

To: Mr. O'Neil Hamilton, Regional Coordinator for the Caribbean Community (CARICOM)

From: Anthony Vanicek, Naoko Kato and Satoko Sawada  
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Date: May 10, 2015

Re: Memorandum on the draft CARICOM Model Act to Implement the United Nations Security Council Resolution 1540 with Regard to the Prevention of the Proliferation of Weapons of Mass Destruction

### **MEMORANDUM**

This memorandum is to briefly set forth the major changes we have made to the original draft model law provided by the Center for International Trade and Security (CITS) at the University of Georgia (“UGA draft”). In order to fully implement the United Nations Security Council’s resolution 1540 (“UNSC resolution 1540”) with regard to the prevention of the proliferation of weapons of mass destruction, we have referred to legislation implementing the UNSC resolution 1540 obligations by South Africa<sup>1</sup> and Malaysia,<sup>2</sup> as well as sample acts and guidelines provided by international organizations and non-governmental organizations. Some of the major changes we made to the UGA draft include the following: 1) a change from a treaty-based approach to a domestic law-based model Act; 2) the inclusion of specifically designated relevant Authorities to carry out specific duties as well as the designation of a Primary Coordinating Authority to serve as the point of contact; 3) filling in the gaps with respect to substantive obligations under the UNSC resolution 1540; 4) the reduction in language that appears to be overly trade-restrictive to make more trade-friendly; 5) the inclusion of personnel

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<sup>1</sup> Non-Proliferation of Weapons of Mass Destruction Act, 1993.

<sup>2</sup> Strategic Trade Act 2010.

reliability requirement; and 6) the provision of alternative lists with respect to controlled items and end-users that can be adapted by CARICOM member states.

1. A Treaty-Based Approach to a Domestic Law-Based Model Act

The UGA draft contained language that will be applicable to treaties (binding all CARICOM member states) and domestic law (binding one CARICOM member state). Per our first meeting on January 22, 2015, we have confirmed that this draft model Act was intended to be enacted by each CARICOM member state as domestic law. As such, we have changed the language in the UGA draft to be applicable to one state as domestic law, as opposed to treaty-based language binding all CARICOM member states. The only section where the draft model Act is referring to the CARICOM is in the preamble. We understand that compliance with the UNSC resolution 1540 is not only important for each CARICOM member state but is critical for the regional security of CARICOM as a whole. As such, we felt it was important to have the language stating CARICOM's objective to pursue regional control over controlled items, as provided in the UGA draft.

2. Designation of Relevant Authorities and a Primary Coordinating Authority

In the UGA draft, there was a reference to a "designated national authority," "lawful authority," "competent authority" and other types of "authority" but no definition was provided for the term "authority." We understand that each CARICOM member state has established a National Authority as required under the Chemical Weapons Convention. However, in researching other states' compliance with the UNSC resolution 1540, we have noticed that many states implement the UNSC resolution 1540 through various pieces of legislation with different agencies responsible for the implementation, instead of one law with one agency in charge. We

understand that CARICOM member states intend to fully comply with the UNSC resolution 1540 with this draft model Act. As such, in case the National Authority does not have all the authorities required to implement the draft model Act, we have designated the ministries of industry, customs, foreign affairs, finance and justice to act as “relevant Authorities” in Section 23 of the draft model Act. This is done so that designated ministries together have sufficient authority to implement the draft model Act as well as to promulgate the regulations as may be necessary. In particular, we have included the Minister of Finance and the Department of Justice as “relevant Authorities” because states’ obligations under the UNSC resolution 1540 includes a prohibition of financing under Operative Paragraph (OP) 2 and adoption of effective enforcement under OP 2 and 3. Finally, the draft model Act provides flexibility in designating any other agencies as a relevant Authority.

We have also designated one of the relevant Authorities to serve as a Primary Coordinating Authority who will be responsible for an inter-agency coordination, including serving as the point of contact for assistance and developing appropriate ways to work with and inform industry and the public regarding their obligations. CARICOM member states are free to choose which relevant Authority will be designated as a Primary Coordinating Authority.

### 3. Substantive Obligations Under the UNSC Resolution 1540

Some obligations under the UNSC resolution 1540 were missing in the UGA draft. For example, OP 3(b) requires states to “[d]evelop and maintain appropriate effective physical protection measures.” As the UGA draft made no reference to “physical protection,” we provided in Section 13(2)(c) of the draft model Act that the relevant Authority may condition the issuance of a permit if the “security and physical protection measures of controlled items” are not provided.

Another example is the brokering of controlled items. OP 3(d) requires states to have effective border controls including brokering in the sale of controlled items. Although Section 8 of the UGA draft provided that states have an authority to establish the prescribed process for registration of brokers, and Annex 7 provided a registration process, thereby inferring that brokers must be registered, the UGA draft did not explicitly state that brokers must be registered. As such, Section 10 of the draft model Act provides that all brokers must be registered, just like the scheme provided in Article 11 of the Strategic Trade Act 2010 in Malaysia.

#### 4. Trade-restrictive language to a more trade-friendly language

The UGA draft contained language that may have appeared overly trade restrictive. For example, Section 10 of the UGA draft on confidentiality seemed to afford a lesser degree of protection on confidentiality because information was not privileged and confidential under Section 10(2) if disclosure was required for the purpose of “national interest, national security or under any written law,” which were undefined in the UGA draft. We also felt that the language “knowingly” in Section 10(3) of the UGA draft was not sufficient to protect confidentiality as there would be no violation if confidential information were disclosed “recklessly” or “negligently.” As such, we followed the Implementation Kit for the Chemical Weapons Convention provided by the Organisation for the Prohibition of Chemical Weapons (OPCW) and the Non-Proliferation of Weapons of Mass Destruction Act, 1993 in South Africa to provide a stronger confidentiality regime while allowing relevant Authorities to disclose confidential information if necessary in order to enforce the draft model Act.

Additionally, we provided in Annex 5 of the draft model Act that CARICOM member states may add exemption provisions from the permission scheme under Sections 8 and 9 of the draft model Act to domestic activities dealing with certain dual-use items (such as schedule 2

and 3 chemicals under the Chemical Weapons Convention), and to international trade activities with non-listed end-users dealing with dual-use items. By exempting certain activities which do not pose serious risks of undermining the purpose of the draft model Act, CARICOM member states can promote research, development, and other peaceful activities.

We also added a more trade-friendly language in the preamble. While the Preamble is not a binding provision, it can be helpful in interpreting the body of the draft model Act. Although the UGA draft aimed to fully implement obligations under the UNSC resolution 1540, it did not have the language that will promote international trade. Because promotion of trade is not an obligation under the UNSC resolution 1540, the body of the draft model Act does not contain such language. However, we included in the preamble that this draft model Act is to provide international peace and security without imposing “undue restrictions on trade,” and that development of science and technology should only serve for the benefit of humankind. Having spoken with an expert on international trade and export controls in the United States, we believe that implementation of the UNSC resolution 1540 will not impede international trade but will only encourage non-state actors to engage in international trade in a manner that fully complies with the draft model Act.

#### 5. Personnel Reliability

Personnel reliability is to ensure that permit applicants (individuals or entities) are reliable in dealing with dangerous materials, such as biological, chemical or nuclear-related materials. Annex 5.1 of the model draft Act sets forth several grounds under which authorized officers shall refuse to grant permits or special permits. Section 1(2) provides that authorized officers shall refuse to grant permits for any individual applicant who 1) is under certain age

which is to be determined by CARICOM member states; 2) is an undischarged bankrupt; or 3) has been convicted of an offense that is to be determined by a relevant Authority of CARICOM member states. Section 1(3) provides that authorized officers shall refuse to grant permits for any entity applicant 1) which does not have a procedure or fails assure to undertake personnel background checks of their employees; 2) which has been the subject of a resolution that has been passed for voluntary winding up or for whom an order for winding up has been made by a court of competent jurisdiction; or 3) if the entity or any of its directors has been convicted of an offense as determined by a relevant Authority of CARICOM member states.

6. Alternative Lists With Respect to Controlled Items and End-Users That Can Be Adapted by CARICOM Member States

a. *Controlled Items List*

As provided in Sections 8 and 9 of the draft model Act, any person (which includes a legal person) must acquire a permit (or a special permit for restricted end-users) to engage in relevant domestic or international trade activities with respect to controlled items. In the UGA draft, Annexes 1 and 2 provided that CARICOM member states may adopt military goods and dual-use lists developed by the European Union (EU). Annex 1 of the draft Model Act provides two additional alternative approaches as to which items list may be adopted by CARICOM member states. In addition to the EU list which consists of a common military list and a list of dual-use items, the draft model Act suggests that CARICOM member states may adopt 1) three annexure lists under the Non-Proliferation of Weapons of Mass Destruction Act, 1993 in South Africa; or 2) various lists that have been accepted multilaterally or plurilaterally. Annex 1 of the draft model Act does not suggest controlled items list provided by the United States as there is no consolidated list available.

*b. End-Users List*

As provided in Section 9 of the draft model Act, engaging in relevant international trade activities with prohibited end-users is banned, and no person shall engage in relevant international trade activities with restricted end-users without a special permit. In the UGA draft, Annex 3 provided that list of restricted parties is “[t]o be constructed by CARICOM as appropriate.” Thus, Annexes 2 and 3 of the draft model Act propose various end-users lists to be adopted by CARICOM member states.

Prohibited end-users are either individuals or entities. Annex 2 of the draft model Act proposes three lists that may be adopted by CARICOM member states as prohibited end-users list. The three lists are: 1) consolidated UNSC sanctions list; 2) prohibited end-users list in the second schedule under the Strategic Trade Act 2010 in Malaysia; and 3) consolidated list of persons, groups and entities subject to EU financial sanctions.

Restricted end-users are countries. Annex 3 of the draft model Act proposes three lists that may be adopted by CARICOM member states as restricted end-users list. The three lists are: 1) list of countries that are subject to sanctions by the UNSC sanctions committees; 2) restricted end-users in the first schedule under the Strategic Trade Act 2010 in Malaysia; and 3) countries listed in the restrictive measures in force in the EU. Annex 2 or 3 of the draft model Act does not suggest end-users list provided by the United States as there is no consolidated list available.

**CARICOM Model Act Project**

**Aiming to Implement the United Nations Security Council Resolution 1540  
with Regard to the Prevention of the Proliferation of  
Weapons of Mass Destruction**

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## **Introduction**

CARICOM Model Act Project to Implement the United Nations Security Council Resolution 1540 (2004) with Regard to the Prevention of the Proliferation of Weapons of Mass Destruction

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### **1. Purpose of CARICOM Model Act**

Under United Nations Security Council resolution 1540 (hereafter UNSCR 1540), adopted unanimously by the UN Security Council in 2004 under Chapter VII of the United Nations Charter, all states shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery. It imposes on all the States binding obligations to adopt and enforce appropriate and effective laws which prohibit any non-State actor from manufacturing, acquiring, possessing, developing, transporting, transferring or using nuclear, chemical or biological weapons and their means of delivery, as well as to take and enforce effective measures to establish domestic controls to prevent the proliferation of these weapons and their means of delivery, including by establishing appropriate controls over related materials. In addition, existing international treaties including the Nuclear Non-Proliferation Treaty, the Chemical Weapons Convention, and the Biological and Toxin Weapons Convention establish similar obligations for the contracting states.

Despite ongoing efforts and a strong desire by governments of the Caribbean Community and Common Market (hereafter CARICOM) and other international organizations and donors, CARICOM Member States continue to face challenges to comply with the obligations under UNSCR 1540 and relevant international treaties because of their limited capacity to develop appropriate strategic trade legislation and implement necessary regulations and controls within their domestic legal system. Although all CARICOM States are members of the relevant international non-proliferation instruments and have already undertaken some legal obligations under these treaties and UNSCR 1540, there is still a gap between their current compliance status and their full compliance with several legal obligations under these international frameworks. At the same time, given that CARICOM States are relatively small island countries, it is important that non-proliferation efforts do not hamper useful and peaceful activities related to nuclear, chemical and biological materials and technologies, especially but not limited to various international trade activities such as exports, re-exports, transit etc.

