

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) Continuing Effect Declaration 2018

Section 28 of the *Autonomous Sanctions Act 2011* (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

The *Autonomous Sanctions Regulations 2011* (the Regulations) facilitate the conduct of Australia’s relations with the Democratic People’s Republic of Korea (the DPRK), and with specific persons or entities outside Australia, through the imposition of autonomous sanctions in relation to the DPRK, and through targeting those persons or entities.

The Regulations permit the Minister to designate a person or entity for targeted financial sanctions and/or declare a person for the purposes of a travel ban, if they satisfy a range of criteria, as set out in regulation 6.

The purpose of a designation is to subject the designated person or entity to targeted financial sanctions. There are two types of targeted financial sanctions under the Regulations:

- 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); and/or
- 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).

The purpose of a declaration is to prevent a person from travelling to, entering or remaining in Australia.

Designated persons, designated and declared persons and designated entities in respect of the DPRK are listed in the *Autonomous Sanctions (Designated Persons and Entities – Democratic People’s Republic of Korea) List 2012*.

The persons listed in Schedule 1 and Schedule 2, and the entities listed in Schedule 3, of the *Autonomous Sanctions (Designated Persons and Entities – Democratic People’s Republic of Korea) Continuing Effect Declaration 2018* (the “DPRK List”) were designated and (where relevant) declared pursuant to paragraph 6(1) of the Regulations on the basis that the person or entity met the criterion mentioned in the table in subregulation 6(1) of the Regulations for the DPRK (as it was then drafted); that is, “[a] person or entity that the Minister is satisfied is associated with the DPRK’s weapons of mass-destruction program or missiles program”. In 2017, this criterion was amended to be as follows: “[a] person or entity that the Minister is satisfied is, or has been, associated with the DPRK’s weapons of mass destruction program or missiles program”.

Sections 4, 5 and 6 of the DPRK List contain the Minister’s declaration under subregulation 9(3) of the Regulations that the designations and (where relevant) the declarations of the persons and entities listed in Schedule 1, Schedule 2 and Schedule 3 to the DPRK List, respectively, continue to have effect. The person listed in Schedule 1 was originally designated in 2012, and last renewed in 2015. The ten persons listed in Schedule 2 were originally designated and declared in 2015. Nine of the entities listed in Schedule 3 were originally designated in 2012, and last renewed in 2015, while one entity (Chongchongang Shipping Company) was originally designated in 2015.

The DPRK List renews the targeted financial sanctions and, where relevant, the travel bans that would otherwise lapse on these 11 persons and 10 entities, each of which the Minister is satisfied is mentioned in Item 1 of the table in subregulation 6(1) of the Regulations.

The legal framework for the imposition of autonomous sanctions by Australia, of which the Regulations and the DPRK 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 public consultations, including with the Australian financial services sector and broader business community, in relation to these types of measures.

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) Continuing Effect Declaration 2018

The *Autonomous Sanctions (Designated Persons and Entities – Democratic People’s Republic of Korea) Continuing Effect Declaration 2018* 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 targeted financial sanctions imposed on persons and entities designated 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 or entity may continue 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.