

No. of 2021

VIRGIN ISLANDS

PROLIFERATION FINANCING (PROHIBITION) ACT, 2021

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**No. of 2021 Proliferation Financing (Prohibition)
Act, 2021 Virgin
Islands**

I Assent

Governor.
, 2021

VIRGIN ISLANDS

No. of 2021

A BILL for

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

[Gazetted , 2021]

ENACTED by the Legislature of the Virgin Islands as follows:

PRELIMINARY

Short title and commencement. **1. (1)** This Act may be cited as the Proliferation Financing (Prohibition) Act, 2021.

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

Interpretation. **2. (1)** In this Act, unless the context otherwise requires

“account” includes

(a) any facility or arrangement under which a financial institution

- (i) accepts the deposit of an asset;
 - (ii) allows the withdrawal or transfer of an asset;
 - (iii) pays, collects or draws on a bearer negotiable instrument on behalf of another person; or
 - (iv) supplies a safety deposit box or any other form of safe deposit; and
- (b) any account that is closed or inactive, or that has a nil balance;

“Agency” means the Financial Investigation Agency established under section 3 (1) of the Financial Investigation Agency, 2003;

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

“arms or related material” includes

- (a) weapons;
- (b) ammunition; and
- (c) military vehicles and equipment, including –
 - (i) battle tanks;
 - (ii) armoured combat vehicles;
 - (iii) large calibre artillery systems;
 - (iv) combat aircraft;
 - (v) attack helicopters;
 - (vi) warships; and
 - (vii) missiles and missile systems,
- (d) spare parts and accessories for the items mentioned in paragraphs (a), (b) and (c); and
- (e) paramilitary equipment, including

- (i) batons, clubs, riot sticks and similar devices of a kind used for law enforcement purposes;
- (ii) tear gas and other riot control agents;
- (iii) body armour, bullet resistant apparel and helmets;
- (iv) handcuffs, leg-irons and other devices used for restraining prisoners;
- (v) riot protection shields;
- (vi) whips;
- (vii) parts and accessories designed or adapted for use in, or with, equipment mentioned in paragraphs (i) to (vi); and
- (viii) such other equipment or item as may be designated by the Governor, by an Order published in the *Gazette*, to constitute arms or related material;

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

- (a) cash;
- (b) virtual or digital currencies, including cryptocurrencies;
- (c) bank credits, travellers’ cheques, bank cheques and money orders;
- (d) precious metals and precious stones;
- (e) real property, chattels, and vessels of the type mentioned in a counter-proliferation resolution of the United Nations;
- (f) shares, securities, bonds and drafts;
- (g) rights of set-off, guarantees, performance bonds, and other financial commitments;
- (h) letters of credit, bills of lading and bills of sale;
- (i) instruments of export financing;

- (j) any other financial resources;
- (k) natural resources;
- (l) human resources, such as crew services;
- (m) any other economic resources that may be used to obtain funds, goods or services;
- (n) legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, or right to claim, an asset; and
- (o) any interest, dividend, income or value accruing from, generated by, or derived from, an asset referred to in any of paragraphs (a) to (n);

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

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

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

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

- (a) obtaining foodstuffs;
- (b) paying rent or mortgage;
- (c) obtaining medicine or medical treatment;
- (d) paying taxes;
- (e) paying insurance premiums;

- (f) paying utility charges;
- (g) paying reasonable professional fees;
- (h) paying reasonable expenses associated with the provision of legal services;
- (i) paying fees or service charges that are in accordance with the laws of the Virgin Islands for the routine holding or maintenance of a frozen asset; or
- (j) any other similar purpose as the Governor considers to be necessary and reasonable;

“biological weapon” means any biological agent or toxin as defined and referred to in section 1 (2) of the Biological Weapons Act 1974 (Overseas Territories) Order 1975;

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

“Commission” means the Financial Services Commission established under section 3 (1) of the Financial Services Commission Act, 2001;

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

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

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

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

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

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

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

“court” means the High Court;

“crew service” means a service providing

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

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

“criminal conduct” has the meaning ascribed to it under section 2 (1) of the Proceeds of Criminal Conduct Act, 1997;

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

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

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

- (a) designated by the Governor under section 9;
- (b) whose designation has been extended by the Governor under section 11; or
- (c) designated by the UN Security Council or its Committees pursuant to a resolution in relation to a designated country;

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

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

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

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

“designated country person or entity” means –

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

- (f) an entity owned or controlled by a person or entity mentioned in paragraphs (a) to (e), including through illicit means; or
- (g) a person or entity acting on behalf, or at the direction, of a person or entity mentioned in any of paragraphs (a) to (f);

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

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

“DNFBP” means a designated non-financial business and profession that qualifies as a relevant business under regulation 2 (1) of the Anti-money Laundering Regulations, 2008 or a business that is designated under the Non-Financial Business (Designation) Notice, 2008 and is –

- (a) established in accordance with the laws of the Virgin Islands;
- (b) required to comply with laws relating to money laundering, terrorist financing and proliferation financing and any related activity; and
- (c) supervised by the Agency under section 5C of the Financial Investigation Agency Act, 2003 or pursuant to any other enactment;

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

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

- (a) to be necessary;
- (b) does not violate the requirements of a counter-proliferation Resolution; and
- (c) has been approved by the UN Security Council or its Committees;

“financial institution” means any business or institution that is licensed, approved or authorised by the Commission under a financial services legislation, including the Financial Services Commission Act, 2001;

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

“financial transaction” has the meaning provided in section 3 (1);

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

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

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

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

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

“money laundering” has the meaning ascribed to it under section 2 (1) of the Financial Investigation Agency Act, 2003;

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

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

“person” means any natural person or body corporate;

“proliferation financing” has the meaning provided by section 6;

“representative office” means a business office that is established by a body corporate in a foreign country, where the body corporate is not licensed to operate, to conduct marketing operations, and includes an office established to represent the government of a designated country;

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

“terrorist financing” has the meaning ascribed to it under section 2 (1) of the Financial Investigation Agency Act, 2003;

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

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

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

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

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

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

Meaning of financial transaction”.