This initiative aims to assist and facilitate CARICOM Member State's to comply with the non-proliferation obligations under UNSCR 1540 and other relevant treaties as far as their obligations are reflected in UNSCR 1540, by proposing a model act that a number of, or all of, CARICOM States can adopt with certain modifications required in the context of their domestic laws. The model act also enables CARICOM states to harmonize their laws and regulations related to the non-proliferation efforts, which may facilitate the further cooperation in policy making and implementation in this region.

## 2. Proposed Products

To fulfill the purpose described above, we produced the following four documents: (1) An Act to Implement United Nations Security Council resolution 1540 with Regard to the Prevention of the Proliferation of Weapons of Mass Destruction(hereafter “the Model Act” or “the Act”) (2) a section-by-section analysis of the Model Act, (3) a series of Annexes to the Model Act, (4) and a 1540 Committee Matrix, which individual CARICOM States could file with the United Nations upon enactment of their own Model Act and its annexes in order to show the United Nations where in its newly enacted laws each of the U.N. requirements has been addressed.

### (1) CARICOM Model Act

The Model Act presents a template that a number of or all of CARICOM States can adopt as a domestic law, with certain modifications, to implement their obligations under UNSCR 1540 and other related non-proliferation treaty obligations, as far as those obligations are reflected in UNSCR 1540. A limited number of modifications may be needed to ensure that the Model Act fits appropriately within the existing legal scheme of certain CARICOM states. As it is a template, there are some brackets intentionally left in place so that each CARICOM State can fill out them and complete the legislation as they see fit, such as the relevant Authority responsible for establishing and implementing certain regulations and the sentencing/penalties for violations of the Act.

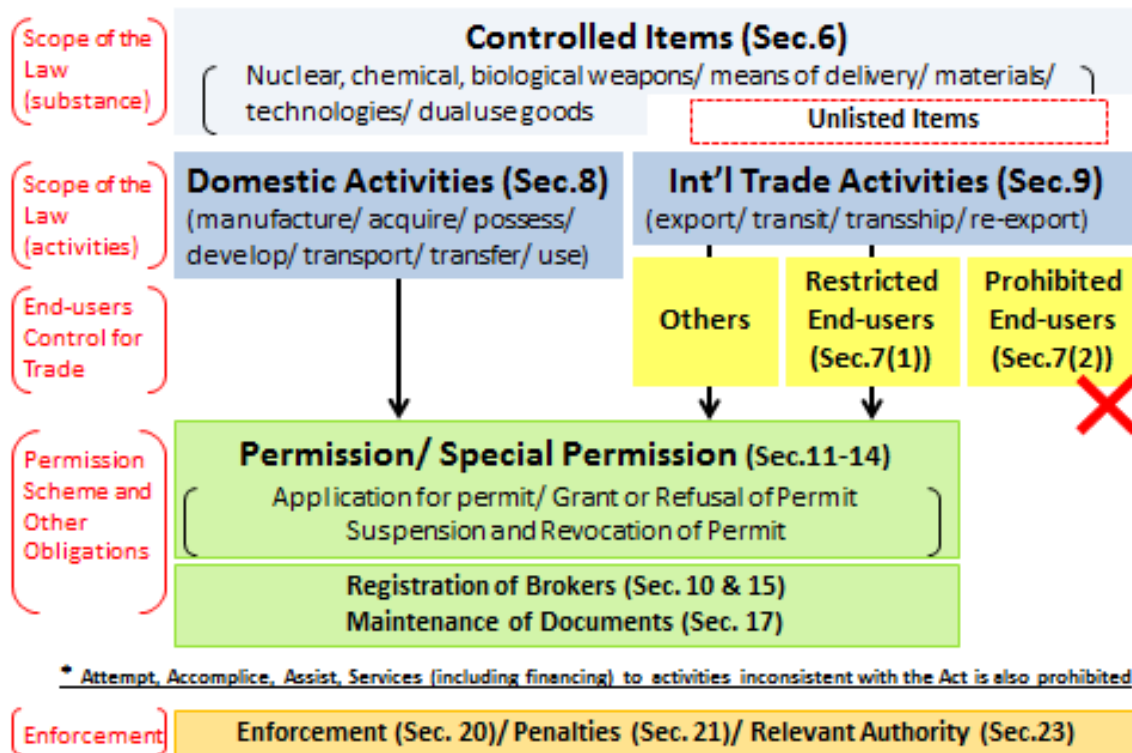
The basic concept of the Model Act is that by subjecting enumerated activities dealing with nuclear, chemical and biological weapons and related materials to a certain permission scheme, the States can increase the transparency of the relevant activities and take effective control over these substances and materials.

To do so, the Model Act establishes the relevant Authority's power to create a controlled items list, a prohibited end-users list, and a restricted end-users list. A controlled items list defines the scope of the substances that are covered by the Model Act, which includes nuclear, chemical, and biological weapons, their means of delivery, related materials and technologies, as well as dual use goods and technologies. Two end-users lists define certain users to whom the international trade activities (i.e. exports, transit, transship or re-export) of the controlled items

are prohibited or restricted. Under this scheme, if an item is on the controlled items list, the item can still be traded but only under the regulation: trade with certain users are totally prohibited as they are known or suspected to be potentially engaged in improper use, i.e. terrorists or smugglers (prohibited end-users list), and trade with the entities or countries (restricted end-users list) are subject to the special permission requirement of the Act. Also, even if the item is not on the controlled items list, if the end-users are on one of the end-users lists, the activity may be subject to the permission scheme under certain situations. The relevant activities covered by the Model Act's permission scheme include all the activities that are enumerated in UNSCR 1540, namely domestic activities such as the manufacturing, possession, transport, use etc., and international trade activities. The Act also prohibits attempting, accomplice, assisting, or providing services (including financing) to the activities that are inconsistent with the Act.

Details of the permission scheme such as the lists themselves, the guidelines for application and the conditions of a permission etc. are supposed to be provided by the regulations on which we propose the templates in the Annexes. (Please see (3) below.) By laying out different requirements and guidelines for permission which are specific to each substance or activity in the regulations and amending them to keep abreast of changes in these lists, CARICOM States can maintain sufficient control over the nuclear, chemical or biological related activities, ranging from prohibition and restriction (permission with conditions) to exemption from the permission requirement. The Model Law also prescribes some provisions on implementation such as enforcement authority and liability for offences.

(Figure 1: The structure of the Model Act)



## (2) Annexes to the Model Act

Annexes are attached to the Model Act and aim to propose the model provisions for the relevant regulations that CARICOM states need to introduce to establish certain details of the Model Act.

Annex 1 provides regulations establishing the controlled items list. Section 6 of the Model Law authorizes the relevant Authority to prescribe any items as controlled items. Annex1 refers to the existing internationally used controlled items lists and some other countries' examples, and can be a template for a list of the controlled items, which will be made by relevant authorities of CARICOM States in accordance with Section 6 of the Model Act.

Annex 2 and 3 are about the regulations establishing the prohibited end-users list and restricted end-users list. Section 7 of the Model Act authorizes the relevant Authority to designate an end-user to be a prohibited end-user or a restricted end-user. Annex 2 and 3 refer to United Nations Security Council resolution and the Consolidated Sanctions List and can be a template for the lists of the prohibited end-users and the restricted end-users, which will be made by relevant authorities of CARICOM States in accordance with Section 7 of the Model Act.

Annex 4 pertains to the regulations establishing the guidelines for applications for a permit or a special permit under Section 12 of the Model Act. It establishes what information an applicant for a permit or a special permit needs to provide to the relevant Authority.

Annex 5 focuses on the regulations establishing the guidelines on granting a permit or a special permit under Section 13(1) of the Model Act. It establishes the conditions and benchmarks that the relevant Authority has to consider in granting a permit or a special permit to an applicant. In addition to the general granting conditions which applied to all the subject items under the Model Act, it also provides subject specific (either nuclear, biological or chemical weapons) conditions. Furthermore, it also prescribes some exceptions to the permit requirement.

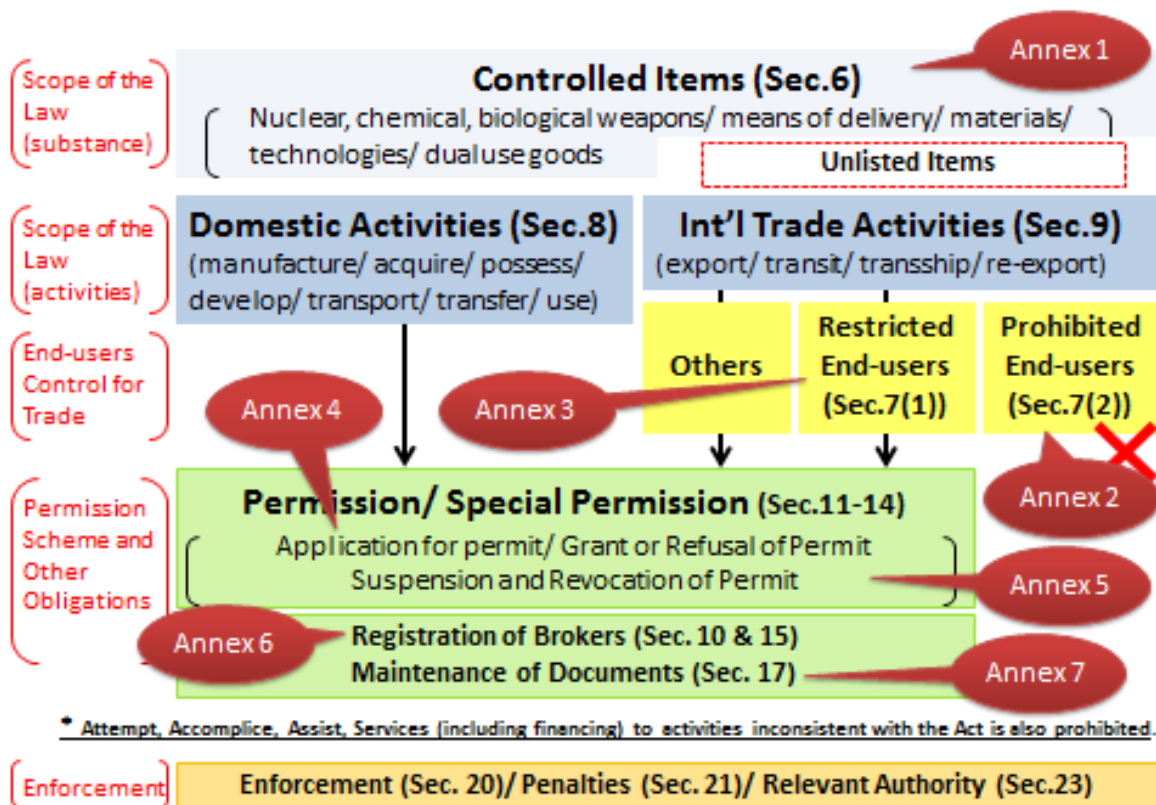
Annex 6 pertains to regulations establishing the guidelines for registration of brokering activities under Section 15 the Model Act. It establishes what information an applicant for a registration of broker shall provide to the relevant Authority.

Annex 7 pertains to the regulations establishing the information required to be recorded by the permit-holder or a registered broker under Section 16 of the Model Act. It prescribes information which needs to be recorded in terms of all the activities covered by a permit or a registration, as well as the additional information which needs to be recorded with respect to specific international trade activities.

Annexes 4 to 7 are based on the various existing implementation guidelines of UNSCR 1540 (2004) and non-proliferation Conventions published by the responsible international

organizations such as Organization for The Prohibition of Chemical Weapons (OPCW), as well as the prominent non-governmental organization, the Verification Research, Training and Information Centre (VERTIC).

