

## **Explanatory Statement**

Issued by the Authority of the Minister for Foreign Affairs

### *Autonomous Sanctions Regulations 2011*

#### *Autonomous Sanctions (Designated Persons and Entities – Democratic People’s Republic of Korea) Amendment List 2016 (No 2)*

The *Autonomous Sanctions Regulations 2011* (the Regulations) commenced on 15 December 2011. The purpose of the Regulations is to facilitate the conduct of Australia’s relations with certain countries, and with specific entities or persons outside Australia, through the imposition of autonomous sanctions in relation to those countries, or targeting those entities or persons.

Paragraph 6 (1) (a) of the Regulations authorises the Minister for Foreign Affairs (the Minister), by legislative instrument, to designate a person or entity on the basis that it is mentioned in an item of the table in regulation 6, including on the basis that the Minister is satisfied that the person or entity is associated with the Democratic People’s Republic of Korea’s (DPRK) weapons of mass-destruction (WMD) program or missiles program. The purpose of such a designation is to subject the designated person or entity to targeted financial sanctions. The designated person or entity becomes the object of the prohibition in regulation 14 (which prohibits directly or indirectly making an asset available to, or for the benefit of, a designated person or entity, other than as authorised by a permit granted under regulation 18).

An asset owned or controlled by a designated person or entity is a “controlled asset”, subject to the prohibition in regulation 15 (which requires a person who holds a controlled asset to freeze that asset, by prohibiting that person from either using or dealing with that asset, or allowing it to be used or dealt with, or facilitating the use of or dealing with it, other than as authorised by a permit granted under regulation 18).

Paragraph 6 (1) (b) of the Regulations authorises the Minister, by legislative instrument, to declare a person on the basis that it is mentioned in an item of the table in regulation 6, including on the basis that the minister is satisfied that the person is associated with the Democratic People’s Republic of Korea’s (DPRK) weapons of mass-destruction (WMD) program or missiles program. The purpose of such a declaration is to prevent the declared person from travelling to, entering or remaining in Australia.

Each person and entity listed in Schedule 1 and Schedule 2 of the *Autonomous Sanctions (Designated Persons and Entities – Democratic People’s Republic of Korea) Amendment List 2016 (No 2)* (the Amendment List) is designated by the Minister for the purposes of paragraph 6 (1) (a) of the Regulations on the basis the person or entity meets the criterion mentioned in Item 1 of the table in regulation 6; that is, it is a person or entity that the Minister is satisfied is associated with the DPRK’s weapons of mass-destruction program or missiles program.

The following persons listed in Schedule 1 of the Amendment List were designated

by the Minister for the purposes of paragraph 6 (1) of the Regulations in December 2013 on the basis that they are mentioned in an item of the table in regulation 6, that is: a person that the Minister is satisfied is associated with the DPRK's weapons of mass destruction or missiles program:

1. Pak To-chun
2. Ju Kyu-chang
3. O Kuk-ryol
4. Paek Se-bong
5. Su Lu-chi
6. Alex Tsai
7. Kim Yong-chol
8. Chang Wen-fu
9. Kim Chol Sam
10. Son Mun San

The following entities listed in Schedule 2 and Schedule 3 of the Amendment List were designated by the Minister for the purposes of paragraph 6 (1) of the Regulations in December 2013 on the basis that they are mentioned in an item of the table in regulation 6, that is: an entity that the Minister is satisfied is associated with the DPRK's weapons of mass destruction or missiles program:

1. Foreign Trade Bank (FTB)
2. Global Interface Company Inc.
3. Korea Daesong General Trading Corporation
4. Trans Merit Company Limited
5. Korea Taesong Trading Company
6. Korea Daesong Bank
7. DCB Finance Ltd
8. Trans Multi Mechanics Company Limited
9. Munitions Industry Department
10. Second Economic Committee
11. Reconnaissance General Bureau
12. Office 39
13. Korea Kwangson Banking Corporation
14. Daedong Credit Bank

Regulation 9 of the Regulations provides that a designation or a declaration made under regulation 6 (1) ceases to have effect on the third anniversary of the day in which the designation took effect. The Amendment List (Schedules 1 and 2) contains the Minister's declaration under sub-regulation 9 (3) that the designations and declarations of the following persons that were originally designated in December 2013 continue to have effect:

