Annex: Model Provisions to Combat the Financing of the Proliferation of Weapons of Mass Destruction

Notes on Using These Model Provisions

These model provisions are aimed at assisting states to develop or amend their legislative framework to comply with international obligations and standards to implement financial measures to combat the proliferation of weapons of mass destruction. The provisions are based on relevant UN Security Council resolutions and the Financial Action Task Force (FATF) Recommendations.

The model provisions are intended to be a legal policy and legislative drafting resource. The provisions are drafted in a style that will be familiar to common law jurisdictions. However, the model provisions are nevertheless useful for civil law jurisdictions in understanding the legal requirements. States should take care to adapt the underlying concepts and specific language to accord with constitutional and fundamental legal principles in their legal systems. Specific notes are included throughout this text (in text boxes) to provide further guidance or to highlight issues for consideration. Where there is text in brackets, states need to insert relevant domestic references.

The international obligations on proliferation financing contain a range of different measures, from targeted financial sanctions, to activity-based prohibitions, to vigilance measures. Therefore, it is probable – depending on a state's existing laws – that more than one piece of legislation may be required to implement the various international obligations. Examples of legislation that could integrate proliferation financing provisions include: anti-money laundering/counterterrorist finance (AML/CTF) laws; criminal or penal codes or laws; UN sanctions laws; counterterrorism or security laws; counter proliferation of WMD laws; and customs, trade or export control laws.

Some countries have taken the approach of adopting a law that implements Article 41 of the UN Charter regarding measures not involving the use of armed force and subsequently adopting regulations that address the different requirements of each UN Security Council Resolution imposing sanctions. This approach creates a flexible framework that can capture all sanctions obligations under one umbrella. Given that regulations can be easily amended, it also enables countries to keep their domestic laws in compliance with changing international obligations. It should be noted that while a single UN Charter law brings legal obligations under one umbrella,

a number of agencies will nevertheless be involved in its implementation. Strong inter-agency coordination will be vital to successful implementation.

When deciding which law/s should incorporate counter proliferation financing provisions or whether an entirely new law should be developed, countries should first undertake a mapping exercise to identify all relevant existing legislation.

We welcome feedback on these model provisions in order to continue to improve them. Feedback can be directed to:

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List of Provisions

AN ACT

Entitled

Counter Proliferation Financing Act [year]

Being an Act to provide for financial measures to prevent the proliferation of weapons of mass destruction,

Made by the [name of enactor/method of enactment].

Chapter I: Preliminary

1. Object of the Act

The object of this Act is to:

(a) protect the national interest and promote the security of [State] and its citizens by preventing the proliferation of weapons of mass destruction; and
(b) give effect to Article 41 of the Charter of the United Nations by implementing financial measures arising from United Nations Security Council Resolutions listed in Schedule 1 or prescribed by Regulations; and
(c) protect fundamental rights and freedoms through robust procedural safeguards.

States should insert their country name in Paragraph (a).

2. Entry into force

This Act shall enter into force on [date/gazettal].

3. Application

This Act applies:

(a) in [State]; and
(b) to all citizens of [State] and bodies corporate incorporated under a law of [State] wherever located; and
(c) to a vessel flying the flag of [State]; and
(d) to an aircraft registered in [State]; and
(e) to an offence committed on board a vessel flying the flag of [State] or an aircraft registered in [State] wherever located.

States should ensure that the Act applies to any external territories.

States should ensure that they are able to apply this Act to vessels, which are flagged, and aircraft, which are registered, by the state. In some states, this may be implicit in Paragraph (a) and therefore Paragraphs (c) and (d) are not required.

Paragraph (e) may not be required where the extension of enforcement jurisdiction is already provided by the criminal or penal law of the state and therefore covered by Section 4. Where the criminal or penal law of a state does not extend such enforcement jurisdiction over vessels and aircraft, states should include Section 3(1)(e). Section 3(1)(e) extends jurisdiction over offences committed on board a state's flagged vessel or registered aircraft wherever located. This is mainly relevant to situations where the vessel or aircraft is on or over the high seas to ensure that there is not a gap in legal coverage. It should be noted that where a vessel or aircraft that is flagged/registered by one state is located in the territory of another state, the other state will have concurrent jurisdiction. The jurisdiction of the flag-state or state of registration is not exclusive. These issues of jurisdiction are governed by international law and states may wish to seek specific legal advice on this point to clarify the application of laws.

4. Application of the [criminal code]

The [criminal code] applies to all offences under this Act.

States should insert a reference to the relevant criminal or penal law.

The broader framework of a state's criminal or penal law should apply to offences under this Act. In particular, states should ensure that ancillary offences are provided for each offence in this Act. Ancillary offences are variously described across different states but should include the equivalent of 'attempt', 'participate as an accomplice in', 'incite', 'conspire to commit' and 'direct'.

Given the transnational nature of proliferation of WMD activities and their financing, states should also ensure that broad heads of jurisdiction apply to criminal offences under this Act. Note, in particular, the comment above regarding extending jurisdiction to cover offences on-board vessels and aircraft.

5. Act to bind the State

This Act binds the State.

6. Definitions

(1) The following definitions apply for the purpose of this Act:

"account" includes:

(a) any facility or arrangement under which a financial institution:
  (i) accepts deposit of an asset; or
  (ii) allows withdrawal or transfer of an asset; or
  (iii) pays, collects or draws on a bearer negotiable instrument on behalf of any other 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;

"aircraft" means any machine or craft that can derive support in the atmosphere from the reactions of the air, other than the reactions of the air against the earth's surface;

States should ensure that the definition of 'aircraft' corresponds with their national aviation legislation.

"arms or related materiel" includes:

(a) weapons; and
(b) ammunition; and
(c) military vehicles and equipment, including:
  (i) battle tanks; and
  (ii) armoured combat vehicles; and
  (iii) large calibre artillery systems; and
  (iv) combat aircraft; and
  (v) attack helicopters; and
  (vi) warships; and
  (vii) missiles and missile systems,

which 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; and

(d) spare parts and accessories for the items mentioned in Paragraph (a), (b) or (c); and
(e) paramilitary equipment, including:
  (i) batons, clubs, riot sticks and similar devices of a kind used for law enforcement purposes; and
  (ii) tear gas and other riot control agents; and
  (iii) body armour, bullet resistant apparel and helmets; and
  (iv) handcuffs, leg-irons and other devices used for restraining prisoners; and
  (v) riot protection shields; and
  (vi) whips; and
  (vii) parts and accessories designed or adapted for use in, or with, equipment mentioned in Paragraphs (i) to (vi);

"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) currency, precious metals, precious stones and other financial resources; and
(b) real property, chattels and vessels; and
(c) natural resources, human resources and other economic resources that may be used to obtain funds, goods or services; and
(d) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, or right to claim such asset, including bank credits, travellers cheques, bank cheques, money orders, shares, securities, bonds, drafts, and letters of credit; and
(e) any interest, dividends, income or value accruing from, generated by, or derived from such asset;

In relation to the reference to 'vessels' in Paragraph (b), states should note that Annex III of UN Security Council Resolution 2270 on DPRK provides a list of Ocean Maritime Management Co (OMM) vessels that must be covered by the prohibition against dealing with assets in Section 16.

"authorisation" means a permission granted by the [minister] to undertake an act or make an omission that is otherwise prohibited by this Act and can include conditions imposed on the permission;

"ballistic missile-related goods" means items, materials, equipment or technology:

(a) listed in Security Council document S/2015/546; or
(b) that could contribute to ballistic missile-related programmes or weapons of mass destruction delivery systems and are prescribed by Regulations;

References are made throughout this Act to documents produced by international organisations that provide a list of goods. These documents are regularly updated. It is recommended that states consider listing these documents in subsidiary legal instruments, for example, by prescribing them in Regulations, to allow them to be quickly updated as needed. The documents are listed on the face of this Act only for ease of reference.

UN Security Council Resolutions on Iran and DPRK require states to determine other items that could contribute to ballistic missile or WMD-related programmes. Paragraph (b) allows a state to list additional such items 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 [State] for the routine holding or maintenance of a frozen asset;
    (ii) any other similar purpose;

"biological weapon" means any agent, toxin, weapon, equipment, or means of delivery mentioned in Article 1 of the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, of 10 April 1972;

"chemical weapon" has the same meaning as in Article II of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, of 3 September 1992;

Note that the definition in Article II of the Convention includes components of chemical weapons and means of delivery, together or separately.

"Consolidated List" means the list of all designated persons and entities maintained by the Sanctions Secretariat under Paragraph 51(2)(b);

"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 United Nations Security Council Resolution listed in Schedule 1;

"control" means exercising influence, authority or power over decisions about financial or operating policies, and includes control as a result of, 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" has a corresponding meaning;

"correspondent relationship" means a relationship that involves the provision of banking or 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 or currency or value transfer business at or through a permanent place of business in one country; and

(b) the respondent carries on a banking or 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 or currency or value transfer services between those permanent places of business;

"court" means the [relevant court];

States should specify a court of competent jurisdiction.

"crew service" means a service providing:
(a) flight or cabin crew for a vessel or aircraft; or
(b) a person to travel on board a vessel or aircraft for any purpose relating to the vessel or aircraft's operation; or
(c) a person to travel on board a vessel or aircraft to examine the qualifications or competency of flight or cabin crew;

States should ensure that the definition of 'crew service' corresponds with their national maritime and aviation legislation.

"deal" includes sale, supply, lease, transfer, conversion, disposition, movement or use, and "dealing" and "dealt" have the same meaning;

"designated person or entity" means a person or entity:
(a) designated by the [minister] under Section 10; or
(b) whose designation has been extended by the [minister] under Section 11; or
(c) designated by the United Nations Security Council or its Committees pursuant to a Resolution listed in Schedule 2 or 3 or prescribed by Regulations;

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

"DNFBP" means a designated non-financial business or profession in [State], that is:
(a) a person or entity that conducts any of the following activities:
    (i) providing a gaming, junket or other related casino service;
    (ii) acting as a professional intermediary in a real estate transaction;
    (iii) dealing in precious metals;
    (iv) dealing in precious stones;
    (v) providing a trust or company service; or

(b) an accountant, a lawyer, a notary public, or other independent legal professional when preparing for, engaging in, or carrying out a transaction for a client concerning any of the following activities:
  (i) buying or selling real estate;
  (ii) managing client currency, securities or other assets;
  (iii) managing a bank, savings or securities account;
  (iv) organising contributions for the creation, operation or management of a body corporate;
  (v) creating, operating or managing a body corporate or unincorporated entity;
  (vi) buying and selling businesses;

States should ensure that the definition of 'DNFBP' is consistent with the definition of the same in each state's anti-money laundering and counterterrorist finance (AML/CTF) legislation.

"DPRK" means the Democratic People's Republic of Korea;

"DPRK financial institution" means a person or entity, wherever located, that conducts an activity listed in Paragraphs (a) to (m) of the definition of financial institution and that is:
(a) regulated, registered, incorporated or licensed under any law of DPRK; or
(b) owned or controlled by DPRK;

Paragraph (a) of the definition of "DPRK financial institution" should cover a range of persons and entities that are in some way regulated, registered, incorporated or licensed under any DPRK law where that person or entity conducts any of the activities listed in the definition of "financial institution". For example, Paragraph (a) would cover a company (not necessarily a bank) incorporated in DPRK that conducts any of the activities listed in the definition of "financial institution".