(Figure 2: The structure of the Model Act and Annexes)



### (3) Section-by-Section Analysis

We produced the “Section-by-Section Analysis” as a brief explanation of the Model Act, following the example of the US legislative practice. This document briefly describes what each provision/section of the Model Act seeks to accomplish. It also refers to the authority of the provision/section from time to time.

### (4) 1540 Committee Matrix

Using an actual 1540 Committee Matrix template, this document intends to explain which section in the Model Act corresponds to which obligation under the UNSCR 1540.

The 1540 Committee, established under Operative Paragraph 4 of UNSCR 1540, has utilized the Matrix to organize information about implementation of UNSCR 1540 by Member States since 2005.<sup>1</sup> The matrix breaks down twelve provisions of UNSCR 1540 into more than two-hundred elements which the Member States should legislate or take into account in implementing the Resolution. Although the note to the Matrix states that the Committee uses it as a reference tool, not as a tool to measure compliance by States in terms of their non-proliferation obligation, it is a useful tool to check each State's current status of the implementation and make sure that the obligations under the resolution are met.

Our Matrix shows that each provision of the Model Act and the relevant regulations are drafted to meet certain obligations or to implement the recommended items in UNSCR 1540. In legislating its own law based on the Model Act, each CARICOM government can utilize this Matrix to explain to the legislators and the public what its proposed law is trying to accomplish in terms of UNSCR 1540. Furthermore, individual CARICOM States could file this Matrix with the United Nations upon enactment of their own Model Act and its annexes in order to show the United Nations where in its newly enacted laws each of the requirements under UNSCR 1540 has been addressed.

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<sup>1</sup> A matrix for each UN Member State is prepared by the group of experts and subsequently approved by the Committee. A list of Committee Approved Matrix can be found here. <http://www.un.org/en/sc/1540/national-implementation/1540-matrix/committee-approved-matrices.shtml>.

## **Model Act**

### **An Act to Implement the United Nations Security Council Resolution 1540 with Regard to the Prevention of the Proliferation of Weapons of Mass Destruction**

WHEREAS [State's name] is determined to safeguard their national security, and comply with its international security obligations, and United Nations (UN) Security Council resolution 1540;

AND WHEREAS [State's name] is committed to the prevention of the proliferation of nuclear, chemical, and biological weapons while cognizant that such efforts should not hamper international cooperation in materials, equipment, and technology for peaceful purposes, while goals of peaceful utilization should not be used as a cover for proliferation;

AND WHEREAS [State's name] is committed to preventing non-State actors or terrorists from acquiring conventional weapons, weapons of mass destruction, and their delivery systems;

AND WHEREAS [State's name] recognizes the need for a legal framework preserving international peace and security without undue restrictions on international trade, or the development of chemical, biological, or nuclear science and technology that is beneficial for humankind;

AND WHEREAS [State's name] is committed to its obligations as a State Party to the Treaty on the Non-Proliferation of Nuclear Weapons; the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction; and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction;

AND WHEREAS [State's name] endeavors to ensure that achievements in the fields of biology, chemistry, and nuclear technology should be used exclusively for the benefit of humankind;

AND WHEREAS [State's name] is exercising controls over certain transactions regarding international trade and transport of nuclear and radioactive materials, chemicals, organisms, toxins, and other materials, equipment and technologies in relation to weapons of mass destruction and their delivery systems under other relevant Acts;

AND WHEREAS it is considered necessary to provide for integrated legal measures to exercise controls over the domestic handling and international trade of such materials, equipment and



technologies and to prohibit unlawful activities in relation to weapons of mass destruction and their means of delivery and the related materials;

AND WHEREAS [State's name] believes that an effective common system of strategic trade controls on controlled items among CARICOM (Caribbean Community) states is desirable to ensure that [State's name] is compliant with all the international commitments and responsibilities that it has accepted by ratification of all relevant international treaties, including the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxic Weapons and on Their Destruction (1972), The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (1972), The Treaty on the Non-Proliferation of Nuclear Weapons, and the UN Charter (1968);

AND WHEREAS it is desirable to achieve a uniform and consistent application of controls throughout CARICOM in order to promote regional and international security and to provide a level playing field for enforcement officials and for the business community within CARICOM;

AND WHEREAS controlled items including dual-use items (including software and technology) should be subject to effective control when they enter and exit the Caribbean Community;

AND WHEREAS common lists of controlled items, of restricted and prohibited end-users, and of guidelines for permitting regulated activities involving such goods and technologies are essential elements for an effective trade management regime of CARICOM.

## **Section 1: Short Title**

This Act may be cited as the *Act Regarding to the Prevention of the Proliferation of Weapons of Mass Destruction [year]*.

## **Section 2: Interpretations**

In this Act, unless the contrary intention appears:

*Biological Weapons Convention (1972)* means the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.

*Chemical Weapons Convention (1993)* means the Convention on the Prohibition of the Development, Production, Stockpiling and use of Chemical Weapons and on their Destruction (including the annexes to that Convention).

*Non-Proliferation Treaty (1968)* means the Treaty on the Non-Proliferation of Nuclear Weapons.

*United Nations Security Council resolution 1540 (2004)* means the resolution that was adopted by the UN Security Council on 28 April 2004.

## **Section 3: Extent and Application**

This Act shall extend –

- (a) to acts or omissions prohibited under this Act, which are committed by any person or entity in the territory of [State's name];
- (b) to acts or omissions prohibited under this Act, which are committed by [State's name] national outside the territory of [State's name];
- (c) to acts or omissions prohibited by this Act, which are committed on board [State's name] sea vessels and aircraft;
- (d) to acts or omissions prohibited by this Act, which are committed by a stateless person or resident whose habitual residence is the territory of [State's name];

(e) to acts or omissions prohibited by this Act, which are committed with the intent to harm [State's name] or its nationals or to compel [State's name] to do or abstain from doing any act; or

(f) to acts or omissions prohibited by this Act, in which the victim of the offence is a national of [State's name].

#### **Section 4: Prevailing Law**

(1) This Act is additional to, and does not prejudice the operation of any other national Acts, relating to the prevention of the proliferation of weapons of mass destruction and their delivery systems.

(2) In the event of any conflict or inconsistency between the provisions of this Act and those of any other national laws of [State's name], relating to the prevention of the proliferation of weapons of mass destruction and their delivery systems the provisions of this Act shall prevail and the conflicting or inconsistent provisions of the other national laws shall, to the extent of the conflict or inconsistency, be deemed to be superseded.

#### **Section 5: Definitions**

*“acquire”* in relation to any items, means the purchase, hire or borrowing of the items, or the acceptance of the items, as a gift;

*“authorized officer”* means designated enforcement officers under a relevant Authority, which may set conditions for the conduct of activities by authorized officers;

*“biological weapon”* has the same meaning as assigned to it under the Biological Weapons Convention (1972);

*“broker”* means the activity of a person who, either on his own behalf or acting as an agent on behalf of another person—

(a) negotiates, arranges for or facilitates the purchasing, financing, insurance, storage, warehousing, freight-forwarding, sale or supply of items; or

(b) buys, sells or supplies such items;

“*chemical weapon*” has the same meaning as assigned to it under the Chemical Weapons Convention (1993);

“controlled items” means any items prescribed as controlled items under section 6;

“*develop*” in relation to any items, means any stage prior to the serial production of the items, including design, design research, design analysis, development of a design concept, assembly and testing of a prototype, pilot production, generation of design data, the process of transforming design data into a product, configuration design, integration design, and layout;

“*entity*” means any government agency, academic institution, corporation, company, partnership, society, association, firm, sole proprietorship, or other legal entity;

“*export*” means to take out from [State’s name] items by land, water or air, and includes the placing of the goods in a conveyance for the purpose of taking the items out from [State’s name]; but does not include the taking out from [State’s name] of items that have been brought in transit or transshipped;

“*finance*” refers to the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations;

“*items*” includes any technology, data, technical assistance, services, software, processes, activities, facilities, substances, materials, items, equipment, components, assemblies or systems;

“*manufacture*” in relation to any items, means any stage of production of the goods, including construction, production, engineering, integration, assembly, mounting, inspection, testing, and quality assurance;

“*nuclear weapon*” has the same meaning as assigned to it under the Nuclear Non-Proliferation Treaty (1968);

“*permit*” means a permit issued under this Act, and includes a special permit;

"*person*" means any natural person, legal person, or juridical person including, but not limited to, entities with legal rights, duties, and obligations;

"*proceedings*" includes the following:

- (a) Proceedings during the investigation phase;
- (b) Court proceedings aimed at establishing the guilt or innocence of the alleged perpetrator;
- (c) Post-trial proceedings, extradition proceedings triggered at the request of a foreign State; and
- (d) Bilateral proceedings established for the purpose of rendering mutual assistance in criminal matters, such for the taking of statements and those designed to execute the freezing and forfeiture of assets;

"*provision of services*" related to international trade in controlled items including (i) Brokering, (ii) Financing, (iii) Technical assistance, (iv) Transmitting technical data, (v) Transportation;

"*re-export*" means to take out from [State's name], by land, water or air, any items that have been imported for use within [State's name];

"*restricted activities*" means any activity that is contrary to the purpose of this Act such as any activity that supports development, production, handling, usage, maintenance, storage, inventory or proliferation of any weapon of mass destruction and its delivery system;

"*technical assistance*" includes instructions, skills, training, the provision of working knowledge and consulting services and may involve the transfer of technical data;

"*technical data*" includes blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals and instructions in print or electronic format;

"*transit*" means to bring items from any country into [State's name]'s territory but not entering its economy by land, sea, or air, where the items are to be taken out from [State's name] on the same conveyance on which they are brought into [State's name] without any landing in [State's name], but does not include the passage through [State's name] in accordance with international law of a foreign conveyance carrying items;

"*transmit*" in relation to any technical data or technology, means to —

- (a) provide in [State's name] by electronic means; or
- (b) make available in [State's name] on a computer, so that it becomes accessible (whether on a request, or subject to a pre-condition, or otherwise) to a person in a foreign country, whether he is a specific person, a person within a specific class, any person in general or the person who carries out the transmission;

*“transshipment”* means to remove items from the conveyance on which they were brought into the territory of [State's name] without entering its economy and to place the items on the same or another conveyance for the purpose of taking them out of [State's name] territory, where these acts are carried out on a through bill of lading, through airway bill or through manifest;

*“unlisted items”* means items that may be used in restricted activities but are not prescribed as controlled items under Section 6;

*“use”* in relation to any items, means the operation, installation, maintenance, inspection, repair, overhaul or refurbishing of the items;

*“weapons of mass destruction”* means any weapon designed to kill, harm or infect people, animals or plants through the effect of nuclear explosion or dispersion or the toxic properties of a chemical weapon or the infectious or toxic properties of a biological weapon, and includes a delivery system designed, adapted or intended for the deployment of such weapons and their materials.

## **Section 6: Controlled Items**

(1) The relevant Authority may, by order published in the Gazette, prescribe any items as controlled items for the purposes of this Act.

(2) If any question arises as to whether any item is or is not included in a class of items appearing in an order made under subsection (1), such question shall be decided by the relevant Authority.

## **Section 7: Restricted and Prohibited End-User**

- (1) The relevant Authority may designate an end-user to be a restricted end-user for which a special permit is required under this Act.
- (2) The relevant Authority may designate an end-user to be a prohibited end-user to which all export, transit, trans-shipment and re-export of controlled items or unlisted items under this Act are prohibited.
- (3) A list of the restricted end-users and prohibited end-users shall be published by order in the Gazette, and the relevant Authority may amend the list from time to time.

## **Section 8: Relevant Domestic Activities Related to Controlled Items**

- (1) No person shall, without a prescribed permit, manufacture, acquire, possess, develop, transport, transfer, or use controlled items.
- (2) No person shall attempt, accomplice, assist, or provide services relating to activities which are inconsistent with subsection (1).
- (3) Exemptions from the permit requirement under subsection (1) may be granted in the regulations under this Act in strict accordance with international obligations.