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

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

Application.

4. (1) This Act applies to

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

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

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

Act to bind the Crown.

5. This Act binds the Crown.

PART I

PROLIFERATION FINANCING

Meaning of proliferation financing.

6. (1) Proliferation financing takes place when a person –

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

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

(2) The activities referred to in subsection (1) are –

(a) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, sale, supply, transfer, export, transshipment or use of –

(i) nuclear weapons;

(ii) chemical weapons;

(iii) biological weapons; or

(iv) materials related to nuclear weapons, chemical weapons, biological weapons or radiological weapons that are prescribed by regulations or restricted or prohibited under any enactment relating to export or import controlled measures; and

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

7. (1) No person shall engage in proliferation financing.

Prohibition
against
proliferation
financing.

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

PART II

TARGETED FINANCIAL SANCTIONS

Designations and Related Matters

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

Designation by
UN Security
Council.

(a) apply in the Virgin Islands with effect from the date of the designation;

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

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

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

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

Power of
Governor to
designate.

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

- (a) the person or entity is
 - (i) an agent or entity of the government of a designated country;
 - (ii) an agent or entity of an association or institution or a member of the governing party of a designated country;
 - (iii) owned or controlled, directly or indirectly, by a person or an entity mentioned in subparagraph (i) or (ii); or
 - (iv) acting on behalf, or at the direction, of a person or an entity mentioned in subparagraph (i), (ii) or (iii); and
- (b) the person or entity is or has been involved in any of the activities listed in subsection (2).

(2) The activities referred to in subsection (1) (b) are –

- (a) activities prohibited under Part III;

- (b) activities related to a designated country's weapons of mass destruction or ballistic missile-related programmes;
- (c) other activities prohibited by a designated country Resolution;
- (d) attempting, participating in or facilitating activities mentioned in paragraph (a), (b) or (c); or
- (e) assisting in the evasion of measures contained in a designated country Resolution.

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

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

- (a) apply in the Virgin Islands with effect from the date of the designation; and
- (b) have the immediate effect of imposing the prohibitions provided in sections 15 and 16 .

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

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

Duration of designation by Governor.

- (a) expires under subsection (2); or
- (b) is revoked under section 11.

(2) Subject to section 11 (1), a designation made by the Governor expires three years after the date on which it was made.

(3) The Governor may extend the duration of a designation at any time before the designation expires if he or she is satisfied that the grounds for the designation in section 9 continue to exist.

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

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

(6) Where a designation made by the Governor under section 9 expires or is extended, the fact of such expiration or extension shall, as soon as practicable, be published in the *Gazette*.

Revocation, etc.
of designation.

11. (1) Where the Governor is satisfied that the grounds for designating a person or an entity under section 9 no longer exist in relation to the person or entity, or there is a need to vary a designation, the Governor may, as the case may be

(a) revoke the designation; or

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

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

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

(b) in the case of a variation –

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

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

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

Judicial review
of a designation.

12. (1) Nothing in this Act limits a person's right to seek judicial review of a designation made by the Governor under section 9.

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

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

Notification of designations and revocations.

- (a) a designation or revocation is made by the UN Security Council or its Committees under a designated country Resolution;
- (b) a designation is made by the Governor under section 9;
- (c) a variation or revocation is made by the Governor under section 11; or
- (d) a designation has expired under section 10.

(2) The persons specified for the purpose of subsection (1) are

- (a) the Attorney General;
- (b) the Agency;
- (c) the Commission;
- (d) the International Tax Authority;
- (e) the Royal Virgin Islands Police Force;
- (f) all financial institutions;
- (g) all DNFBPs; and
- (e) any other person or entity, other than the designated person or entity, considered necessary by the Governor to be notified in accordance with section 14.

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

Notice to designated person or entity.

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

- (a) the date of the designation;
- (b) the duration of the designation;
- (c) the grounds for the designation;

- (d) the information relied on in making the designation, with the exception of information that, in the opinion of the Governor acting reasonably, should not be disclosed on the ground that it would or is likely to prejudice national security or is not in the public interest to disclose;
- (e) the details of the prohibitions imposed;
- (f) the avenues available to appeal against the designation; and
- (g) information on the procedure for making an application for an authorisation under section 54 or 55.

(3) A notification under subsection (1) is satisfied if it complies with section 65.

Prohibitions

Prohibition
against
dealing with
assets.

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

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

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

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

(4) Subsection (3) shall not apply if the person has an authorisation under section 54 or 55.

(5) It is not a defence to a charge under subsection (3) that a response from the Agency verifying a suspicion under section 33 (4) was not received.

Prohibition
against
making assets
available.

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

- (a) to a designated person or entity;
- (b) to a person or entity owned or controlled by a designated person or entity;

(c) to a person or entity acting on behalf of a designated person or entity; or

(d) for the benefit of a designated person or entity.

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

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

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

(a) the person has an authorisation under section 54 or 55; or

(b) a payment, including by way of interest or other earnings, is made to an account containing frozen assets and that payment is also frozen.

Seizure of Frozen Assets

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

Order for seizure of frozen assets.

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

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

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

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

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

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

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

Management of
seized assets.

18. (1) Any asset seized pursuant to section 17 shall be managed and dealt with in accordance with the Asset Seizure and Forfeiture Act, 2020.

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

PART III

FINANCIAL MEASURES

Prohibition on
financing.