"DPRK flagged vessel" means a vessel:
(a) regulated, registered or licensed under a law of DPRK; or
(b) owned or controlled by DPRK;

"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 [minister] considers:
(a) to be necessary; and
(b) does not violate the requirements of a United Nations Security Council Resolution listed in Schedule 1 or prescribed by Regulations;

"financial institution" means any person or entity that conducts in [State] any of the following activities for or on behalf of a customer:

(a) acceptance of deposits and other repayable funds from the public, including private banking;
(b) lending, including consumer credit, mortgage credit, factoring (with or without recourse), and financing of commercial transactions, including forfeiting;
(c) financial leasing other than in respect of arrangements relating to consumer products;
(d) the transfer of currency or value;
(e) issuing or managing means of payment, including credit and debit cards, cheques, travellers' cheques, money orders and bankers' drafts, and currency in non-physical form;
(f) issuing financial guarantees or commitments;
(g) trading in:
    (i) money market instruments;
    (ii) bearer negotiable instruments;
    (iii) foreign exchange;
    (iv) exchange, interest rate or index instruments;
    (v) transferable securities;
    (vi) commodity futures;
(h) participation in securities issues or the provision of financial services related to such issues;
(i) individual or collective portfolio management;
(j) safekeeping or administration of physical currency, bearer negotiable instruments or liquid securities on behalf of other persons;
(k) investing, administering or managing assets on behalf of other persons;
(l) providing an insurance service;
(m) currency changing;

The definition of 'financial institution' should be consistent with the definition of the same in each state's AML/CTF legislation.

"financial service" means any activity listed in:

(a) Paragraphs (a) to (m) of the definition of financial institution; or
(b) Paragraphs (a)(i) to (v) of the definition of DNFBP; or
(c) Paragraphs (b)(i) to (vi) of the definition of DNFBP; or
(d) the provision of consultancy, training or advisory services related to the activities in Paragraph (a), (b) or (c);

"frozen asset" means an asset which cannot be dealt with due to the prohibition imposed under Section 16;

"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, placement of insurance and providing an insurance brokerage or other insurance intermediation service;

"Iran" means the Islamic Republic of Iran;

"Joint Comprehensive Plan of Action" means the Joint Comprehensive Plan of Action that is attached as Annex A to United Nations 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;

"[minister]" means [relevant minister];

> The powers given to the minister, particularly the power to designate persons and entities, has a significant impact on the rights of persons. As such, it is recommended that the relevant authority is a minister or other senior official. Another option to protect against possible abuse of power could be to nominate a committee or council of senior officials so that the power is not vested in a single person, so long as the committee or council can operate and make decisions efficiently.

"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, whether assembled, partly assembled, or unassembled;

> The definition seeks to cover component parts of nuclear weapons and means of delivery of nuclear weapons, regardless of the purpose of the item and whether the items are assembled or unassembled.

"own" means having a legal entitlement, either directly or indirectly, to 25% or more of a body corporate or entity, and "owned", "ownership" and "owning" have corresponding meanings;

"person" means any natural person or body corporate;

"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;

"Sanctions Secretariat" means the Sanctions Secretariat established under Section 51;

"subsidiary" means a body corporate with voting stock that is owned or controlled by another body corporate;

"vessel" means any kind of vessel used in navigation by water, however propelled or moved, and includes the following:

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

States should ensure that the definition of 'vessel' corresponds with their national maritime legislation.

"weapons of mass destruction related material" means items, materials, equipment, goods, or technology:

(a) listed in any of the following documents:
    (i) Security Council document S/2006/814;
    (ii) Security Council document S/2006/815;
    (iii) Security Council document S/2006/853;
    (iv) Security Council document S/2006/853/CORR.1;
    (v) Security Council document S/2009/205;
    (vi) Security Council document S/2013/136;
    (vii) International Atomic Energy Agency document INFCIRC/254/Rev.9/Part 1a;
    (viii) International Atomic Energy Agency document INFCIRC/254/Rev.7/Part 2a;
    (ix) Annex III to United Nations Security Council Resolution 2321; or
(b) that could contribute to DPRK's nuclear-related, ballistic missile-related or weapons of mass destruction-related programmes and are the subject of a determination made by the United Nations Security Council or its Committees under Paragraph 8(a)(ii) of United Nations Security Council Resolution 1718 that has not ceased to have effect; or
(c) that are dual-use conventional arms and are the subject of a determination made under Paragraph 7 of United Nations Security Council Resolution 2321; or
(d) that could contribute to weapons of mass destruction-related programmes and are prescribed by Regulations.

UN Security Council Resolutions on DPRK require states to determine other dual-use items that could contribute to WMD programmes. Paragraph (d) allows a state to list or specify additional items in Regulations. Paragraph (d) also implements catch-all provisions of UN Security Council Resolutions on Iran that cover items that have been prohibited from transfer by states under UN Security Council Resolutions that specify such action is required on the basis of possession of information that provides reasonable grounds to believe they are intended for a prohibited program.

(2) For the purpose of a "DNFBP" defined in this section, a **"trust or company service"** includes any of the following:
   (a) forming, registering or managing a body corporate or unincorporated legal entity;
   (b) acting as, or arranging for another person to act as, a director or secretary of a company, the partner of a partnership or a similar position in relation to a body corporate or unincorporated legal entity;
   (c) providing a registered office, business address, correspondence address or accommodation for a body corporate or unincorporated legal entity;
   (d) acting as, or arranging for another person to act as, a trustee of an express trust or the equivalent function for another unincorporated legal entity;
   (e) acting as, or arranging for another person to act as, a nominee shareholder for another person.

(3) For the purpose of a "trust or company service" mentioned in Subsection (2), an **"unincorporated legal entity"** includes any unincorporated foundation, association, partnership, undertaking, or legal arrangement, such as a trust, that has certain legal rights and obligations.

Chapter II: Proliferation financing

7. Offence of Proliferation financing

(1) A person must not engage in conduct specified in Subsection (5) knowing that, or reckless as to whether, the conduct relates to an activity specified in Subsection (7).

(2) A person who contravenes Subsection (1) is guilty of an offence.

Penalty:

(a) if the offender is a natural person – a fine not exceeding [xx] or imprisonment for a period not exceeding [xx] or both; or
(b) if the offender is a body corporate – a fine not exceeding [xx].

(3) A person commits an offence under Subsection (2) even if an activity specified in Subsection (7) does not occur or is not attempted.

(4) Subsection (2) does not apply if the person has engaged in conduct for which an authorisation has been granted under Section 40.

(5) The following conduct is specified for the purpose of Subsection (1):

(a) collecting, providing or managing an asset; or
(b) providing advice related to the activities in Paragraph (a); or
(c) providing a financial service; or
(d) conducting a financial transaction.

(6) For the purpose of Paragraph 5(d):

(a) a person conducts a financial transaction if the person is a party to the transaction or procures or facilitates the transaction; and
(b) a transaction can be made by any means, including electronic or physical transfer of an asset.

(7) For the purpose of Subsection (1), the activities specified are:

(a) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, sale, supply, transfer, export, transhipment or use of:
    (i) nuclear weapons; or
    (ii) chemical weapons; or
    (iii) biological weapons; or
    (iv) materials related to nuclear weapons, chemical weapons or biological weapons that are prescribed by Regulations; or
(b) the provision of technical training, advice, service, brokering or assistance related to any of the activities in Paragraph (a).

This provision seeks to implement the financial aspects of Operative Paragraphs (OP) (2) and (3)(d) of UN Security Council Resolution 1540. These provisions extend the prohibitions against financing to cover the proliferation activities of non-state actors.

The terms 'nuclear weapons', 'chemical weapons' and 'biological weapons' used in Subsection (7) are each defined terms in this Act. States should note that each definition includes not only the weapons themselves, but also their component parts and means of delivery. States should give careful attention to all materials captured by these definitions.

OP 3(d) of UN Security Council Resolution 1540 requires the implementation of export controls, which extends beyond nuclear, biological and chemical weapons to also cover "related materials". In the absence of an export control regime in these model provisions, Subsection (7)(d) includes a reference to "related materials prescribed by Regulations", which should specify the range of export-controlled items.

States should ensure that the offences in this Act constitute predicate offences to money laundering. States have different approaches to specifying predicate offences to money laundering. Some states list specific offences as predicate offences, other states apply a threshold penalty approach, that is, all offences above a certain penalty threshold constitute predicate offences to money laundering. States should use the appropriate legal method in their jurisdiction to capture the offences in this Act as a predicate offences.

Chapter III: Targeted financial sanctions

The requirements for implementing targeted financial sanctions relating to proliferation of WMD are very similar to those relating to terrorism. States may consider combining targeted financial sanctions for both terrorism and proliferation into a single regime.

Part I: Designation Process

8. Designations by the United Nations Security Council relating to Iran

(1) A designation of a person or entity by the United Nations Security Council or its Committees under a Resolution listed in Schedule 2 or prescribed by Regulations shall:
    (a) have immediate application in [State]; and
    (b) have the immediate effect of imposing the prohibitions in Sections 16 and 17; and
    (c) shall continue in force until:
        (i) it expires under Subsection (2); or
        (ii) it is revoked by the United Nations Security Council or its Committees.

(2) A designation under Subsection (1) shall expire on 18 October 2023 unless otherwise decided by the United Nations Security Council.

The date of 18 October 2023 is eight years after the Joint Comprehensive Plan of Action Adoption Day. This time limit is imposed by UN Security Council Resolution 2231, OP 6(c). States should note that two potential decisions could occur at the international level that would impact on this timeframe. Firstly, the UN Security Council could find that there has been a failure by Iran to comply with the Joint Comprehensive Plan of Action, in which case the targeted financial sanctions would continue to apply indefinitely. Alternatively, the International Atomic Energy Agency (IAEA) could find that all nuclear activities in Iran remain peaceful, in which case, the IAEA would provide a report to the UN Security Council which would need to make a determination that the targeted financial sanctions would no longer continue to apply. States should monitor decisions of the UN Security Council and IAEA to determine whether changes to the legislation are required to implement those decisions if they are made.

9. Designations by the United Nations Security Council relating to DPRK

(1) A designation of a person or entity by the United Nations Security Council or its Committees under a Resolution listed in Schedule 3 or prescribed by Regulations shall:
    (a) have immediate application in [State]; and
    (b) have the immediate effect of imposing the prohibitions in Sections 16, 17 and 18; and

(c) shall continue in force until it is revoked by the United Nations Security Council or its Committees.

10. Designation by the [minister] relating to DPRK

(1) The [minister] must designate an entity where there are reasonable grounds to believe that:
  (a) the entity is any of the following:
    (i) an entity of the Government of DPRK;
    (ii) an entity of the Workers' Party of DPRK;
    (iii) is owned or controlled, directly or indirectly, by an entity mentioned in Subparagraph (i) or (ii);
    (iv) is acting on behalf of, or at the direction of, an entity mentioned in Subparagraph (i) or (ii); and
  (b) the entity is or has been involved in an activity listed in Subsection (2).