## **Section 9: Relevant International Trade Activities Related to Controlled Items and Unlisted Items**

- (1) No person shall, without a prescribed permit, export, transit, transship, or re-export controlled items.
- (2) No person shall, without a prescribed special permit, export, transit, transship, or re-export controlled items or unlisted items to a restricted end-user specified in subsection 7(1).
- (3) No person shall export, transit, transship, or re-export controlled items or unlisted items to a prohibited end-users specified in subsection 7(2).
- (4) If a person is informed by the relevant Authority or otherwise knows or has reason to believe that any unlisted items will be used for any restricted activities, then the person shall

notify the relevant Authority of his intention to export, transit, transship or re-export such unlisted item at least [] days before that transaction is to be carried out. Upon such notification, the relevant Authority shall decide whether or not and under what condition to allow that transaction to proceed.

(5) No person shall attempt, accomplice, assist, or provide services relating to activities which are inconsistent with subsection (1), (2) or (3).

(6) Exemptions from the permit requirement under subsection (1), (2) or (3) may be granted in the regulations under this Act in strict accordance with international obligations.

### **Section 10: Brokering of Controlled Items**

(1) No person shall carry out an act of brokering of any controlled items unless he is registered under section 15, and where required under the related laws, holds a valid permit for the brokering of such controlled items from the relevant Authority under related laws where—

- (a) he has been notified by the relevant Authority or an authorized officer that such controlled items may be intended or are likely to be used, wholly or in part, for or in connection with an activity which is inconsistent with any restricted activities;
- (b) he knows that such controlled items are intended to be used, wholly or in part, for or in connection with an activity which is inconsistent with any restricted activities; or
- (c) he has reasonable grounds to suspect that such controlled items are intended or are likely to be used, wholly or in part, for or in connection with an activity which is inconsistent with any restricted activities.

### **Section 11: Application of Act to Permits and Registration**

(1) Without prejudice to the general application of the related laws, for the purpose of controlled items, unlisted items and restricted activities regulated under this Act, the relevant Authority shall deal with the permits and registration required for such controlled items, unlisted items and restricted activities in accordance with the provisions of this Act.



## **Section 12: Application for Permit and Additional Information**

- (1) An application for a permit or special permit referred to in section 8 and 9 shall be made to the relevant Authority in accordance with the regulations made under this Act.
- (2) The relevant Authority may, at any time after the receipt of an application under subsection (1) and before the application is determined, by a written notice, require the applicant to provide any additional documents or information to the relevant Authority within the period specified in the notice.
- (3) If the additional documents or information required under subsection (2) are not provided by the applicant within the period specified in the notice or any extended period granted by the relevant Authority, the application shall be deemed to be withdrawn and shall not be further proceeded with, but without affecting the right of the applicant to make a fresh application.

## **Section 13: Grant or Refusal of Permit**

- (1) The relevant Authority may, after considering the application for a permit under subsection 12(1) and any additional documents or information provided under subsection 12(2) and being satisfied that all the requirements have been fulfilled, grant the permit or refuse to grant the permit in accordance with the regulations made under this Act.
- (2) The relevant Authority may impose such conditions as it considers appropriate in granting the permit, including, but not limited to the following:
  - (a) the quantities of controlled items provided for by the permit;
  - (b) the end-use requirements and the verification of such end-use requirements of controlled items;
  - (c) the security and physical protection measures of controlled items;
  - (d) the individuals in a permitted entity who may access to the controlled items in case the permit is granted to an entity;
  - (e) the states or territories to which controlled items may be exported or from which controlled items may be imported;

- (f) the re-export from a state to which controlled items originating in (the Country), are destined for export;
  - (g) the ports, airports or border posts which may be used for the import, export, re-export or transit of controlled goods.
- (3) Every permit granted under subsection (1) shall set out the duration of the permit.
- (4) The conditions imposed under the permit may at any time be varied or amended by the relevant Authority provided that the holder of the permit is given a reasonable opportunity of being heard.
- (5) The decision of the relevant Authority under this section shall be communicated to the applicant by written notice as soon as practicable.
- (6) The written notice by the relevant Authority under subsection (5) shall specify—
- (a) in the case where the permit is granted, the fact of such grant and the conditions, if any, imposed under subsection (2); and
  - (b) in the case of a refusal to grant a permit, the fact of such refusal and the reason for the refusal.
- (7) Any person aggrieved due to a denial of a permit under this Section may appeal to the Relevant Authority, who may confirm, amend or set aside the decision of the denial.
- (8) The relevant Authority may renew any permit upon application.

#### **Section 14: Suspension and Revocation of Permit**

- (1) The relevant Authority may, at any time, suspend or revoke a permit if it has reason to believe that —
- (a) the holder of the permit has failed to comply with any provisions of this Act;
  - (b) the holder of the permit has failed to comply with any conditions attached to the permit;
  - (c) the holder of the permit had improperly or illegally obtained the permit; or

- (d) it is necessary for national interest, national security or non-proliferation purposes, and shall notify the holder of the permit within thirty days by a notice in writing that the permit has been suspended or revoked.
- (2) A suspension or revocation under subsection (1) shall remain in force until the holder of the permit has taken measures to the satisfaction of the relevant Authority to remove the reasons for such suspension or revocation.
- (3) Any person aggrieved due to a suspension or revocation of a permit under this Section may appeal to the relevant Authority, who may confirm, amend or set aside the decision of the suspension or revocation.

### **Section 15: Registration of Brokers**

- (1) An application for registration to carry out brokering of controlled items referred to in section 10 shall be made to the relevant Authority in accordance with the regulations made under this Act.
- (2) The relevant Authority may, at any time after the receipt of an application under this section and before the application is determined, by a written notice, require the applicant to provide any additional documents or information to the relevant Authority within the period specified in the notice.
- (3) If the additional documents or information required under subsection (2) are not provided by the applicant within the period specified in the notice or any extended period granted by the relevant Authority, the application shall be deemed to be withdrawn and shall not be further proceeded with, but without affecting the right of the applicant to make a fresh application.
- (4) The relevant Authority may, after considering the application for registration and any additional documents or information provided under subsection (2) and being satisfied that all the requirements have been fulfilled, register the applicant or refuse registration.
- (5) Registration under this section shall be valid for a period of [] year and shall be renewable upon application.

- (6) The relevant Authority may impose such conditions as it considers appropriate in granting the registration.
- (7) The conditions imposed upon the registration may at any time be varied or amended by the relevant Authority provided that the registered broker is given a reasonable opportunity of being heard.
- (8) The decision of the relevant Authority under this section shall be communicated to the applicant by written notice as soon as practicable.
- (9) The written notice by the relevant Authority under subsection (9) shall specify—
- (a) in the case where the registration is granted, the fact of such registration and the conditions, if any, imposed under subsection (6); and
  - (b) in the case of a refusal of registration, the fact of such refusal and the reason for the refusal.
- (10) Any person aggrieved due to a denial of a registration under this Section may appeal to the relevant Authority, who may confirm, amend or set aside the decision of the denial.
- (11) The relevant Authority may, at any time, suspend or revoke a registration if it has reason to believe that —
- (a) the registered broker has failed to comply with any provisions of this Act;
  - (b) the registered broker has failed to comply with any conditions attached to the registration;
  - (c) the registered broker had improperly or illegally obtained the registration; or
  - (d) it is necessary for national interest, national security or non-proliferation purposes, and shall notify the registered broker within thirty days by a notice in writing that the registration has been suspended or revoked.
- (12) A suspension or revocation under subsection (10) shall remain in force until the registered broker has taken measures to the satisfaction of the relevant Authority to remove the reasons for such suspension or revocation.

(13) Any person aggrieved due to the suspension or revocation of the registration under this Section may appeal to the relevant Authority, who may confirm, amend or set aside the decision of the suspension or revocation.

#### **Section 16: Maintenance of Documents and Register**

(1) A person who is granted a permit or registered as a broker under this Act shall maintain comprehensive records in relation to the controlled items or restricted activities in accordance with the regulations made under this Act:

- (a) for a period of 5 years;
- (b) in hard copy (paper) or electronic formats;
- (c) a person who is granted a permit or registered as a broker shall make these records available to the government authorities when requested to assist in an investigation or prosecution of a violation, including a trans-national cooperative enforcement activity.

#### **Section 17: Registers**

(1) The relevant Authority shall keep and maintain a register of permit holders and registered brokers.

(2) The registers shall be available to the public for inspection subject to such conditions as the relevant Authority considers appropriate.

(3) A copy or extract of any entry in the registers duly certified by the relevant Authority shall be given to any person requiring the copy or extract upon payment of the prescribed fee.

(4) The registers shall be conclusive evidence if any question arises as to whether any person holds a valid permit or is a registered broker under this Act.

## **Section 18: Protection of Actions Taken in Good Faith and Without Negligence**

(1) No suit, prosecution or other legal proceeding shall lie against the Government of [State's name] including the relevant Authority or any authorized officers for anything which is in good faith and without negligence done or purported to be done in pursuance of this Act or any implementing regulations.

## **Section 19: Confidentiality of Information Obtained by Government Authorities**

(1) Any information and document obtained pursuant to this Act or its implementing regulations or by virtue of this Act or its implementing regulations are privileged and confidential within or outside [State's name], unless such information or document is publicly available.

(2) No person in possession of privileged or confidential information or documents shall, without the written consent of the person from whom they were obtained, disclose, transmit or make known to any person any privileged or confidential information or documents, allow privileged or confidential information or documents to be disclosed, transmitted or made known to any person, or allow any person to have access to privileged or confidential information or documents, unless for the purpose of —

- (a) enforcement of this Act or its implementing regulations;
- (b) dealing with an emergency involving public safety;
- (c) satisfying the requirements of any law or as evidence in any court of law; or
- (d) sharing relevant information with authorities in other countries if required for effective international cooperation.

(3) If the relevant Authority or any court is of opinion that the disclosure of certain information or document may compromise the interests of [State's name] or affected person, it may direct that any proceedings before it be held *in camera*.

## **Section 20: Enforcement**

(1) Without prejudice to the powers of the authorized officers under any other national law, the enforcement powers provided under this Section shall be available to the authorized officers of [State's name]. The authorized officers of [State's name] shall have the following powers, for the purpose of enforcement of this Act, including but not limited to:

- (a) to receive and consider any report of the commission of an offence under this Act;
- (b) to demand the production of any permit, record or other document under this Act;
- (c) to inspect, including making copies of or taking extracts from a permit, record or other document under this Act;
- (d) to investigate any offence under this Act;
- (e) to prosecute suspected violations of this Act; and
- (f) to examine and seize any controlled items or unlisted items together with any container, package, conveyance or other article in which the controlled items or unlisted items are stored, kept or found, record, book, account, document or computerized data relating to any offence under this Act.

(2) The relevant Authority may collaborate with competent authorities of other States and international organizations and entities, and coordinate their actions to the extent required by the implementation of this Act.

## **Section 21: Violations and Penalties**

(1) Liability for offenses by individuals

Any person who-

- (a) contravenes or fails to comply with this Act;
- (b) falsely represents that any goods or activities fall outside the purview of this Act;
- (c) makes any statement regarding a matter with which this Act is concerned to an authorized officer which statement is false in any material respect, knowing it to be false or knowing it to be misleading;

- (d) falsely holds himself out to be an authorized officer;
- (e) refuses or fails to comply to the best of his ability with any lawful requirement of an authorized officer, or
- (f) hinders or obstructs an authorized officer in the exercise of his functions under this Act,

shall be guilty of an offence, and liable on conviction -

- (i) in the case of an offense referred to in paragraph (a),
  - 1. in the case of Section 8, 9, and 10 of this Act to a fine, or to imprisonment for a period not exceeding [] years;
  - 2. in the case of Section 19 of this Act, to a fine, or to imprisonment for a period not exceeding [] years;
  - 3. in the case of any other Section of this Act, to a fine or to imprisonment for a period not exceeding [] years;
- (ii) in the case of an offense referred to in paragraph (b) to a fine, or to imprisonment for a period not exceeding [] years;
- (iii) in the case of an offense referred to in paragraph (c) to a fine, or to imprisonment for a period not exceeding [] years;
- (iv) in the case of an offense referred to in paragraph (d) to a fine, or to imprisonment for a period not exceeding [] years;
- (v) in the case of an offense referred to in paragraph (e) to a fine, or to imprisonment for a period not exceeding [] years; and
- (vi) in the case of an offense referred to in paragraph (f) to a fine, or to imprisonment for a period not exceeding [] years.

