

23. (1) A confiscation order made—

(a) by a magistrate's court, other than a regional court, shall have the effect of a civil judgment of that court;

(b) by a regional court shall have the effect of a civil judgment of the magistrate's court of the district in which the relevant trial took place.

(2) Where a High Court makes a confiscation order—

(a) the confiscation order shall have the effect of a civil judgment of that court; or

(b) the presiding judge may direct the registrar of that court to forward a certified copy of the confiscation order to the clerk of the magistrate's court designated by the presiding judge or, if no such court is designated, to the clerk of the magistrate's court within the area of jurisdiction of which the offence concerned was committed, and, on receipt of the said copy of the confiscation order the clerk of the magistrate's court concerned shall register the confiscation order whereupon it shall have the effect of a civil judgment of that magistrate's court.

Procedure where person absconds or dies

24. (1) If a court is satisfied that—

(a) (i) a person had been charged with an offence;

(ii) a person had been convicted of any offence;

(iii) a restraint order had been made against a person; or

(iv) there is sufficient evidence for putting a person on trial for an offence;

(b) a warrant for his or her arrest had been issued and that the attendance of that person in court could not be secured after all reasonable steps were taken to execute that warrant;

(c) the proceedings against him or her cannot be resumed within a period of six months due to his or her continued absence; and

(d) there are reasonable grounds to believe that a confiscation order would have been made against him or her were it not for his or her continued absence, the court may, on the application by the National Director, enquire into any benefit the person may have derived from that offence.

(2) (a) Whenever a defendant who has been convicted of an offence dies before a confiscation order is made, the court may, on the application by the National Director, enquire into any benefit the person may have derived from that offence if the court is satisfied that there are reasonable grounds to believe that a confiscation order would have been made against him or her were it not for his or her death.

(b) The executor of the estate of the deceased shall be entitled to appear before the court and make representations for purposes of the enquiry referred to in paragraph (a).

(3) The court conducting an enquiry under this section may—

(a) if the court finds that the person referred to in that subsection has so benefited, make a confiscation order and the provisions of this Part shall, with the necessary changes, apply to the making of such order;

(b) if a *curator bonis* has not been appointed in respect of any of the property concerned, appoint a *curator bonis* in respect of realisable property; and

- (c) authorise the realisation of the property concerned in terms of Part 4.
- (4) A court shall not exercise its powers under subsection (3)(a) and (c) unless it has afforded all persons having any interest in the property concerned an opportunity to make representations to it in connection with the making of such orders.
- (5) A court conducting an enquiry under subsection (2) shall not apply sections 21 and 22.
- (6) If a person, excluding a person contemplated in subsection (1)(a)(ii), against whom a confiscation order had been made under subsection (3) is subsequently tried and —
 - (a) convicted of one or other of the offences in respect of which the order had been made, the court convicting him or her may conduct an enquiry under section 20 and make an appropriate order;
 - (b) acquitted of the offence in respect of which the order had been made, the court acquitting him or her may make an appropriate order.

PART 3 RESTRAINT ORDERS

Cases in which restraint orders may be made

- 25.** (1) A High Court may exercise the powers conferred on it by section 23(1)—
- (a) when—
 - (i) a prosecution for an offence has been instituted against the defendant concerned;
 - (ii) either a confiscation order has been made against that defendant or it appears to the court that there are reasonable grounds for believing that a confiscation order may be made against that defendant; and
 - (iii) the proceedings against that defendant have not been concluded; or
 - (b) when—
 - (i) that court is satisfied that a person is to be charged with an offence; and
 - (ii) it appears to the court that there are reasonable grounds for believing that a confiscation order may be made against such person.
- (2) Where the High Court has made a restraint order under subsection (1)(b), that court shall rescind the restraint order if the relevant person is not charged within such period as the court may consider reasonable.

Restraint orders

- 26.** (1) The National Director may by way of an *ex parte* application apply to a competent High Court for an order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property to which the order relates.
- (2) A restraint order may be made—
- (a) in respect of such realisable property as may be specified in the restraint order and which is held by the person against whom the restraint order is being

made;

(b) in respect of all realisable property held by such person, whether it is specified in the restraint order or not;

(c) in respect of all property which, if it is transferred to such person after the making of the restraint order, would be realisable property.

(3) (a) A court to which an application is made in terms of subsection (1) may make a provisional restraint order having immediate effect and may simultaneously grant a rule nisi calling upon the defendant upon a day mentioned in the rule to appear and to show cause why the restraint order should not be made final.