(2) The following activities are specified for the purpose of Subsection (1):
  (a) activities prohibited under Chapter IV; or
  (b) activities related to DPRK's weapons of mass destruction or ballistic missile-related programmes; or
  (c) other activities prohibited by a United Nations Security Council Resolution listed in Schedule 3 or prescribed by Regulations; or
  (d) attempting, participating in or facilitating activities in Paragraphs (a), (b) or (c).

(3) The [minister] must take into consideration any relevant communication from a foreign government or the United Nations Security Council or its Committees when deciding whether an entity should be designated.

(4) The [minister's] designation of an entity has immediate application in [State].

(5) The [minister's] designation of an entity has the immediate effect of imposing the prohibitions under Sections 16, 17 and 18.

This section gives effect to OP 32 of UN Security Council Resolution 2270. The domestic designation process is very similar to the domestic designation process required by Resolution 1373 related to terrorism, although the grounds for designation here are far more specific and relate only to DPRK. States should consider whether the domestic designation process for DPRK, and the subsequent notification and other procedural requirements for DPRK, should be contained in one piece of legislation together with the domestic designation process for terrorism pursuant to Resolution 1373. This would enable states to utilise authorities and mechanisms already in placed and implemented for the purposes of Resolution 1373.

11. Duration of [minister's] designation

(1) A designation made by the [minister] under Section 10 shall continue in force until:
    (a) it expires under Subsection (2); or
    (b) it is revoked by the [minister] under Section 12.

(2) A designation expires [3] years after the date on which it was made.

(3) The [minister] may extend the duration of a designation at any time before the designation expires if the Minister continues to be satisfied that the grounds for designation in Section 10 are met.

(4) A designation that has been extended by the [minister] under Subsection (3) expires [3] years after the date on which the extension was made.

(5) There is no limit to the number of times the [minister] can extend a designation.

States should choose a time period for expiry of a designation. The expiration of designations forces periodic reconsideration of the grounds for designation. This is a procedural safeguard to protect individual rights.

12. Revocation of [minister's] designation

(1) The [minister] may revoke a designation prior to its expiry if the [minister] reasonably believes that the grounds for designation under Section 10 are no longer met.

(2) The revocation of a designation shall have immediate application in [State].

13. Judicial review

(1) Nothing in this Act limits a person's right to seek [judicial review] of a designation by the [minister].

(2) The [court] may consider material in closed proceedings, and in the absence of the designated person or entity and their legal representative, where disclosure of the material would prejudice national security.

In relation to the reference to 'judicial review', it is recommended that states identify the relevant terminology for a review enabling a court to consider whether a legal error has been made.

In relation to Paragraph (2), states should adopt language consistent with the powers of the relevant court to consider material in closed proceedings, taking into account human rights and constitutional protections.

14. Notification of designations and revocations

(1) The [minister] must, without delay, use any necessary means to notify persons specified in Subsection (2) if:
   (a) a designation or revocation is made by the United Nations Security Council or its Committees under United Nations Security Council Resolutions listed in Schedule 2 or 3 or prescribed by Regulations; or
   (b) a designation is made by the [minister] under Section 10; or
   (c) a revocation is made by the [minister] under Section 12; or
   (d) a designation has expired under Section 11(2) or (4).

(2) The following persons are specified for the purpose of Subsection (1):
   (a) a financial institution or DNFBP who has a reporting obligation under this Act [or the law on anti-money laundering and counter-terrorist financing]; and
   (b) any other person or entity considered necessary by the [minister], other than the designated person or entity.

The reference in Paragraph (a) to 'the law on anti-money laundering and counter-terrorist financing' refers to a state's legislation regulating financial institutions and DNFBPs for compliance with AML/CTF requirements.

Depending on whether you choose to put reporting obligations for financial institutions and DNFBPs in this Act or in AML/CTF legislation, the reference here should be to the appropriate law. Refer to comments on 'reporting obligations' below.

(3) The [minister] must, as soon as reasonably practicable, publish in any manner considered appropriate:
   (a) a designation or revocation made by the United Nations Security Council or its Committees under a United Nations Security Council Resolution listed in Schedule 2 or 3 or prescribed by Regulations; or
   (b) a designation made by the [minister] under Section 10; or
   (c) a revocation made by the [minister] under Section 12; or
   (d) the expiry of a designation under Section 11(2) or (4).

States should note that pursuant to Sections 8, 9 and 10, decisions of the UN Security Council or the [minister] to designate persons or entities have the immediate effect of imposing the prohibitions in Sections 16, 17 and 18. No other administrative process is required for those decisions to have legal effect. Section 14 recognises that in practice some form of communication of the UN Security Council or the [minister's] decision should take place and therefore outlines a possible communication process. However, legal obligations are imposed by the making of the decision, not by the communication of that decision. To promote compliance with the legal obligations, FATF recommends that these decisions are notified 'without delay' to financial institutions and DNFBPs.

15. Notice of designation to a designated person or entity

(1) The [minister] must, within a reasonable time, make reasonable efforts to give written notice of their designation to:
    (a) a person or entity designated by the [minister] under Section 10; and
    (b) a person or entity designated by the United Nations Security Council or its Committees under a United Nations Security Council Resolution listed in Schedule 2 or 3 or prescribed by Regulations if that person or entity is located within the territory of [State]; and
    (c) a person designated by the United Nations Security Council or its Committees under United Nations Security Council Resolutions listed in Schedule 2 or 3 or prescribed by Regulations if that person is a national of [State]; and
    (d) a person designated by the United Nations Security Council or its Committees under United Nations Security Council Resolutions listed in Schedule 2 or 3 or prescribed by Regulations if that person is a body corporate incorporated under a law of [State].

(2) The notice in Subsection (1) must contain the following matters as applicable:
    (a) the grounds for designation; and
    (b) the information relied on in making the designation, with the exception of information that, in the opinion of the [minister] acting reasonably, should not be disclosed on the grounds that [it would prejudice national security]; and
    (c) the duration of the designation; and
    (d) details of the prohibitions imposed; and
    (e) avenues to appeal the designation; and
    (f) the right to seek [judicial review] of the designation; and
    (g) information on the procedure for making an application for an authorisation under Section 40.

The language in Paragraph (2)(b) should reflect the legal basis on which your government can withhold information from the public. The phrase 'prejudice national security' is used in a number of states.

A three-stage process for notification is contemplated by Section 15. Firstly, without delay financial institutions, DNFBPs and any other person that is suspected of holding the asset of a designated person or entity should be notified. This notification should be carried out in a manner that does not alert the designated person or entity or allow the assets to dissipate. Secondly, it is recommended that information regarding designations and revocations is publicly available in some form, for example on an official website of the Sanctions Secretariat. This should take place only after the specific notice to financial institutions, DNFBPs and other relevant persons. Thirdly, and lastly, reasonable efforts should be made to notify persons and entities designated by the [minister], or designated by the UN Security Council or its Committees and who are located in your state or are nationals of your state. Where a designated person or entity is located in your state, the state has obligations to inform designated persons or entities of their rights – for example, the right to authorised access to assets or a right to judicial review of the [minister's] decision, among others. This is the basis of the third limb of the notification process.

Part II: Prohibitions

For all offences in this Act, 'knowledge' should be able to be inferred from objective factual circumstances. This is a common law principle that exists in many states. However, it may be the practice in some states that a provision needs to be included in every offence that knowledge can be inferred from objective factual circumstances. Without this principle, this mental element of the offence would be very difficult to prove.

16. Prohibition against dealing with assets

(1) A person must not deal with an asset knowing that, or reckless as to whether, the asset is owned, controlled or held, directly or indirectly, wholly or jointly, by:
    (a) a designated person or entity; or
    (b) on behalf of a designated person or entity; or
    (c) at the direction of a designated person or entity.

(2) A person who contravenes Subsection (1) is guilty of an offence.

    Penalty:

(a) if the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] years or both; or
(b) if the offender is a body corporate – a fine not exceeding [xx] or an amount equivalent to the value of the asset, whichever is greater.

(3) For the avoidance of doubt, Subsection (1) applies to any and all assets of persons and entities listed in Subsection (1) and is not limited to assets related to a specific act, plot or threat.

(4) Subsection (2) does not apply if the person has an authorisation under Section 40(2), (3) or (4).

(5) It is not a defence to Subsection (2) that a response from the [police] verifying a suspicion under Subsection 35(4) was not received.

The prohibition against dealing with assets implements the obligation to "freeze assets". It clarifies what is meant by freezing an asset by articulating that this means you can no longer deal with the asset. "Deal" is a defined term. It means that you can no longer sell, supply, transfer, move, convert, dispose of or use the asset. However, the prohibition against dealing with assets does not give rise to an entitlement to confiscate those assets. Ownership of the asset does not change as a result of this provision.

The recklessness test in Subsection (1) is the broadest implementation of the prohibition against dealing with assets. This ensures that a person cannot continue to transact with assets even though they may also file an STR at the point when a suspicion is raised. This means that when a person has a suspicion that an asset is owned, controlled or held by or on behalf of or at the direction of a designated person or entity, then two obligations are invoked: first, the obligation to file an STR under Section 37(4), and second, the prohibition against dealing with the asset pursuant to Section 16(2).

The proliferation of weapons of mass destruction has serious consequences for global, regional and national security and the safety of a state's citizens. States should insert penalties commensurate with the gravity of the offences in this Act.

Fines for bodies corporate should generally be higher than fines for natural persons in order for the penalty to have a sufficient deterrent effect.

17. Prohibition against making assets available

(1) A person must not 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; or
(b) to a person or entity owned or controlled by a designated person or entity; or

(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) A person who contravenes Subsection (1) is guilty of an offence.

Penalty:
(a) if the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] years or both; or
(b) if the offender is a body corporate – a fine not exceeding [xx] or an amount equivalent to the value of the asset, whichever is greater.

(3) For the purpose of Subsection (1), it is immaterial whether the asset is located inside or outside [State].

(4) Subsection (2) does not apply if:
(a) the person has an authorisation under Section 40(2), (3) or (4); 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.

18. Prohibition on joint ventures with designated persons and entities of DPRK

(1) A person must not establish or maintain a joint venture with a person or entity knowing that, or reckless as to whether, that person or entity is designated by:
(a) the United Nations Security Council or its Committees under a United Nations Security Council Resolution listed in Schedule 3 or prescribed by Regulations; or
(b) the [minister] under Section 10.

(2) A person who contravenes Subsection (1) is guilty of an offence.

Penalty:
(a) if the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] years or both; or
(b) if the offender is a body corporate – a fine not exceeding [xx].

References are made in various offence provisions in this Act to "maintaining" certain things, for example, see the reference in Subsection (1) above to "maintaining a joint venture". States should consider whether these references to "maintaining" are better encapsulated in transitional provisions according to their domestic practices so that upon entry into force of this Act, existing joint ventures or accounts (and so on) as applicable must be terminated and no new joint ventures or account as applicable can be established.

Part III: Seizure of frozen assets

19. Court may grant order for seizure of frozen assets

(1) An [enforcement authority] may apply to the court for an order for an [authorised officer] to search for and seize a frozen asset.