The accused may provide as a defense that he or she has made all reasonable inquiries and had no reason to know that the conduct would be inconsistent with this Act.

(2) Liabilities for offences by entities



Where an offence under this Act has been committed by an entity, any person who at the time the commission of the offence was a director, manager, secretary or other similar officer of the entity or was purporting to act in any such capacity, or was in any manner or to any extent responsible for the management of any of the affairs of such entity, or was assisting in such management, shall be deemed to be guilty of the offence unless the person proves that the offence was committed without his knowledge, consent or connivance and that he exercised all due diligence to prevent the commission of such offence, having regard to the nature of his functions in that capacity and to all the circumstances.

(3) Penalties with reference to other laws

Where any act or omission constitutes an offence punishable under this Act and also under any other relevant national regulation, then the offender found guilty of such offence shall be liable to be punished under that regulation which imposes a greater punishment.

## **Section 22: Applicability of International Law**

(1) Any person in relation to whom proceedings are taken for any of the offences set forth in this Act shall be granted fair and equitable treatment, including enjoyment of all rights and guarantees provided by domestic or international law, in particular international human rights law, refugee law, and, when applicable, humanitarian law.

## **Section 23: Relevant Authority**

(1) Relevant Authority is—

- (a) [Ministry of Industry] as used in Section [].....;
- (b) [Customs and Excise Department] as used in Section [].....;
- (c) [Ministry of Foreign Affairs] as used in Section []....;
- (d) [Ministry of Finance] as used in Section[]....;
- (e) [Department of Justice] as used in Section []....; and
- (f) [] as used in Section []....

and have authority to make regulations as may be necessary to give effect to this Act.

(2) Primary Coordinating Authority, which will be responsible for an inter-agency coordination, including serving as the point of contact for assistance and developing appropriate ways to work with and inform industry and the public regarding their obligations, is [Ministry of xx].

## Annex 1

### Regulations Establishing the List of Controlled Items

[Among the three non-proliferation Conventions, only the Chemical Weapons Convention has the agreed list of the items that the State parties should control in accordance with the Convention. However, as there are some existing model lists endorsed by international organization or utilized by other countries, CARICOM States can complete the controlled items list under the Act by adopting or referring to one or more of these examples.]

As prescribed by Sections 8, 9 and 10, no person shall engage in relevant domestic activities, international trade activities and brokering without a permit, a special permit or a registration.

Note 1: A State could use the following multilaterally or plurilaterally accepted lists for each substance.

#### Related to Biological Weapons:

Although no CARICOM States is a member of the Australia Group, it is worth referring to its lists, as it is a non-binding cooperative framework consisting of 42 biological and chemical exporting and transshipping countries and its common control lists are well established. The members of the Australia Group include small island countries such as Malta and Republic of Cyprus.

- Dual-use Biological Equipment and Related Technology and Software (includes 9 kinds of equipment and related technology and software)  
[http://www.australiagroup.net/en/dual\\_biological.html](http://www.australiagroup.net/en/dual_biological.html)
- Human and Animal pathogens and Toxins  
[http://www.australiagroup.net/en/human\\_animal\\_pathogens.html](http://www.australiagroup.net/en/human_animal_pathogens.html)
- Plant Pathogens  
<http://www.australiagroup.net/en/plants.html>

#### Related to Chemical Weapons:

- Chemical Weapons Convention's schedule of chemicals  
<http://www.opcw.org/chemical-weapons-convention/annexes/annex-on-chemicals/#c12006>

- Dual-use Chemical Manufacturing Facilities and Equipment and Related Technology and Software (Australia Group)  
[http://www.australiagroup.net/en/dual\\_chemicals.html](http://www.australiagroup.net/en/dual_chemicals.html)

Related to Nuclear Weapons:

- The Nuclear Suppliers Group (NSG) is a group of nuclear supplier countries that seeks to contribute to the non-proliferation of nuclear weapons through the implementation of two sets of Guidelines for nuclear exports and nuclear-related exports.

(1) Guidelines for Nuclear Transfers

[http://www.nuclearsuppliersgroup.org/images/Files/Updated\\_control\\_lists/Prague\\_2013/NSG\\_Part\\_1\\_Rev.12\\_clean.pdf](http://www.nuclearsuppliersgroup.org/images/Files/Updated_control_lists/Prague_2013/NSG_Part_1_Rev.12_clean.pdf)

(2) Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Materials, Software, and Related Technology

[http://www.nuclearsuppliersgroup.org/images/Files/Updated\\_control\\_lists/Prague\\_2013/NSG\\_Part\\_2\\_Rev.9\\_clean.pdf](http://www.nuclearsuppliersgroup.org/images/Files/Updated_control_lists/Prague_2013/NSG_Part_2_Rev.9_clean.pdf)

Note 2: Alternatively, one could use the annexures used in Non-Proliferation of Weapons of Mass Destruction Act No. 87, 1993, § 1 Definitions (South Africa) which provides lists for each of the substance. This list is useful as it covers all the substances under the three WMD conventions.

Biological Weapons in Annexures A and B:

[http://www.thedti.gov.za/nonproliferation/pdf/Government\\_Notice19\\_Eng.pdf](http://www.thedti.gov.za/nonproliferation/pdf/Government_Notice19_Eng.pdf)

Chemical Weapons in Annexures A, B, C, D, E, F:

[http://www.thedti.gov.za/nonproliferation/pdf/Government\\_Notice18\\_Eng.pdf](http://www.thedti.gov.za/nonproliferation/pdf/Government_Notice18_Eng.pdf)

The Nuclear Dual-Use Equipment List:

[http://www.thedti.gov.za/nonproliferation/pdf/Government\\_Notice20\\_Eng.pdf](http://www.thedti.gov.za/nonproliferation/pdf/Government_Notice20_Eng.pdf)

Note 3: Alternatively, one could use the Common Military Goods List and Dual-Use Items List of the European Union, that also informs other countries' trade control regimes such as Malaysia's Strategic Trade Bill 2010. The Dual-Use Items List provides a comprehensive consolidated lists from all international and multilateral agreements including the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers' Group

(NSG), the Australia Group and the Chemical Weapons Convention (CWC). One thing to note is that the Military Goods List covers broad items beyond the WMD, such as rifles and mines:

Common Military List of the European Union (as amended in March, 2014)

[http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XG0409\(01\)&from=EN](http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52014XG0409(01)&from=EN)

List of Dual-Use Items (as amended in October, 2014)

[http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc\\_152996.pdf](http://trade.ec.europa.eu/doclib/docs/2015/january/tradoc_152996.pdf)

(The original Regulation (EC) No 428/2009 which set up the dual-use goods control regime)

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:134:0001:0269:en:PDF>

Schedule of Strategic Items of Malaysia

[http://www.miti.gov.my/cms/documentstorage/com.tms.cms.document.Document\\_fdb07478-c0a8156f-5062e9b4-a924b35d/Strategic%20Items%20List%20All.pdf](http://www.miti.gov.my/cms/documentstorage/com.tms.cms.document.Document_fdb07478-c0a8156f-5062e9b4-a924b35d/Strategic%20Items%20List%20All.pdf)

## Annex 2

### Regulations Establishing the List of Prohibited End-Users

As prescribed in Section 9(3) of the Act, no person shall export, transit, transship, or re-export controlled items or unlisted items to a prohibited end-users or provide services to those activities.

Note 1: A State could use the following list provided by the United Nations Security Council Sanctions Committee.

The United Nations Security Council Sanctions Committee provides the Consolidated Sanctions List which includes all individuals and entities subject to sanctions measures imposed by the Security Council. The Consolidated Sanctions List is regularly updated by the United Nations Security Council Sanctions Committee.

Consolidated Sanctions List (updated in April 2015) is available at:

<http://www.un.org/sc/committees/consolidated.pdf>.

Note 2: Alternatively, one could use the list by Malaysia that provides a comprehensive consolidated list for prohibited end-users under the Strategic Trade Act.

The List (updated in November 2014) is available at:

[http://www.miti.gov.my/storage/documents/ca9/com.tms.cms.document.Document\\_efd1a561-c0a8156f-54b216b3-4b594181/1/Restricted%20and%20Prohibited%20End%20Users.pdf](http://www.miti.gov.my/storage/documents/ca9/com.tms.cms.document.Document_efd1a561-c0a8156f-54b216b3-4b594181/1/Restricted%20and%20Prohibited%20End%20Users.pdf).

Note 3: Alternatively, one could use the list by the European Union that provides the Consolidated list of persons, groups and entities subject to EU financial sanctions.

The Consolidated list (updated in April 2015) is available at:

[http://eeas.europa.eu/cfsp/sanctions/consol-list/index\\_en.htm](http://eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm).

## Annex 3

### Regulations Establishing the List of Restricted End-Users

As prescribed in Section 9(2) of the Act, no person shall, without a prescribed special permit, export, transit, transship, or re-export controlled items or unlisted items to a restricted end-user or provide services to those activities.

Note 1: A State could use the following list provided by the United Nations.

Currently the United Nations Security Council imposes sanctions measures on, or relating to, the following States or entities:

- Al Qaida and Taliban
- Central African Republic
- Cote d'Ivoire
- The Democratic People's Republic of Korea
- Democratic Republic of the Congo
- Eritrea
- Guinea-Bissau
- Iran
- Iraq
- Lebanon
- Liberia
- Libya
- Somalia
- Sudan
- Yemen

Some countries, including Australia, Canada, the European Union and the United States impose restrictive measures unilaterally. These may be in addition to, or in the absence of, sanctions adopted by the UN Security Council.

United Nations Security Council Sanctions Committees can be accessed at:

<http://www.un.org/sc/committees/index.shtml>.

Note 2: Alternatively, one could use the list by Malaysia that provides a comprehensive consolidated list for restricted end-users under the Strategic Trade Act.

The List (updated in November 2014) is available at:

[http://www.miti.gov.my/storage/documents/ca9/com.tms.cms.document.Document\\_efd1a561-c0a8156f-54b216b3-4b594181/1/Restricted%20and%20Prohibited%20End%20Users.pdf](http://www.miti.gov.my/storage/documents/ca9/com.tms.cms.document.Document_efd1a561-c0a8156f-54b216b3-4b594181/1/Restricted%20and%20Prohibited%20End%20Users.pdf).

Note 3: Alternatively, one could use the list by the European Union that provides a list of countries against which the restrictive measures by the European Union are currently in force.

The List (updated in December 2015) is available at:

[http://eeas.europa.eu/cfsp/sanctions/docs/measures\\_en.pdf](http://eeas.europa.eu/cfsp/sanctions/docs/measures_en.pdf).



## Annex 4

### **Regulations Establishing the Guidelines for Application for a Permit or a Special Permit under Section 12 of the Act**

1. In order to apply for a permit or a special permit under section 12 of the Act, the applicant shall provide the following information to the relevant Authority in accordance with a prescribed format:

- (a) Details of the applicant:
  - (i) Name
  - (ii) Address
  - (iii) Contact information
  - (iv) Citizenship (if individual)
  - (v) Country of Residence (if individual)
  - (vi) Country of Registration (if entity)
  - (vii) Name of responsible person or representative (if entity);
- (b) The controlled item for which the applicant is seeking a permit for dealing;
- (c) Description of the activity, including the amount of the controlled item which is planned to be involved in the activity, and the details of the other party of the activity as applicable;
- (d) All the other information required by the relevant Authority.