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

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

- (a) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, sale, supply, transfer or use of a Controlled Item;
- (b) the provision of technical training, advice, services, brokering or assistance related to any of the activities mentioned in paragraph (a);
- (c) any activity that facilitates a designated country's nuclear or ballistic missile programmes;
- (d) any activity prohibited by a designated country Resolution;
- (e) assisting the evasion of measures imposed by a designated country Resolution; or
- (f) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, sale, supply, transfer or use of –
 - (i) materials, equipment, goods or technology listed in the following IAEA documents –
 - (aa) (iA) INFCIRC/254/Rev.12/Part 1; or
 - (bb) (iB) INTCIRC/254/Rev.9/Part 2;
 - (ii) arms or related material;

- (iii) ballistic missile-related goods; or
- (iv) materials, equipment, goods or technology that could contribute to reprocessing or enrichment-related or heavy water-related activities, including any such activity as may be prescribed in regulations made under section 71.

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

(4) Subsection (3) shall not apply if the person has an authorisation under section 55.

20. (1) No person shall knowingly or recklessly conduct a specified financial transaction that could contribute to an activity specified in subsection (2). Prohibition on financial transactions.

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

- (a) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, sale, supply, transfer or use of a Controlled Item;
- (b) the provision of technical training, advice, services, brokering or assistance related to any of the activities mentioned in paragraph (a);
- (c) any activity that facilitates a designated country's nuclear or ballistic missile programmes;
- (d) any activity prohibited by a designated country Resolution;
- (e) assisting the evasion of measures imposed by a designated country Resolution; or
- (f) the manufacture, production, possession, acquisition, stockpiling, storage, development, transportation, sale, supply, transfer or use of –
 - (i) materials, equipment, goods or technology listed in the following IAEA documents –
 - (aa) (iA) INFCIRC/254/Rev.12/Part 1; or
 - (bb) (iB) INTCIRC/254/Rev.9/Part2;

- (ii) arms or related material;
- (iii) ballistic missile-related goods; or
- (iv) materials, equipment, goods or technology that could contribute to reprocessing or enrichment-related or heavy water-related activities, including any such activity as may be prescribed in regulations made under section 71.

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

(4) Subsection (3) shall not apply if the person has an authorisation under section 55.

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

Prohibition on financial support for trade.

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

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

(3) Subsection (2) shall not apply if the person has an authorisation under section 54 or 55.

Prohibition on joint ventures.

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

- (a) a designated country person or entity;
- (b) a person or entity designated by –
 - (i) the UN Security Council or its Committees under a designated country Resolution; or
 - (ii) the Governor under section 9;
- (c) an entity owned or controlled by a person or entity mentioned in paragraph (b); or
- (d) a person acting on behalf, or at the direction, of a person or entity mentioned in paragraph (b) or (c).

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

(3) Subsection (2) shall not apply if the person has an authorisation under section 54 or 55.

23. (1) No financial institution shall –

Prohibition on relationships with designated country financial institutions.

(a) establish or maintain a joint venture with a designated country financial institution;

(b) obtain or maintain ownership or control of a designated country financial institution; or

(c) establish or maintain a correspondent relationship with a designated country financial institution.

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

(3) Subsection (2) does not apply if the financial institution has an authorisation under section 55.

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

Prohibition on maintaining offices or accounts in a designated country.

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

(3) Subsection (2) shall not apply if the financial institution has an authorisation under section 55.

25. (1) No designated country financial institution shall establish or maintain a representative office, branch, subsidiary or account in the Virgin Islands.

Prohibition on establishing or maintaining offices and accounts in the Virgin Islands.

(2) A financial institution shall not open or maintain an account in the Virgin Islands knowing that, or reckless as to whether, the account holder is a person or entity specified in subsection (3) without authorisation from the Governor under section 54 or 55.

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

(a) a designated country diplomatic mission, consular post or other representative office;

(b) a designated country diplomatic agent, consular officer or other officer of the government of the designated country;

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

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

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

Prohibition relating to professional or commercial activities.

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

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

Prohibition on transactions in real property.

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

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

(a) the government of a designated country;

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

(c) a designated country diplomatic mission, consular post or other representative office;

(d) a designated country diplomatic agent, consular officer or other officer of the government of a designated country;

(e) an entity owned or controlled by a person or entity mentioned in paragraphs (a) to (d); and

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

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

Prohibition on dealing or insuring flagged vessel.

28. (1) A person shall not

(a) deal with a designated country's flagged vessel; or

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

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

(3) A person does not commit an offence under subsection (2) if he or she has an authorisation under section 55.

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

Prohibition on insuring other vessels.

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

(3) A person does not commit an offence under subsection (2) if the person has an authorisation under section 55.

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

Prohibition on leasing or chartering vessel or aircraft, etc.

- (a) the government of a designated country;
- (b) a public body, corporation or agency of the government of a designated country;
- (c) owned or controlled by a person or an entity mentioned in paragraph (a) or (b); or
- (d) acting on behalf, or at the direction, of a person or entity mentioned in paragraphs (a) to (c).

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

(3) A person does not commit an offence under subsection (2) if the person has an authorisation under section 55.

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

Prohibition on procuring vessel or crew service.

- (a) the government of a designated country;
- (b) a public body, corporation or agency of the government of a designated country;
- (c) owned or controlled by a person or an entity mentioned in paragraph (a) or (b); or

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

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

(3) A person does not commit an offence under subsection (2) if the person has an authorisation under section 55.

PART IV

REPORTING OBLIGATIONS

Reporting obligations not limited.

32. Nothing contained in this Act shall be construed to limit the reporting obligations on a financial institution or DNFBP imposed by the Proceeds of Criminal Conduct Act, 1997 or any other enactment relating to money laundering and terrorist financing.

Request to verify suspicion.

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

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

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

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

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

Obligation to report suspicion.

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

- (a) the person received notification of the designation under section 14 (1),

- (b) of publication of the designation in accordance with section 9 (4), or
- (c) the person became aware that the asset belongs, or is connected, to the designated person or entity,

whichever occurs first.

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

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

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

(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 35 (4).

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

35. (1) This section applies where a financial institution or DNFBP knows, suspects or has reasonable grounds to suspect, that information that is known to it may – Reporting suspicious transactions.

- (a) be relevant to the detection, investigation or prosecution of a person for money laundering, terrorist financing or any related offence;

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

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

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

- (a) the purpose of the transaction;
- (b) the origin of the funds;
- (c) where the funds will be sent;
- (d) the name and address of the person who will receive the funds; and
- (e) any other information that may be relevant to –
 - (i) the prosecution or investigation of an offence of the kind mentioned in subsection (1) (a);
 - (ii) any proceedings under this Act; or
 - (iii) the Proceeds of Criminal Conduct Act, 1997.

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

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

- (a) information mentioned in subsection (3) that is known to the financial institution or DNFBP;
- (b) any other information required by the Agency 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 shall provide a report under subsection (4) in accordance with any form and procedure specified by the Agency.

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

(8) Where a person who is required to make a suspicious transaction report under subsection (4) has the option to make the same or similar report under the Proceeds of Criminal Conduct Act, 1997 or other enactment, he or she may make the report under that Act or other enactment instead of under subsection (4) if he or she, in relation to proliferation financing or other conduct prohibited under this Act, satisfies the requirements of subsections (3) and (5), and subsection (7) shall apply as if the report were made under subsection (4).

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

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

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

Restriction on disclosure.

- (a) that a suspicion has been formed under section 33 (1) or section 35 (1);
- (b) a request has been made under section 33 (1);
- (c) that a report has been made under section 34 or 35 (4);
- (d) that a suspicion has been or may be communicated to the Agency under section 35 (9); or
- (e) any other information from which a person could reasonably infer any of the matters in paragraph (a), (b), (c) or (d).

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

- (a) the Agency in accordance with this Act;
- (b) a police officer for any law enforcement purpose;

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

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

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

Enhanced
reporting
obligations.

37.(1) A financial institution or DNFBP shall make a report to the Agency where it has reasonable grounds to believe that –

- (a) a financial transaction exceeding \$10,000 was made or attempted and that financial transaction involves a designated country person or entity;
- (b) an account was opened or attempted to be opened by a designated country person or entity;
- (c) an asset of a value exceeding \$10,000 came under management or was requested to come under management and that asset is owned or controlled by a designated country person or entity; or
- (d) a company, joint venture or other ownership or control structure exists and could be used to evade a prohibition under this Act or any other measure contained in a designated country Resolution.

(2) The report shall include the following information, if applicable and available –

- (a) details of the account holder;
- (b) name and address of the owner or controller of the asset;
- (c) the origin of the asset;
- (d) details of ownership and control structures; and

— (e) details of the transaction or attempted transaction, including

- (i) the name and address of the sender;
- (ii) the name and address of the intended recipient;
- (iii) the purpose of the transaction or attempted transaction; and
- (iv) where the asset was intended to be sent.

(3) A financial institution or DNFBP shall provide a report under subsection (1) in accordance with any form and procedure specified by the Agency.

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

(5) Nothing in this section precludes a financial institution or DNFBP from communicating to the Agency 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 35 (4).

PART V

SUPERVISION AND ENFORCEMENT

38. (1) In addition to the functions imposed or conferred on the Agency under this Act, the Financial Investigation Agency Act, 2003, the Proceeds of Criminal Conduct Act, 1997 and any other enactment relating to money laundering and terrorist financing, the Agency shall also be responsible for –

Functions of Agency in relation to proliferation financing.

- (a) monitoring and assessing the level of risk of proliferation financing in the Territory and taking appropriate measures to address such risk;
- (b) providing guidance and feedback to the persons and entities subject to this Act to assist them to comply with the provisions of the Act;

- (c) cooperating with domestic and international counterparts to ensure the consistent, efficient and effective implementation of the provisions of this Act; and
- (d) performing such other duties as are not inconsistent with this Act for the purpose of ensuring compliance with the requirements of the Act.

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

Power to require information or document.

39. (1) The Agency may, by notice to any person or entity, require the person or entity to –

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

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

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

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

(4) The requirement under subsection (3) (a) in relation to a notice shall not be construed to extend to the giving of reasons that will constitute tipping-off under section 31 of the Proceeds of Criminal Conduct Act, 1997.

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

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

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

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

Powers of entry and inspection.

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

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

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

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

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

Power to conduct onsite inspection.

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

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

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

Restrictions on powers.

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

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

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

Failure to comply with information requirement.

43. (1) If on an application made by the Agency it appears to the Court that a person ("the information defaulter") has failed to do something that he or she was required to do under section 39 (1) or (3) (b), 40 (1) (d), or 41 (2) subject to subsection (3) thereof, the Court may make an order under this section.

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

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

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

- (a) order the body corporate, partnership or unincorporated body to cease carrying on business until it complies with the requirement of an order made under subsection (2);

- (b) in the case of a body corporate incorporated or registered under the BVI Business Companies Act, 2004, order the body corporate to wind up in accordance with the provisions of that Act or such other enactment as the Court deems fit;
- (c) in the case of a limited partnership, order the winding up of the limited partnership in accordance with the Limited Partnership Act, 2017 and, for that purpose, the reference in section 89 (1) of that Act to “a liquidator appointed by a resolution of the general partners passed under section 88 (1) (b) (ii)” shall be construed to refer to “a liquidator appointed by the Court”;
- (d) in the case of a general partner under the Partnership Act, 1996, order the termination of the partnership notwithstanding anything to the contrary that may be contained in that Act; or
- (e) in the case of an unincorporated body, order that the licence, registration or any other form of approval given to, or made in respect of, the unincorporated body to be cancelled, notwithstanding anything to the contrary that may be contained in the enactment by virtue of which the licence, registration or other form of approval was given or made.

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

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

- (a) gives information, or produces a document, knowing it is false in a material particular in response to a request made under section 39 (1) or 41; or
- (b) destroys, mutilates, defaces, conceals or removes a document with the intention of evading a request made under section 39 (1) or 41.

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

Disclosure of information.

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

- (a) enabling or assisting the Governor in implementing UN Security Council Resolutions relating to proliferation financing;
- (b) detecting, investigating or prosecuting an offence;
- (c) enforcing a law relating to the proceeds of criminal conduct, whether under the Proceeds of Criminal Conduct Act, 1997 or any equivalent law of a foreign country;
- (d) promoting, monitoring or enforcing compliance with this Act or the laws of another country equivalent to this Act or laws relating to sanctions, money laundering or terrorist financing;
- (e) enabling or assisting an official trustee to discharge his or her functions under an enactment relating to insolvency;
- (f) monitoring or enforcing compliance with laws relating to trade, customs and excise duty, or export and import restrictions;
- (g) facilitating cooperation with domestic law enforcement agencies; and
- (h) providing mutual legal assistance to foreign law enforcement agencies.

Enforcement
measures.

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

- (a) issue a warning under section 46; or
- (b) impose a civil penalty pursuant to section 47.

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

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

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

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

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

47. (1) The Agency may, subject to subsection (2) and section 48, impose a penalty of such amount as it considers appropriate on a person who fails to comply with – Power to impose civil penalty.

- (a) a requirement imposed by –
 - (i) a direction given under section 38 (2), or
 - (ii) a condition of an authorisation under section 56, or
- (b) an obligation provided under this Act,

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

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

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

- (a) issued by the Agency or other regulatory or supervisory body or by a professional body whose members, whether wholly or partly, operate in the financial sector; and
- (b) published in a manner approved by the Agency or other regulatory or supervisory body or by the professional body as suitable in its opinion to bring the guidance to the attention of persons likely to be affected by it.

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

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

(6) Where the Agency presents a higher penalty to the Court for confirmation, the Court may –

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

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

Duty to issue notice.

48. (1) The Agency shall, before imposing a penalty against a person under section 47, give notice to the person –

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

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

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

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

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

(5) The Agency shall notify the person of its decision under subsection (3) and, where it varies or withdraws the proposed penalty, of the further steps (if any) it has taken in relation to the person.

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

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

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

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

49. (1) A person who is aggrieved by a decision of the Agency imposing a penalty under section 47 may appeal the decision to the Board. Right of appeal.

(2) After hearing an appeal brought under subsection (1), the Board may –

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

(3) A person who is dissatisfied with the decision of the Board may appeal to the Court which may –

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

(4) For the purposes of this section, “Board” means the Board of the Agency established under section 4A (1) of the Financial Investigation Agency Act, 2003.

Offences.

50. (1) A person commits an offence if he or she, for the purpose of obtaining an authorisation under section 54 or 55 –

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

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

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

(4) For the avoidance of doubt, a description of the type of offence in the second column of Schedule 3 is merely a summary of the offence and is not to be read as substituting the fuller offence contained in the actual section concerned.

Extra-territorial offences.

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

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

Liability of officers of bodies corporate, etc.

52. (1) Where an offence under this Act committed by a body corporate is shown to –

- (a) have been committed with the consent or connivance of an officer of the body corporate, or
- (b) be attributable to any neglect on the part of any such officer,

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

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

- (a) have been committed with the consent or connivance of a partner, or
- (b) be attributable to any neglect on the part of a partner,

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

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

- (a) have been committed with the consent or connivance of an officer of the association, or
- (b) be attributable to any neglect on the part of any such officer,

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

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

(5) In this section –

- (a) “officer” –
 - (i) in relation to a body corporate, means a director, manager, secretary, chief executive, member of the committee of management, or a person purporting to act in such a capacity; and
 - (ii) in relation to an unincorporated association, means any officer of the association or any member of its governing body, or a person purporting to act in such a capacity; and
- (b) “partner” includes a person purporting to act as a partner.

Proceedings
against
unincorporated
bodies.

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

(2) Section 25 of the Interpretation Act relating to the service of documents have effect in relation to proceedings for an offence under this Act as if the partnership or association were a body corporate.

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

PART VI

AUTHORISATIONS

Authorisation by
the Governor.

54. (1) A person or entity that is the subject of a designation under section 8 or 9 may, if any of the matters specified in subsection (2) or section 55 (1) applies, apply in writing to the Governor requesting an authorisation.

(2) An authorisation may relate to –

- (a) payment of basic expenses of designated persons and their dependent family members;
- (b) payment of reasonable professional fees and expenses associated with the provision of legal services;
- (c) payment of fees or service charges for the routine holding or maintenance of frozen funds or economic resources;
- (d) payment of necessary extraordinary expenses;
- (e) payments into or from an account of a diplomatic or consular mission or of an international organisation enjoying immunity in accordance with international law, intended to be used for official purposes of the diplomatic or consular mission or international organisation;
- (f) satisfaction of an arbitral decision rendered before the date on which the designated person was so designated, or satisfaction of a judicial or administrative decision made at any time; or
- (g) payment due under a contract or agreement concluded by, or an obligation that arose before, the date on which the

designated person or entity was so designated if the payment is not for the benefit of a designated person.

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

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

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

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

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

Further
authorisation.

- (a) for a civil nuclear cooperation project described in Annex III of the Joint Comprehensive Plan of Action;
- (b) for any activity required for the implementation of the Joint Comprehensive Plan of Action;
- (c) to carry out activities of a designated country's missions to the United Nations and its specialized agencies and related organisations or other diplomatic and consular missions of the designated country;
- (d) for the delivery of humanitarian assistance;
- (f) for denuclearisation;
- (g) for a financial transaction with a designated country's financial institution and the financial transaction relates solely to the operation of diplomatic or consular missions in the designated country or humanitarian assistance

activities that are undertaken by, or in connection with, the United Nations;

- (h) pursuant to an exception in any international instrument applicable in relation to a designation; or
- (i) to satisfy any other requirement of the UN Security Council or its Committees.

(2) The Governor may not grant an authorisation, whether under this section or section 54, if the authorisation would violate a provision of a counter-proliferation Resolution.

Conditions, in relation to an authorisation.

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

(2) Prior to granting an authorisation under section 54 or 55, the Governor –

- (a) shall seek any approvals required by, and make any notifications required to, the UN Security Council or its Committees; and
- (b) may consider any communication from a foreign government relevant to the authorisation.

(3) Where the Governor receives an application under section 54 (1), he or she shall determine the application within a reasonable time and respond to the applicant in writing –

- (a) granting the authorisation, including any conditions attached to the authorisation; or
- (b) the authorisation.

Revocation, variation, etc. of authorisation.

57. (1) The Governor may at any time vary or revoke an authorisation granted under section 54 or 55.

(2) On the grant, variation or revocation of an authorisation, the Governor shall –

- (a) in the case of an authorisation granted to a particular person, give notice of the grant, variation or revocation to that person; and

- (b) in the case of a general authorisation or an authorisation applicable to a category of persons, take such steps as the Governor considers appropriate to publicise the grant, variation or revocation of the authorisation.

(3) A failure by any person to comply with any condition in an authorisation is acting in a way that is contrary to the authorisation, unless –

- (a) the authorisation was modified after the completion of the act so authorised; and
- (b) the alleged failure to comply with a condition in the authorisation would not have been a failure if the authorisation had not been so modified.

PART VII

MISCELLANEOUS PROVISIONS

58. (1) No claim in connection with any contract or transaction the performance of which has been affected, directly or indirectly, in whole or in part, by this Act shall be enforced if it is made by –

Claims for indemnity or under contract.

- (a) a designated person or entity; or
- (b) a person acting through or on behalf of a designated person or entity.

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

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

59. (1) The Governor shall –

Requirement to publish list of designated persons.

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

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

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

Proposal for
designation.

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

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

(a) the Agency, Commission, International Tax Authority or any law enforcement agency or other Government body may request the Governor to designate a person or entity that the Agency, Commission, International Tax Authority or law enforcement agency or other Government body believes meets the criteria for designation under section 9 (1); and

(b) the Governor may consult with the Agency, Commission, International Tax Authority or any law enforcement agency or other Government body as he or she considers necessary to determine whether there are reasonable grounds to believe that a person or entity meets the criteria for designation.

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

Application to
unfreeze an
asset.

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

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

(a) the applicant is not a designated person or entity, and

(b) the frozen asset is not connected to proliferation financing or is not the subject of any ongoing criminal investigation,

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

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

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

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

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

- (a) designations, variations and revocations, in relation to persons to whom this Act applies by virtue of section 4 (1), made by –
 - (i) the Governor under this Act; and
 - (ii) the UN Security Council or its Committees;
- (b) international cooperation on matters relating to the administration of this Act; and
- (c) investigations and prosecutions for offences under this Act.

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

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

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

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

- (a) information regarding the evasion or attempted evasion of a prohibition under this Act; and
- (b) information that the Governor believes would assist the UN Security Council or its Committees to carry out their functions under a UN Security Council Resolution relating to proliferation financing.

Monitoring
financial
institutions and
DNFBPs.

64. (1) The Agency shall take appropriate measures to monitor financial institutions and DNFBPs for the purpose of securing compliance by those persons with the requirements of this Act and any directions given by the Agency.

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

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

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

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

Notices.

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

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

principal office of the body corporate, partnership or association.

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

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

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

Exercise of powers under this Act.

67. The Governor may delegate, in writing, to the Agency or any specific officer of the Agency 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 9, the power to extend a designation under section 10 (3) and the power to vary or revoke a designation under section 11.

Delegation of authority.

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

Immunity from liability.

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

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

Power to amend Part III.

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

- (a) expanding, reducing or otherwise modifying the list of prohibitions in relation to a designated country or a designated person or entity;

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

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

Power to amend
the Schedules.

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

Regulations.

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

Repeal and
saving.

72. (1) The Proliferation Financing (Prohibition) Act, 2009 is repealed.

(2) Notwithstanding subsection (1), where any action was taken or pending under the Proliferation Financing (Prohibition) Act, 2009 (“the 2009 Act”) prior to the coming into force of this Act, that action shall continue to be dealt with and disposed of under the 2009 Act.

SCHEDULE 1

CONTROLLED ITEMS RELATED TO A DESIGNATED COUNTRY

[Section 2 (1)]

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

A. The following items are Import and Export Controlled Items –

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

1. (1) Arms or related material, including –

- (a) weapons;
- (b) ammunition;
- (c) military vehicles and equipment, including –
 - (i) battle tanks;
 - (ii) armoured combat vehicles;
 - (iii) large calibre artillery systems;
 - (iv) combat aircraft;
 - (v) attack helicopters;
 - (vi) warships; and
 - (vii) missiles and missile systems;
- (d) spare parts and accessories for the items mentioned in sub-paragraph (a), (b) and (c); and

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

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

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

- (a) listed in any of the following documents –
 - (i) UN Security Council document S/2006/853;
 - (ii) UN Security Council document S/2006/853/CORR.1;
 - (iii) UN Security Council document S/2016/308;
 - (iv) UN Security Council document S/2016/1069;
 - (v) UN Security Council document S/2017/728;
 - (vi) UN Security Council document S/2017/760;
 - (vii) UN Security Council document S/2017/822;
 - (viii) UN Security Council document S/2017/829;
 - (ix) IAEA document INFCIRC/254/Rev.8/Part 2;
 - (x) IAEA document INFCIRC/254 Rev.10/Part 2;

- (xi) IAEA document INFCIRC/254/ Rev.11/Part 1;
- (xii) IAEA document INFCIRC/254/ Rev.13/Part 1;
- (xiii) Annex III to UN Security Council Resolution 2321; or

- (b) that could contribute to weapons of mass destruction-related programmes, unless otherwise exempted by regulations made under section 71.

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

- (a) listed in UN Security Council document S/2014/253; or
- (b) that could contribute to ballistic missile-related programmes or weapons of mass destruction delivery systems, unless otherwise exempted by regulations made under section 71.

4. Items, materials, equipment or technology that could contribute to the operational capabilities of a designated country's armed forces, unless otherwise exempted by regulations made under section 71.

B. The following items are EXPORT controlled items –

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

1. (1) **Aviation fuel**, including aviation gasoline, naptha-type jet fuel, kerosene-type jet fuel and kerosene-type rocket fuel, except for aviation fuel provided to a designated country passenger aircraft for its return flight to the designated country.
- (2) **Condensates** of all kinds, or natural gas liquids.
- (3) **Refined petroleum products.**
- (4) **Crude oil.**
- (5) **Iron, steel or other metals (HS codes 72 to 83).**
- (6) **Helicopters, aircraft, vessels and transportation vehicles (HS codes 86 to 89).**

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

(8) **Other items –**

- (a) The transfer of financial services business (as defined in section 2 (1) of the Financial Services Commission Act, 2001) or financial or other assets or resources in relation to “other activities prohibited by” various UN Security Council Resolutions (UNSCRs) relating to a designated country.
- (b) The sale, supply or transfer of luxury goods and other goods not specified in sub-paragraph (7) to or from a designated country as specified by UNSCR 1718 and any subsequent Resolutions.
- (c) Other items specified in regulations made under section 71.

C. The following items are IMPORT controlled items –

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

- (1) **Coal.**
- (2) **Iron and iron ore.**
- (3) **Lead and lead ore.**
- (4) **Gold, titanium ore, vanadium ore, copper, silver, nickel, and zinc.**

- (5) **Seafood**, including fish, crustaceans, molluscs and other aquatic invertebrates in all forms, and fishing rights related to such products.
- (6) **Statues.**
- (7) **Food and agricultural products (HS codes 12, 08, 07).**
- (8) **Textiles**, including fabrics and partially and fully completed apparel products.
- (9) **Machinery (HS code 84).**
- (10) **Electrical equipment (HS code 44).**
- (11) **Industrial machinery (HS codes 84 and 85).**
- (12) **Wood (HS code 44).**
- (13) **Earth and stone**, including magnesite and magnesia (HS code 25).
- (14) **Rare earth minerals** as may be prescribed by regulations made under **section 71**.

SCHEDULE 2

DESIGNATED COUNTRIES

[Section 2 (1)]

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

SCHEDULE 3

OFFENCES AND PENALTIES

[Section 50 (3)]

Section	Type of Offence	Penalty (Body Corporate)	Penalty (Individual)
15 (1) & (3)	Dealing with an asset knowingly or recklessly with a designated person or entity, etc.	\$500,000	\$250,000 or 3 years imprisonment, or both
16 (1) & (3)	Making an asset available knowingly or recklessly to a designated person or entity	\$500,000	\$250,000 or 3 years imprisonment, or both
19 (1) & (3)	Knowingly or recklessly making available an asset or financial service to a designated person or entity that could contribute to an activity listed in subsection (2)	\$500,000	\$250,000 or 3 years imprisonment, or both
20 (1) & (3)	Knowingly or recklessly conducting specified transaction that could contribute to an activity in subsection (2)	\$500,000	\$250,000 or 3 years imprisonment, or both
21 (1) & (2)	Knowingly or recklessly providing an asset or financial service intended to facilitate trade with a designated country person or entity	\$500,000	\$250,000 or 3 years imprisonment, or both
22 (1) & (2)	Establishing or maintaining a joint venture knowingly or recklessly as to whether certain	\$500,000	\$250,000 or 3 years imprisonment, or both

	identified persons or entities are a party to the joint venture		
23 (1) & (2)	Financial institution establishing or maintaining joint venture with a designated country's financial institution, etc.	\$500,000	\$250,000 or 3 years imprisonment, or both
24 (1) & (2)	Financial institution establishing or maintaining a representative office, branch, subsidiary or account in the territory of a designated country	\$400,000	\$200,000 or 2 years imprisonment, or both
25 (1), (2) & (4)	Designated country's financial institution establishing or maintaining representative office, branch, subsidiary or account in the Virgin Islands, or opening or maintaining an account in the Virgin Islands without authorisation	\$400,000	\$200,000 or 2 years imprisonment, or both
26 (1) & (2)	Conducting financial transaction relating to professional or commercial profit-making activities in relation to a designated country's diplomatic agents, etc.	\$400,000	\$200,000 or 2 years imprisonment, or both
27 (1) & (3)	Selling, leasing, sub-leasing or hiring real property to a person or entity listed in subsection (2) without approval of the Governor	\$400,000	\$200,000 or 2 years imprisonment, or both
28 (1) & (2)	Dealing with or	\$300,000	\$200,000 or 2 years

	insuring a designated country's flagged vessel		imprisonment, or both
29 (1) & (2)	Providing insurance service in relation to a vessel involved in conduct prohibited by a designated country Resolution	\$300,000	\$200,000 or 2 years imprisonment, or both
30 (1) & (2)	Leasing or chartering vessel or aircraft or providing crew service to a person or entity that is, or is, connected to the government of a designated country, etc.	\$300,000	\$200,000 or 2 years imprisonment, or both
31 (1) & (2)	Procuring vessel or crew service from another person or entity that is, or is, connected to the government of a designated country, etc.	\$300,000	\$200,000 or 2 years imprisonment, or both
34 (1) & (5)	Intentionally or negligently failing to report the holding of an asset of a designated person or entity	\$500,000	\$250,000 or 3 years imprisonment, or both
35 (4) & (8)	Intentionally or negligently failing to make a suspicious transaction report	\$500,000	\$250,000 or 3 years imprisonment, or both
36 (1) & (4)	Intentionally or negligently disclosing information contrary to subsection (1)	\$500,000	\$250,000 or 3 years imprisonment, or both
37 (1) & (4)	Intentionally or negligently failing to make an enhanced report	\$500,000	\$250,000 or 3 years imprisonment, or both
43 (4)	Giving information or procuring document knowing it to be false	\$500,000	\$250,000 or 3 years imprisonment, or both

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

Passed by the House of Assembly this day of , 2021.

Speaker.

Clerk of the House of Assembly.

OBJECTS AND REASONS

This Bill is designed essentially to create provisions to prevent the proliferation of weapons of mass destruction and their financing as contained in the various United Nations instruments on biological, chemical and nuclear weapons. The genesis of the Bill is FATF Recommendation 7 on targeted financial sanctions related to proliferation. The Recommendation requires countries to “*implement targeted financial sanctions to comply with United Nations Security Council resolutions relating to the prevention, suppression and disruption of proliferation of weapons of mass destruction and its financing*”. The applicable United Nations Security Council resolutions essentially “*require countries to freeze without delay the funds or other assets of, and to ensure that no funds and other assets are made available, directly or indirectly, to or for the benefit of, any person or entity designated by, or under the authority of, the United Nations Security Council*”.

Where the United Nations Security Council over the years had reason to suspect that any of those instruments were being violated, it had been taking necessary steps, through the adoption of relevant Security Council resolutions, to impose sanctions which all member countries are required to comply with. In this respect, the Bill creates provisions to ensure the implementation of specified financial measures that relate to counter-proliferation resolutions of the United Nations.

The Bill contains 7 Parts, with a Preliminary part providing specific definitions of key terms that are used in the various provisions thereof and indicating the persons to whom the Bill applies and the circumstances in which proliferation financing takes place (clause 6). Part I of the Bill specifically prohibits a person from engaging in proliferation financing.

Part II of the Bill deals with targeted financial sanctions by recognising and implementing UN Security Council designations of persons or entities who are considered to have violated specific resolutions of the Council. In order to better protect the Virgin Islands against the activities of proliferation financing, the Bill empowers the Governor to also designate any person or entity that the Governor has reasonable grounds to believe is an agent or entity of a designated country, an association or institution of the governing political party of a designated country, or is otherwise controlled by such person or entity or is acting on behalf or at the direction of a person or entity of a designated country. In this regard, the Bill provides the period when a designation by the Governor can remain in place, including the power to extend or renew a designation. It also creates provisions for revocation and variation of designations, including the giving of notices to designated persons or entities and enabling applications for judicial review.

In accordance with the requirements of FATF Recommendation 7, the Bill creates a number of offences. These offences relate to knowingly or recklessly dealing with assets related to a designated person or entity, and making such assets

available to a designated person or entity. In that regard, provision is made for the search, seizure and management of such assets.

Part III of the Bill creates certain prohibitions relative to financial measures. These measures relate to providing financing, conducting or facilitating financial transactions, providing financial support for trade, establishing or maintaining joint ventures, establishing or maintaining relationships with a designated country's financial institutions, establishing or maintaining representative offices, branches, subsidiaries or accounts in a designated country or establishing or maintaining such institutions or accounts in the Virgin Islands on behalf of a designated country. In addition, provision is made prohibiting professional or commercial activities with or on behalf of a designated country's diplomatic agent, consular officer or other official of the government of a designated country. The prohibitions are extended to cover transactions in real property relative to the government of a designated country or its institutions or officers, including any dealing with or insuring of a flagged vessel of, or leasing or chartering a vessel or aircraft of, or procuring a vessel or crew service from, a designated country.

Parts IV and V of the Bill respectively outline reporting obligations and issues relating to supervision and enforcement, while Part VI makes provision for the granting of authorisation by the Governor to enable specified activities outlined in clauses 54 (2) and 55 (1) to be undertaken in relation to designated persons and entities, including designated countries. The final Part of the Bill deals with miscellaneous matters. It should be noted that this Bill also seeks to repeal the Proliferation Financing (Prohibition) Act, 2009 which was prepared and enacted before the FATF completed its revision of the previous 40+9 Recommendations to incorporate provisions on proliferation financing.

The 3 Schedules created under the Bill deal with matters related to the identification of controlled items connected to a designated country, the countries that are designated under the Act (with power for a review and amendment of that designation), and offences and penalties for contravention of the prohibitions outlined in the Act.

The above measures are considered to effectively meet the Virgin Islands' obligations to meet the requirements of FATF Recommendation 7.

Accordingly, the Bill is commended for the consideration and approval of the Hon. Members of the House of Assembly.

Minister of Finance