(2) An [enforcement authority] may make an application to the court under Subsection (1) at the [enforcement authorities'] own instigation or upon the request of the holder of a frozen asset.

(3) On application by the [enforcement authority], the court may make an order for [an authorised officer] to search for and seize a frozen asset in the following circumstances:
    (a) the seizure is necessary in order to preserve the asset; or
    (b) there is a reasonable risk that the asset will dissipate.

(4) If during the course of a search under an order granted under Subsection (3), an [authorised officer] finds an asset that he or she has reasonable grounds to believe could have been included in the order had its existence been known at the time of application of the order, the [authorised officer] may seize that asset and the seizure order shall be deemed to authorize such seizure.

(5) An asset seized under an order granted under Subsection (3) may only be retained so long as the asset remains frozen under this Act.

Due to the fact that an asset freeze may continue for several years, this provision allows the state to seize and maintain frozen assets. States should ensure that this provision is adapted to reflect domestic legal authorities and processes for the seizure of assets. States should also ensure that they have effective asset management systems in place so that frozen assets are preserved. States should consider any liabilities that may arise is relation to assets under its management – for example, where an asset is de-valued, damaged or destroyed. Provisions for seizing assets can be particularly useful where states have banking rules that prohibit dormant bank accounts to remain open past a certain period of time.

States should note that, in general, the seizure of frozen assets does not create a right to confiscation of those assets. The exception to this rule is OP 14 of UN Security Council Resolution 1874 regarding the DPRK, which allows states to dispose of designated vessels in a manner not inconsistent with obligations under relevant UN Security Council Resolutions. In this context, disposal includes storage, destruction or transfer to another state. This exception in relation to vessels recognises the financial and practical difficulties faced by states in maintaining a vessel that is subject to an asset freeze.

Chapter IV: Other financial measures relating to DPRK

20. Prohibition on financing related to DPRK

(1) A person must not make available an asset or financial service related to an activity specified in Subsection (4) knowing that, or reckless as to whether, the asset or financial service is being made available to a person or entity specified in Subsection (6).

(2) A person who contravenes Subsection (1) is guilty of an offence.

Penalty:

(a) if the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] or both; or
(b) if the offender is a body corporate – a fine not exceeding [xx].

(3) Subsection (2) does not apply if the person has an authorisation under Section 40(6).

(4) For the purpose of Subsection (1), the activities specified are:

(a) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, transfer or use of a item specified in Subsection (5); or
(b) the provision of technical training, advice, services, brokering or assistance related to any of the activities in Paragraph (a).

(5) For the purpose of Subsection (4), the following items are specified:

(a) arms or related materiel; or
(b) weapons of mass destruction related material; or
(c) ballistic missile-related goods; or
(d) items, materials, equipment, goods or technology that could contribute to the operational capabilities of DPRK armed forces and are prescribed by Regulations; or
(e) coal, iron, or iron ore; or
(f) gold, titanium ore, vanadium ore, copper, silver, nickel, or zinc; or
(g) rare earth minerals prescribed by Regulations; or
(h) aviation fuel prescribed by Regulations; or
(i) any other items prescribed by Regulations.

(6) For the purpose of Subsection (1), the following persons and entities are specified:

(a) a person in the territory of DPRK; or
(b) a national of DPRK; or
(c) a body corporate incorporated under a law of DPRK; or
(d) the government of DPRK; or
(e) a public body, corporation or agency of the government of DPRK; or

(f) an entity owned or controlled by a person or entity mentioned in Paragraphs (a) to (e); or
(g) a person acting on behalf of, or at the direction of, a person or entity mentioned in Paragraphs (a) to (e).

21. Prohibition on financial transactions related to DPRK

(1) A person must not conduct a financial transaction related to an activity specified in Subsection (5), knowing that, or reckless as to whether, a person or entity specified in Subsection (7) is a party to the financial transaction.

(2) A person who contravenes Subsection (1) is guilty of an offence.

Penalty:
(a) if the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] or both; or
(b) if the offender is a body corporate – a fine not exceeding [xx].

(3) Subsection (2) does not apply if the person has an authorisation under Section 40(6).

(4) For the purpose of Subsection (1):
(a) a person conducts a financial transaction if the person is a party to the transaction, or procures or facilitates the transaction; and
(b) a transaction can be made by any means, including electronic or physical transfer of an asset.

(5) 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 an item specified in Subsection (6); or
(b) the provision of technical training, advice, services, brokering or assistance related to any of the activities in Paragraph (a).

(6) For the purpose of Subsection(5), the following items are specified:
(a) arms or related materiel; or
(b) weapons of mass destruction related material; or
(c) ballistic missile-related goods; or
(d) items, materials, equipment, goods or technology that could contribute to the operational capabilities of DPRK armed forces and are prescribed by Regulations; or
(e) coal, iron, or iron ore; or
(f) gold, titanium ore, vanadium ore, copper, silver, nickel, or zinc; or
(g) rare earth minerals prescribed by Regulations; or
(h) aviation fuel prescribed by Regulations; or

(i) any other items prescribed by Regulations.

(7) For the purpose of Subsection (1), the following persons and entities are specified:
(a) a person in the territory of DPRK; or
(b) a national of DPRK; or
(c) a body corporate incorporated under a law of DPRK; or
(d) the government of DPRK; or
(e) a public body, corporation or agency of the government of DPRK; or
(f) an entity owned or controlled by a person or entity mentioned in Paragraphs (a) to (e); or
(g) a person acting on behalf of, or at the direction of, a person or entity mentioned in Paragraphs (a) to (e).

For the purpose of Subsection (6) in both the Section 20 and Section 21 offence provisions, states may choose to add 'luxury goods' to that list. While there is no specific requirement in the UN Security Council Resolutions prohibiting financing the sale, supply or transfer of luxury goods, OP 11 of Resolution 2094 requires states to prohibit the transfer of financial services or financial or other assets or resources to DPRK in relation to "other activities prohibited by" UN Security Council Resolutions relating to DPRK. Resolution 1718 prohibits the sale, supply or transfer of luxury goods to DPRK. A list of luxury goods is specified by the UN Resolutions, however, states are required to add other items they determine to be luxury goods. This could be done in Regulations to these model provisions.

The materials in Subsection (6)(e) to (h) have been included since prohibiting financing of these materials is consistent with the intention of the UN Security Council Resolutions and is an effective method of bolstering the implementation of export controls related to these materials.

22. Prohibition on trade with DPRK

(1) A person must not provide public or private financial support for trade with DPRK.

(2) For the purpose of Subsection (1), financial support includes the granting of export credits, guarantees or insurance related to trade.

(3) A person who contravenes Subsection (1) is guilty of an offence.

Penalty:
(a) If the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] or both; or
(b) if the offender is a body corporate – a fine not exceeding [xx].

(4) Subsection (3) does not apply if the person has an authorisation under Section 40(6).

The UN Security Council Resolutions use the term 'financial support' in relation to this obligation and provide an inclusive list of three examples of such financial support (export credits, guarantees and insurance). By comparison, other financial measures in the UN Security Council Resolutions relating to DPRK use to the terms "funds, other financial assets and economic resources" and "financial services", which have been implemented in these model provisions through the defined terms "assets" and "financial services". States may wish to give greater clarity to the private sector on what is captured by the term "financial support" by instead using the defined terms "assets" and "financial services" and amending the definitions to clarify that export credits, guarantees and insurance are clearly captured.

23. Prohibition on relationships with DPRK financial institutions

(1) A financial institution must not:
- (a) establish or maintain a joint venture with a DPRK financial institution; or
- (b) obtain or maintain ownership or control of a DPRK financial institution; or
- (c) establish or maintain a correspondent relationship with a DPRK financial institution.

(2) A person who contravenes Subsection (1) is guilty of an offence.

Penalty:
- (a) if the offender is a natural person – a fine not exceeding [xx]; or
- (b) if the offender is a body corporate – a fine not exceeding [xx].

(3) Subsection (2) does not apply if the financial institution has an authorisation under Section 40(6).

(4) The offence under Subsection (2) is a strict liability offence.

24. Prohibition on maintaining offices in DPRK

(1) A financial institution must not establish or maintain a representative office, branch, subsidiary or account in the territory of DPRK.

(2) A person who contravenes Subsection (1) is guilty of an offence.

Penalty:
- (a) if the offender is a natural person – a fine not exceeding [xx]; or
- (b) if the offender is a body corporate – a fine not exceeding [xx].

(3) Subsection (2) does not apply if the financial institution has an authorisation under Section 40(6).

(4) The offence under Subsection (2) is a strict liability offence.

25. Prohibition on maintaining offices in [State]

(1) A DPRK financial institution must not establish or maintain a representative office, branch, subsidiary or account in the territory of [State].

(2) A person who contravenes subsection (1) is guilty of an offence.

Penalty:
- (a) if the offender is a natural person – a fine not exceeding [xx]; or
- (b) if the offender is a body corporate – a fine not exceeding [xx].

(3) The offence under Subsection (2) is a strict liability offence.

26. Prohibition on accounts related to DPRK missions

(1) A financial institution must not open or maintain an account in [State] knowing that, or reckless as to whether, the account holder is a person or entity specified in Subsection (3) without authorisation from the [minister] under Section 40(6).

(2) A person who contravenes Subsection (1) is guilty of an offence.

Penalty:
- (a) if the offender is a natural person – a fine not exceeding [xx]; or
- (b) if the offender is a body corporate – a fine not exceeding [xx].

(3) For the purpose of Subsection (1), the following persons and entities are specified:
- (a) a DPRK diplomatic mission or consular post; or
- (b) a DPRK diplomatic agent or consular officer; or
- (c) a person or entity owned or controlled by a person or entity in Paragraphs (a) or (b); or
- (d) a person acting on behalf of, or at the direction of, a person or entity in Paragraphs (a), (b) or (c).

This prohibition is to implement OP 16 of UN Security Council Resolution 2321, which limits DPRK diplomatic missions, consular posts, accredited diplomats and consular officers to only one bank account per mission, post, diplomat and officer. The intention is that in order to regulate the number of bank accounts DPRK missions and diplomats have in your state, financial institutions have to seek authorisation to open or maintain a bank account for a person specified in this provision. A single financial institution may not know whether a specified person has an account with another financial institution. However, a state's financial intelligence unit, regulatory or law enforcement authority would be able to obtain this information. Therefore, an obligation is imposed to obtain an authorisation to establish or maintain an account for a specified person.

27. Prohibition against financial transactions related to professional or commercial activities

(1) A person must not 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 for, a DPRK diplomatic agent.

(2) A person who contravenes Subsection (1) is guilty of an offence.

Penalty:

(a) if the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] or both; or
(b) if the offender is a body corporate – a fine not exceeding [xx].

(3) For the purpose of Subsection (1):

(a) a person conducts a financial transaction if the person is a party to the transaction, or procures or facilitates the transaction; and
(b) a transaction can be made by any means, including electronic or physical transfer of an asset.

28. Prohibition against use of real property

(1) A person must not use, lease, sub-lease or hire real property for any activity other than a diplomatic or consular activity knowing that, or reckless as to whether, the real property is owned or leased:

(a) by the government of DPRK; or
(b) a public body, corporation or agency of the government of DPRK; or
(c) a DPRK diplomatic mission or consular post; or
(d) a DPRK diplomatic agent or consular officer; or
(e) a person or entity owned or controlled by a person or entity in Paragraphs (a) to (d).

(2) A person who contravenes Subsection (1) is guilty of an offence.

Penalty:

(a) if the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] or both; or
(b) if the offender is a body corporate – a fine not exceeding [xx].

29. Prohibition relating to vessels

(1) A person must not:
(a) deal with a DPRK flagged vessel; or
(b) provide an insurance service in relation to a DPRK flagged vessel.

(2) A person who contravenes Subsection (1) is guilty of an offence.

Penalty:

(a) If the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] or both; or
(b) if the offender is a body corporate – a fine not exceeding [xx].

(3) Subsection (2) does not apply if the person has an authorisation under Section 40(6).

(4) The offence under Subsection (2) is a strict liability offence.

30. Prohibition relating to vessels and aircraft

(1) A person must not 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 DPRK; or
(b) a public body, corporation or agency of the government of DPRK; or
(c) owned or controlled by an entity mentioned in Paragraphs (a) or (b); or
(d) acting on behalf of, or at the direction of, an entity mentioned in Paragraphs (a) or (b).

(2) A person who contravenes Subsection (1) is guilty of an offence.

Penalty:

(a) If the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] or both; or
(b) if the offender is a body corporate – a fine not exceeding [xx].

(3) Subsection (2) does not apply if the person has an authorisation under Section 40(6).

This Section is intended to implement OP 19 of UN Security Council Resolution 2270 and OP 8 of Resolution 2321. Note that where the person or entity is a designated person or entity, this prohibition is also covered by the targeted financial sanctions prohibition against making assets available to designated persons and entities under Section 17.

Chapter V: Other financial measures relating to Iran

31. Prohibition on financing related to Iran

(1) A person must not make available an asset or financial service related to an activity specified in Subsection (4) knowing that, or reckless as to whether, the asset or financial service is being made available to a person or entity specified in Subsection (6).

(2) A person who contravenes Subsection (1) is guilty of an offence.

Penalty:

(a) if the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] or both; or
(b) if the offender is a body corporate – a fine not exceeding [xx].

(3) Subsection (2) does not apply if the person has an authorisation under Section 40(5).

(4) For the purpose of Subsection (1), the activities specified are:

(a) the manufacture, production, possession, stockpiling, storage, development, transportation, supply, sale, transfer or use of an item listed in Subsection (5); or
(b) the provision of technical training, advice, services, brokering or assistance related to any of the activities in Paragraph (a).

(5) For the purpose of Subsection (4)(a) the items listed are:

(a) materials, equipment, goods or technology listed in the following International Atomic Energy Agency documents:
    (i) INFCIRC/254/Rev.12/Part 1; or
    (ii) INFCIRC/254/Rev.9/Part 2; or
(b) arms or related materiel; or
(c) ballistic missile-related goods; or
(d) materials, equipment, goods or technology that could contribute to reprocessing or enrichment-related or heavy water-related activities and that are prescribed by Regulations.

(6) For the purpose of Subsection (1), the following persons and entities are specified:

(a) the government of Iran; or
(b) a public body, corporation or agency of the government of the Iran; or
(c) an entity owned or controlled by an entity mentioned in Paragraphs (a) or (b); or
(d) a person or entity acting on behalf of, or at the direction of, an entity mentioned in Paragraphs (a), (b) or (c).

32. Prohibition on financial transactions related to Iran

(1) A person must not conduct a financial transaction related to an activity listed in Subsection (5), knowing that, or reckless as to whether, a person or entity specified in Subsection (7) is a party to the financial transaction.

(2) A person who contravenes Subsection (1) is guilty of an offence.

Penalty:

(a) if the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] or both; or
(b) if the offender is a body corporate – a fine not exceeding [xx].

(3) Subsection (2) does not apply if the person has an authorisation under Section 40(5).

(4) For the purpose of Subsection (1):

(a) a person conducts a financial transaction if the person is a party to the transaction or procures or facilitates the transaction; and
(b) a transaction can be made by any means, including electronic or physical transfer of an asset.

(5) For the purpose of Subsection (1), the activities specified are:

(a) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, transfer or use of an item listed in Subsection (6); or
(b) the provision of technical training, advice, services, brokering or assistance related to any of the activities in Paragraph (a).

(6) For the purpose of Subsection (5)(a) the items listed are:

(a) materials, equipment, goods or technology listed in the following International Atomic Energy Agency documents:
    (i) INFCIRC/254/Rev.12/Part 1; or
    (ii) INFCIRC/254/Rev.9/Part 2; or
(b) arms or related materiel; or
(c) ballistic missile-related goods; or
(d) materials, equipment, goods or technology that could contribute to reprocessing or enrichment-related or heavy water-related activities and that are prescribed by Regulations.

(7) For the purpose of Subsection (1), the following persons and entities are specified:

(a) the government of Iran; or
(b) a public body, corporation or agency of the government of the Iran; or
(c) an entity owned or controlled by an entity mentioned in Paragraphs (a) or (b); or
(d) a person or entity acting on behalf of, or at the direction of, an entity mentioned in Paragraphs (a), (b) or (c).

33. Prohibition on commercial activities

(1) A person must not sell, or otherwise make available, ownership in or control of, a commercial activity specified in Subsection (4), knowing that, or reckless as to whether, the sale or availability is to a person or entity specified in Subsection (5).

(2) A person who contravenes Subsection (1) is guilty of an offence.

Penalty:

(a) if the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] or both; or

(b) if the offender is a body corporate – a fine not exceeding [xx].

(3) Subsection (2) does not apply if the person has an authorisation under Section 40(5).

(4) For the purpose of Subsection (1), the following commercial activities are specified:

(a) uranium mining; or

(b) uranium production; or

(c) manufacturing, producing, possessing, acquiring, stockpiling, storing, developing, transporting, supplying, selling, transferring or using:

(i) materials, equipment, goods, or technology that are listed in International Atomic Energy Agency document INFCIRC/254/Rev.12/Part 1; or

(ii) ballistic missile-related goods.

(5) For the purpose of Subsection (1), the following persons and entities are specified:

(a) a national of Iran; or

(b) a body corporate incorporated under a law of Iran; or

(c) the government of Iran; or

(d) a public body, corporation or agency of the government of the Iran; or

(e) an entity owned or controlled by an entity mentioned in Paragraphs (a) to (d); or

(f) a person acting on behalf of or at the direction of an entity mentioned in Paragraphs (a) to (e).

Chapter VI: Cross-border transportation of cash, precious metals and precious stones

The physical transportation of bulk cash and gold are well-documented proliferation financing methods, particularly in relation to DPRK. UN Security Council Resolutions highlight the importance of monitoring the cross border transportation of cash, precious metals and precious stones. FATF Recommendation 32 also includes requirements for states to implement an effective regime for the declaration of cross-border transportation of 'currency and bearer negotiable instruments'. States should ensure that they have an effective system of declaration of cross border transportation of cash and that the system also covers precious metals, such as gold, and precious stones.

Chapter VII: Preventative measures for financial institutions and DNFBPs

The FATF Recommendations require financial institutions and DNFBPs to implement a range of preventative measures relating to AML/CTF. While not specifically required by UN Security Council Resolutions or FATF Recommendations, states should ensure that these preventative measures cover counter-proliferation financing in addition to AML/CTF. Doing so ensures the effective implementation of UN Security Council Resolutions and may also assist states in complying with FATF's 'effectiveness criteria', in particular Immediate Outcome 11. Requirements related to preventative measures for financial institutions and DNFBPs include: (a) obligations to undertake a risk assessment; (b) obligations for external audits; (c) obligations to adopt internal programmes; (d) obligations to perform customer due diligence; (e) obligations to conduct enhanced due diligence in relation to high risk jurisdictions, high risk business activities, and where the risk of [proliferation financing] is high; (f) obligations for due diligence in relation to correspondent banking relationships; and (g) obligations around record-keeping and transmittal of wire transfer information.

Chapter VIII: Reporting obligations

34. Reporting obligations not limited

Nothing in this Act limits the reporting obligations on a financial institution or DNFBP imposed by the [law on anti-money laundering and counter-terrorist financing].

35. Request to verify

(1) A person who holds an asset which he or she suspects is, or may be, owned, controlled or held on behalf of, or at the direction of, a designated person or entity may make a request in writing to the [police] to verify that suspicion.

(2) The request must 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 [police] must use their 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 [police] must respond in writing stating that:
    (a) it is likely that the property is owned or controlled by a designated person or entity; or
    (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.

States should nominate a first point of contact to assist with verification of identity requests. This may be a law enforcement agency, financial intelligence unit or regulatory authority responsible for proliferation financing. The reference is made to 'police' in this provision because it is generally law enforcement agencies, which have the skills and access to relevant information necessary to help verify whether there is a match against the Consolidated List of designated persons and entities. Alternatively, states may also nominate the Sanctions Secretariat as the first point of contact.

36. Obligation to report the assets of a designated person or entity

(1) A person who holds an asset of a designated person or entity must report the holding of that asset to the [Sanctions Secretariat OR relevant supervisor] as soon as reasonably practicable and in any event within [5 working days] from:
    (a) the date that person received notification of the designation under Section 14(1); or

(b) the date of publication of the designation under Section 14(3); or
(c) the date the asset came into the possession or control of that person.

(2) The report must include the following information, if available:
(a) details of the asset; and
(b) name and address of the owner or controller of the asset; and
(c) details of any attempted transaction involving the asset, including:
(i) the name and address of the sender; and
(ii) the name and address of the intended recipient; and
(iii) the purpose of the attempted transaction; and
(iv) the origin of the asset; and
(v) where the asset was intended to be sent.

(3) The report must be in accordance with any form or procedure specified by the [Sanctions Secretariat OR relevant supervisor].

(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 37(4).

(5) A person who intentionally, or by negligence, fails to make a report under Subsection (1) is guilty of an offence.

Penalty:
(a) if the offender is a natural person - a fine not exceeding [xx]; or
(b) if the offender is a body corporate – a fine not exceeding [xx].

Depending on the proliferation financing risks in your state, it may be that it is primarily financial institutions that may hold assets required to be frozen under this Act. If this is the case, states may wish to consider whether the relevant authority for the purpose of reporting obligations should be the financial intelligence unit. This would take advantage of the existing relationship and lines of communication between financial institutions and the financial intelligence unit. Alternatively, states could also consider whether reports should be provided to the relevant supervisor appointed under this Act.

37. Obligation to report suspicious transactions

(1) This section applies where a financial institution or DNFBP 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, an offence under this Act or any other indictable offence; or

(b) be relevant to the detection, investigation or prosecution of a person for a foreign indictable offence; or
(c) concern proceeds of crime.

Descriptions of the categories of offences in Subsection (1) should be adapted to suite the terminology adopted in each state's domestic legislation on those matters, particularly the criminal or penal law, money laundering offence and proceeds of crime/criminal asset recovery legislation.

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

(3) Where Subsection (1) applies, a financial institution or DNFBP must take reasonable measures to ascertain the following information:
(a) the purpose of the transaction; and
(b) the origin of the funds; and
(c) where the funds will be sent; and
(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 Paragraph (1)(a); or
(ii) any proceedings under this Act or [the law on anti-money laundering and counter-terrorist financing]; or
(iii) a proceeds of crime law of [State].

(4) Where Subsection (1) applies, a financial institution or DNFBP must make a suspicious transaction report to the [financial intelligence unit] as soon as is reasonably practicable and in any event within [5 working days] from the date the suspicion first arose.

States should ensure their AML/CTF legislation enables the financial intelligence unit to share information relating to proliferation financing with the relevant authorities for proliferation financing matters mentioned in this Act (the Sanctions Secretariat, the [minister], supervisors).

(5) A report under Subsection (4) must include:
(a) such information mentioned in Subsection (3) that is known to the financial institution or DNFBP; and
(b) any other information required by the [financial intelligence unit] that is known to the financial institution or DNFBP; and
(c) the basis on which the suspicion has arisen.

(6) A financial institution or DNFBP must provide a report under Subsection (4) in accordance with any form and procedure specified by the [financial intelligence unit].

(7) A financial institution or DNFBP that has made a report in accordance with Subsection (4) must, if requested to do so by the [financial intelligence unit], provide to the [financial intelligence unit] any further information that it has relating to the suspicion.

(8) A person who intentionally, or by negligence, fails to make a report under Subsection (4) is guilty of an offence.

Penalty:
(a) if the offender is a natural person – a fine not exceeding [xx]; or
(b) if the offender is a body corporate – a fine not exceeding [xx].

(9) Nothing in this section precludes a financial institution or DNFBP from communicating to the [financial intelligence unit] any suspicion it may have prior to the making of a report under Subsection (4).

This is an example of provisions on 'suspicious transaction reporting' that includes a requirement to make an STR where offences related to proliferation financing are suspected. Neither the UN Security Council Resolutions, nor the FATF Recommendations, require proliferation financing to be included in STR obligations. However, doing so is recommended in order to effectively implement the Resolutions and may also be a measure that is considered in the context of the FATF's 'effectiveness criteria' (IO 11). States should note that the FATF Recommendations require a range of other measures around suspicious transaction reporting obligations. These would equally apply where the STR is made in relation to a proliferation financing offence under this Act. These other provisions are not included in this Act. Suspicious transaction reporting obligations and related provisions are ideally located within a state's AML/CTF legislation. The example provisions are given here to encourage inclusion of proliferation financing in suspicious transaction reporting obligations.

FATF Recommendations require DNFBPs that undertake certain types of activities to make STRs. States should consider their domestic AML/CTF legislation on the circumstances under which DNFBPs are required to comply with reporting obligations and amend this provision accordingly.

38. Prohibition against disclosing report, information or suspicion

(1) Where Sections 35(1), 36(1), 37(1) or 37(4) apply, a person must not, unless required to do so under this Act, disclose to anyone else:
(a) that a suspicion has been formed under Section 35(1) or Section 37(1); or
(b) a request has been made under Section 35(1); or
(c) that a report has been made under Section 36(1) or Section 37(4); or

(d) that a suspicion has been or may be communicated to the [financial intelligence unit] under Section 37(9); or
(e) any other information from which a person could reasonably infer any of the matters in Paragraphs (a), (b) or (c).

(2) Subsection (1) does not apply to disclosures made by the person to:
(a) the [financial intelligence unit], [police] or [Sanctions Secretariat OR relevant supervisor] in accordance with this Act; or
(b) a police officer for any law enforcement purpose; or
(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 duties; or
(d) a lawyer 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 interests of justice.

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

Penalty:
(a) if the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] years, or both; or
(b) if the offender is a body corporate – a fine not exceeding [xx].

39. Enhanced reporting obligations related to DPRK

(1) A financial institution or DNFBP must make a report to the [financial intelligence unit] where it has reasonable grounds to believe that:
(a) a financial transaction exceeding [USD 10,000] was made or attempted and that financial transaction involves DPRK, a national of DPRK or a person or entity owned or controlled by DPRK; or
(b) an account was opened or attempted to be opened by DPRK, a national of DPRK or a person or entity owned or controlled by DPRK; or
(c) an asset of a value exceeding [USD 10,000] came under management or was requested to come under management and that asset is owned or controlled by DPRK, a national of DPRK or a person or entity owned or controlled by DPRK; or
(d) a front company, shell company, joint venture or other ownership or control structure exists and could be used to evade a prohibition in Chapter IV or any other measure contained in a United Nations Security Council Resolution listed in Schedule 3 or prescribed by Regulations.

(2) The report must include the following information, if applicable and available:
    (a) details of the parties to the transaction or attempted transaction; and
    (b) details of the account holder; and
    (c) name and address of the owner or controller of the asset; and
    (d) the origin of the asset; and
    (e) details of ownership and control structures; and
    (f) details of the transaction or attempted transaction, including:
        (i) the name and address of the sender; and
        (ii) the name and address of the intended recipient; and
        (iii) the purpose of the transaction or attempted transaction; and
        (iv) where the asset was intended to be sent.

(3) A financial institution or DNFBP must provide a report under Subsection (1) in accordance with any form and procedure specified by the [financial intelligence unit].

(4) A person who intentionally, or by negligence, fails to make a report under Subsection (1) is guilty of an offence.

Penalty:
    (a) if the offender is a natural person – a fine not exceeding [xx]; or
    (b) if the offender is a body corporate – a fine not exceeding [xx].

(5) Nothing in this section precludes a financial institution or DNFBP from communicating to the [financial intelligence 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 37(4).

The UN Security Council Resolutions on DPRK extend beyond suspicious transaction reporting by requiring enhanced monitoring. These additional reporting obligations on financial institutions and DNFBPs are aimed at facilitating this enhanced monitoring in accordance with OP 11 of Resolution 2094, OP 6 of Resolution 2087, and OP 16 and OP 38 of Resolution 2270.

States should define “front company” and “shell company” as used in Section 39(1) in accordance with their corporations law. For the purpose of these model provisions, the terms refer to organisational structures used to shield a “parent” company from liability or scrutiny.

Chapter IX: Administration of the Act

Part I: Functions and powers of the [minister]

40. Authorisations by the [minister]

(1) A person may apply in writing to the [minister] for authorisation to act in contravention of a prohibition in this Act.

(2) In relation to a prohibition in Chapter III, Part II, the [minister] may grant an authorisation if the action contravening a prohibition is required to meet:
   (a) a basic expense; or
   (b) a contractual obligation; or
   (c) an extraordinary expense; or
   (d) a judicial, administrative or arbitral lien or judgement entered into prior to [the designation of the person or entity *OR* 23 December 2006], and the asset is necessary to satisfy that lien or judgement.

The date of 23 December 2006 is the date of adoption of UN Security Council Resolution 1737, which originally imposed the asset freezing obligations. This date is specified in the obligation in Resolution 2231, Annex B, OP 6(d)(iv), which specifically refers to the date of adoption of Resolution 1737, and which Paragraph (d) seeks to implement. States should note that adopting this exact wording of OP 6(d)(iv) means that where a person or entity was designated after 23 December 2006 and a judicial, administrative or arbitral lien was entered into prior to designation but after 23 December 2006, an authorisation cannot be granted to satisfy that lien or judgement. Therefore, two options have been provided in these model provisions, states should seek advice from the UN Security Council in implementing this provision.

(3) In relation to persons and entities designated by the United Nations Security Council or its Committees under United Nations Security Council Resolutions listed in Schedule 2 or prescribed by Regulations relating to Iran, the [minister] may also grant an authorisation if the action contravening a prohibition is:
   (a) necessary for a civil nuclear cooperation project described in Annex III of the Joint Comprehensive Plan of Action; or
   (b) necessary for any activity required for the implementation of the Joint Comprehensive Plan of Action.

(4) In relation to persons and entities designated by the United Nations Security Council or its Committees under United Nations Security Council Resolutions listed in Schedule 3 or prescribed by Regulations relating to DPRK, the [minister] may also grant an authorisation if the action contravening a prohibition is:

(a) necessary to carry out activities of DPRK's missions to the United Nations and its specialized agencies and related organisations or other diplomatic and consular missions of DPRK; or
(b) necessary for the delivery of humanitarian assistance; or
(c) necessary for denuclearisation.

(5) In relation to a prohibition in Chapter V relating to Iran, the [minister] may also grant an authorisation if the action contravening a prohibition:
    (a) is related to:
        (i) equipment covered by B.1 of International Atomic Energy Agency document INFCIRC/254/Rev.12/Part 1 that is for light water reactors; or
        (ii) low-enriched uranium covered by A.1.2 of International Atomic Energy Agency document INFCIRC/254/Rev.12/Part 1 that is incorporated in assembled nuclear fuel elements for light water reactors; or
        (iii) materials, equipment, goods or technology listed in International Atomic Energy Agency document INFCIRC/254/Rev.9/Part 2 that is for exclusive use in light water reactors; or
        (iv) materials, equipment, goods or technology that is directly related to:
            (ivA) the modification of two cascades at the Fordow facility for stable isotope productions; or
            (ivB) the modernisation of the Arak reactor based on the conceptual design agreed in the Joint Comprehensive Plan Of Action; or
            (ivC) the export of Iran's enriched uranium in excess of 300 kilograms in return for natural uranium; or
    (b) has been approved by the United Nations Security Council or its Committees; or
    (c) is consistent with any other exception provided by a United Nations Security Council Resolution listed in Schedule 2 or prescribed by Regulations.

UN Security Council Resolution 2231 does not prohibit the sale, supply or transfer of the items listed in Subsection 5(a), nor does it require UN Security Council approval for the sale, supply or transfer of these items. Nonetheless, states should note that they have obligations to ensure that: (a) the requirements, as appropriate, of the Guidelines as set out in the relevant INFCIRC documents have been met; (b) they have obtained and are in a position to exercise a right to verify the end-use and end-use location of any supplied item; (c) they notify the UN Security Council within ten days of the supply, sale or transfer; and (d) in relation to items listed in the relevant INFCIRC documents, they also notify the International Atomic Energy Agency within ten days of the supply, sale or transfer. Therefore, these model provisions include requirements to obtain authorisation to finance the sale, supply or transfer of these items so that states are in a position to meet the verification and notification requirements.

States should note that in relation to Paragraph (b), the UN Security Council can approve nuclear materials as well as arms or related materiel and ballistic missile-related goods.

(6) In relation to a prohibition in Chapter IV relating to DPRK, the [minister] may also grant an authorisation if the action contravening a prohibition is:
    (a) necessary for the delivery of humanitarian assistance; or
    (b) necessary for livelihood purposes; or
    (c) has been approved by the United Nations Security Council or its Committees; or
    (d) is consistent with any other exception provided by a United Nations Security Council Resolution listed in Schedule 3 or prescribed by Regulations.

(7) The [minister] may not grant an authorisation if the authorisation would violate a provision of a United Nations Security Council Resolution listed in Schedule 1 or prescribed by Regulations.

(8) The [minister] may impose any conditions on an authorisation.

(9) Prior to granting an authorisation, the [minister] must:
    (a) seek any approvals required by, and make any notifications required to, the United Nations Security Council or its Committees, and
    (b) consider any communication from a foreign government relevant to the authorisation.

(10) Where an application is made under Subsection (1) the [minister] must determine the application within a reasonable time and respond to the applicant in writing to:
    (a) grant the authorisation, including any conditions attached to the authorisation; or
    (b) deny the authorisation.

41. Annual report

(1) The [minister] must cause to be published an annual report by regarding the administration of this Act.

(2) The report shall include information regarding:
   (a) designations and revocations made under this Act by the [minister]; and
   (b) designations and revocations made by the United Nations Security Council or its Committees relating to citizens of [State], bodies corporate incorporated under a law of [State] or persons located in [State]; and
   (c) international cooperation on matters relating to the administration of this Act; and
   (d) investigations and prosecutions for offences under this Act.

(3) Nothing in Subsection (2) requires the [minister] to disclose information that would [prejudice national security].

42. Report to United Nations Security Council or its Committees

(1) The [minister] must periodically provide a report to the United Nations Security Council or its Committees in writing.

(2) The report must contain information relevant to the implementation of United Nations Security Council Resolutions listed in a Schedule to this Act or prescribed by Regulations, including:
   (a) information regarding the evasion or attempted evasion of a prohibition under this Act; and
   (b) information that the [minister] believes would assist the United Nations Security Council or its Committees to carry out their functions under a United Nations Security Council Resolution listed in a Schedule to this Act or prescribed by Regulations.

43. Power to request information and documents

(1) Where the [minister] believes that it is necessary for the purpose of carrying out their functions under this Act, the [minister] may request, in writing, any person to provide information or produce documents in their possession or subject to their control.

(2) The [minister] may specify the manner in which, and the period within which, information or documents are to be provided.

(3) A request made under Subsection (1) may include a continuing obligation to keep the [minister] informed as circumstances change, or on such regular basis as the [minister] may specify.

(4) Notwithstanding any other Act or any contractual obligation imposing confidentiality obligations, a person must comply with a request made under Subsection (1).

(5) For the avoidance of doubt, Subsection (4) does not affect [legal professional privilege].

44. Production of documents

Where a request is made for the production of documents, the [minister] may:

(a) take copies of or extracts from any document so produced; and
(b) request any person producing a document to give a written explanation of it.

45. Failure to comply with a request for information or documents

(1) A person who:

(a) (a) fails to comply with a request made under Section 43(1); or
(b) (b) gives information, or produces a document, knowing it is false in a material particular in response to a request made under Section 43(1); or
(c) (c) destroys, mutilates, defaces, conceals or removes a document with the intention of evading a request made under Section 43(1), is guilty of an offence.

Penalty:

(a) if the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] years or both; or
(b) is the offender is a body corporate – a fine not exceeding [xx].

Offences for failure to comply with requests for information are not as severe as the offences relating to proliferation financing, and should therefore attract lesser penalties.

(2) It is a defence to a prosecution under Paragraph (1)(a) that the person has reasonable excuse for failing to comply with the request for information or documents.

(3) A person who gives information, or produces a document, reckless as to whether it is false in a material particular in response to a request made under Section 43(1) is guilty of an offence.

Penalty:

(a) if the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] years or both; or
(b) if the offender is a body corporate – a fine not exceeding [xx].

(4) Where a person is convicted of an offence under this Section, the [court] may make an order requiring that person, within such period as may be specified in the order, to comply with the request.

46. Information to be confidential

Information obtained by the [minister] under this Act is confidential information and can only be disclosed in accordance with Section 47.

47. Disclosure of information by the [minister]

The [minister] may disclose any information obtained under this Act to any agency or body, including an international agency or body or an agency or body of a foreign government, for any of the following purposes:

(a) detecting, investigating or prosecuting an indictable offence;
(b) enforcing a [proceeds of crime law];
(c) promoting, monitoring or enforcing compliance with this Act or the financial sanctions law of another State;
(d) enabling or assisting an official trustee to discharge his functions under enactments relating to insolvency;
(e) monitoring or enforcing compliance with enactments relating to anti-money laundering and counter-terrorist financing;
(f) monitoring or enforcing compliance with [trade, export, or customs laws];
(g) enabling or assisting international law enforcement cooperation under police to police cooperation mechanisms, [mutual legal assistance laws] or other relevant mechanisms and laws;
(h) enabling or assisting any State or territory outside [State] to exercise functions corresponding to those of the [minister] under this Act;
(i) enabling or assisting the United Nations Security Council or its Committees in implementing United Nations Security Council Resolutions listed in Schedule 1 or prescribed by Regulations.

48. Communications from foreign governments

The [minister] may either directly or through diplomatic channels transmit, receive and respond to communications from foreign governments or the United Nations Security Council or its Committees with regard to the powers exercisable under this Act.

49. Power to make regulations

(1) The [minister] may make Regulations consistent with this Act prescribing all matters which are:
(a) required or permitted to be prescribed by this Act; or
(b) necessary or convenient to be prescribed for giving effect to this Act.

(2) Without limiting subsection (1), the Regulations may prescribe additional United Nations Security Council Resolutions.

50. Delegation of authority

The [minister] may delegate, in writing, to an officer of the Sanctions Secretariat 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 10, the power to extend a designation under Section 11(3) and the revocation power under Section 12.

Part II: Sanctions Secretariat

51. Sanctions Secretariat

(1) There is established a Sanctions Secretariat.

(2) The Sanctions Secretariat may exercise functions and powers necessary to support the [minister] in the administration of this Act, including:
   (a) maintaining an up-to-date Consolidated List of all designated persons and entities; and
   (b) specifying such forms and notices as are necessary in the implementation of this Act; and
   (c) receiving reports under [Section 36(1) of this Act OR Section X of the law on anti-money laundering and counter terrorist financing]; and
   (d) facilitating the sharing of information with other agencies or bodies in accordance with Section 47; and
   (e) publishing information on procedures for disputing a prohibition under Section 16, 17 or 18 on the basis of a false match against the Consolidated List; and
   (f) publishing information on procedures for appealing a designation to the [minister] or to the United Nations Security Council or its Committees.

You may wish to nominate an existing agency to undertake the functions under this Section. For the purpose of these model provisions, a 'Sanctions Secretariat' has been created and so named to support the [minister] and receive delegations of functions and powers from the [minister]. In some states, it may be that the [minister] is already able to delegate functions to their department and that department is already administratively required to support the [minister]. If that is the case, you may not need to establish a 'Sanctions Secretariat'; the functions of the Sanctions Secretariat under Subsection 51(2) can simply be attributed to the [minister] and delegated by the [minister] as appropriate to their department under Section 50.

States may choose to use the Consolidated List of designations by UN Security Council Committees available at this website <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list> and add designations by the [minister] under this Act.

Amend Subsection 2(d) as necessary to reflect the legislation, which contains the reporting obligations. If reporting obligations are contained in other legislation, ensure that the other legislation enables the reports to be shared with the Sanctions Secretariat. This should include the sharing of STRs related to financial sanctions.

Part III: National Coordinating Committee

52. [National coordinating committee] on counter-proliferation financing

(1) There is established a [national coordinating committee] on counter-proliferation financing.

(2) The [national coordinating committee] on counter-proliferation financing shall consist of a representative from:
    (a) the [ministry of foreign affairs]; and
    (b) the [ministry of justice/home affairs/attorney-general/public prosecutor]; and
    (c) the [customs/border control]; and
    (d) every supervisor appointed under this Act; and
    (e) the [police]; and
    (f) the [financial intelligence unit]; and
    (g) the [central bank]; and
    (h) the [trade/export/investment authority]; and
    (i) the [intelligence agency]; and
    (j) the Sanctions Secretariat; and
    (k) such other persons as are invited from time to time by the [minister].

(3) The chair of the [national coordinating committee] shall be the [minister].
(4) The [national coordinating committee] must be convened on a regular basis as determined by the [minister].

This section provides an indicative list of ministries or departments that may be involved in a state's counter-proliferation financing system. If states wish to expand an existing AML/CTF national coordinating committee to include counter-proliferation financing, states should note that the range of ministries or departments involved in counter-proliferation financing will be broader than those involved in AML/CTF. Note that the [committee] does not need to be held at the ministerial level. The Act allows the [minister] to delegate this function to the Sanctions Secretariat. Indeed, it is recommended that this [committee] is held at the officer or senior officer level to facilitate the exchange of information and maintain flexibility.

53. Functions of the [national coordinating committee]

The functions of the [national coordinating committee] on counter-proliferation financing are to:

(a) facilitate necessary information sharing between supervisors, the [minister], and other agencies involved in the operation of the counter-proliferation financing system; and
(b) facilitate the production and dissemination of information on the risks of proliferation financing in order to give advice and make decisions on counter-proliferation financing requirements and the risk-based implementation of those requirements; and
(c) facilitate co-operation amongst supervisors and consultation with other agencies in the development of counter-proliferation financing policies and legislation; and
(d) facilitate consistent and co-ordinated approaches to the development and dissemination of counter-proliferation financing guidance materials and training initiatives by supervisors; and
(e) facilitate good practice and consistent approaches to supervision of this Act; and
(f) provide a forum for examining any operational or policy issues that have implications for the effectiveness or efficiency of the counter-proliferation financing system.

Chapter X: Supervision and enforcement

Part I: Supervision

54. Appointment of supervisors

(1) The following supervisors are appointed for monitoring and enforcing compliance with this Act:
- (a) …….
- (b) …….
- (c) …….

(2) If the products or services provided by a person or entity are covered by more than one supervisor:
- (a) the supervisors concerned will agree on the relevant supervisor for that person or entity; and
- (b) the relevant supervisor will notify the person or entity accordingly.

States may wish to appoint a single supervisor, for example, the Sanctions Secretariat or the financial intelligence unit. Alternatively, states may wish to appoint several supervisors. These supervisors may be regulatory authorities with responsibility to regulate specific sectors.

Subsection (2) is recommended to avoid confusion where several supervisors are appointed.

55. Functions of supervisors

The functions of a supervisor appointed under Section 54 are to:
- (a) monitor and assess the level of risk of proliferation financing across all of the persons and entities that it supervises; and
- (b) monitor the persons and entities that it supervises for compliance with this Act, and for this purpose to develop and implement a risk-based supervisory programme; and
- (c) provide guidance and feedback to the persons and entities it supervises in order to assist those persons and entities to comply with this Act; and
- (d) produce codes of practice for compliance with this Act; and
- (e) receive reports under [Section 36(1) of this Act OR Section X of the law on anti-money laundering and counter terrorist financing]; and
- (f) enforce compliance with this Act; and
- (g) co-operate through the Sanctions Secretariat and the [national coordinating committee for counter-proliferation financing] (or any other mechanism that may be appropriate) with domestic and international counterparts to ensure the consistent, effective, and efficient implementation of this Act.

States should consider whether compliance with a code of practice can be considered by a court in criminal proceedings when determining whether a person has acted in contravention of a prohibition under this Act. States may need to adopt special provisions enabling a court to consider codes of practice.

States should amend Paragraph (e) as necessary to reflect the legislation, which contains the reporting obligations. If reporting obligations are contained in other legislation, ensure that the other legislation enables the reports to be shared with the Sanctions Secretariat and supervisor/s, as appropriate.