2. This information shall be stored in a domestic registry of permit under section 17 of the Act.

## Annex 5

### Regulations Establishing the Guidelines of Granting a Permit or a Special Permit Under Section 13(1) of the Act

1. Authorized officers shall refuse to grant permits or special permits for any relevant domestic activity or any relevant international trade activity under section 13(1)—
  - (1) Where the said activity is deemed to be:
    - (a) Harmful to public health or national security; or
    - (b) Supportive of international terrorism; or
    - (c) Supportive of proliferation of weapons of mass destructions; or
    - (d) In breach of a bilateral or multilateral arms control or non-proliferation agreement; or
    - (e) In violation of a United Nations Security Council sanctions regime; or
    - (f) Supportive of acts of genocide or crimes against humanity; or
    - (g) In violation of human rights contrary to international law; or
    - (h) Contributing to the perpetration of war crimes contrary to international law;
  - (2) To an individual who—
    - (a) is under the age of [] years;
    - (b) is an undischarged bankrupt;
    - (c) has, during the period of [] years immediately preceding the application, been convicted of an offense as determined by a relevant Authority of [State's name]; or
  - (3) To an entity—
    - (a) which does not have a procedure or fails to assure to undertake personnel background checks of their employees;
    - (b) which has been the subject of a resolution that has been passed for voluntary winding up or for whom an order for winding up has been made by a court of competent jurisdiction;

(c) if the entity or any of its directors has been convicted of an offense as determined by a relevant Authority of [State's name].

2. With respect to nuclear weapons and related materials, the authorized officials shall make the issuance of a permit or a special permit under section 13(1) conditional on the applicant meeting the following requirements as applicable:

(a) accepting prime responsibility for the implementation of physical protection of nuclear material or nuclear facilities;

(b) giving an assurance that it will give due priority to the security culture, to its development, and maintenance necessary to ensure its effective implementation in the entire organization;

(c) giving an assurance that it will take a graded approach to physical protection requirements, taking into account the [relevant Authority]'s current evaluation of the threat, the relative attractiveness, the nature of the material and potential consequences associated with the unauthorized removal of nuclear material and with the sabotage against nuclear material or nuclear facilities;

(d) having in place several layers and methods of physical protection (structural or other technical, personnel and organizational) that have to be overcome or circumvented by an adversary in order to achieve his objectives;

(e) having in place a quality assurance policy and quality assurance programmes to provide confidence that specified requirements for all activities important to physical protection are satisfied;

(f) having in place contingency (emergency) plans to respond to unauthorized removal of nuclear material or sabotage of nuclear facilities or nuclear material, or attempts thereof;

(g) giving an assurance that it will fully co-operate with the [relevant Authority] in the implementation of [State's name] [Comprehensive Safeguards Agreement with the International Atomic Energy Agency] [Additional Protocol with the International Atomic Energy Agency] [Voluntary Offer Safeguards Agreement] [Item Specific Safeguards Agreement], as [it applies] [they apply] to any nuclear material or nuclear facility covered by the permit;

(h) accepting prime responsibility for computer security related to activities covered by the permit; and

(i) giving an assurance that it has conducted a design basis threat analysis or other appropriate threat assessment of computer security, taking into consideration any relevant threat assessments undertaken by the [relevant Authority] related to cyber and nuclear security.

3. With respect to biological weapons and related materials, the authorized officials shall make the issuance of a permit or a special permit under section 13(1) conditional on the applicant meeting the following requirements as applicable:

(a) demonstrating that the applicant meet certain laboratory biosafety and biosecurity conditions;

(b) demonstrating that the applicant being qualified to work with the controlled items listed in the permit;

(c) having in place procedures for reporting theft, loss or release to the relevant Authority regardless of whether intentional or accidental; and

(d) demonstrating that the applicant will meet national packaging, labeling and shipping standards for controlled biological materials.

4. With respect to chemical weapons and their related materials, the authorized officials shall make the issuance of a permit or a special permit under section 13(1) conditional on the applicant meeting the following requirements as applicable:

(a) giving an assurance that the Schedule 1 chemicals under Chemical Weapons Convention are exclusively applied to research, medical, pharmaceutical or protective purposes and the types and quantities of chemicals are strictly limited to those which can be justified for such purposes;

(b) demonstrating that the production of the chemicals are carried out in a facility which complies with the relevant standards and adopting measures to ensure the safety of people and to protect the environment; and

(c) having in place procedures for reporting theft, loss, or release to the relevant Authority regardless of whether intentional or accidental;

5. Notwithstanding section 8 and 9 of the Act, permit requirement shall not apply to the following activities:

(a) an export of any document in which any technology which is necessary for the development, production or use of any controlled items is recorded, stored or embodied, or to the transmission of such technology to the extent that the export or transmission is necessary to facilitate:

(i) the installation, operation, maintenance or repair of any items which have been exported;

(ii) an application for a patent; or

(iii) a research in such technology, the results of which have no practical application.

\*Note: In Section 5 of the Annex, a State may add some exemption provisions from the permission scheme under Section 8 and 9 of the Act to domestic activities dealing with certain dual-use items (such as schedule 2 and 3 chemicals under the Chemical Weapons Convention), and to international trade activities with non listed end-users dealing with dual-use items. By exempting certain activities which do not pose serious risks of undermining the purpose of this Act, a State may promote research, development, and other peaceful activities.

## **Annex 6**

### **Regulations Establishing the Guidelines for Registration of Brokering Activities Under Section 15 of the Act**

1. In order to apply for a registration under section 15 of the Act, the applicant shall provide the following information to the relevant Authority in accordance with a prescribed format:
  - (a) Details of the applicant:
    - (i) Name
    - (ii) Address
    - (iii) Contact information
    - (iv) Citizenship (if individual)
    - (v) Country of Residence (if individual)
    - (vi) Country of Registration (if entity)
    - (vii) Name of responsible person or representative (if entity);
  - (b) Description of the activity, including the name of the controlled items which are planned to be involved in the activity and the details of the other party or parties involved in the activity;
  - (c) All the other information required by the relevant Authority.
2. This information shall be stored in a domestic registry of brokers under section 17 of the Act.

## Annex 7

### Regulations Establishing the Information Required to be Recorded by the Permit-Holder or a Registered Broker Under Section 16 of the Act

1. The permit-holder or a registered broker shall maintain under section 16 of the Act comprehensive records containing the following information:

- (a) For all the activities which are covered by a permit or a registration:
  - (i) The activity which was undertaken;
  - (ii) Name and quantity of the controlled items or unlisted items involved in the activity;
  - (iii) The date of the activity;
  - (iv) The person in charge of the activity and contact information;
  - (v) The other party of the activity and contact information as applicable;
  - (vi) Additional descriptive information from the manufacturer, as applicable and appropriate, such as serial numbers, dimensions, technical specifications and capabilities;
  - (vii) Country of origin of the controlled items or unlisted items as applicable;
  - (viii) A permit or a registration, including the date of issue and date of expirations under which the activity was undertaken.
- (b) Additional information required for transits and transshipments:
  - (i) Country of origin of the controlled items or unlisted items;
  - (ii) Date of issue of the export license or authorization from that country;
  - (iii) Date of expiration of the export license or authorization from that country;
  - (iv) Destination country for the controlled items or unlisted items;
  - (v) Date of issue of the import license or authorization from destination country;
  - (vi) Date of expiration of the import license or authorization from destination country;

(vii) Details of the importer/shipper:

- Name
- Address
- Contact Information
- Citizenship (if individual)
- Country of Residence (if individual)
- Country of Registration (if commercial or government)
- Name of responsible person or representative (if commercial or government);

(viii) Details of the final recipient (if different from the importer):

- Name
- Address
- Contact Information
- Citizenship (if individual)
- Country of Residence (if individual)
- Country of Registration (if commercial or government)
- Name of responsible person or representative (if commercial or government);

(ix) Full details of the route to be taken to the final destination, including any other transit countries and ports of entry and exit.

(c) Additional information required for exports and re-exports:

(i) Date of issue of the import license or authorization from the destination country;

(ii) Date of expiration of the export license or authorization from the destination country;

(iii) Name of the license-issuing agency in the destination country;

(iv) Details of licensing conditions attached to the license/permit;

(v) Full details of the route to be taken to the final destination, including any transit countries and ports of entry and exit;

(vi) Details of the importer in destination country:

- Name



- Address
- Contact Information
- Citizenship (if individual)
- Country of Residence (if individual)
- Country of Registration (if commercial or government)
- Name of responsible person or representative (if commercial or government);

(vii) Details about the final recipient (if different from the importer):

- Name
- Address
- Contact Information
- Citizenship (if individual)
- Country of Residence (if individual)
- Country of Registration (if commercial or government)
- Name of responsible person or representative (if commercial or government);

(viii) Copy of End-Use Certificate(s) signed by the foreign recipient and/or the foreign end-user and/or the destination government.

**Model Law on Non-Proliferation of Nuclear, Chemical and Biological Weapons for  
CARICOM Member States**

**Section-by-Section Analysis**

**Section 1: Short Title.** This Act may be cited as the Act Regarding to the Prevention of the Proliferation of Weapons of Mass Destruction [year].

**Section 2: Interpretations.** The Biological Weapons Convention, the Chemical Weapons Convention, the Treaty on the Non-Proliferation of Nuclear Weapons and United Nations Security Council resolution (UNSCR) 1540 (2004) shall inform the interpretation of this Act in accordance with well-established international legal norms.

**Section 3: Extent and Application.** This Act extends to the territory of [State's name], activity by a national of [State's name], activity aboard [State's name] sea vessels and aircrafts, or activity by a person who resides in the territory of [State's name].

**Section 4: Prevailing Law.** This is enacted in addition to other national acts dealing with the same matter. However, should there be any inconsistency between this act and previous national acts dealing with the proliferation of WMDs, the provisions of this act shall prevail..

**Section 5: Definitions.** This section defines key terms used in the Act drafted to be harmonious with well-established international norms.

**Section 6: Controlled Items.** As provided in operative clause six of UNSCR 1540 (2004), the relevant Authority shall have discretion to deem items as “controlled items”. If there is any uncertainty as to whether an item is a “controlled item”, the relevant Authority shall decide.

**Section 7: Restricted and Prohibited End-Users.** The relevant Authority shall define entities that constitute a “restricted end-user” or a “prohibited end-user”. Any party exporting to a restricted end user must apply for a permit. However, parties may not export any items to prohibited end users. The list of prohibited end users and restricted end-users is to be published in the Gazette.

**Section 8: Relevant Domestic Activities Related to Controlled Items.** In accordance with UNSCR 1540 (2004), persons are prohibited from manufacturing, possessing, acquiring, transporting, transferring, or using any controlled item, unless that individual has a permit, or an exemption provided by the relevant authority applies.

**Section 9: Relevant International Trade Activities Related to Controlled Items and Unlisted Items.** In accordance with UNSCR 1540 (2004), no person shall engage in

international trade of controlled items without a permit. Any party trading controlled or unlisted items with a restricted end-user must obtain a special permit. Any person who is informed, or has a reason to believe that an item will be used contrary to the purpose of section 8 must notify the relevant Authority who will decide how, and whether the transaction will proceed.

**Section 10: Brokering of Controlled Items.** Consistent with operative clause 3(c) of UNSCR 1540 (2004), no person shall act as a broker for any “controlled item” without first registering under section 15. Additionally, no person shall act as a broker if they know, or have grounds to suspect that the item may be intended for activity inconsistent with section 8 or section 9.

**Section 11: Application of Act to Permits and Registration.** The relevant Authority, when deciding matters relating to the issuance of permits or regulations relating to controlled items, unlisted items, and restricted activities, shall only make regulations in accordance with this Act.

**Section 12: Application for Permit and Additional Information.** Consistent with clause 3(d) of UNSCR 1540 (2004), applications for permits must be made to the relevant Authority who, before making a decision, may request additional information from the applicant. Should the applicant fail to provide such requested documentation, the application is recognized as withdrawn, but will not preclude the applicant from making a fresh application.

