) cash;
- (b) virtual or digital currencies, including cryptocurrencies;
- (c) bank credits, travellers’ cheques, bank cheques and money orders;
- (d) precious metals and precious stones;
- (e) real property, chattels, and vessels of the type mentioned in a counter-proliferation resolution of the United Nations;
- (f) shares, securities, bonds and drafts;
- (g) rights of set-off, guarantees, performance bonds, and other financial commitments;
- (h) letters of credit, Acts of lading and Acts of sale;
- (i) instruments of export financing;
- (j) any other financial resources;
- (k) natural resources;
- (l) human resources, such as crew services;
- (m) any other economic resources that may be used to obtain funds, goods or services;
- (n) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, or right to claim, an asset; and
- (o) any interest, dividend, income or value accruing from, generated by, or derived from, an asset referred to in any of paragraphs (a) to (n);

“authorisation” means a licence granted by the Governor in writing to undertake an act or make an omission that is otherwise prohibited by this Act, and includes any condition imposed on the licence;

“ballistic missile-related goods” mean items, materials, equipment or technology—

- (a) listed in UN Security Council document S/2015/546 or any subsequent UN Security Council document in that regard; or
- (b) that could contribute to ballistic missile-related programmes or weapons of mass destruction delivery systems as may be specified by the Governor in regulations;

“basic expense” means an expense necessarily incurred for any of the following purposes—

- (a) obtaining foodstuffs;
- (b) paying rent or mortgage;
- (c) obtaining medicine or medical treatment;
- (d) paying taxes;
- (e) paying insurance premiums;
- (f) paying utility charges;
- (g) paying reasonable professional fees;
- (h) paying reasonable expenses associated with the provision of legal services;
- (i) paying fees or service charges that are in accordance with the laws of Anguilla for the routine holding or maintenance of a frozen asset; or
- (j) any other similar purpose as the Governor considers to be necessary and reasonable;

“biological weapon” means any biological agent or toxin as defined and referred to in section 1(2) of the Biological Weapons Act, R.S.A. c. B45;

“chemical weapon” has the definition ascribed to it in Article II of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 1993;

“Commission” means the Financial Services Commission established under section 2(1) of the Financial Services Commission Act, R.S.A. c. F28;

“consular officer” has the same meaning as in Article 1(1)(d) of the Vienna Convention on Consular Relations of 24 April, 1963;

“contractual obligation” means an obligation whereby a payment is required under a contract or agreement made before the date of the designation and where the payment required does not violate the requirements of a counter-proliferation Resolution;

“control” means exercising influence, authority or power over decisions about financial or operating policies, and includes control as a result, or by means, of trusts, agreements, arrangements, understandings or practices, whether or not having legal or equitable force and whether or not based on legal or equitable rights, and “controlled” shall be construed accordingly;

“Controlled Item” means an item listed in Schedule 1 on which import or export controls are imposed, and shall be construed to include any other import or export control measures imposed under any other enactment, an Order-in-Council, or pursuant to an Order made by the Governor and published in the *Gazette*;

“correspondent relationship” means a relationship that involves the provision of banking, currency or value transfer services by one financial institution (the “correspondent”) to another financial institution (the “respondent”) where—

- (a) the correspondent carries on a banking, currency or value transfer business at or through a permanent place of business in one country;
- (b) the respondent carries on a banking, currency or value transfer business at or through a permanent place of business in another country; and
- (c) the relationship between the correspondent and the respondent relates, in whole or in part, to the provision of banking, currency or value transfer services between those permanent places of business;

“country” includes a territory, state, province or any other geographical area that forms part of, or has a specific legal or constitutional relationship as a separate territory with, a country;

“court” means the High Court;

“crew service” means a service providing—

- (a) flight or cabin crew for a vessel or aircraft;
- (b) a person to travel on board a vessel or an aircraft for any purpose relating to the vessel’s or aircraft’s operation; or
- (c) a person to travel on board a vessel or an aircraft to examine the qualifications or competency of flight or cabin crew;

“counter-proliferation Resolution” means a UN Security Council Resolution related to a designated country or any other counter-proliferation related matter that is prescribed by regulations;

“criminal conduct” has the meaning ascribed to it under section 1 of the Proceeds of Crime Act, R.S.A. c. P98;

“deal” includes sale, supply, lease, transfer, conversion, disposition, movement or use, and “dealing” and “dealt” shall be construed accordingly;

“designated country” means a country that is listed in Schedule 2;

“designated person or entity” means a person or entity—

- (a) designated by the Governor under section 8;
- (b) whose designation has been extended by the Governor under section 10; or
- (c) designated by the UN Security Council or its Committees pursuant to a resolution in relation to a designated country;

“designated country financial institution” means a person or entity, wherever located, that conducts an activity similar to that conducted by a financial institution or service provider and that is—

- (a) regulated, registered, formed, incorporated or licensed under a law of a designated country;
- (b) owned or controlled by a designated country; or
- (c) acting on behalf of a designated country;

“designated country flagged vessel” means a vessel that is—

- (a) regulated, registered, formed or licensed under a law of a designated country; or
- (b) owned or controlled by a designated country;

“designated country person or entity” means—

- (a) a person in the territory of a designated country;
- (b) a national of a designated country;
- (c) a body corporate incorporated under a law of a designated country;
- (d) the government of a designated country;
- (e) a public body, corporation or agency of the government of a designated country;
- (f) an entity owned or controlled by a person or entity mentioned in paragraphs (a) to (e), including through illicit means; or
- (g) a person or entity acting on behalf, or at the direction, of a person or entity mentioned in any of paragraphs (a) to (f);

“designated country resolution” means a UN Security Council resolution related to a designated country;

“diplomatic agent” has the same meaning as in Article I(e) of the Vienna Convention on Diplomatic Relations of 18 April, 1961;

“service provider” has the meaning specified in the Anti-Money Laundering and Terrorist Financing Regulations;

“entity” includes any unincorporated body, group, association, organisation, institution or arrangement;

“extraordinary expense” means any payment which is not a basic expense or a contractual obligation that the Governor considers—

- (a) to be necessary;

(b) does not violate the requirements of a counter-proliferation Resolution; and

(c) has been approved by the UN Security Council or its Committees;

“financial institution” means any business or institution that is licensed, approved or authorised by the Commission under a financial services legislation, including the Financial Services Commission Act, R.S.A. c. F28;

“financial service” means any activity performed by a financial institution or a service provider, and includes the provision of consultancy, training or advisory services related to such activity;

“financial transaction” has the meaning provided in section 2(1);

“frozen asset” means an asset which cannot be dealt with due to the prohibitions imposed under section 15 or 16, including a vessel that has been designated for this purpose by the UN Security Council or its Committees under a designated country Resolution;

“IAEA” means the International Atomic Energy Agency of the United Nations;

“insurance service” means a service providing an undertaking or commitment under which a person is obliged, in return for payment, to provide another person, in the event of materialisation of a risk, with an indemnity or a benefit as determined by the undertaking or commitment, and includes underwriting insurance, re-insurance, placement of insurance and providing an insurance brokerage or other insurance intermediation service;

“Joint Comprehensive Plan of Action” means the Joint Comprehensive Plan of Action that is attached as Annex A to UN Security Council Resolution 2231;

“joint venture” means an arrangement between two or more persons or entities to cooperate on a project, initiative, business or activity, whether or not that arrangement has legal or equitable force or is based on legal or equitable rights;

“money laundering” has the meaning ascribed to it under section 2(1) of the Financial Intelligence Unit Act;

“nuclear weapon” means any weapon that derives its destructive force from nuclear reactions and any explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used, and includes component parts of any such weapon and any nuclear explosive device that is not intended for use as a weapon;

“own” means having a legal entitlement, either directly or indirectly, to 10% or more of a body corporate or entity, and “owned” and “ownership” shall be construed accordingly;

“person” means any natural person or body corporate;

“proliferation financing” has the meaning provided by section 5;

“representative office” means a business office that is established by a body corporate in a foreign country, where the body corporate is not licensed to operate, to conduct marketing

operations, and includes an office established to represent the government of a designated country;

“subsidiary” has the meaning ascribed to it under section 2(1) of the Regulatory Code, 2009;

“terrorist financing” has the meaning ascribed to it under section 1 of the Proceeds of Crime Act, R.S.A. c. P98;

“UN Security Council” means the United Nations Security Council; and

“vessel” means any kind of vessel used in navigation by water, however propelled or moved, and includes the following—

- (a) a ship, boat, barge, lighter or other floating craft; and
- (b) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water;

(2) For purposes of the definition of “arms or related material”, the terms therein used have the same meanings as they have for the purposes of reports by Member States to the United Nations Register of Conventional Arms established under United Nations General Assembly Resolution A/RES/46/36L of 6 December 1991.

(3) In relation to the production of a document under this Act where the document is in electronic form, the power to require the production of the document includes a power to require the production of a copy of the document in legible form or in a form from which the document can readily be produced in visible and legible form.

(4) Where under this Act any matter is required to be published in the *Gazette*, that matter may, in addition to being published in the *Gazette*, also be published on the Unit’s Internet site or in such other manner as the Governor considers appropriate.

### **Meaning of “financial transaction”**

2. (1) A financial transaction is the transfer of an asset by any means, including physical or electronic transfer.

(2) A person conducts a financial transaction if the person is a party to the transaction, or procures or facilitates the transaction.

### **Application**

3. (1) This Act applies to—

- (a) all Anguillians and permanent residents of Anguilla, including persons who are legally resident or otherwise present, in Anguilla, and includes bodies corporate incorporated, registered, licensed, formed, approved or authorised under a law of Anguilla, wherever it may be located;
- (b) a vessel flying the flag of Anguilla;
- (c) an aircraft registered in Anguilla; and

- (d) an offence committed on board a vessel flying the flag of, or an aircraft registered in, Anguilla, wherever it

may be located.

(2) For the avoidance of doubt, it is declared that the offences, including ancillary offences, prescribed under the Criminal Code Act, 1997 may, to the extent feasible, be applied in relation to offences under this Act.

(3) For the purpose of subsection (2), an ancillary offence relates to conduct connected to an offence, such as attempt, conspiracy, being an accessory after the fact, incitement, and participating as an accomplice.

#### **Act to bind the Crown**

4. This Act binds the Crown.

### PART 2

#### PROLIFERATION FINANCING

#### **Meaning of proliferation financing**

5. (1) Proliferation financing takes place when a person—

- (a) makes available an asset;
- (b) provides a financial service; or
- (c) conducts a financial transaction; and

the person knows that, or is reckless as to whether, the asset, financial service or financial transaction is intended, in whole or in part, to facilitate any of the activities specified in subsection (2), regardless of whether the specified activity occurs or is attempted.

- (2) The activities referred to in subsection (1) are—

- (a) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, sale, supply, transfer, export, transshipment or use of—
  - (i) nuclear weapons,
  - (ii) chemical weapons,
  - (iii) biological weapons, or
  - (iv) materials related to nuclear weapons, chemical weapons, biological weapons or radiological weapons that are prescribed by regulations or restricted or prohibited under any enactment relating to export or import controlled measures; and
- (b) the provision of technical training, advice, service, brokering or assistance related to any of the activities mentioned in paragraph (a).

**Prohibition against proliferation financing**

6. (1) No person shall engage in proliferation financing.
- (2) A person who contravenes subsection (1) commits an offence.

## PART 3

## TARGETED FINANCIAL SANCTIONS

*Designations and Related Matters***Designation by UN Security Council**

7. (1) A designation of a person or entity by the UN Security Council or its Committees under a UN Security Council Resolution shall—

- (a) apply in Anguilla with effect from the date of the designation;
- (b) have the immediate effect of imposing the prohibitions provided in sections 15 and 16; and
- (c) continue in force until its application is terminated by the Governor by a Notice published in the *Gazette*.

(2) For the purposes of determining the termination of a UN Security Council Resolution under subsection (1)(c), the Governor shall have regard to—

- (a) whether the designation of the person or entity by the UN Security Council or its Committees has been revoked; or
- (b) where the UN Security Council Resolution has specified a date for the expiry of the Resolution, whether that date has expired and has not been renewed.