56. Delegation of authority

A supervisor may delegate, in writing, to a suitable officer the exercise of any or all of the supervisor's powers and functions under this Act.

Part II: Powers of supervisors

57. Power to request information and documents

(1) Where a supervisor believes that it is necessary for the purpose of monitoring compliance with or detecting evasion of this Act, the supervisor may request, in writing, any person to provide information or produce documents in their possession or subject to their control.

(2) A supervisor may specify the manner in which, and the period within which, information or documents are to be provided.

(3) A request made under Subsection (1) may include a continuing obligation to keep the supervisor informed as circumstances change, or on such regular basis as the supervisor may specify.

(4) Notwithstanding any other Act or any contractual obligation imposing confidentiality obligations, a person must comply with a request made under Subsection (1).

(5) For the avoidance of doubt, Subsection (4) does not affect [legal professional privilege].

58. Production of documents

Where a request is made for the production of documents, a supervisor may:

(a) take copies of or extracts from any document so produced; and
(b) request any person producing a document to give a written explanation of it.

59. Power to conduct on-site inspections

(1) A supervisor may, at any reasonable time, enter and remain at any place (other than a [residential dwelling]) for the purpose of conducting an on-site inspection of a person or entity that it supervises.

(2) During an inspection, a supervisor may require any employee, officer, or agent of the person or entity that it supervises to answer questions relating to its records and documents and to 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 by a supervisor under this section if the answer would or could incriminate the person.

(4) Before a supervisor requires a person to answer a question, the person must be informed of the right specified in Subsection (3).

(5) Nothing in this section requires a lawyer to disclose a [privileged communication].

In relation to Subsection (5), states should adopt terminology that corresponds with domestic rules around legal professional privilege.

60. Failure to comply with a request for information or documents

(1) A person who:
- (a) fails to comply with a request made under Section 57(1) or Section 59; or
- (b) gives information, or produces a document, knowing it is false in a material particular in response to a request made under Section 57(1) or Section 59; or
- (c) destroys, mutilates, defaces, conceals or removes a document with the intention of evading a request made under Section 57(1) or Section 59, is guilty of an offence.

Penalty:
- (a) if the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] years or both; or
- (b) is the offender is a body corporate – a fine not exceeding [xx].

(2) It is a defence to a prosecution under Paragraph (1)(a) that the person has reasonable excuse for failing to comply with the request for information or documents.

(3) A person who gives information, or produces a document, reckless as to whether it is false in a material particular in response to a request made under Section 57(1) or Section 59 is guilty of an offence.

Penalty:

(a) if the offender is a natural person – a fine not exceeding [xx] or imprisonment for a term not exceeding [xx] years or both; or
(b) if the offender is a body corporate – a fine not exceeding [xx].

(4) Where a person is convicted of an offence under this Section, the [court] may make an order requiring that person, within such period as may be specified in the order, to comply with the request.

61. Information to be confidential

Information obtained by a supervisor under this Act is confidential information and must only be disclosed in accordance with Section 62.

Where a supervisor is also a regulatory authority, states should consider whether information obtained under this Act by a supervisor can be used for the purposes of carrying out its functions as a regulatory authority under the regulatory law; and vice versa. If this is the case, states should adopt provisions giving effect to this right. States should also consider whether the supervisor is required to inform a person of the purpose for which the information is sought and the fact that the information may be used for another purpose.

62. Disclosure of information by a supervisor

A supervisor may disclose any information obtained under this Act to any agency or body, including an international agency or body or an agency or body of a foreign government, for any of the following purposes:

(a) detecting, investigating or prosecuting an indictable offence;
(b) enforcing a [proceeds of crime law];
(c) promoting, monitoring or enforcing compliance with this Act or the financial sanctions law of another State;
(d) enabling or assisting an official trustee to discharge his functions under enactments relating to insolvency;
(e) monitoring or enforcing compliance with enactments relating to anti-money laundering and counter-terrorist financing;
(f) monitoring or enforcing compliance with [trade, export, or customs laws];
(g) enabling or assisting international law enforcement cooperation under police to police cooperation mechanisms, [mutual legal assistance laws] or other relevant mechanisms and laws;

(h) enabling or assisting any State or territory outside [State] to exercise functions corresponding to those of a supervisor under this Act;
(i) enabling or assisting the [minister] in implementing United Nations Security Council Resolutions listed in Schedule 1 or prescribed by Regulations.

Part III: Enforcement

63. Enforcement measures

(1) A supervisor may do one or more of the following where it has reasonable grounds to believe that a person or entity that it supervises has contravened a prohibition under this Act:
(a) issue a formal warning; or
(b) issue an infringement notice under Section 64; or
(c) accept an enforceable undertaking under Section 65 and seek an order from the court for breach of that undertaking under Section 66; or
(d) seek a performance injunction from the court under Section 67.

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

Supervisors should have a range of non-criminal enforcement measures available to them and should also be able to refer matters to the prosecution authority where appropriate for criminal prosecution.

Subsection (2) highlights the point that states should ensure that relevant regulatory authorities have the power in their respective laws to suspend or revoke a license or registration for contravention of a prohibition under this Act.

64. Infringement notice

(1) A supervisor may serve an infringement notice, in writing, to a person or entity that it supervises where the supervisor has reasonable grounds to believe that the person or entity has contravened a prohibition or failed to meet an obligation under this Act.

(2) A person or entity to whom an infringement notice has been served must, within [30 days] of the date the notice was served, pay a penalty not exceeding:
(a) [xx] for an individual; or
(b) [xx] for a body corporate.

(3) A supervisor may publish in any manner considered appropriate an infringement notice issued to a person or entity.

Where states have civil penalty regimes, it is recommended that civil penalties be included.

65. Enforceable undertaking

(1) A supervisor may request a written undertaking from a person or entity in connection with compliance with this Act.

(2) Without limiting Subsection (1), a written undertaking may relate to an activity of a person or entity or to an officer, employee, agent or a group of officers, employees or agents of the person or entity.

(3) A person or entity may give the supervisor a written undertaking in connection with compliance with this Act.

(4) The terms of an undertaking under this Section must be lawful and in compliance with this Act.

66. Enforcement of undertaking

(1) If the supervisor considers that a person or entity has breached one or more of the terms of an undertaking it provided under Section 65, the supervisor may apply to the court for an order under Subsection (2).

(2) If the court is satisfied that:
    (a) the person or entity has breached one or more of the terms of its undertaking; and
    (b) the undertaking was relevant to the person or entity's obligation under this Act, the court may make an order directing the person or entity to comply with any of the terms of the undertaking.

67. Performance injunctions

(1) A supervisor may apply to the court for an injunction requiring a person or to do an act in order to comply with this Act.

(2) Further to an application under Subsection (1), the court may grant an injunction requiring a person to do an act if it is satisfied that:
    (a) a person has refused or failed, or is refusing or failing, or is proposing to refuse or fail, to do an act; and
    (b) the refusal or failure was, is or would be a contravention of this Act.

(3) An injunction granted by the Court under Subsection (2) may relate to an officer, employee or agent, or a group of officers, employees or agents of the person or entity

the subject of the performance injunction.

(4) An application made under Subsection (1) may be made ex parte and the court may grant an interim injunction under Subsection (2) without the defendant being heard when the court considers it appropriate to do so.

(5) Where the court has granted an injunction under Subsection (2), a supervisor may publish a notice outlining the details of the person or entity's non-compliance and any remedial action ordered by the court.

Chapter XI: Miscellaneous

68. Protection from liability for acts done in good faith

No person is subject to any civil or criminal liability, action, claim or demand for anything done or omitted to be done in good faith in accordance with this Act.

This Section aims to protect all persons, including financial institutions and DNFBPs, against liability for actions or omissions in pursuance of complying with any or all requirements of this Act.

69. Immunity of State

No minister or official of the government of [State] and no person acting at the direction of a minister or official of the government of [State] is subject to any civil or criminal liability, 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.

70. Imputing conduct to bodies corporate

For the purpose of the Act, any conduct engaged in on behalf of a body corporate by an employee, agent or officer of the body corporate acting within the actual or apparent scope of his or her employment, or within his or her actual or apparent authority, is conduct also engaged in by the body corporate.

71. Liability of officers of bodies corporate

(1) If a body corporate contravenes a provision of this Act and the contravention is attributable to an officer of the body corporate failing to take reasonable care, the officer is guilty of an offence and liable to a fine not exceeding the maximum for an offence constituted by a contravention by a natural person of the provision contravened by the body corporate.

(2) In determining whether an officer of a body corporate is guilty of an offence, regard must be had to:
    (a) what the officer knew about the matter concerned; and
    (b) the extent of the officer's ability to make, or participate in the making of, decisions that affect the body corporate in relation to the matter concerned; and
    (c) whether the contravention by the body corporate is also attributable to an act or omission of any other person; and
    (d) any other relevant matter.

(3) An officer of a body corporate may be found guilty of an offence in accordance with Subsection (1) whether or not the body corporate has been convicted or found guilty of the crime committed by it.

(4) For the purpose of this section, an **"officer"** of a body corporate includes a person who makes or participates in the making of decisions that affect the whole or a substantial part of the body corporate's business and a person who has the capacity to affect significantly the body corporate's financial standing.

Schedule 1: United Nations Security Council Resolutions

United Nations Security Council Resolutions on the proliferation of nuclear, chemical and biological weapons and their means of delivery:
Resolution 1540 (2004) of the Security Council, adopted on 28 April 2004
Successor resolutions to the above Resolution

United Nations Security Council Resolutions on Democratic People's Republic of Korea:
Resolution 1718 (2006) of the Security Council, adopted on 14 October 2006
Resolution 1874 (2009) of the Security Council, adopted on 12 June 2009
Resolution 2087 (2013) of the Security Council, adopted on 22 January 2013
Resolution 2094 (2013) of the Security Council, adopted on 7 March 2013
Resolution 2270 (2016) of the Security Council, adopted on 2 March 2016
Resolution 2321 (2016) of the Security Council, adopted on 30 November 2016
Successor resolutions to any of the above Resolutions

United Nations Security Council Resolutions on Iran:
Resolution 1737 (2006) of the Security Council, adopted on 27 December 2006
Resolution 2231 (2015) of the Security Council, adopted on 20 July 2015
Successor resolutions to any of the above Resolutions

Schedule 2: United Nations Security Council Resolutions related to Iran

Resolution 1737 (2006) of the Security Council, adopted on 27 December 2006
Resolution 2231 (2015) of the Security Council, adopted on 20 July 2015
Successor resolutions to any of the above Resolutions

Schedule 3: United Nations Security Council Resolutions related to DPRK

Resolution 1718 (2006) of the Security Council, adopted on 14 October 2006
Resolution 1874 (2009) of the Security Council, adopted on 12 June 2009
Resolution 2087 (2013) of the Security Council, adopted on 22 January 2013
Resolution 2094 (2013) of the Security Council, adopted on 7 March 2013
Resolution 2270 (2016) of the Security Council, adopted on 2 March 2016
Resolution 2321 (2016) of the Security Council, adopted on 30 November 2016
Successor resolutions to any of the above Resolutions