**Section 13: Grant or Refusal of Permit.** Consistent with clause 3(d) of UNSCR 1540, a request for a permit may be refused, granted, or granted subject to conditions as the relevant Authority decides appropriate. If a permit is denied, the relevant Authority is obligated to provide reasons for the refusal. The permit shall state the duration, and the relevant Authority may renew any permit upon application.

**Section 14: Suspension and Revocation of Permit.** The relevant Authority may suspend or revoke a permit if the relevant Authority has reason to believe that the permit holder is non-compliant, or if it is in the interest of national security, or for non-proliferation purposes. Suspension or revocation shall remain in effect until the permit holder has taken measure to cure the reasons for the suspension to the satisfaction of the relevant Authority.

**Section 15: Registration of Brokers.** Consistent with operative clause 3(c) of UNSCR 1540 (2004) , any party who seeks to carry out a brokering of controlled items shall make an application to the relevant Authority who shall either grant registration, request additional information or documents, or refuse registration. Registration may be granted subject to specified conditions. The relevant Authority may suspend or revoke registration if the broker is non-compliant with this act, or the conditions of registration, or for reasons of national security. A suspension or revocation shall remain in force until the reason for the suspension or revocation is cured to the satisfaction of the relevant Authority.

**Section 16: Maintenance of Documents and Register.** A permit holder or registered broker under this Act is obligated to maintain comprehensive records in relation to the controlled item or restricted activities in electronic or hard copy format for a period of 5 years. Parties granted a permit or broker registration are required to assist in an investigation, or prosecution of a violation.

**Section 17: Registers.** The relevant Authority will maintain a register of permit holders and registered brokers which shall be available to the public for inspection, subject to conditions the deemed appropriate by the relevant Authority. This register shall be conclusive evidence in any dispute as to whether a party is a valid permit holder. A copy of any entry into the registers shall be given to any person requiring the copy upon payment of the prescribed fee.

**Section 18: Protection of Actions Taken in Good Faith and Without Negligence.** Consistent with existing legal norms, neither the Government of [State's name], including the relevant Authority, relevant Authority or any authorized officers, shall be subject to a suit or any other legal proceeding for acts done in good faith, not involving negligence, or done in furtherance of this Act.

**Section 19: Confidentiality of Information Obtained by Government Authorities.** Any document or information obtained pursuant to this Act is privileged and confidential, unless such information is otherwise made public. Information obtained may not be disclosed without written consent of the information provider, unless such information is necessary for the enforcement of the Act, or dealing with an emergency involving public safety.

**Section 20: Enforcement.** In accordance with operative clauses two and three of UNSCR 1540 (2004), authority provided under this Section shall be vested in the authorized officers of [State's name] who shall have the authority to consider reports of any offence, demand the production of any permit or document under this act, inspect certificates, investigate any offence under this Act, to prosecute any violation under this Act, and to examine or seize any controlled item or unlisted items relating to any offense. The relevant Authority may also collaborate with authorities of other nations for the enforcement of this act.

**Section 21: Violations and Penalties.** For individuals who fail to comply with this Act, the guilty individual shall pay a fine, or be imprisoned for a period not exceeding [] years. If an offence is committed by an entity, culpability shall extend to any person who, at the time of the offense, was a director, manager, secretary, or other similar officer of the entity, and such individuals may be punished with a fine, or imprisonment for a period not exceeding [] years.

**Section 22: Applicability of International Law.** In accordance with internationally accepted practices, any person against whom a proceeding is brought in this Act shall be granted fair

treatment, including all rights and guarantees provided by domestic or international law, including international human rights law, refugee law, and humanitarian law.

**Section 23: Relevant Authority.** This section, to be modified as appropriate by CARICOM states, should identify which relevant authorities will be in charge of the duties prescribed by the various sections of this Act.

# APPROVED 1540 COMMITTEE MATRIX OF [STATE]

*The information in the matrices originates primarily from national reports and is complemented by official government information, including that made available to inter-governmental organizations. The matrices are prepared under the direction of the 1540 Committee.*

*The 1540 Committee intends to use the matrices as a reference tool for facilitating technical assistance and to enable the Committee to continue to enhance its dialogue with States on their implementation of Security Council Resolution 1540.*

*The matrices are not a tool for measuring compliance of States in their non-proliferation obligations but for facilitating the implementation of Security Council Resolutions 1540 (2004), 1673 (2006), 1810 (2008) and 1977 (2011). They do not reflect or prejudice any ongoing discussions outside of the Committee, in the Security Council or any of its organs, of a State's compliance with its non-proliferation or any other obligations. Information on voluntary commitments is for reporting purpose only and does not constitute in any way a legal obligation arising from resolution 1540 or its successive resolutions.*

## OP 1 and related matters from OP 5, OP 6, OP 8 (a), (b), (c) and OP 10

State:  
Date

{State's name}  
(date)

Legally binding instruments, organizations, codes of conduct, arrangements, statements and other issues.		YES	if YES, relevant information (i.e. signing, accession, ratification, etc)	Remarks (information refers to the page of the English version of the national report or an official web site)
1	Nuclear Non-Proliferation Treaty (NPT)		(It is not a matter of the domestic law but rather a matter of each State's commitment of not supporting WMD proliferation by ratifying various international treaties listed on the left column. It depends on each CARICOM State)	
2	Nuclear Weapons Free Zone/ Protocol(s)			
3	Convention for the Suppression of Acts of Nuclear Terrorism			

4	Convention on Physical Protection of Nuclear Material (CPPNM)		
5	2005 Amendment to the CPPNM		
6	Comprehensive Nuclear-Test-Ban Treaty (CTBT) (not in force)		
7	Chemical Weapons Convention (CWC)		
8	Biological Weapons Convention (BWC)		
9	Geneva Protocol of 1925		
10	Other Conventions/Treaties		
11	International Atomic Energy Agency (IAEA)		
12	Hague Code of Conduct (HCOC)		
13	Other Arrangements		
14	General statement on non-possession of WMD		
15	General statement on commitment to disarmament and non-proliferation		
16	General statement on non-provision of WMD and related materials to non-State actors		
17	Other <sup>1</sup>		

1. Including, as appropriate, information with regard to membership in relevant international, regional or sub-regional organizations.

OP1. *Decides that* all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;



## OP 2 - Nuclear Weapons (NW), Chemical Weapons (CW) and Biological Weapons (BW)

Does national legislation exist which prohibits persons or entities to engage in one of the following activities ? Can violators be penalized ?		National legal framework					Enforcement: civil/criminal penalties and others			Remarks
		YES			if YES, source document of national implementation law	YES				
		N W	C W	B W		N W	C W	B W		
1	manufacture/produce	✓	✓	✓	Sec 8(1) : No person shall manufacture, acquire, possess, develop, transport, transfer, or use controlled items (including NW, CW, BW) without permit. Permit shall not be granted if the activity deems to be supportive of proliferation of WMDs: (Annex5).	✓	✓	✓	Sec 20: Enforcement power is provided to the relevant authorities. Sec 21: Fines and/or Imprisonment for noncompliance with the Act.	
2	acquire	✓	✓	✓	Same as above	✓	✓	✓	Same as above	
3	possess	✓	✓	✓	Same as above	✓	✓	✓	Same as above	
4	stockpile/store	✓	✓	✓	Same as above (Including in “possess”)	✓	✓	✓	Same as above	
5	develop	✓	✓	✓	Same as above	✓	✓	✓	Same as above	
6	transport	✓	✓	✓	Same as above	✓	✓	✓	Same as above	
7	transfer	✓	✓	✓	Same as above	✓	✓	✓	Same as above	
8	use	✓	✓	✓	Same as above	✓	✓	✓	Same as above	
9	participate as an accomplice in abovementioned activities	✓	✓	✓	Sec 8(2): No person shall attempt, accomplice, assist, or provide services relating to activities which are inconsistent with Sec 8(1).	✓	✓	✓	Same as above	
10	assist in	✓	✓	✓	Same as above	✓	✓	✓	Same as above	

	abovementioned activities								
11	finance abovementioned activities	✓	✓	✓	Same as above	✓	✓	✓	Same as above
12	abovementioned activities related to means of delivery <sup>2</sup>	✓	✓	✓	Same as above (“Controlled items” include means of delivery)	✓	✓	✓	Same as above
13	involvement of non-State actors in abovementioned activities	✓	✓	✓	Permit shall not be granted if the activity deems to be supportive of International terrorism: (Annex5). Also, authority may impose conditions in granting a permit, including the verification of end-use requirements. (Sec 13(1))	✓	✓	✓	Same as above
14	Other								

2. Means of delivery: missiles, rockets and other unmanned systems capable of delivering nuclear, chemical, or biological weapons, that are specially designed for such use.

OP2. *Decides also* that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

**OP 3 (a) and (b) - Account for/Secure/Physically protect NW, CW and BW, including Related Materials<sup>3</sup>**

**State:**  
**Date**

**{State's name}**  
**(date)**

Are any of the following measures, procedures or legislation in place to account for, secure or otherwise protect NW, CW, BW and Related Materials? Can violators be penalized ?		National legal framework			Enforcement: civil/criminal penalties and others			Remarks		
		YES			if YES, source document	YES			if YES, source document	
		N W	C W	B W *		N W	C W			B W
1	Measures to account for production	✓	✓	✓	Sec 8(1) : No person shall manufacture, acquire, possess, develop, transport, transfer, or use controlled items (including NW, CW, BW) without permit. Sec 16 & Annex 7: Anyone who is granted a permit shall maintain comprehensive records in relation to the permit and make these records available to the authorities.	✓	✓	✓	Sec20: Enforcement power is provided to the relevant authorities. Sec 21: Fines and/or Imprisonment for noncompliance with the Act.	
2	Measures to account for use	✓	✓	✓	Same as above.	✓	✓	✓	Same as above.	
3	Measures to account for storage	✓	✓	✓	Same as above. (including in possession)	✓	✓	✓	Same as above.	
4	Measures to account for transport	✓	✓	✓	Same as above.	✓	✓	✓	Same as above.	
5	Other measures for accounting									
6	Measures to secure production	✓	✓	✓	Sec 8(1) : No person shall manufacture, acquire, possess, develop, transport, transfer, or use controlled items (including NW, CW, BW) without permit. Sec 13(2) & Annex 5: Such permit shall be granted conditional on the applicant satisfying the certain safety standards and also specific	✓	✓	✓	Same as above.	

					condition on physical protection measure can be imposed on a permit.					
7	Measures to secure use	✓	✓	✓	Same as above.	✓	✓	✓	Same as above.	
8	Measures to secure storage	✓	✓	✓	Same as above.	✓	✓	✓	Same as above.	
9	Measures to secure transport	✓	✓	✓	Same as above.	✓	✓	✓	Same as above.	
10	Other measures for securing	✓	✓	✓	Same as above.	✓	✓	✓	Same as above.	
11	Regulations for physical protection of facilities/materials/transports	✓	✓	✓	Same as above.	✓	✓	✓	Same as above.	
12	Licensing/registration of installations/facilities/persons/entities/use/handling of materials	✓	✓	✓	Sec 8(1) & 9(1) : Require a permission for activities related to controlled items. Sec 12-14: Permission scheme. Sec 10: Require brokers to be registered. Sec 15: Registration scheme.	✓	✓	✓	Same as above.	
13	Reliability check of personnel	✓	✓	✓	Annex 5 1(2) & (3): Require an individual applicant and entity applicant certain qualifications including personnel background check by an entity.	✓	✓	✓	Same as above.	
14	Measures to account for/secure/ physically protect means of delivery	✓	✓	✓	Same as 6-11 ("Controlled items" include means of delivery)	✓	✓	✓	Same as above.	

3. Related materials: materials, equipment and technology covered by relevant multilateral treaties and arrangements, or included on national control lists, which could be used for the design, development, production or use of nuclear, chemical and biological weapons and their means of delivery.