1. Pak To-chun
2. Ju Kyu-chang
3. O Kuk-ryol
4. Paek Se-bong
5. Su Lu-chi
6. Alex Tsai

7. Kim Yong-chol
8. Chang Wen-fu
9. Kim Chol Sam
10. Son Mun San

Regulation 9 of the Regulations provides that a designation made under regulation 6 (1) ceases to have effect on the third anniversary of the day in which the designation took effect. The Amendment List (Schedules 1 and 2) contains the Minister's declaration under sub-regulation 9 (3) that the designations of the following entities that were originally designated in December 2013 continue to have effect:

1. Foreign Trade Bank (FTB)
2. Global Interface Company Inc.
3. Korea Daesong General Trading Corporation
4. Trans Merit Company Limited
5. Korea Taesong Trading Company
6. Korea Daesong Bank
7. DCB Finance Ltd
8. Trans Multi Mechanics Company Limited

The following entities listed in Schedule 3 of the Amendment List will cease to have effect from 6 December 2016:

1. Munitions Industry Department (MID)
2. Second Economic Committee (SEC)
3. Reconnaissance General Bureau (RGB)
4. Office 39
5. Korea Kwangson Banking Corporation (KKBC)
6. Daedong Credit Bank

These entities were listed by the UN Security Council in March 2016 when the UN Security Council adopted Resolution 2270. Australia implements UN Security Council DPRK designations automatically. Therefore these six entities are subject to targeted financial sanctions under Australian law under the *Charter of the United Nations (Sanctions – Democratic People's Republic of Korea) Regulation 2008*.

The imposition of sanctions, including through designations and declarations, is designed to increase pressure on the DPRK to comply with United Nations Security Council resolutions, and to engage in serious negotiations on its nuclear and missile programs.

The legal framework for the imposition of autonomous sanctions by Australia, of which the Regulations and the Amendment List are part, has been the subject of extensive consultation with governmental and non-governmental stakeholders since May 2010.

The Department of Foreign Affairs and Trade (DFAT) conducts ongoing public consultations, including with the Australian financial services sector and broader business community, in relation to these types of measures. Relevant Commonwealth Government departments were consulted prior to and during the drafting of this

legislative instrument. DFAT also undertook public consultations from 24 October to 11 November 2016 to both seek information from interested parties to inform the review and to provide procedural fairness to designated persons and entities.

In order to meet the policy objective of prohibiting unauthorised financial transactions involving the persons and entities specified in the Amendment List, the Department is satisfied that wider consultations beyond those it has already undertaken would be inappropriate (sub-sections 17 (1) and (2) of the *Legislation Act 2003*).

## **Statement of Compatibility with Human Rights**

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

*Autonomous Sanctions (Designated Persons and Entities – Democratic People’s Republic of Korea) Amendment List 2016 (No 2)*

The *Autonomous Sanctions (Designated Persons and Entities – Democratic People’s Republic of Korea) Amendment List 2016 (No 2)* (the Amendment List) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

A person or entity subject to designation or declaration under regulation 6 of the Regulations may apply to the Minister for the revocation of those decisions (regulation 11 of the Regulations). Decisions under both regulations 6 and 11 of the Regulations are judicially reviewable.

The designations and declarations are proportionate to the sanctions objectives to increase pressure on the DPRK to comply with United Nations Security Council resolutions, and to engage in serious negotiations on its nuclear and missile programs.

The targeted financial sanctions imposed on the persons and entities designated by the Minister under paragraph 6 (1) (a) of the Regulations do not affect the title to any asset owned or controlled by the designated person or entity. A designated person may apply for a permit to draw on his or her frozen assets, or receive assets from other sources, to meet basic expenses, including for foodstuffs, rent or mortgage, medicines or medical treatment, taxes, insurance premiums, public utility charges, reasonable professional fees, reimbursement of expenses associated with the provision of legal services, or fees or service charges that are in accordance with a law in force in Australia for the routine holding or maintenance of frozen assets (regulations 18 and 20 of the Regulations).

Similarly, a designated person or entity may draw on frozen assets they own or control to satisfy any pre-existing judicial, administrative or arbitral lien or judgement awarded to another (non-designated) person or entity, as well as to make payments required under contracts, agreements or obligations made before the date on which those assets became frozen.

Regulation 19 authorises the Minister to waive the operation of a declaration under regulation 6 so as to allow the person to travel to, enter or remain in Australia, either on the grounds that it would be in the national interest or on humanitarian grounds.

The Department of Foreign Affairs and Trade (DFAT) conducts ongoing public consultations, including with the Australian financial services sector and broader business community, in relation to these types of measures. Relevant Commonwealth Government departments were consulted prior to and during the drafting of this legislative instrument. DFAT also undertook public consultations from 24 October to 11 November 2016 both to seek information from interested parties to inform the

review and to provide procedural fairness to designated persons and entities. No submissions were received.