(3) The Governor shall, as soon as practicable, cause to be published in the *Gazette* any designation of a person or an entity by the UN Security Council or its Committees.

**Power of Governor to designate**

8. (1) The Governor may designate a person or an entity if he or she has reasonable grounds to believe that—

- (a) the person or entity is—
  - (i) an agent or entity of the government of a designated country,
  - (ii) an agent or entity of an association or institution or a member of the governing party of a designated country,
  - (iii) owned or controlled, directly or indirectly, by a person or an entity mentioned in subparagraph (i) or (ii), or

- (iv) acting on behalf, or at the direction, of a person or an entity mentioned in subparagraph (i), (ii) or (iii); and
  - (b) the person or entity is or has been involved in any of the activities listed in subsection (2).
- (2) The activities referred to in subsection (1)(b) are—
- (a) activities prohibited under Part 4;
  - (b) activities related to a designated country's weapons of mass destruction or ballistic missile-related programmes;
  - (c) other activities prohibited by a designated country Resolution;
  - (d) attempting, participating in or facilitating activities mentioned in paragraph (a), (b) or (c); or
  - (e) assisting in the evasion of measures contained in a designated country Resolution.

(3) In deciding whether or not a person or an entity should be designated under subsection (1), the Governor may take into consideration any relevant communication from a foreign government or the UN Security Council or its Committees, or any request received pursuant to section 60(2)(a).

(4) Any designation by the Governor of a person or an entity under this section shall, as soon as practicable and subject to subsection (5), be published in the *Gazette*, and the designation shall—

- (a) apply in Anguilla with effect from the date of the designation; and
- (b) have the immediate effect of imposing the prohibitions provided in sections 14 and 15.

(5) The failure to publish a designation in the *Gazette* shall not vitiate the efficacy or effect of the designation as provided in subsection (4)(a) and (b).

#### **Duration of designation by Governor**

9. (1) A designation made by the Governor under section 8 shall continue in force until it—

- (a) expires under subsection (2); or
- (b) is revoked under section 10.

(2) Subject to section 10(1), a designation made by the Governor expires 3 years after the date on which it was made.

(3) The Governor may extend the duration of a designation at any time before the designation expires if he or she is satisfied that the grounds for the designation in section 8 continue to exist.

(4) Any extension of a designation under subsection (3) shall not exceed 3 years at a time.

(5) There is no limit to the number of times the Governor may extend a designation.

(6) Where a designation made by the Governor under section 8 expires or is extended, the fact of such expiration or extension shall, as soon as practicable, be published in the *Gazette*.

#### **Revocation, etc. of designation**

**10.** (1) Where the Governor is satisfied that the grounds for designating a person or an entity under section 8 no longer exist in relation to the person or entity, or there is a need to vary a designation, the Governor may, as the case may be—

(a) revoke the designation; or

(b) vary the designation in such manner as he or she deems fit.

(2) Where the Governor revokes or varies a designation under subsection (1), he or she shall—

(a) in the case of a revocation, specify the date when the revocation takes effect;

(b) in the case of a variation—

(i) indicate what aspect of the designation has been varied and in what form; and

(ii) specify the date when the variation takes effect; and

(c) as soon as practicable, publish the fact of the revocation or variation in the *Gazette*.

#### **Judicial review of a designation**

**11.** (1) Nothing in this Act limits a person's right to seek judicial review of a designation made by the Governor under section 8.

(2) Where in a judicial review or other legal proceeding brought with respect to a designation, the Attorney-General claims that the disclosure of any particular material will or is likely to prejudice national security or that it will be against the public interest to do so, the Court may consider the material concerned in closed proceedings, and in the absence of the designated person or entity and his or her legal representative, to make its determination on the claim.

#### **Notification of designations and revocations**

**12.** (1) The Governor shall, without delay, use any necessary means to notify persons specified in subsection (2) if—

(a) a designation or revocation is made by the UN Security Council or its Committees under a designated country Resolution;

(b) a designation is made by the Governor under section 8;

(c) a variation or revocation is made by the Governor under section 10; or

- (d) a designation has expired under section 9.
- (2) The persons specified for the purpose of subsection (1) are—
  - (a) the Attorney General;
  - (b) the Unit;
  - (c) the Commission;
  - (d) the Department of Inland Revenue
  - (e) the Royal Anguilla Police Force;
  - (f) all financial institutions;
  - (g) all service providers; and
  - (e) any other person or entity, other than the designated person or entity, considered necessary by the Governor to be notified in accordance with section 13.

**Notice to designated person or entity**

**13.** (1) The Governor shall, within a period not exceeding 14 days after a person or an entity has been designated, cause a written notice to be given to the designated person or entity informing him or her of the designation.

(2) The notice referred to in subsection (1) shall contain the following matters, as applicable—

- (a) the date of the designation;
  - (b) the duration of the designation;
  - (c) the grounds for the designation;
  - (d) the information relied on in making the designation, with the exception of information that, in the opinion of the Governor acting reasonably, should not be disclosed on the ground that it would or is likely to prejudice national security or is not in the public interest to disclose;
  - (e) the details of the prohibitions imposed;
  - (f) the avenues available to appeal against the designation; and
  - (g) information on the procedure for making an application for an authorisation under section 53 or 54.
- (3) A notification under subsection (1) is satisfied if it complies with section 64.

*Prohibitions***Prohibition against dealing with assets**

**14.** (1) No person shall deal with an asset knowing that, or reckless as to whether, the asset is owned, controlled or held, directly or indirectly, wholly or jointly—

- (a) by a designated person or entity;
- (b) on behalf of a designated person or entity; or
- (c) at the direction of a designated person or entity.

(2) For the avoidance of doubt, subsection (1) is not limited to assets related to a specific act, plot or threat.

(3) A person who contravenes subsection (1) commits an offence.

(4) Subsection (3) shall not apply if the person has an authorisation under section 53 or 54.

(5) It is not a defence to a charge under subsection (3) that a response from the Unit verifying a suspicion under section 32(4) was not received.

**Prohibition against making assets available**

**15.** (1) No person shall make an asset available knowing that, or reckless as to whether, it is being made available, directly or indirectly, wholly or jointly—

- (a) to a designated person or entity;
- (b) to a person or entity owned or controlled by a designated person or entity;
- (c) to a person or entity acting on behalf of a designated person or entity; or
- (d) for the benefit of a designated person or entity.

(2) For the purpose of subsection (1), it is immaterial whether the asset is located inside or outside Anguilla.

(3) A person who contravenes subsection (1) commits an offence.

(4) Subsection (3) shall not apply if—

- (a) the person has an authorisation under section 53 or 54; or
- (b) a payment, including by way of interest or other earnings;

is made to an account containing frozen assets and that payment is also frozen.

*Seizure of Frozen Assets***Order for seizure of frozen assets**

**16.** (1) The Unit may apply to the Court for an order to search for and seize an asset (“frozen asset”) on the basis of any of the grounds mentioned in subsection (2).

(2) The grounds referred to in subsection (1) are that—

(a) the seizure is necessary to preserve the asset; or

(b) there is a reasonable risk that the asset will dissipate.

(3) An application under subsection (1) may be on the initiative of the Unit, or upon the request of the holder of a frozen asset.

(4) Upon receiving an application pursuant to subsection (1), the Court may make an order for the Unit to search for and seize a frozen asset.

(5) If during the course of a search pursuant to an order granted under subsection (4), the Unit finds an asset that it has reasonable grounds to believe could have been included in the order had its existence been known at the time of application for the order, the Unit may seize that asset and the seizure order made by the Court shall be deemed to authorise such seizure.

(6) An asset seized pursuant to an order granted under subsection (4) may only be retained so long as the asset remains frozen under this Act.

**Management of seized assets**

**17.** (1) Any asset seized pursuant to section 16 shall be managed and dealt with in accordance with the Proceeds of Crime Act.

(2) No liability arises if a seized asset is damaged, destroyed or devalued, unless such damage, destruction or devaluation can be attributed to the wilful neglect of the Unit.

## PART 4

## FINANCIAL MEASURES

**Prohibition on financing**

**18.** (1) No person shall knowingly or recklessly make available an asset or financial service to a designated person or entity that could contribute to an activity specified in subsection (2).

(2) For the purpose of subsection (1), the activities specified are—

(a) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, sale, supply, transfer or use of a Controlled Item;

(b) the provision of technical training, advice, services, brokering or assistance related to any of the activities mentioned in paragraph (a);

- (c) any activity that facilitates a designated country's nuclear or ballistic missile programmes;
  - (d) any activity prohibited by a designated country Resolution;
  - (e) assisting the evasion of measures imposed by a designated country Resolution; or
  - (f) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, sale, supply, transfer or use of—
    - (i) materials, equipment, goods or technology listed in the following IAEA documents—
      - (AA) (iA) INFCIRC/254/Rev.12/Part 1; or
      - (BB) (iB) INTCIRC/254/Rev.9/Part 2;
    - (ii) arms or related material,
    - (iii) ballistic missile-related goods, or
    - (iv) materials, equipment, goods or technology that could contribute to reprocessing or enrichment related or heavy water-related activities, including any such activity as may be prescribed in regulations made under section 70.
- (3) A person who contravenes subsection (1) commits an offence.
- (4) Subsection (3) shall not apply if the person has an authorisation under section 54.

### **Prohibition on financial transactions**

- 19.** (1) No person shall knowingly or recklessly conduct a specified financial transaction that could contribute to an activity specified in subsection (2).
- (2) For the purpose of subsection (1), the activities specified are—
- (a) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, sale, supply, transfer or use of a Controlled Item;
  - (b) the provision of technical training, advice, services, brokering or assistance related to any of the activities mentioned in paragraph (a);
  - (c) any activity that facilitates a designated country's nuclear or ballistic missile programmes;
  - (d) any activity prohibited by a designated country Resolution;
  - (e) assisting the evasion of measures imposed by a designated country Resolution; or

- (f) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, sale, supply, transfer or use of—
  - (i) materials, equipment, goods or technology listed in the following IAEA documents—
    - (AA) (iA) INFCIRC/254/Rev.12/Part 1, or
    - (BB) (iB) INTCIRC/254/Rev.9/Part2,
  - (ii) arms or related material,
  - (iii) ballistic missile-related goods, or
  - (iv) materials, equipment, goods or technology that could contribute to reprocessing or enrichment related or heavy water-related activities, including any such activity as may be prescribed in regulations made under section 70.

(3) A person who contravenes subsection (1) commits an offence.

(4) Subsection (3) shall not apply if the person has an authorisation under section 54.

(5) In this section, “specified financial transaction” means a financial transaction to which a designated country person or entity is a party, or which has been procured or facilitated by a designated country person or entity.

### **Prohibition on financial support for trade**

**20.** (1) No person shall provide an asset or financial service knowing that, or reckless as to whether, the asset or financial service is intended to facilitate trade with a designated country person or entity.

(2) A person who contravenes subsection (1) commits an offence.

(3) Subsection (2) shall not apply if the person has an authorisation under section 53 or 54.

### **Prohibition on joint ventures**

**21.** (1) No person shall establish or maintain a joint venture knowing that, or reckless as to whether, any or all of the following persons or entities are a party to the joint venture—

- (a) a designated country person or entity;
- (b) a person or entity designated by—
  - (i) the UN Security Council or its Committees under a designated country Resolution, or
  - (ii) the Governor under section 8;
- (c) an entity owned or controlled by a person or entity mentioned in paragraph (b); or
- (d) a person acting on behalf, or at the direction, of a person or entity mentioned in paragraph (b) or (c).

(2) A person who contravenes subsection (1) commits an offence.

(3) Subsection (2) shall not apply if the person has an authorisation under section 53 or 54.

#### **Prohibition on relationships with designated country financial institutions**

**22.** (1) No financial institution or service provider shall—

- (a) establish or maintain a joint venture with a designated country financial institution;
- (b) obtain or maintain ownership or control of a designated country financial institution; or
- (c) establish or maintain a correspondent relationship with a designated country financial institution.

(2) A person who contravenes subsection (1) commits an offence.

(3) Subsection (2) does not apply if the financial institution or service provider has an authorisation under section 54.

#### **Prohibition on maintaining offices or accounts in a designated country**

**23.** (1) No financial institution or service provider shall establish or maintain a representative office, branch, subsidiary or account in the territory of a designated country.

(2) A person who contravenes subsection (1) commits an offence.

(3) Subsection (2) shall not apply if the financial institution or service provider has an authorisation under section 54.

#### **Prohibition on establishing or maintaining offices and accounts in Anguilla**

**24.** (1) No designated country financial institution or service provider shall establish or maintain a representative office, branch, subsidiary or account in Anguilla.

(2) A financial institution or service provider shall not open or maintain an account in Anguilla knowing that, or reckless as to whether, the account holder is a person or entity specified in subsection (3) without authorisation from the Governor under section 53 or 55.

(3) The persons referred to in subsection (2) are—

- (a) a designated country diplomatic mission, consular post or other representative office;
- (b) a designated country diplomatic agent, consular officer or other officer of the government of the designated country;
- (c) a person or entity owned or controlled by a person or entity mentioned in paragraph (a) or (b); and
- (d) a person or entity acting on behalf, or at the direction, of a person or entity mentioned in paragraph (a), (b) or (c).

- (4) A person who contravenes subsection (1) or (2) commits an offence.

**Prohibition relating to professional or commercial activities**

**25.** (1) No person shall conduct a financial transaction relating to professional or commercial profit-making activities knowing that, or reckless as to whether, the financial transaction is with or on behalf of a designated country diplomatic agent, consular officer or other officer of the government of a designated country.

- (2) A person who contravenes subsection (1) commits an offence.

**Prohibition on transactions in real property**

**26.** (1) No person or entity shall sell, lease, sub-lease or hire real property to a person or entity listed in subsection (2) knowing that, or reckless as to whether, the real property may be used for an activity other than an activity approved by the Governor.

- (2) The persons or entities referred to in subsection (1) are—

- (a) the government of a designated country;
- (b) a public body, corporation or agency of the government of a designated country;
- (c) a designated country diplomatic mission, consular post or other representative office;
- (d) a designated country diplomatic agent, consular officer or other officer of the government of a designated country;
- (e) an entity owned or controlled by a person or entity mentioned in paragraphs (a) to (d); and
- (f) a person acting on behalf, or at the direction, of a person or entity mentioned in paragraphs (a) to (e).

- (3) A person who contravenes subsection (1) commits an offence.

**Prohibition on dealing or insuring flagged vessel**

**27.** (1) A person shall not—

- (a) deal with a designated country's flagged vessel; or
- (b) provide an insurance service in relation to a designated country's flagged vessel.

- (2) A person who contravenes subsection (1) commits an offence.

(3) A person does not commit an offence under subsection (2) if he or she has an authorisation under section 54.

**Prohibition on insuring other vessels**

**28.** (1) No person shall provide an insurance service in relation to a vessel that the person knows, or has reasonable grounds to suspect, has been, or is, involved in conduct prohibited by a designated country Resolution.

(2) A person who contravenes subsection (1) commits an offence.

(3) A person does not commit an offence under subsection (2) if the person has an authorisation under section 54.

**Prohibition on leasing or chartering vessel or aircraft, etc.**

**29.** (1) No person shall lease or charter a vessel or aircraft, or provide a crew service, to a person or entity knowing that, or reckless as to whether, the person or entity is—

(a) the government of a designated country;

(b) a public body, corporation or agency of the government of a designated country;

(c) owned or controlled by a person or an entity mentioned in paragraph (a) or (b); or

(d) acting on behalf, or at the direction, of a person or entity mentioned in paragraphs (a) to (c).

(2) A person who contravenes subsection (1) commits an offence.

(3) A person does not commit an offence under subsection (2) if the person has an authorisation under section 54.

**Prohibition on procuring vessel or crew service**

**30.** (1) No person shall procure a vessel or crew service from another person or entity knowing that, or reckless as to whether, the person or entity is—

(a) the government of a designated country;

(b) a public body, corporation or agency of the government of a designated country;

(c) owned or controlled by a person or an entity mentioned in paragraph (a) or (b); or

(d) acting on behalf, or at the direction, of an entity mentioned in paragraphs (a) to (c).

(2) A person who contravenes subsection (1) commits an offence.

(3) A person does not commit an offence under subsection (2) if the person has an authorisation under section 54.

## PART 5

## REPORTING OBLIGATIONS

**Reporting obligations not limited**

**31.** Nothing contained in this Act shall be construed to limit the reporting obligations on a financial institution or service provider imposed by the Proceeds of Crime Act or any other enactment relating to money laundering and terrorist financing.

**Request to verify suspicion**

**32.** (1) A person who holds an asset which he or she suspects is, or may be, owned, controlled or held on behalf, or at the direction, of a designated person or entity may make a request in writing, to the Unit to verify that suspicion and such request shall be made in the form specified in the Schedule 3.

(2) The request shall be accompanied by details of the asset and the owner or controller of the asset as known to the person making the request.

(3) The Unit shall use its best endeavours to assist a person who has made a request under subsection (1).

(4) As soon as is reasonably practicable after receiving a request under subsection (1), the Unit shall respond in writing stating that—

- (a) it is likely that the property is owned or controlled by a designated person or entity;
- (b) it is unlikely that the property is owned or controlled by a designated person or entity; or
- (c) it is unknown whether the property is owned or controlled by a designated person or entity.

(5) A suspicious transaction report shall be done in accordance with Schedule 4.

**Obligation to report suspicion**

**33.** (1) A person who holds an asset of a designated person or entity shall report the holding of that asset to the Unit as soon as reasonably practicable and, in any case, within 5 working days from the date—

- (a) the person received notification of the designation under section 13(1);
- (b) of publication of the designation in accordance with section 8(4); or
- (c) the person became aware that the asset belongs, or is connected, to the designated person or entity;

whichever occurs first.

(2) The report shall include the following information, if available—

- (a) details of the asset;

- (b) name and address of the owner or controller of the asset; and
- (c) details of any attempted transaction at any time involving the asset, including—
  - (i) the name and address of the sender,
  - (ii) the name and address of the intended recipient,
  - (iii) the purpose of the attempted transaction,
  - (iv) the origin of the asset, and
  - (v) where the asset was intended to be sent.

(3) The report shall be in accordance with any form or procedure specified by the Unit.

(4) For the avoidance of doubt, the obligation to make a report under subsection (1) is in addition to the obligation to make a suspicious transaction report under section 34(4).

(5) A person who intentionally, or by negligence, fails to make a report under subsection (1) commits an offence.

### **Reporting suspicious transactions**

**34.** (1) This section applies where a financial institution or service provider knows, suspects or has reasonable grounds to suspect, that information that is known to it may—

- (a) be relevant to the detection, investigation or prosecution of a person for money laundering, terrorist financing or any related offence;
- (b) be relevant to the detection, investigation or prosecution of a person for conduct prohibited under this Act or by a counter-proliferation Resolution; or
- (c) concern proceeds of criminal conduct.

(2) For the avoidance of doubt, subsection (1) applies where a suspicion is formed after this Act comes into force, but that suspicion may be based on information obtained before this Act came into force.

(3) Where subsection (1) applies, a financial institution or service provider shall take reasonable measures to ascertain the following information—

- (a) the purpose of the transaction;
- (b) the origin of the funds;
- (c) where the funds will be sent;
- (d) the name and address of the person who will receive the funds; and

- (e) any other information that may be relevant to—
  - (i) the prosecution or investigation of an offence of the kind mentioned in subsection (1)(a),
  - (ii) any proceedings under this Act, or
  - (iii) the Proceeds of Crime Act.

(4) Where subsection (1) applies, a financial institution or service provider shall make a suspicious transaction report to the Unit as soon as is reasonably practicable and, in any case, within 5 working days from the date the suspicion first arose.

(5) A report under subsection (4) shall include—

- (a) information mentioned in subsection (3) that is known to the financial institution or service provider;
- (b) any other information required by the Unit that is known to the financial institution or service provider; and
- (c) the basis on which the suspicion has arisen.

(6) A financial institution or service provider shall provide a report under subsection (4) in accordance with any form and procedure specified by the Unit.

(7) A financial institution or service provider that has made a report in accordance with subsection (4) shall, if requested to do so by the Unit, provide to the Unit any further information that it has relating to the suspicion.

(8) Where a person who is required to make a suspicious transaction report under subsection (4) has the option to make the same or similar report under the Proceeds of Crime Act or other enactment, he or she may make the report under that Act or other enactment instead of under subsection (4) if he or she, in relation to proliferation financing or other conduct prohibited under this Act, satisfies the requirements of subsections (3) and (5), and subsection (7) shall apply as if the report was made under subsection (4).

(9) Subject to subsection (8), a financial institution or service provider that intentionally, or by negligence, fails to make a suspicious transaction report under subsection (4) commits an offence.

(10) Nothing in this section precludes a financial institution or service provider from communicating to the Unit any suspicion it may have prior to the making of a report under subsection (4).

(11) A suspicious transaction report shall be done in accordance with Schedule 6.

**Restriction on disclosure**

**35.** (1) Where section 32(1), 33, or 34(1) or (4) applies, a person shall not, unless required to do so under this Act, disclose to anyone else—

- (a) that a suspicion has been formed under section 32(1) or section 34(1);
- (b) a request has been made under section 32(1);
- (c) that a report has been made under section 33 or 34(4);
- (d) that a suspicion has been or may be communicated to the Unit under section 34(9);  
or
- (e) any other information from which a person could reasonably infer any of the matters in paragraph (a), (b), (c) or (d).

(2) Subsection (1) does not apply to disclosures made by the person to—

- (a) the Unit in accordance with this Act;
- (b) a police officer for any law enforcement purpose;
- (c) an officer, employee or agent of a financial institution for any purpose connected with the performance of that person's anti-money laundering, counter-terrorist financing or counter-proliferation financing duties; or
- (d) a legal practitioner for the purpose of obtaining legal advice or representation in relation to the matter.

(3) Subsection (1) does not apply where a court is satisfied that disclosure is necessary in the interest of justice.

(4) A person who intentionally, or by negligence, discloses information in contravention of subsection (1) commits an offence.

**Enhanced reporting obligations**

**36.** (1) A financial institution or service provider shall make a report to the Unit where it has reasonable grounds to believe that—

- (a) a financial transaction exceeding \$10,000 was made or attempted and that financial transaction involves a designated country person or entity;
- (b) an account was opened or attempted to be opened by a designated country person or entity;
- (c) an asset of a value exceeding \$10,000 came under management or was requested to come under management and that asset is owned or controlled by a designated country person or entity; or

- (d) a company, joint venture or other ownership or control structure exists and could be used to evade a prohibition under this Act or any other measure contained in a designated country Resolution.
- (2) The report shall include the following information, if applicable and available—
- (a) details of the account holder;
  - (b) name and address of the owner or controller of the asset;
  - (c) the origin of the asset;
  - (d) details of ownership and control structures; and
  - (e) details of the transaction or attempted transaction, including—
    - (i) the name and address of the sender,
    - (ii) the name and address of the intended recipient,
    - (iii) the purpose of the transaction or attempted transaction, and
    - (iv) where the asset was intended to be sent.
- (3) A financial institution or service provider shall provide a report under subsection (1) in accordance with any form and procedure specified by the Unit.
- (4) A person who intentionally, or by negligence, fails to make a report under subsection (1) commits an offence.
- (5) Nothing in this section precludes a financial institution or service provider from communicating to the Unit any suspicion it may have prior to the making of a report under subsection (1).
- (6) For the avoidance of doubt, the obligation to make a report under subsection (1) is in addition to the obligation to make a suspicious transaction report under section 34(4).

## PART 6

### SUPERVISION AND ENFORCEMENT

#### **Functions of Agency in relation to proliferation financing**

**37.** (1) In addition to the functions imposed or conferred on the Unit under this Act, the Financial Intelligence Unit Act, the Proceeds of Crime Act and any other enactment relating to money laundering and terrorist financing, the Unit shall also be responsible for—

- (a) monitoring and assessing the level of risk of proliferation financing in the Territory and taking appropriate measures to address such risk;

- (b) providing guidance and feedback to the persons and entities subject to this Act to assist them to comply with the provisions of the Act;
- (c) cooperating with domestic and international counterparts to ensure the consistent, efficient and effective implementation of the provisions of this Act; and
- (d) performing such other duties as are not inconsistent with this Act for the purpose of ensuring compliance with the requirements of the Act.

(2) The Unit may, for the purposes of performing its functions under, and ensuring compliance with the provisions of, this Act, issue such direction as it considers fit to any person or entity and the person or entity shall comply with the direction.

### **Power to require information or document**

**38.** (1) The Unit may, by notice to any person or entity, require the person or entity to—

- (a) provide information as may be specified in the notice; or
- (b) produce documents as may be specified in the notice in such form and verified or authenticated in such manner as may be required.

(2) The Unit may exercise powers under this section only if the information or documents sought to be obtained are reasonably required in connection with the performance by the Unit of its functions under this Act.

(3) Where the Unit requires information to be provided or documents to be produced under this section—

- (a) the notice shall set out the reasons why the Unit requires the information to be provided or the documents to be produced; and
- (b) the information shall be provided or the documents produced—
  - (i) before the end of the period determined to be reasonable, as may be specified in the notice; and
  - (ii) at such place as may be specified in the notice.

(4) The requirement under subsection (3)(a) in relation to a notice shall not be construed to extend to the giving of reasons that will constitute tipping-off under section 31 of the Proceeds of Crime Act.

(5) A notice issued under subsection (1) may include a continuing obligation to keep the Unit informed as circumstances change, or on such regular basis as the Unit may specify.

(6) The Unit may take copies of, or make extracts from, any document that is produced under this section.

(7) The production of a document shall not affect any lien which a person has on the document.

**Powers of entry and inspection**

**39.** (1) Where the Unit has reasonable cause to believe that any premises are being used by a person or an entity in connection with the person's or entity's business activities or that there are documents or items on the premises which may be required for the purposes of this Act, the Unit may, on the authority of a warrant issued by a Magistrate, at any reasonable time—

- (a) enter and inspect the premises;
- (b) observe the carrying on of business activities by the person or entity;
- (c) inspect any document found on the premises;
- (d) require any person on the premises to provide an explanation of any document or to state where it may be found; and
- (e) remove any item found on the premises.

(2) Where the Unit removes any item found on the premises of a person or an entity pursuant to subsection (1)(e), it shall provide the person or entity with a written inventory of the item removed.

(3) The Unit may exercise powers under this section only if the information or document sought to be obtained is reasonably required in connection with the performance by the Unit of its functions under this Act.

(4) In this section, "premises" means any premises other than premises used only as a dwelling.

**Power to conduct onsite inspection**

**40.** (1) The Unit may, where it forms the view that a person may not be complying with a requirement of this Act and it is necessary to conduct an inspection in relation to the person, at any reasonable time, enter and remain at any place (other than a residential dwelling) for the purpose of conducting an onsite inspection of the person in relation to any matter concerning compliance with the provisions of this Act.

(2) During an onsite inspection, the Unit may require any employee, officer or agent of the person concerned to—

- (a) answer questions relating to the person's records and documents and any items found on the premises; and
- (b) provide any other information that the supervisor may reasonably require for the purpose of the inspection.

(3) A person is not required to answer a question asked pursuant to subsection (2)(a) if giving the answer would incriminate him or her.

**Restrictions on powers**

**41.** (1) This section applies in relation to the powers conferred by sections 38, 39 and 40.

(2) The powers referred to in subsection (1) are not exercisable in relation to information or documents in respect of which a claim to legal privilege could be maintained in legal proceedings.

(3) The exercise of the powers referred to in subsection (1) and the provision of information or production of documents under those powers is not otherwise subject to any restriction on the disclosure of information, whether imposed by statute, contract or otherwise.

#### **Failure to comply with information requirement**

**42.** (1) If on an application made by the Unit it appears to the Court that a person (“the information defaulter”) has failed to do something that he or she was required to do under section 38(1) or (3)(b), 39(1)(d), or 40(2) subject to subsection (3) thereof, the Court may make an order under this section.

(2) An order made under this section may require the information defaulter to do either or both of the following—

- (a) to do the thing that he or she had failed to do within such period as may be specified in the order;
- (b) to take such steps to remedy the consequences of the failure as may be so specified.

(3) Where an information defaulter that is a body corporate, a partnership or an unincorporated body of persons that is not a partnership fails to comply with an order of the Court under subsection (2), the Court, in addition to any other order it has authority to make, may make any of the following orders—

- (a) order the body corporate, partnership or unincorporated body to cease carrying on business until it complies with the requirement of an order made under subsection (2);
- (b) in the case of a body corporate incorporated or registered under the Business Companies Act, order the body corporate to wind up in accordance with the provisions of that Act or such other enactment as the Court deems fit;
- (c) in the case of a limited partnership, order the winding up of the limited partnership in accordance with the Limited Partnership Act, and, for that purpose, the reference in section 89(1) of that Act to “a liquidator appointed by a resolution of the general partners passed under section 88(1)(b)(ii)” shall be construed to refer to “a liquidator appointed by the Court”;
- (d) in the case of a general partner under the Partnership Act, order the termination of the partnership notwithstanding anything to the contrary that may be contained in that Act; or
- (e) in the case of an unincorporated body, order that the licence, registration or any other form of approval given to, or made in respect of, the unincorporated body to be cancelled, notwithstanding anything to the contrary that may be contained in the enactment by virtue of which the licence, registration or other form of approval was given or made.

(4) If the information defaulter is a body corporate, a partnership or an unincorporated body of persons that is not a partnership, an order under subsection (2) may require any officer of the body corporate, partnership or unincorporated body who is, wholly or partly responsible for the failure, to meet such costs of the application as may be specified in the order.

(5) A person commits an offence if he or she—

- (a) gives information, or produces a document, knowing it is false in a material particular in response to a request made under section 38(1) or 40; or
- (b) destroys, mutilates, defaces, conceals or removes a document with the intention of evading a request made under section 38(1) or 40.

### **Disclosure of information**

**43.** (1) Information obtained by the Unit under this Act shall be held confidentially and may only be disclosed in accordance with subsection (2).

(2) The Unit may disclose information obtained under this Act, as applicable, to any government or international agency or body, whether within or outside Anguilla, for any of the following purposes—

- (a) enabling or assisting the Governor in implementing UN Security Council Resolutions relating to proliferation financing;
- (b) detecting, investigating or prosecuting an offence;
- (c) enforcing a law relating to the proceeds of criminal conduct, whether under the Proceeds of Crime Act or any equivalent law of a foreign country;
- (d) promoting, monitoring or enforcing compliance with this Act or the laws of another country equivalent to this Act or laws relating to sanctions, money laundering or terrorist financing;
- (e) enabling or assisting an official trustee to discharge his or her functions under an enactment relating to insolvency;
- (f) monitoring or enforcing compliance with laws relating to trade, customs and excise duty, or export and import restrictions;
- (g) facilitating cooperation with domestic law enforcement agencies; and
- (h) providing mutual legal assistance to foreign law enforcement agencies.

### **Enforcement measures**

**44.** (1) Where the Unit has reasonable grounds to believe that a person or entity subject to this Act has contravened a prohibition or failed to meet an obligation under this Act, it may—

- (a) issue a warning under section 45; or
- (b) impose a civil penalty pursuant to section 46.

(2) This Act does not affect the power of a regulatory or supervisory authority or body to suspend, revoke, impose conditions upon, or amend the conditions of, a licence, practising certificate, registration or other equivalent permission granted to a person or an entity by that regulatory authority or body or to exercise any of its other powers or perform any of its functions in relation to the person.

#### **Power to issue warning**

**45.** (1) Where the Unit has reasonable grounds to believe that a person or an entity subject to this Act has contravened a prohibition under this Act, the Unit may issue one or more warnings to the person or entity concerned;

(2) A warning issued under subsection (1) shall be in writing and in such form, and issued in such manner, as the Unit may determine.

(3) A warning issued on a person or an entity under subsection (1) shall specify the prohibition that has been contravened.

(4) Where the Unit issues a warning under subsection (1), it may publish the warning in such manner and for such period as it may consider fit, having regard to the nature and gravity of the prohibition contravened.

#### **Power to impose civil penalty**

**46.** (1) The Unit may, subject to subsection (2) and section 47, impose a penalty of such amount as it considers appropriate on a person who fails to comply with—

(a) a requirement imposed by—

(i) a direction given under section 37(2), or

(ii) a condition of an authorisation under section 55; or

(b) an obligation provided under this Act;

and for this purpose, “appropriate” means effective, proportionate and dissuasive.

(2) The Unit shall not impose a penalty if it is satisfied that the person took all reasonable steps and exercised all due diligence to ensure that the requirement or obligation would be complied with.

(3) In deciding whether to impose a penalty for failure to comply with a requirement or an obligation, the Unit shall consider whether the person followed any relevant guidance which was at the time—

(a) issued by the Unit or other regulatory or supervisory body or by a professional body whose members, whether wholly or partly, operate in the financial sector; and

(b) published in a manner approved by the Unit or other regulatory or supervisory body or by the professional body as suitable in its opinion to bring the guidance to the attention of persons likely to be affected by it.

(4) A person on whom a penalty is imposed under this section is not liable to be proceeded against for an offence in respect of the same failure.

(5) A penalty imposed by the Unit pursuant to this section shall not exceed \$100,000, unless such higher penalty is presented to and confirmed by the Court.

(6) Where the Unit presents a higher penalty to the Court for confirmation, the Court may—

- (a) confirm the penalty imposed by the Unit; or
- (b) vary the penalty as it considers appropriate, having regard to the seriousness of the failure.

(7) A penalty imposed by the Unit under this section is payable to the Unit for its use and is recoverable in civil proceedings as a debt due to the Unit.

#### **Duty to issue notice**

**47.** (1) The Unit shall, before imposing a penalty against a person under section 46, give notice to the person—

- (a) stating the Unit's intention to impose the penalty;
- (b) stating the reasons for the intention to impose the penalty;
- (c) stating the amount proposed to be imposed as penalty; and
- (d) inviting the person to make any representation he or she wishes.

(2) A notice issued under subsection (1) shall require the person to whom it relates to submit his or her representation (if any) within a period of 21 days from the date indicated on the notice.

(3) Where the Unit receives a representation under this section, it shall consider the representation and—

- (a) confirm the amount of the proposed penalty;
- (b) vary the penalty to be imposed in such manner as it considers fit; or
- (c) withdraw the penalty proposed to be imposed.

(4) Where the Unit varies or withdraws a proposed penalty under paragraph (b) or (c) of subsection (3), as the case may be, it may take further steps (if any) in consequence of the variation or withdrawal as it considers appropriate.

(5) The Unit shall notify the person of—

- (a) its decision under subsection (3); and,
- (b) the further steps (if any) it has taken in relation to the person, where it varies or withdraws the proposed penalty.

(6) Where the Unit imposes a penalty under subsection (3)(a) or (b), it shall require the person to pay to the Unit the penalty imposed in such manner and within such period as the Unit may determine.

(7) Where the Unit varies a penalty under subsection (3)(b), the application of subsection (6) is without prejudice to any further steps that the Unit may take under subsection (5).

(8) Where the Unit does not receive a representation in relation to a notice it has issued under this section, it shall proceed to impose such penalty as it considers appropriate, but such penalty shall not be higher than the penalty provided in the notice issued under subsection (1)(c).

(9) A notice issued under this section may, at the written request of the person against whom it is issued, be extended by the Unit for a period not exceeding an additional 7 days.

### **Right of appeal**

**48.** (1) A person who is aggrieved by a decision of the Unit imposing a penalty under section 46 may appeal the decision to the High Court.

(2) After hearing an appeal brought under subsection (1), the High Court may—

- (a) set aside the decision of the Unit;
- (b) confirm the decision of the Unit; or
- (c) vary the decision of the Unit in such manner as it considers fit.

### **Offences**

**49.** (1) A person commits an offence if he or she, for the purpose of obtaining an authorisation under section 53 or 54—

- (a) provides information or makes a statement that is false in a material respect or a document that is not what it purports to be; and
- (b) knows that, or is reckless as to whether, the information or statement is false or the document is not what it purports to be.

(2) An authorisation granted in connection with information or a statement that is false in a material particular or a document that is not what it purports to be is void from the time it was granted.

(3) A person who commits an offence under this Act is liable, on conviction, to the penalty prescribed for that offence under Schedule 5.

(4) For the avoidance of doubt, a description of the type of offence in the second column of Schedule 5 is merely a summary of the offence and is not to be read as substituting the fuller offence contained in the actual section concerned.

**Extra-territorial offences**

**50.** (1) An offence under this Act may be committed by a person acting in the course of a business in the financial sector although the conduct which gives rise to the offence takes place wholly or partly outside Anguilla.

(2) Nothing contained in this section affects any criminal liability arising otherwise than under this section.

**Liability of officers of bodies corporate, etc.**

**51.** (1) Where an offence under this Act committed by a body corporate is shown to—

(a) have been committed with the consent or connivance of an officer of the body corporate; or

(b) be attributable to any neglect on the part of any such officer;

the officer as well as the body corporate commit an offence and are liable to be proceeded against and punished accordingly.

(2) Where an offence under this Act committed by a partnership is shown to—

(a) have been committed with the consent or connivance of a partner; or

(b) be attributable to any neglect on the part of a partner;

the partner as well as the partnership commit an offence and are liable to be proceeded against and punished accordingly.

(3) Where an offence under this Act committed by an unincorporated association (other than a partnership) is shown to—

(a) have been committed with the consent or connivance of an officer of the association, or

(b) be attributable to any neglect on the part of any such officer;

the officer as well as the association commit an offence and are liable to be proceeded against and punished accordingly.

(4) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts and defaults of a member in connection with the member's functions of management as if the member were a director of the body corporate.

(5) In this section—

(a) “officer”—

(i) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity; and

- (ii) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such a capacity; and

(b) “partner” includes a person purporting to act as a partner.

### **Proceedings against unincorporated bodies**

**52.** (1) Proceedings under this Act that are alleged to have been committed by a partnership or an unincorporated association shall be brought in the name of the unincorporated partnership or association and not in that of its members.

(2) A fine imposed on the partnership or association on its conviction for an offence is to be paid out of the funds of the partnership or association.

## PART 7

### AUTHORISATIONS

#### **Authorisation by the Governor**

**53.** (1) A person or entity that is the subject of a designation under section 7 or 8 may, if any of the matters specified in subsection (2) or section 54(1) applies, apply in writing to the Governor requesting an authorisation.

(2) An authorisation may relate to—

- (a) payment of basic expenses of designated persons and their dependent family members;
- (b) payment of reasonable professional fees and expenses associated with the provision of legal services;
- (c) payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources;
- (d) payment of necessary extraordinary expenses;
- (e) payments into or from an account of a diplomatic or consular mission or of an international organisation enjoying immunity in accordance with international law, intended to be used for official purposes of the diplomatic or consular mission or international organisation;
- (f) satisfaction of an arbitral decision rendered before the date on which the designated person was so designated, or satisfaction of a judicial or administrative decision made at any time; or
- (g) payment due under a contract or agreement concluded by, or an obligation that arose before, the date on which the designated person or entity was so designated if the payment is not for the benefit of a designated person.

(3) Where the Governor receives an application under subsection (1), he or she may, if satisfied that the applicant is a designated person or entity that meets any of the requirements outlined in subsection (2), grant the applicant authorisation.

(4) An authorisation granted by the Governor under subsection (3) shall specify the acts authorised by it and may be—

- (a) general or applicable to a category of persons or to a particular person;
- (b) subject to conditions; or
- (c) of indefinite duration or subject to an expiry date.

(5) A person or entity does not commit an offence under this Act in respect of anything done by the person or entity under an authorisation granted by the Governor.

#### **Further authorisation**

**54.** (1) The Governor may also, in relation to a person or entity designated by the UN Security Council or its Committees under a designated country Resolution, grant an authorisation, as applicable, if he or she considers it necessary—

- (a) for a civil nuclear cooperation project described in Annex III of the Joint Comprehensive Plan of Action;
- (b) for any activity required for the implementation of the Joint Comprehensive Plan of Action;
- (c) to carry out activities of a designated country's missions to the United Nations and its specialized agencies and related organisations or other diplomatic and consular missions of the designated country;
- (d) for the delivery of humanitarian assistance;
- (f) for denuclearisation;
- (g) for a financial transaction with a designated country's financial institution and the financial transaction relates solely to the operation of diplomatic or consular missions in the designated country or humanitarian assistance activities that are undertaken by, or in connection with, the United Nations;
- (h) pursuant to an exception in any international instrument applicable in relation to a designation; or
- (i) to satisfy any other requirement of the UN Security Council or its Committees.

(2) The Governor may not grant an authorisation, whether under this section or section 53, if the authorisation would violate a provision of a counter-proliferation Resolution.

#### **Conditions, in relation to an authorisation**

**55.** (1) The Governor may, in granting an authorisation under section 53 or 54, impose any etc. conditions on the authorisation.

- (2) Prior to granting an authorisation under section 53 or 54, the Governor—
- (a) shall seek any approvals required by, and make any notifications required to, the UN Security Council or its Committees; and
  - (b) may consider any communication from a foreign government relevant to the authorisation.
- (3) Where the Governor receives an application under section 53(1), he or she shall determine the application within a reasonable time and respond to the applicant in writing—
- (a) granting the authorisation, including any conditions attached to the authorisation; or
  - (b) the authorisation.

#### **Revocation, variation, etc. of authorisation**

- 56.** (1) The Governor may at any time vary or revoke an authorisation granted under section 53 or 54.
- (2) On the grant, variation or revocation of an authorisation, the Governor shall—
- (a) in the case of an authorisation granted to a particular person, give notice of the grant, variation or revocation to that person; and
  - (b) in the case of a general authorisation or an authorisation applicable to a category of persons, take such steps as the Governor considers appropriate to publicise the grant, variation or revocation of the authorisation.
- (3) A failure by any person to comply with any condition in an authorisation is acting in a way that is contrary to the authorisation, unless—
- (a) the authorisation was modified after the completion of the act so authorised; and
  - (b) the alleged failure to comply with a condition in the authorisation would not have been a failure if the authorisation had not been so modified.

### PART 8

#### MISCELLANEOUS PROVISIONS

##### **Claims for indemnity or under contract**

- 57.** (1) No claim in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by this Act shall be enforced if it is made by—
- (a) a designated person or entity; or
  - (b) a person acting through or on behalf of a designated person or entity.

(2) Subsection (1) applies in particular to any claim for indemnity or any other claim of this type, such as a claim for compensation or a claim under guarantee (including a financial guarantee or indemnity).

(3) In any proceedings for the enforcement of a claim, the burden of proof that the claim is not prohibited is on the person seeking to enforce the claim.

#### **Requirement to publish list of designated persons**

**58.** (1) The Governor shall—

- (a) keep up to date a list of designated persons and entities; and
- (b) subject to subsection (3), cause the list of such designated persons and entities to be published at least once in each year.

(2) The list of designated persons and entities referred to in subsection (1) may be published in such form as the Governor considers appropriate, including publication on an Internet site approved by the Governor.

(3) Where the Governor updates a list of designated persons under subsection (1)(a), he or she shall, within 14 days of updating the list, publish the list in the *Gazette*.

#### **Proposal for designation**

**59.** (1) The Governor shall be responsible for identifying persons or entities that he or she has reasonable grounds to believe meet the criteria for designation by the UN Security Council or its Committees under a designated country Resolution.

(2) For the purposes of subsection (1)—

- (a) the Unit, Commission, Department of Inland Revenue or any law enforcement agency or other Government body may request the Governor to designate a person or entity that the Unit, Commission, International Tax Authority or law enforcement agency or other Government body believes meets the criteria for designation under section 8(1); and
- (b) the Governor may consult with the Unit, Commission, International Tax Authority or any law enforcement agency or other Government body as he or she considers necessary to determine whether there are reasonable grounds to believe that a person or entity meets the criteria for designation.

(3) Where the Governor identifies any person or entity pursuant to subsection (1), he or she shall report the identified person or entity to the UN Security Council or its Committees using the procedure specified by the UN Security Council or its Committees.

#### **Application to unfreeze an asset**

**60.** (1) A person or entity whose asset has been frozen may apply to the Governor to unfreeze the asset.

(2) Upon the receipt of an application under subsection (1) and after being satisfied that—

- (a) the applicant is not a designated person or entity; and
- (b) the frozen asset is not connected to proliferation financing or is not the subject of any ongoing criminal investigation;

the Governor shall issue a direction to unfreeze the asset and have it returned to the applicant.

(3) The Governor shall cause a copy of the direction to be provided to any person or entity in possession, custody or control of the frozen asset concerned.

(4) A person who fails to immediately comply with a direction issued by the Governor under this section commits an offence.

### **Report to Parliament**

**61.** (1) The Governor shall, within 3 months after the end of each year, cause to be prepared a report regarding the exercise of powers and performance of functions, including those of the Unit, under this Act in respect of the immediately preceding year.

(2) The report prepared under subsection (1) shall include information regarding—

- (a) designations, variations and revocations, in relation to persons to whom this Act applies by virtue of section 3(1), made by—
  - (i) the Governor under this Act, and
  - (ii) the UN Security Council or its Committees;
- (b) international cooperation on matters relating to the administration of this Act; and
- (c) investigations and prosecutions for offences under this Act.

(3) Nothing contained in subsection (2) requires the Governor to disclose information that would prejudice national security or is considered by the Governor not to be in the public interest to disclose.

(4) The Governor shall cause a copy of the report prepared under subsection (1) to be laid before the House of Assembly no later than 3 months after the preparation of the report.

### **Report to UN Security Council**

**62.** (1) The Governor shall periodically cause a report to be provided to the UN Security Council or its Committees in the terms set out in subsection (2).

(2) The report referred to in subsection (1) shall contain information relevant to the implementation of UN Security Council Resolutions relating to proliferation financing, including—

- (a) information regarding the evasion or attempted evasion of a prohibition under this Act; and

- (b) information that the Governor believes would assist the UN Security Council or its Committees to carry out their functions under a UN Security Council Resolution relating to proliferation financing.

### **Monitoring financial institutions and Service provider**

**63.** (1) The Unit shall take appropriate measures to monitor financial institutions and Service provider for the purpose of securing compliance by those persons with the requirements of this Act and any directions given by the Unit.

(2) The Unit may, for the purposes of monitoring persons under subsection (1), seek the assistance and cooperation of the Commission in relation to persons licensed and supervised by the Commission or incorporated or registered by the Registrar of Corporate Affairs.

(3) In performing its functions under this Act in relation to securing compliance with a requirement of this Act or a direction given by it, the Unit may—

- (a) seek the assistance of any other person or authority; and
- (b) authorise the person or authority to perform such task on behalf of the Unit as the Unit may prescribe.

(4) Nothing contained in subsection (3) includes the giving of a direction under this Act.

### **Notices**

**64.** (1) Where a notice is required to be given or served under this Act, the notice may be given to, or served on, a person—

- (a) by posting it to the person's last known address;
- (b) by leaving it for the person with some adult person at his or her usual or last known place of abode or business; or
- (c) where the person is a body corporate, partnership or unincorporated association
  - (i) by posting it to the registered or principal office of the body corporate, partnership or association, or
  - (ii) by delivering it to the secretary or clerk of the body corporate, partnership or association at the registered or principal office of the body corporate, partnership or association.

(2) Where under this Act the Governor or Agency is under a duty to give a notice to a person but does not have an address for the person, the Governor or the Unit, as the case may be, shall cause the notice to be published in the *Gazette*.

(3) The form of a notice issued under this section shall be such as the Governor or the Unit, as the case may be, may determine.

**Exercise of powers under this Act**

**65.** Where, in relation to a money laundering, terrorist financing or proliferation financing activity, a power referred to in this Act may be exercised under this Act and under another enactment or Order-in-Council, the power shall be exercised either under this Act or under another enactment or Order-in-Council, but not under both.

**Delegation of authority**

**66.** The Governor may delegate, in writing, to the Unit or any specific officer of the Unit the exercise of any or all of his or her powers and functions under this Act, other than the power of delegation conferred by this section, the designation power under section 8, the power to extend a designation under section 9(3) and the power to vary or revoke a designation under section 10.

**Immunity from liability**

**67.** (1) Neither the Governor, Agency or other official of the Government nor a person acting at the direction of the Governor, Agency or Government shall be liable to any civil or criminal action, claim or demand for anything done or omitted to be done in good faith for the purpose of discharging a duty, performing a function or exercising a power under this Act.

(2) No person shall be liable to any civil or criminal action, claim or demand for anything done or omitted to be done in good faith in accordance with this Act.

**Power to amend Part 4**

**68.** (1) Where the UN Security Council or its Committees pass a resolution or make any other decision in relation to a designated country or a designated person or entity that makes it necessary to amend any of the provisions in Part 4, the Governor may, in consultation with the Unit, by Order amend such provision.

(2) An amendment under subsection (1) may relate to—

- (a) expanding, reducing or otherwise modifying the list of prohibitions in relation to a designated country or a designated person or entity;
- (b) modifying the list of persons or entities related to a designated country or a designated person or entity;
- (c) modifying activities relating to trade, business, commerce, provision of services or other transaction in relation to a designated country or a designated person or entity;
- (d) goods, materials and other items as may be necessary;
- (e) financial institutions in relation to any designated country or designated person or entity; or
- (f) such other matter considered relevant in the context of any provision in Part 4.

(3) An Order made under subsection (1) shall be published in the *Gazette* and shall be equally subject to the requirements of this Act to the extent applicable.

**Power to amend the Schedules**

**69.** The Governor may, by an Order published in the *Gazette*, amend any of the Schedules.

**Regulations**

**70.** The Governor may make Regulations for the effective carrying out of the provisions of this Act.

**Citation and commencement**

**71.** (1) This Act may be cited as the Proliferation Financing (Prohibition) Act, 2023.

(2) This Act shall come into force on such date as the Governor may, by Notice published in the *Gazette*, appoint.

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**SCHEDULE 1**

(Section 1(1))

**CONTROLLED ITEMS RELATED TO A DESIGNATED COUNTRY**

[Upon the coming into force of this Act, this Schedule shall, unless otherwise provided by virtue of a power exercised by the Governor under section 70, apply only to the Democratic People's Republic of Korea designated in Schedule 2]

**A. The following items are Import and Export Controlled Items—**

Restrictions apply on the sale, supply or transfer of the items listed below, wherever situated, that are destined for a designated country or for any person in a designated country. Also restricted is the import, purchase or acquisition of these items, wherever situated, from a designated country person or entity.

**1. (1) Arms or related material, including—**

- (a) weapons;
- (b) ammunition;
- (c) military vehicles and equipment, including –
  - (i) battle tanks;
  - (ii) armoured combat vehicles;
  - (iii) large calibre artillery systems;
  - (iv) combat aircraft;
  - (v) attack helicopters;
  - (vi) warships; and
  - (vii) missiles and missile systems;
- (d) spare parts and accessories for the items mentioned in subparagraph (a), (b) and (c); and
- (e) paramilitary equipment, including—
  - (i) batons, clubs, riot sticks and similar devices of a kind used for law enforcement purposes;
  - (ii) tear gas and other riot control agents;
  - (iii) body armour, bullet resistant apparel and helmets;
  - (iv) handcuffs, leg-irons and other devices used for restraining prisoners;
  - (v) riot protection shields;

- (vi) whips; and
- (vii) parts and accessories designed or adapted for use in, or with, equipment mentioned in sub-paragraphs (i) to (vi).

(2) The military vehicles and equipment mentioned in sub-paragraph (1)(a), (b) and (c) have the same meanings as they have for the purposes of reports by United Nations Member States to the United Nations Register of Conventional Arms established under United Nations General Assembly Resolution A/RES/46/36L of 6 December 1991.

**2. Weapons of mass destruction related material**, relating to items, materials, equipment, goods or technology—

- (a) listed in any of the following documents—
  - (i) UN Security Council document S/2006/853;
  - (ii) UN Security Council document S/2006/853/CORR.1;
  - (iii) UN Security Council document S/2016/308;
  - (iv) UN Security Council document S/2016/1069;
  - (v) UN Security Council document S/2017/728;
  - (vi) UN Security Council document S/2017/760;
  - (vii) UN Security Council document S/2017/822;
  - (viii) UN Security Council document S/2017/829;
  - (ix) IAEA document INFCIRC/254/Rev.8/Part 2;
  - (x) IAEA document INFCIRC/254 Rev.10/Part 2;
  - (xi) IAEA document INFCIRC/254/ Rev.11/Part 1;
  - (xii) IAEA document INFCIRC/254/ Rev.13/Part 1;
  - (xiii) Annex III to UN Security Council Resolution 2321; or
- (b) that could contribute to weapons of mass destruction-related programmes, unless otherwise exempted by regulations made under section 70.

**3. Ballistic missile-related goods**, relating to items, materials, equipment or technology—

- (a) listed in UN Security Council document S/2014/253; or
- (b) that could contribute to ballistic missile-related programmes or weapons of mass destruction delivery systems, unless otherwise exempted by regulations made under section 70.

**4. Items, materials, equipment or technology** that could contribute to the operational capabilities of a designated country's armed forces, unless otherwise exempted by regulations made under section 70.

**B. The following items are EXPORT controlled items—**

Restrictions apply on the sale, supply or transfer of the items listed below, wherever situated, that are destined for a designated country or for any person in a designated country.

**1. (1) Aviation fuel**, including aviation gasoline, naphtha-type jet fuel, kerosene-type jet fuel and kerosene-type rocket fuel, except for aviation fuel provided to a designated country passenger aircraft for its return flight to the designated country.

(2) **Condensates** of all kinds, or natural gas liquids.

(3) **Refined petroleum products.**

(4) **Crude oil.**

(5) **Iron, steel or other metals (HS codes 72 to 83).**

(6) **Helicopters, aircraft, vessels and transportation vehicles (HS codes 86 to 89).**

(7) **Luxury goods**, including jewellery with pearls, gems, precious and semi-precious stones (including diamonds, sapphires, rubies and emeralds), jewellery of precious metal or of metal clad with precious metal, yachts, luxury automobiles and motor vehicles, automobiles and other motor vehicles to transport people, including station wagons but excluding motor vehicle for public transport, racing cars, luxury watches, including wrist and pocket watches and watches with a case of precious metal or metal clad with precious metal, aquatic recreational vehicles (such as personal watercraft), snowmobiles (valued greater than \$2,000), items of lead crystal, recreational sports equipment, rugs and tapestries (valued greater than \$500), tableware of porcelain or bone china (valued greater than \$100).

**(8) Other items—**

(a) The transfer of financial services business (as defined in section 2(1) of the Financial Services Commission Act, 2001) or financial or other assets or resources in relation to "other activities prohibited by" various UN Security Council Resolutions (UNSCRs) relating to a designated country.

(b) The sale, supply or transfer of luxury goods and other goods not specified in subparagraph (7) to or from a designated country as specified by UNSCR 1718 and any subsequent Resolutions.

(c) Other items specified in regulations made under section 70.

**C. THE FOLLOWING ITEMS ARE IMPORT CONTROLLED ITEMS—**

Restrictions apply on importing, purchasing or acquiring the items listed below, wherever situated, from a designated person or entity.

**(1) Coal.**

- (2) **Iron and iron ore.**
- (3) **Lead and lead ore.**
- (4) **Gold, titanium ore, vanadium ore, copper, silver, nickel, and zinc.**
- (5) **Seafood**, including fish, crustaceans, molluscs and other aquatic invertebrates in all forms, and fishing rights related to such products.
- (6) **Statues.**
- (7) **Food and agricultural products (HS codes 12, 08, 07).**
- (8) **Textiles**, including fabrics and partially and fully completed apparel products.
- (9) **Machinery (HS code 84).**
- (10) **Electrical equipment (HS code 44).**
- (11) **Industrial machinery (HS codes 84 and 85).**
- (12) **Wood (HS code 44).**
- (13) **Earth and stone**, including magnesite and magnesia (HS code 25).
- (14) **Rare earth minerals** as may be prescribed by regulations made under section 70.

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**SCHEDULE 2**

(Section 1(1))

**DESIGNATED COUNTRIES**

1. Democratic People's Republic of Korea (also referred to as North Korea)
  2. Islamic Republic of Iran
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**SCHEDULE 3**

(Section 32(1))

**REQUEST TO VERIFY SUSPICION FORM***(Section 32 of the Proliferation Financing (Prohibition) Act, 2023)*

Please complete this part of the form and indicate what you are reporting on.

<b>1. Person submitting this report</b>	
a. Full Name	
b. Job title	
c. Company / Organisation	
d. Address	
e. Contact number (s)	
f. Email address	

<b>2. Details of the asset(s)</b>

<b>3. Details of the owner or controller of the asset(s)</b>	
a. Full Name	
b. Date of birth	
c. Nationality	
d. Address	
e. Passport	
e. other identification document	

4. Reason for the request

Signature	Date (DD/MM/YYYY)

\_\_\_\_\_

**SCHEDULE 4**

(Section 32(5))

**DETAILS TO BE INCLUDED IN SUSPICIOUS ACTIVITY/TRANSACTION REPORTS  
REGARDING PROPERTY OWNED OR CONTROLLED BY  
DESIGNATED PERSONS OR ENTITIES**

1. The name, and, if available, the last known address, of the designated person or entity concerned.
2. For property that came into the possession or immediate control of a reporting entity through a transaction conducted or proposed to be conducted through the reporting entity and involving a facility with the reporting entity:
  - (a) the grounds on which the reporting entity holds the suspicion referred to in section 60(3) and the date on which that suspicion was formed;
  - (b) to the best of the knowledge of the reporting entity, the date on which the reporting entity became aware of the existence of the property, and if readily available to the reporting entity, the type of, and all other available identifying information about, the property;
  - (c) if readily available electronically to the reporting entity—
    - (i) the nature of the transaction; and
    - (ii) the date of the transaction.
    - (iii) the type and identifying number of the facility;
    - (iv) the value of the property in the facility, if known to the person preparing the report for the reporting entity;
  - (d) the name, address, date of birth, if applicable, and if known to the person preparing the report for the reporting entity, occupation or, if appropriate, business or principal activity of the person in whose name the facility is operated, and if available to the person preparing the report for the reporting entity, details of any documentary or other evidence held by the reporting entity and used to establish the identity of that person;
  - (e) the names of the signatories to the facility and, if available to the person preparing the report for the reporting entity, details of any documentary or other evidence held by the reporting entity and used to establish the identity of the signatories to the facility;
  - (f) if readily available electronically to the reporting entity, the name, address, date of birth, if applicable, and occupation or, if appropriate, business or principal activity of each person conducting the transaction and of any person on whose behalf the transaction is conducted;

- (g) if applicable, the branch name, address, and telephone number of the reporting entity which provided the facility involved in the transaction or the reporting entity through which the transaction was conducted, as the case may be.
3. For other property in the possession or immediate control of a reporting entity or any other person
- (a) the grounds on which the reporting entity or other person holds the suspicion referred to in section 60(3) and the date on which that suspicion was formed;
  - (b) to the best of the knowledge of the reporting entity or other person, the date on which the reporting entity or other person became aware of the existence of the property, and if readily available to the reporting entity or other person, the type of, and all other available identifying information about the property;
  - (c) the value of the property, if known to the reporting entity or other person;
  - (d) if available to the reporting entity or other person the name, address, date of birth, if applicable, and occupation or, if appropriate, business or principal activity of the person who owns the property, if it is not owned by the entity, and details of any documentary or other evidence held by the reporting entity or other person and used to establish the identity of the person who owns the property;
  - (e) if available to the reporting entity or other person, the name, address, date of birth, if applicable, and occupation or, if appropriate, business or principal activity of the person who controls the property, if it is not controlled by the entity, and details of any documentary or other evidence held by the reporting entity or other person and used to establish the identity of the person who controls the property.
4. If the report is made in relation to property controlled or possessed by a reporting entity, the name, position, and phone and fax number of the person authorised by the reporting entity to prepare and submit the report. In all other cases, the name, position, if relevant, and phone and fax numbers of the person who prepared the report.
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**SCHEDULE 5**

(Section 49(3))

**OFFENCES AND PENALTIES**

<b>Section</b>	<b>Type of Offence</b>	<b>Penalty (Body Corporate)</b>	<b>Penalty (Individual)</b>
14(1) & (3)	Dealing with an asset knowingly or recklessly with a designated person or entity, etc.	\$500,000	\$250,000 or 3 years imprisonment, or both
15(1) & (3)	Making an asset available knowingly or recklessly to a designated person or entity	\$500,000	\$250,000 or 3 years imprisonment, or both
18(1) & (3)	Knowingly or recklessly making available an asset or financial service to a designated person or entity that could contribute to an activity listed in subsection (2)	\$500,000	\$250,000 or 3 years imprisonment, or both
19(1) & (3)	Knowingly or recklessly conducting specified transaction that could contribute to an activity in subsection (2)	\$500,000	\$250,000 or 3 years imprisonment, or both
20(1) & (2)	Knowingly or recklessly providing an asset or financial service intended to facilitate trade with a designated country person or entity	\$500,000	\$250,000 or 3 years imprisonment, or both
21(1) & (2)	Establishing or maintaining a joint venture knowingly or recklessly as to whether certain identified persons or entities are a party to the joint venture	\$500,000	\$250,000 or 3 years imprisonment, or both
22(1) & (2)	Financial institution establishing or maintaining joint venture with a designated country's financial institution, etc.	\$500,000	\$250,000 or 3 years imprisonment, or both
23(1) & (2)	Financial institution establishing or maintaining a representative office, branch, subsidiary or account in the territory of a designated country	\$400,000	\$200,000 or 2 years imprisonment, or both
24(1), (2) & (4)	Designated country's financial institution establishing or maintaining representative office, branch, subsidiary or account in Anguilla, or opening or maintaining an account in Anguilla without authorisation	\$400,000	\$200,000 or 2 years imprisonment, or both

25(1) & (2)	Conducting financial transaction relating to professional or commercial profitmaking activities in relation to a designated country's diplomatic agents, etc.	\$400,000	\$200,000 or 2 years imprisonment, or both
26(1) & (3)	Selling, leasing, subleasing or hiring real property to a person or entity listed in subsection (2) without approval of the Governor	\$400,000	\$200,000 or 2 years imprisonment, or both
27(1) & (2)	Dealing with or insuring a designated country's flagged vessel	\$300,000	\$200,000 or 2 years imprisonment, or both
28(1) & (2)	Providing insurance service in relation to a vessel involved in conduct prohibited by a designated country Resolution	\$300,000	\$200,000 or 2 years imprisonment, or both
29(1) & (2)	Leasing or chartering vessel or aircraft or providing crew service to a person or entity that is, or is, connected to the government of a designated country, etc.	\$300,000	\$200,000 or 2 years imprisonment, or both
30(1) & (2)	Procuring vessel or crew service from another person or entity that is, or is, connected to the government of a designated country, etc.	\$300,000	\$200,000 or 2 years imprisonment, or both
31(1) & (5)	Intentionally or negligently failing to report the holding of an asset of a designated person or entity	\$500,000	\$250,000 or 3 years imprisonment, or both
32(4) & (8)	Intentionally or negligently failing to make a suspicious transaction report	\$500,000	\$250,000 or 3 years imprisonment, or both
33(1) & (4)	Intentionally or negligently disclosing information contrary to subsection (1)	\$500,000	\$250,000 or 3 years imprisonment, or both
34(1) & (4)	Intentionally or negligently failing to make an enhanced report	\$500,000	\$250,000 or 3 years imprisonment, or both
35(4)	Giving information or procuring document knowing it to be false in a material particular, or destroying, mutilating, defacing, etc. a document with intention of evading a request	\$500,000	\$250,000 or 3 years imprisonment, or both

36(1)	Knowingly or recklessly providing information that is false in a material particular or a document that is not what it purports to be, for the purpose of obtaining an authorisation	\$500,000	\$250,000 or 3 years imprisonment, or both
37(4)	Failing to immediately comply with a direction issued by the Governor	\$100,000	\$50,000 or 1 year imprisonment, or both

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**SCHEDULE 6**

(Section 34(11))

**COMPLIANCE REPORTING FORM FOR SUSPECTED SANCTIONS BREACHES**

- (a) This form should be used to report all compliance-related information to the Financial Intelligence Unit including information regarding suspected designated persons (Part B); assets you have frozen (Part C); and suspected breaches of financial sanctions (Part D).
- (b) Please note that the information you provide may be shared for the purpose of facilitating or ensuring compliance with financial sanctions regulations.
- (c) Annexes 2 and 3 to this form provide key terms and information to assist you in completing your report.
- (d) Your financial sanctions reporting and compliance obligations are explained in the Financial Sanctions Guidance. You should consult this guidance prior to completing this form. Please note that for some businesses there is a legal obligation to report, and that not doing so is a criminal offence.
- (e) Please ensure that when you complete this form, you believe that the facts and information provided in this form are accurate and true to the best of your knowledge.
- (f) You should note that a criminal offence may be committed if you contravene any of the prohibitions in respect of the financial sanctions regime(s) detailed in part 12 below, or you intentionally participate in activities knowing that the object or effect of them is to circumvent any of those prohibitions or enables or facilitates the contravention of any of those prohibitions.
- (g) Please email completed forms, including any associated documents to:

Financial Intelligence Unit at [fiu@gov.ai](mailto:fiu@gov.ai) with “SUSPECTED DESIGNATED PERSON”, “FROZEN ASSETS”, or “SUSPECTED BREACH” as applicable in the subject line.

All submissions should be password protected with unique password issued by the Financial Intelligence Unit to Reporting Entities.

***If you are unsure of your compliance or reporting obligations under financial sanctions, you should seek independent legal advice.***

**PART A: GENERAL INFORMATION**

Please complete this part of the form and indicate what you are reporting on.

<b>1. Person submitting this report</b>	
a. Full Name	
b. Job title	
c. Company / Organisation	
d. Address	
e. Contact number (s)	
f. Email address	

<b>2. Date submitted (DD – MM – YYYY)</b>

<b>3. Are you submitting this form on behalf of a third party? (Tick box) e.g. you are a law firm, agent or guardian representing someone</b>	<b>Yes</b>	
	<b>No</b>	
If yes, please provide the third party's contact details, including their Group ID if they are a designated person.		

<b>4. What are you reporting? (Tick all that are applicable)</b>	
Suspected designated person [Please complete Part B of this form]	
Frozen assets [Please complete Part C of this form]	
Suspected breach [Please complete Part D of this form]	

**PART B: REPORTING A SUSPECTED DESIGNATED PERSON**

This part should be used to report your knowledge or suspicion that an individual, business or organisation is a designated person and therefore subject to financial sanctions. Please complete a separate form for each designated person on whom you are reporting.

Your report should include information from which a designated person can be identified. For example, aliases or alternative identities that could be used to evade sanctions.

If you are also reporting that you have frozen the assets of a designated person, please complete Part C of this form. If you are also reporting a suspected breach of financial sanctions, please complete Part D of this form.

<b>5. Suspected designated person (including persons owned or controlled by them)</b>	
a. Group ID from the consolidated list	
b. Name of the designated person as given on the consolidated list	
c. Name of the person/entity if owned/controlled by a designated person	

6. Information on which your knowledge or suspicion is based	
a. What has caused you to know or suspect that the person you are reporting on is a designated person (or is owned/controlled by one)? <sup>1</sup>	
b. Please provide any information not already on the consolidated list by which the designated person can be identified	<i>E.g. new aliases, dates of birth, addresses, passport numbers, additional trading names, etc.</i>

### PART C: INFORMATION ON FROZEN ASSETS

This part should be used to report that you have frozen the assets of a designated person. Please complete a separate form for each designated person whose assets you have frozen.

If you know or suspect that a person is a designated person, please complete Part B of this form. If you are also reporting a breach of financial sanctions, please complete Part D of this form.

7. Designated person (“DP”)	
a. Group ID from the consolidated list	
b. Name of the designated person as given on the consolidated list	
c. Name of the person/entity if owned/controlled by a designated person	

<sup>1</sup> Please provide as much detail as possible, including your relationship with the person, what information you hold and how it came to you.

**8. Please provide information on all funds and economic resources you have frozen (For definitions and guidance on what to include please see Annexes A & B.)**

**Part D: INFORMATION ABOUT A SUSPECTED BREACH**

This part should be used to report any suspected or known breach of financial sanctions. Please complete one form for each overarching activity. Multiple transactions/transfers relating to an overarching activity may be listed in one form.

Your report should include all known details in relation to the suspected breach activity. Additional supporting material should be attached to your submission and noted in section 22. Where information is not known or not applicable, please state in requisite field.

**9. Who do you suspect has committed, or has attempted to commit, the suspected breach? Please provide details**

**10. Summary of facts**

<p><b>[Including the date(s) the suspected breach (or breaches) was discovered, how it was discovered, and the series of actions that led to a suspected breach taking place (where known)].</b></p>
Empty space for user input

<p><b>11. Does this information relate to a suspected completed, or suspected attempted, breach? Tick box</b></p>	
Completed	
Attempted ( <i>including blocked or rejected activity</i> )	

<p>12. Financial sanctions regime(s) under which the suspected breach has occurred                  The list of all financial sanctions regimes in effect in the UK can be found on OFSI's on GOV.UK:  <a href="https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases">https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases</a></p> <p>Additionally, the list of all financial sanction regimes in effect in Anguilla can be found on the following:</p> <p>Financial Intelligence Unit:  <a href="https://www.fiu.gov.ai/amlcft-legal-frameworks/financial-sanctions-notice">https://www.fiu.gov.ai/amlcft-legal-frameworks/financial-sanctions-notice</a></p> <p>Financial Services Commission:  <a href="http://fsc.org.ai/internationalsanctions.php">http://fsc.org.ai/internationalsanctions.php</a></p> <p>Government of Anguilla:  <a href="http://gov.ai/department.php?id=4&amp;dept=33">http://gov.ai/department.php?id=4&amp;dept=33</a></p>	
a. Financial Sanctions Regime (s)	
b. Act/Regulation(s) ( <i>if known</i> )	
c. Relevant section(s), article(s), regulation(s) suspected of having been breached ( <i>if known</i> )	

**DETAILS OF SUSPECTED BREACH**

See Annex A for a description of what can constitute funds, economic resources, and financial services.

<b>13. What does the suspected breach involve: (Tick all applicable boxes and include a description).</b>
---

<b>Funds</b>		
Describe, in full, the type(s) of funds involved.		
<b>Economic Resource(s)</b>		
Describe, in full, the economic resource(s) involved.		
<b>Financial Services</b>		
Describe, in full, what the financial services are, including how and when they were provided.		
<b>Licence conditions</b>		
Give the licence condition(s) and describe, in full, how you suspect it has been breached. Please include the licence no.		

<b>Reporting obligations</b>		
Give the reporting obligation and describe, in full, how you suspect it has been breached. Please include the licence no. where relevant.		
<b>14. Total value of the suspected breach (actual or estimated) Please provide this information in the currency that was used at the time of the transfer (or provide an estimated value in USD or XCD if unknown with the currency estimated being indicated).</b>		

<b>15. Method(s) of payment and/or transfer e.g. bank transfer, cash, cheque, money order, internet/electronic, or physical asset transfer – road, rail, air, sea, etc.</b>	

<b>16. Remitter/sender information</b>	
Please provide full information on the remitter/sender of the funds and/or economic resources, including: dates, goods involved, amount(s), currencies, account names, account numbers and sort codes, bank details, and nationalities of payers, dates of birth, where known.	
<i>If more space is required, please complete Annex 1 (A1), or attach supporting documents with your submission.</i>	
<b>17. Intermediary information</b>	
Please provide any information you have on intermediaries involved in the activity, including: role in transfer, name(s), date of birth, company registration information, country of operation/nationality, address/location, account name, account number and sort code and bank details, where known.	
<i>If more space is required, please complete Annex 1 (A2), or attach supporting documents with your submission.</i>	
<b>18. Ultimate beneficiary information</b>	
Please provide information on the ultimate beneficiaries of the funds and/or economic resources, including: name, account name, account number and sort code, bank details, residential/company address, date of birth and nationality, where known.	
<i>If more space is required, please complete Annex 1 (A3), or attach supporting documents with your submission.</i>	

<b>19. Please list all external parties who have been made aware that this information is being passed to OFSI, including any designated persons</b>

<b>20. Has this matter been reported to any other authority? If so, please provide their contact details.</b>

<b>21. Other relevant information</b> <i>Please provide any other information you think will help us understand what has happened.</i>

<b>22. Are you providing any supporting documents?</b> <i>Please include any documents that support the information provided, such as bank statements, transaction reports, copies of licences, paperwork, contracts, etc. including those from other jurisdictions.</i>	<b>Yes</b>	
	<b>No</b>	
Please list the supporting documents you are providing.		

Additional remittances *(for Section 16 Remitting information)*

<b>A1. Additional remittance information</b>

Additional remittances *(for Section 17 Intermediary information)*

<b>A2. Additional intermediaries</b>

Additional remittances *(for Section 18 Beneficiary/Beneficiaries information)*

<b>A3. Additional beneficiaries' information</b>

**Annex 2**

This Annex describes some of the common terms used in financial sanctions legislation.

**DESIGNATED PERSONS**

A designated person is an individual, entity or body, listed under EU or UK legislation as being subject to financial sanctions.

The list of designated persons can be found on OFSI's consolidated list of asset freeze targets here:

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

Note that the financial sanctions also apply to persons and entities that are **owned or controlled**, directly or indirectly, by a designated person. Those persons or entities may not be designated in their own right, so their name may not appear on the consolidated list. However, those persons or entities are similarly the subject of the financial sanctions. For more information on ownership and control see OFSI's Guide to Financial Sanctions.

**FUNDS**

Funds means financial assets and benefits of every kind, including but not limited to:

- cash, cheques, claims on money, drafts, money orders and other payment instruments;
- deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
- loans and mortgages;
- publicly and privately traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
- interest, dividends or other income on or value accruing from or generated by assets;
- credit, right of set-off, guarantees, performance bonds or other financial commitments;
- letters of credit, bills of lading, bills of sale;
- documents evidencing an interest in funds or financial resources;
- any other instrument of export-financing.

**ECONOMIC RESOURCES**

Economic resources mean assets of every kind, whether tangible or intangible, movable or immovable, (such as goods, property, or rights) which are not funds themselves but which can be used to obtain funds, goods or services.

**GROUP ID**

All reports to OFSI involving a designated person should include their ‘Group ID’ reference number. The Group ID is a unique identifier for a designated person which can be found in their entry on the consolidated list.

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets>

**FINANCIAL SERVICES**

Financial services mean any service of a financial nature, including, but not limited to:

- insurance-related services consisting of:
  - direct life assurance;
  - direct insurance other than life assurance;
  - reinsurance and retrocession;
  - insurance intermediation, such as brokerage and agency;
  - services auxiliary to insurance, such as consultancy, actuarial, risk assessment and claim settlement services.
  
- banking and other financial services consisting of:
  - accepting deposits and other repayable funds;
  - lending (including consumer credit, mortgage credit, factoring and financing of commercial transactions);
  - financial leasing;
  - payment and money transmission services (including credit, charge and debit cards, travellers’ cheques and bankers’ drafts);
  - providing guarantees or commitments;
  - financial trading (as defined below);
  - participating in issues of any kind of securities (including underwriting and placement as an agent, whether publicly or privately) and providing services related to such issues;
  - money brokering;
  - asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial, depository and trust services;
  - settlement and clearing services for financial assets (including securities, derivative products and other negotiable instruments);
  - providing or transferring financial information, and financial data processing or related software (but only by suppliers of other financial services);
  - providing advisory and other auxiliary financial services in respect of any activity listed in sub-paragraphs (i) to (xi) (including credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy).
  
- “Financial trading” means trading for own account or for account of customers, whether on an investment exchange, in an over-the-counter market or otherwise, in:
  - money market instruments (including cheques, bills and certificates of deposit);
  - foreign exchange;
  - derivative products (including futures and options);
  - exchange rate and interest rate instruments (including products such as swaps and forward rate agreements);

- transferable securities;
- other negotiable instruments and financial assets (including bullion).

**TRUST SERVICES**

‘Trust services’ are defined as:

- the creation of a trust, or similar arrangement;
- the provision of a registered office, business address, correspondence address, administrative address for a trust or similar arrangement;
- the operation or management of a trust or similar arrangement; or
- acting or arranging for another person to act as a trustee of a trust or similar arrangement.

Trust services are provided ‘for the benefit of’ a person (“B”) where -

- (a) B is a beneficiary of a trust or similar arrangement
- (b) B is referred to as a potential beneficiary in a document from the settlor relating to a trust or similar arrangement (such as a letter of wishes), or
- (c) Having regard to all the circumstances, B might reasonably be expected to obtain, or to be able to obtain, a significant financial benefit from the trust or similar arrangement.

**Annex 3****Frozen accounts**

All reports of frozen accounts should include the following information:

- Name of financial institution holding the account
- Account name
- Details of the account holder
- Date account frozen
- Type of account
- Account number
- Sort code (where relevant)
- Credit balance
- Debit balance
- Currency
- Date account opened
- Any other relevant information relevant to the freezing of the account

**Frozen payments / transactions**

All reports of frozen payments or transactions should include the following information:

- Details of the institution/person who has frozen the transaction
- Details of their role in the transaction
- Date of transaction (Inc. amount and currency)
- Date transaction frozen
- All relevant account details (originator, intermediaries, beneficiary)
- Details of the originator of the transaction (name, address, etc.)
- Details of the originating financial institution (name, address, etc.)
- Details of any intermediary financial institutions (name, address, etc.)
- Details of the beneficiary of the transaction (name, address, etc.)
- Details of the beneficiary financial institution (name, address, etc.)
- Any additional information found in the originator-to-beneficiary or bank-to-bank information
- Any other additional information relevant to the freezing of the transaction, including the payment instruction where available.

Barbara Webster-Bourne  
*Speaker*

Passed by the House of Assembly this            day of            , 2023.

Lenox J. Proctor  
*Clerk of the House of Assembly*

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**OBJECTS AND REASONS**

*(The objects and reasons do not form part of the Bill)*

The objects and reasons of the Bill for Proliferation Financing (Prohibition) Act 2023, is to make provisions for offences related to proliferation financing and related matters. The Bill has 8 Parts—

**Part 1** makes preliminary provisions for the Interpretation of terms used in the Act and details the application of Act.

**Part 2** – details the meaning of proliferation financing and creates the offence of proliferation financing.

**Part 3** – deals with financial sanctions that may be imposed on a person or entity designated as such by a Resolution by the UN Security Council or by the Governor by publication in the *Gazette*. This Part also provides for the time period during which such designation shall be in effect and includes provisions for the extension, the revocation and the judicial review of such designation. Where a designation is made under this part or if same has been extended or revoked the Governor shall notify persons specified in this part including the person or entity who has been designated as a Designated person or entity. This part also prohibits individuals from dealing with assets owned by a designated person or entity or making assets available to a Designated person or entity. Lastly it allows for the seizure of frozen assets belonging to a designated person or entity and for the management of such assets in accordance with the procedure established in the Proceeds of Crime Act.

**Part 4** – makes provisions for financial measures that maybe imposed to deal with proliferation financing. This part prohibits a number of activities including:

1. Making available of assets or financial services to Designated person or entity where such financing will be used to facilitate the production of and training in the use of control items and similar activities.
2. Prohibiting persons from entering joint ventures with Designated person or entity.
3. Prohibiting Financial Institutions or Service provider from entering into business relationships with other Financial Institutions or Service provider established in designated countries.
4. Prohibiting designated countries, Financial Institutions or the Service provider from establishing offices or accounts in Anguilla.
5. Prohibiting persons from dealing with a Designated country, flagged vessel or ensuring a flagged vessel of a designated country.

**Part 5** – This part creates reporting obligations on persons who are in possession of assets belonging to a designated person or entity. Similarly a person who suspects that they are in possession of assets belonging to a Designated person or entity shall report the suspicion. This part also creates an obligation on Financial Institutions and Service provider to report to the Unit any suspicious transaction that they believe may be relevant to an offence under this ACT, the Proceeds of Crime Act or a counter terrorism resolution. Similarly, a Financial Institution or service provider shall engage in enhanced reporting to the Unit in particular circumstances including where an account was opened by a Designated country, person or entity. Where a report is made under this part the fact that such report was made shall not be disclosed.

**Part 6** – This part deals with the supervisory function of the Unit and the powers held by the Unit for the enforcement of the provisions of the Bill. Such powers include the power to require a person or entity to provide specified information or document in accordance with notice given by the Unit. The Unit also has the power to enter and inspect premises used for business activities. Where documents specified in the notice are discovered on inspection the Unit has the power to remove such documents in the performance of its function in this part. Similarly, the Unit can conduct an on-site inspection of business premises to ensure compliance. The powers under this part however, are not exercisable in relation to privileged information or documents. This part also details the ramifications for failure to comply where the entity is a body corporate, partnership, limited partnership, or unincorporated body. Any information obtained by the Unit shall be held confidential and may only be disclosed for specified purposes. This part also makes provisions for the issuing of warnings and imposition of civil penalties for failure to comply with the prohibitions in this Bill. Before a penalty can be imposed notice must be given of such penalty. A person aggrieved by a penalty imposed by the Unit may appeal to the High Court.

**Part 7** – This part deals with authorization where a person or entity has been designated as a Designated person or entity by the UN Security Council or the Governor such person or entity may apply to the Governor requesting authorization for access to money or financing for specified purposes including for basic living expenses for such person and/or his/her family. Where authorization is granted under this part conditions may be attached by the Governor. The authorization may be revoked or varied and notice of same shall be given to the person affected by the revocation or variation.

**Part 8** – This part deals with miscellaneous provisions in the Bill. It includes the requirements of the Governor to publish a list of designated persons at least twice a year in the gazette. The Governor is also required to identify persons they believe meet the criteria for designation by the UN Council. This part also allows for the unfreezing of assets where the Governor is satisfied that the asset is not connected to a designated person for proliferation financing. The Governor is also required to prepare a report regarding the exercise of powers of the Governor and the Unit and same shall be laid before the House of Assembly. Similarly, the Governor is required to report to the UN Council on the implementation in Anguilla of a UN Council resolution. This part also provides for the delegation by the Governor to the agency the exercise of his/her powers and functions under this Act. Neither the Governor or agency or other official of the Government shall be liable for any criminal or civil action for anything done in good faith in the performance of their functions. This part also allows for the amendment of the schedule by Order made by the Governor.