\* Information required in this section may also be available in the State's Confidence Building Measures report, if submitted to the BWC Implementation Support Unit (online at: [http://www.unog.ch/80256EE600585943/\(httpPages\)/4FA4DA37A55C7966C12575780055D9E8?OpenDocument](http://www.unog.ch/80256EE600585943/(httpPages)/4FA4DA37A55C7966C12575780055D9E8?OpenDocument) )

OP3. *Decides also* that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials and to this end shall:

(a) Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport;

(b) Develop and maintain appropriate effective physical protection measures;

**OP 3 (a) and (b) - Account for/Secure/Physically protect NW including Related Materials (NW specific)**

State:  
Date

{State's name}  
(date)

Are any of the following measures, procedures or legislation in place to account for, secure or otherwise protect NW and Related Materials? Can violators be penalized ?		National legal framework		Enforcement: civil/criminal penalties and others		Remarks
		YES	if YES, source document	YES	if YES, source document	
1	National regulatory authority	✓	Sec 20: Enforcement power is provided to the relevant authorities. Sec 23: State should designate particular ministry or organization as an authority to implement the provisions under the Act.	NA		
2	IAEA Safeguards Agreements	UNSCR 1540 doesn't require Members to ratify or abide by specific IAEA agreements listed in the left column.  However, under the Act, State can incorporate safety and physical protection standards/measures in those agreements by specifying them as a requirement for granting a permit or imposing a specific measure as a condition for a permit under Annex 5 and Sec 13 (2).				
3	IAEA Code of Conduct on Safety and Security of Radioactive Sources					
4	Supplementary Guidance on the Import and Export of Radioactive Sources of the Code of Conduct on the Safety and Security of Radioactive Sources					
5	IAEA Database on Illicit Trafficking of Nuclear Materials and other Radioactive Sources					
6	Other Agreements related to IAEA					

7	Additional national legislation/regulations related to nuclear materials including CPPNM					
8	Other					

**OP 3 (a) and (b) - Account for/Secure/Physically protect CW including Related Materials (CW specific)**

State:  
Date

{State's name}  
(date)

Are any of the following measures, procedures or legislation in place to account for, secure or otherwise protect CW and Related Materials? Can violators be penalized ?		National legal framework		Enforcement: civil/criminal penalties and others		Remarks
		YES	if YES, source document	YES	if YES, source document	
1	National CWC authority		(It is not specifically required under the UNSCR 1540 and the Act doesn't address this.)	NA		
2	Reporting Schedule I, II and III chemicals to OPCW	(✓)	(Although it is not specifically required under the UNSCR 1540) State's authority can report Schedule 1,2 and 3 chemicals to OPCW by utilizing the information submitted by the permit applicant under Sec 12.	NA		
3	Account for, secure or physically protect "old chemical weapons"	(✓)	(Although It is not specifically required under the UNSCR 1540) If there are abandoned "old chemical weapons" in CARICOM State and somebody acquires, transports or uses them, it's inconsistent with Sec 8 and the relevant authority should discipline the violator.		Sec 20: Enforcement power is provided to the relevant authorities.  Sec 21: Fines and/or Imprisonment for noncompliance with the Act.	
4	Other legislation/ regulations controlling chemical materials					
5	Other					



**OP 3 (a) and (b) - Account for/Secure/Physically protect BW including Related Materials (BW specific)**

State:  
Date

{State's name}  
(date)

Are any of the following measures, procedures or legislation in place to account for, secure or otherwise protect BW and Related Materials? Can violators be penalized ?		National legal framework		Enforcement: civil/criminal penalties and others		Remarks
		YES	if YES, source document	YES	if YES, source document	
1	Regulations for genetic engineering work	(✓)	(It depends on what list each CARICOM State will create. For example, EU list, Australia Group list, South Africa list all include Genetic Elements and Genetically-modified Organisms)			
2	Other legislation/ regulations related to safety and security of biological materials					
3	Other					

**OP 3 (c) and (d) and related matters from OP 6 and OP 10 - Controls of NW, CW and BW, including Related Materials**

**State:**  
**Date**

**{State's name}**  
**(date)**

Which of the following legislation, procedures, measures, agencies exist to control border crossings, export/import and other transfers of NW, CW, BW and Related Materials ? Can violators be penalized ?		National legal framework			Enforcement: civil/criminal penalties, and measures of implementation, etc			Remarks	
		YES			if YES, source document	YES			
		N W	C W	B W		N W	C W		B W
1	Border control	✓	✓	✓	Sec 9(1) No person shall export, transit, transship, or re-export controlled items without permit. Sec 9 (2) & (3): End-user control applied to the trade measures.	✓	✓	✓	Sec 20: Enforcement power is provided to the relevant authorities. Sec 21: Fines and/or Imprisonment for noncompliance with the Act.
2	Technical support of border control measures								
3	Control of brokering, trading in, negotiating, otherwise assisting in sale of goods and technology	✓	✓	✓	Sec 10: Requiring brokers to be registered.	✓	✓	✓	Sec 20: Enforcement power is provided to the relevant authorities. Sec 21: Fines and/or Imprisonment for noncompliance with the Act.
4	Enforcement agencies/authorities	✓	✓	✓	Sec 20: Enforcement power is provided to the relevant authorities. Sec 23: Each State should designate particular ministry or organization as an authority to implement the provisions under the Act.	N A	N A	N A	
5	Export control legislation in place	✓	✓	✓	Sec 9(1) No person shall export, transit, transship, or re-export controlled items without permit. Sec 9 (2) & (3): End-user control applied to trade measures.	✓	✓	✓	Sec 20: Enforcement power is provided to the relevant authorities. Sec 21: Fines and/or Imprisonment for noncompliance with the Act.

6	Licensing provisions				Sec 12-14: Permission scheme. Sec 13(2) & Annex 5: Such permit shall be granted conditional on the applicant satisfying the certain standards and also specific conditions can be imposed on a permit.				Same as above.	
7	Individual licensing	✓	✓	✓		✓	✓	✓		
8	General licensing									
9	Exceptions from licensing	✓	✓	✓	Annex 5.5: Exemptions from permit are provided. (Further consideration needed)	N A	N A	N A		
10	Licensing of deemed export/visa	(✓)			(Although not specifically addressed in the Act, the same permission scheme under Sec 12-14 should be applied)					
11	National licensing authority	✓	✓	✓	Sec 20: Enforcement power is provided to the relevant authorities. Sec 23: Each State should designate particular ministry or organization as an authority to implement the provisions under the Act.	N A	N A	N A		
12	Interagency review for licenses	(✓)			Sec 13(7), Sec 14(3), and Sec15(10): The person aggrieved due to a denial of a permission or registration may appeal to the relevant authority. (Relevant authority can be multiple agencies depending on how the State designates the relevant authority under this section.)					
13	Control lists	✓	✓	✓	Sec 6 The relevant authority can make and amend a controlled items list.	N A	N A	N A		
14	Updating of lists	✓	✓	✓	Same as above.	N A	N A	N A		
15	Inclusion of technologies	✓	✓	✓	Sec 5 :“Controlled items” include technologies.	N A	N A	N A		
16	Inclusion of means of delivery	✓	✓	✓	Sec 5: “Controlled items” include means of delivery. (through the definition of WMDs)	N A	N A	N A		
17	End-user controls	✓	✓	✓	Sec 7: The relevant authority can make and amend a restricted and prohibited end-users list. Sec 13(2): A permit can be conditioned on the	✓	✓	✓	Sec 20: Enforcement power is provided to the relevant authorities. Sec 21: Fines and/or Imprisonment for	

				end-use requirements and the verification of such end-use requirement.				noncompliance with the Act.	
18	Catch all clause	✓	✓	✓	Sec 9(4): If a person is informed by the relevant authority or otherwise knows or has reason to believe that any unlisted item will be used for restricted activity under the Act, the person shall notify the relevant authority of his intention of taking action regarding that item and the relevant authority shall decide whether or not allow that transaction.	✓	✓	✓	Same as above.
19	Intangible transfers	(✓)			Sec 8 & Sec 9 The permission scheme is applied to technology transfer as “controlled items” include intangible item. Sec 5, Sec 8(2) & Sec 9(5): Transmission of technical data or technology is included in “provision of services.” Provision of services which is inconsistent with Sec 8(1) or 9(1)-(3) is prohibited.	✓	✓	✓	Same as above.
20	Transit control	✓	✓	✓	Sec 9(1) No person shall export, transit, transship, or re-export controlled items without permit. Sec 9(2) & (3): End-user control applied to trade measures.	✓	✓	✓	Sec 20: Enforcement power is provided to the relevant authorities. Sec 21: Fines and/or Imprisonment for noncompliance with the Act.
21	Trans-shipment control	✓	✓	✓	Same as above.	✓	✓	✓	Same as above.
22	Re-export control	✓	✓	✓	Same as above.	✓	✓	✓	Same as above.
23	Control of providing funds	✓	✓	✓	Sec 9(5): No person shall attempt, accomplice, assist, or provide services (including financing) to the activities inconsistent with the Act.	✓	✓	✓	Same as above.
24	Control of providing transport services	✓	✓	✓	Sec 9(5) : No person shall attempt, accomplice, assist, or provide services (including transport services) to the activities inconsistent with the Act.	✓	✓	✓	Same as above.
25	Control of importation	(✓)			(Although not specifically addressed in the Act,) As a person who acquires or possesses,	✓	✓	✓	Same as above.

				controlled items need to get a permit, the Authority can control acquisition of controlled items by import through the permission scheme.				
26	Extraterritorial applicability	✓	✓	✓	Sec 3 (1) (b), (e) and (f).	N A	N A	N A
27	Other							

(c) Develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law;

(d) Establish, develop, review and maintain appropriate effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls; and establishing and enforcing appropriate criminal

6. *Recognizes* the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists;

10. Further to counter that threat, *calls upon* all States, in accordance with their national legal authorities and legislation and consistent with international law, to take cooperative action to prevent illicit trafficking in nuclear, chemical or biological weapons, their means of delivery, and related materials;

## OP 6, 7 and 8 (d) - Control lists, Assistance, Information

State:

{State's name}

Date

(date)

Can information be provided on the following issues ?		YES		Remarks
1	Control lists - items (goods/ equipment/ materials/ technologies)	✓	Sec 6 & Annex 1: Relevant authority may prescribe any items as controlled items (including goods, materials and technology).	
2	Control lists - other			
3	Assistance offered		(Depending on a State)	
4	Assistance requested		(Depending on a State)	
5	Point of Contact for assistance	✓	Under Sec 23(2): State can designate a particular Ministry as a Primary Coordinating Authority, which will be responsible for an inter-agency coordination, including serving as the point of contact for assistance and developing appropriate ways to work with and inform industry and the public regarding their obligations.	
6	Assistance in place (bilateral/multilateral)		(Depending on the State)	
7	Work with and inform industry	✓	Under Sec 23(2): State can designate a particular Ministry as a Primary Coordinating Authority, which will be responsible for an inter-agency coordination, including serving as the point of contact for assistance and developing appropriate ways to work with and inform industry and the public regarding their obligations.	
8	Work with and inform the public	✓	Under Sec 23(2): State can designate a particular Ministry as a Primary Coordinating Authority, which will be responsible for an inter-agency coordination, including serving as the point of contact for assistance and developing appropriate ways to work with and inform industry and the public regarding their obligations.	
9	Point of Contact	✓	Under Sec 23(2): State can designate a particular Ministry as a Primary Coordinating Authority, which will be responsible for an inter-agency coordination, including serving as the point of contact for assistance and developing appropriate ways to work with and inform industry and the public regarding their obligations.	
10	Other <sup>4</sup>	-		

4. Information may include references to voluntary implementation national action plan and visits to States, at their invitation, by the 1540 Committee.

6. *Recognizes* the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists;

7. *Recognizes* that some States may require assistance in implementing the provisions of this resolution within their territories and invites States in a position to do so to offer assistance as appropriate in response to specific requests to the States lacking the legal and regulatory infrastructure, implementation experience and/or resources for fulfilling the above provisions;

8. *Calls upon* all States: (d) To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws;