

Explanatory Statement

Issued by the Authority of the Minister for Foreign Affairs

Autonomous Sanctions Regulations 2011

Autonomous Sanctions (Designated Persons and Entities and Declared Persons— Democratic People’s Republic of Korea) Amendment (No. 2) Instrument 2022

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.

Autonomous sanctions are measures not involving the use of armed force which a government imposes as a matter of foreign policy in response to situations of international concern. Such situations include the violation or evasion by the Democratic People’s Republic of Korea (DPRK) of certain United Nations Security Council (UNSC) Resolutions.

The *Autonomous Sanctions Regulations 2011* (the Regulations) make provision for, amongst other things, the proscription of persons or entities for autonomous sanctions, including in relation to the violation or evasion by the DPRK of certain UNSC Resolutions. Regulation 6 of the Regulations enables the Minister for Foreign Affairs (the Minister) to designate a person or entity for targeted financial sanctions if the Minister is satisfied that they are assisting or have assisted in the violation, or evasion by the DPRK of Resolution 825, 1540, 1695, 1718, 1874, 1887, 2087, 2094, 2270 or 2321 of the UNSC or a subsequent resolution relevant to one of the above listed UNSC Resolutions (item 1(b) of the table at regulation 6).

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

- a 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).

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

Under subregulations 9(1) of the Regulations, designations cease to have effect on the third anniversary of the day on which they took effect or were most recently declared to continue in effect, unless the Minister declares (or further declares) that they are to continue in effect pursuant to subregulation 9(3) of the Regulations.

In accordance with regulation 6, the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Democratic People’s Republic of Korea) Amendment (No. 2) Instrument 2022* (the Instrument) designates three entities for targeted financial sanctions. The Minister made the designations being satisfied that each of the entities are assisting or have assisted in the violation, or evasion by the DPRK of Resolution 825, 1540, 1695, 1718, 1874, 1887, 2087, 2094, 2270 or 2321 of the UNSC or a subsequent resolution relevant to one of the above listed UNSC Resolutions, and therefore meet the criteria set out in item 1(b) of the table at regulation 6.

Details of the Instrument which amend the 2012 List are set out at **Attachment A**.

The legal framework for the imposition of autonomous sanctions by Australia, of which the Regulations and the 2012 List are part, was the subject of extensive consultation with governmental and non-governmental stakeholders when introduced. The sanctions being imposed through the making of the Instrument were subject to targeted consultation within government and with relevant international partners. In order to meet the policy objective of prohibiting unauthorised financial transactions involving the entities specified in the Instrument, the Department is satisfied that wider consultations beyond those it has already undertaken would not be appropriate (subsections 17(1) and (2) of the *Legislation Act 2003*). Consultation would risk alerting entities to the impending sanctions and enabling capital flight before assets can be frozen.

The Office of Best Practice Regulation (OBPR) has advised that a Regulation Impact Statement is not required (OBPR reference: 26252).

Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Democratic People’s Republic of Korea) Amendment (No. 2) Instrument 2022

Section 1

The title of the instrument is the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Democratic People’s Republic of Korea) Amendment (No. 2) Instrument 2022*.

Section 2

Subsection 2(1) provides that the instrument commences the day after it is registered.

Subsection 2(2) is a technical provision that makes clear that any information inserted in column 3 of the table about the specific date of commencement is not part of the instrument and can be inserted or edited at a later date.

Section 3

The instrument is made under paragraphs 6(a) of the *Autonomous Sanctions Regulations 2011* (the Regulations) to designate three entities for targeted financial sanctions.

Section 4

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Schedule 1

Item 1

Under subsection 3(1) of the *Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Democratic People’s Republic of Korea) List 2012* (the 2012 List), entities listed in Schedule 1 are designated entities for the Democratic People’s Republic of Korea (DPRK). Item 1 adds the following entities to Part 3 of Schedule 1 of the 2012 List:

- Korean Ungum Corporation
- Russian Financial Society
- Commercial Bank Agrosoyuz

The above designations are made on the basis that each of the entities meet the criteria mentioned in item 1 of the table in regulation 6 of the Regulations, that is, they are an entity that the Minister for Foreign Affairs is satisfied is assisting, or has assisted, in the violation, or evasion, by the DPRK of:

- (i) Resolution 825, 1540, 1695, 1718, 1874, 1887, 2087, 2094, 2270 or 2321 of the United Nations Security Council or;
- (ii) A subsequent resolution relevant to a resolution mentioned in subparagraph (i).

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 and Declared Persons—Democratic People’s Republic of Korea) Amendment (No. 2) Instrument 2022

The *Autonomous Sanctions (Designated Persons and Entities and Declared Persons—Democratic People’s Republic of Korea) Amendment (No. 2) Instrument 2022* (the Instrument) 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*.

Overview of the Instrument

Modern sanctions regimes impose highly targeted measures in response to situations of international concern, including the violation or evasion by the Democratic People’s Republic of Korea (DPRK) of certain United Nations Security Council (UNSC) Resolutions. Thus, autonomous sanctions pursue legitimate objectives, and have appropriate safeguards in place to ensure that any limitation on human rights engaged by the imposition of sanctions is justified and a proportionate response to the situation of international concern. The Government keeps its sanctions regimes under regular review, including in relation to whether more effective, less rights-restrictive means are available to achieve similar foreign policy objectives.

The *Autonomous Sanctions Regulations 2011* (the Regulations) make provision for, amongst other things, the proscription of persons or entities for autonomous sanctions, including in relation to the violation or evasion by the DPRK of certain UNSC Resolutions. Regulation 6 of the Regulations enables the Minister for Foreign Affairs (the Minister) to designate a person or entity for targeted financial sanctions if the Minister is satisfied that they are assisting or have assisted in the violation, or evasion by the DPRK of Resolution 825, 1540, 1695, 1718, 1874, 1887, 2087, 2094, 2270 or 2321 of the UNSC or a subsequent resolution relevant to one of the above listed UNSC Resolutions (item 1(b) of the table at regulation 6).

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

- a 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).

Under subregulations 9(1) of the Regulations, designations cease to have effect on the third anniversary of the day on which they took effect or were most recently declared to continue in effect, unless the Minister declares (or further declares) that they are to continue in effect pursuant to subregulation 9(3) of the Regulations.

In accordance with regulation 6, the Instrument designates three entities for targeted financial sanctions. The Minister made the designations being satisfied that each of the entities are assisting or have assisted in the violation, or evasion by the DPRK of Resolution 825, 1540, 1695, 1718, 1874, 1887, 2087, 2094, 2270 or 2321 of the UNSC or a subsequent resolution relevant to one of the above listed UNSC Resolutions, and therefore meet the criteria set out in item 1(b) of the table at regulation 6.

Human rights implications

As the Instrument relates to the designation of entities not persons, humans are only affected insofar as they are prohibited from making an asset available to, or for the benefit of, the designated entity or from making an asset which they own or control to be used with or dealt with by a designated entity. This does not engage any of the applicable rights or freedoms.

Conclusion

This Instrument is compatible with human rights as it does not raise any human rights issues.