(b) If the defendant has been absent during a period of 21 days from his or her usual place of residence and from his or her business (if any) within the Republic, the court may direct that it shall be sufficient service of that rule if a copy thereof is affixed to or near the outer door of the buildings where the court sits and published in the *Gazette*, or may direct some other mode of service.

(c) Upon application by the defendant, the court may anticipate the return day for the purpose of discharging the provisional restraint order if 24 hours' notice of such application has been given to the applicant contemplated in subsection (1).

(4) (a) A restraint order shall provide for notice to be given to persons affected by the order.

(b) Any person affected by a restraint order may at any time apply for the variation or rescission of the order.

(5) If it deems it necessary in the interests of justice, the High Court which made a restraint order—

(a) may at any time vary or rescind the restraint order; or

(b) shall rescind the restraint order if the proceedings against the defendant concerned are concluded.

(6) Without derogating from the generality of the powers conferred by subsection (1), a restraint order may make such provision as the High Court may think fit—

(a) for the reasonable living expenses of a person against whom the restraint order is being made and his or her family or household; and

(b) for the reasonable legal expenses of such person in connection with any proceedings instituted against him or her in terms of this Chapter or any criminal proceedings to which such proceedings may relate, if the court is satisfied that the person whose expenses must be provided for has disclosed under oath all his or her interests in property subject to a restraint order and that the person cannot meet the expenses concerned out of his or her unrestrained property.

(7) A High Court making a restraint order may also make such further order in respect of the discovery of any facts including facts relating to any property over which the defendant may have effective control and the location of such property as the court may consider necessary or expedient with a view to achieving the objects of the restraint order.

(8) A High Court making a restraint order may, when it makes the order or at any time thereafter, make any ancillary orders that the court considers appropriate for the proper, fair and effective execution of the order, including an order authorising the seizure of the property concerned by a police official.

(9) Property seized under subsection (8) shall be dealt with in accordance with the directions of the High Court which made the relevant preservation of property

order.

Seizure of property subject to restraint order

27. (1) In order to prevent any realisable property from being disposed of or removed contrary to a restraint order, any police official may seize any such property if he or she has reasonable grounds to believe that such property will be so disposed of or removed.

(2) Property seized under subsection (1) shall be dealt with in accordance with the directions of the High Court which made the relevant restraint order.

Appointment of *curator bonis* in respect of property subject to restraint order

28. (1) Where a High Court has made a restraint order, that court may at any time—

(a) appoint a *curator bonis* to do, subject to the directions of that court, any one or more of the following on behalf of the person against whom the restraint order has been made, namely—

(i) to perform any particular act in respect of any of or all the property to which the restraint order relates;

(ii) to take care of the said property;

(iii) to administer the said property; and

(iv) where the said property is a business or undertaking, to carry on, with due regard to any law which may be applicable, the business or undertaking;

(b) order the person against whom the restraint order has been made to surrender forthwith, or within such period as that court may determine, any property in respect of which a *curator bonis* has been appointed under paragraph (a), into the custody of that *curator bonis*.

(2) Any person affected by an order contemplated in subsection (1)(b) may at any time apply—

(a) for the variation or rescission of the order; or

(b) for the variation of the terms of the appointment of the *curator bonis* concerned or for the discharge of that *curator bonis*.

(3) The High Court which made an order contemplated in subsection (1)(b)—

(a) may at any time—

(i) vary or rescind the order; or

(ii) vary the terms of the appointment of the *curator bonis* concerned or discharge that *curator bonis*;

(b) shall rescind the order and discharge the *curator bonis* concerned if the relevant restraint order is rescinded;

(c) may make such order relating to the fees and expenditure of the *curator bonis* as it deems fit, including an order for the payment of the fees of the *curator bonis*—

(i) from the confiscated proceeds if a confiscation order is made; or

(ii) by the State if no confiscation order is made.

Orders in respect of immovable property subject to restraint order

29. (1) A High Court which has made a restraint order in respect of immovable property may at any time, with a view to ensuring the payment to the State—

(a) where a confiscation order has not been made, of an amount equal to the most recent value of the immovable property; or

(b) where a confiscation order has been made, of an amount not exceeding the amount payable under the confiscation order, order the registrar of deeds concerned to endorse any one or more of the restrictions contemplated in subsection (2) on the title deed of the immovable property.

(2) An order contemplated in subsection (1) may be made in respect of the following restrictions, namely—

(a) that the immovable property shall not without the consent of the High Court be mortgaged or otherwise encumbered;

(b) that the immovable property shall not without the consent of the High Court be attached or sold in execution; and

(c) that the immovable property shall not without the consent of the High Court—

(i) vest in the Master of the High Court or trustee concerned, as the case may be, when the estate of the owner of that immovable property is sequestrated; or

(ii) where the owner of that immovable property is a company or other juristic person which is being wound up, form part of the assets of such company or juristic person, if the owner of that immovable property has not made the payment referred to in that subsection to the State.

(3) In order to give effect to subsection (1), the registrar of deeds concerned shall—

(a) make the necessary entries in his or her registers and the necessary endorsement on the office copy of the title deed, and thereupon any such restriction shall be effective against all persons except, in the case of a restriction contemplated in subsection (2)(b), against any person in whose favour a mortgage bond or other charge was registered against the title deed of immovable property prior to the endorsement of the restriction on the title deed of the immovable property, but shall lapse on the transfer of ownership of the immovable property concerned;

(b) when the original of the title deed is produced to him or her, make the necessary endorsement thereon.

(4) Unless the High Court directs otherwise, the custody of immovable property on the title deed of which a restriction contemplated in subsection (2)(c) was endorsed shall vest as from the date on which—

(a) the estate of the owner of the immovable property is sequestrated; or

(b) where the owner of the immovable property is a company or other juristic person, such company or juristic person is being wound up, in the person in whom the said custody would have vested if such a restriction were not so endorsed.

(5) Where the High Court granted its consent in respect of a restriction contemplated in subsection (2)(c) and endorsed on the title deed of immovable property, the immovable property shall be deemed—

(a) if the estate of the owner of the immovable property was sequestrated, to have vested in the Master of the High Court or trustee concerned, as the case may be, as if such a restriction were not so endorsed; or

(b) if the owner of the immovable property is a company or other juristic person

which is being wound up, to have formed part of the assets of such company or juristic person as if such a restriction were not so endorsed.

(6) Any person affected by an order contemplated in subsection (1) may at any time apply for the rescission of the order.

(7) (a) The High Court which made an order contemplated in subsection (1)—

(i) may at any time rescind the order; and

(ii) shall rescind the order if the relevant restraint order is rescinded or the amount payment of which is ensured by the order has with the consent of that court been paid into court.

(b) If such order is rescinded, the High Court shall direct the registrar of deeds concerned to cancel any restriction endorsed by virtue of that order on the title deed of immovable property, and that registrar of deeds shall give effect to any such direction.

PART 4

REALISATION OF PROPERTY

Realisation of property

30. (1) A High Court may exercise the powers conferred upon it by subsection (2) when—

(a) a confiscation order has been made against the defendant concerned;

(b) such confiscation order is no longer subject to review or appeal; and

(c) the proceedings against that defendant have not been concluded.

(2) A High Court may, on the application of the National Director—

(a) if a *curator bonis* has not been appointed in respect of any of the property concerned, appoint a *curator bonis* in respect of realisable property;

(b) subject to subsection (3), authorise a *curator bonis* appointed under section 28(1)(a) or under paragraph (a) of this subsection, as the case may be, to realise any realisable property in such manner as that court may determine;

(c) order any person who holds realisable property to surrender the said property forthwith into the custody of a *curator bonis* appointed under section 28(1)(a) or under paragraph (a) of this subsection, as the case may be.

(3) A High Court shall not exercise its powers under subsection (2) (b) unless it has afforded all persons known to have any interest in the property concerned an opportunity to make representations to it in connection with the realisation of that property.

(4) If the court referred to in subsection (2) is satisfied that a person—

(a) is likely to be directly affected by the confiscation order; or

(b) has suffered damage to or loss of property or injury as a result of an offence or related criminal activity referred to in section 18(1) which was committed by the defendant, the court may allow that person to make representations in connection with the realisation of that property.

(5) If the court is satisfied that a person who has suffered damage to or loss of property or injury as a result of an offence or related criminal activity referred to in section 18(1) which was committed by the defendant—

(a) has instituted civil proceedings, or intends to institute such proceedings within a reasonable time, or

(b) has obtained a judgment against the defendant, in respect of that damage, loss or injury, the court may order that the *curator bonis* suspend the realisation of the whole or part of the realisable property concerned for the period that the court deems fit in order to satisfy such a claim or judgment and related legal expenses and may make such ancillary orders as it deems expedient.

(6) The *curator bonis* shall as soon as possible after—

(a) (i) the proceedings referred to in subsection (4)(a) have been disposed of; or

(ii) the judgment referred to in subsection (4) (b) has been satisfied, as the case may be; or

(b) the period determined under subsection (4) has expired, whichever occurs first, realise the realisable property concerned as contemplated in subsection (2).

Application of certain sums of money

31. (1) The following sums of money in the hands of a *curator bonis* appointed under this Chapter, namely—

(a) the proceeds of any realisable property realised by virtue of section 30; and

(b) any other sums of money, being property of the defendant concerned, shall, after such payment as the High Court may direct have been made out of such sums of money, be applied on that defendant's behalf in satisfaction of the confiscation order made against him or her: Provided that where the High Court may direct payment out of such sums of money, the State shall not have a preferential claim: Provided further that, if sums of money remain in the hands of the *curator bonis* after the amount payable under such confiscation order has been fully paid, the *curator bonis* shall distribute those sums of money—

(i) among such persons who held realisable property which has been realised by virtue of section 30; and

(ii) in such proportions, as that court may, after affording such persons an opportunity to make representations to it in connection with the distribution of those sums of money, direct.

(2) Without limiting the generality of subsection (1) such payment as the High Court may direct shall, for the purposes of that subsection, include any payment in respect of an obligation which was found to have priority in terms of section 20.

Functions of *curator bonis*

32. (1) Immediately after letters of curatorship have been granted to a *curator bonis* appointed under this Chapter, the *curator bonis* shall take into his or her custody all the property in respect of which he or she was appointed, as well as any book, record or other document in the possession or custody or under the control of any person referred to in section 30(1)(b) or 32(2)(c) which relates to the said property.

(2) Save as is otherwise provided in this Chapter, the provisions of the Administration of Estates Act, 1965 (Act 66 of 1965), shall with the necessary changes apply in respect of a *curator bonis* appointed under this Chapter.

Exercise of powers by High Court and *curator bonis*

- 33.** (1) The powers conferred upon a High Court by sections 26 to 31, or upon a *curator bonis* appointed under this Chapter, shall—
- (a) subject to paragraphs (b) and (c), be exercised with a view to making available the current value of realisable property for satisfying any confiscation order made or which might be made against the defendant;
 - (b) in the case of realisable property held by a person to whom that defendant has directly or indirectly made an affected gift, be exercised with a view to realising not more than the current value of such gift;
 - (c) be exercised with a view to allowing any person other than that defendant or the recipient of such gift to retain or recover the current value of any property held by him or her,
- and, except as provided in sections 20(1) and 26(6), any obligation of that defendant or the recipient of such gift which conflicts with the obligation to satisfy a confiscation order shall be left out of account.
- (2) The provisions of subsection (1) shall not be construed as prohibiting any High Court from making any additional order in respect of a debt owed to the State.

Variation of confiscation orders

- 34.** (1) If the High Court is satisfied that the realisable property is inadequate for the payment of the balance of the amount to be recovered under a confiscation order against the defendant concerned, that court may, on the application of that defendant, issue a certificate to that effect stating the reasons for the court being so satisfied.
- (2) For the purposes of subsection (1), the High Court may—
- (a) in the case of realisable property held—
 - (i) by a person whose estate has been sequestrated, take into account the extent to which the proceeds of property in that estate may be distributed among the creditors; or
 - (ii) by a company or other juristic person which is being wound up, take into account the extent to which the assets of such company or juristic person may be distributed among the creditors;
 - (b) leave out of account any inadequacy in the realisable property which is in the opinion of that court wholly or partly attributable to anything done by the defendant for the purpose of preserving any property held by a person to whom the defendant had directly or indirectly made an affected gift from the risk of any realisation in terms of this Chapter.
- (3) (a) If a certificate referred to in subsection (1) has been issued, the defendant may apply to the court which made the confiscation order against him or her for the reduction of the amount to be recovered under that confiscation order.
- (b) Such court or, if the judge or judicial officer concerned is not available, any judge or judicial officer of that court may substitute for the amount to be recovered under such confiscation order such lesser amount as that court may consider just in the circumstances of the case.

Effect of sequestration of estates on realisable property

35. (1) When the estate of a person who holds realisable property is sequestrated—

(a) the property for the time being subject to a restraint order made before the date of sequestration; and

(b) the proceeds of any realisable property realised by virtue of section 30 and for the time being in the hands of a *curator bonis* appointed under this Act, shall not vest in the Master of the High Court or trustee concerned, as the case may be.

(2) When the estate of a defendant who has directly or indirectly made an affected gift to any other person is sequestrated—

(a) no court shall set aside the disposition of such gift under section 27, 28 or 29 of the Insolvency Act, 1936 (Act No. 24 of 1936)—

(i) if a prosecution for an offence has been instituted against the defendant and the proceedings against him or her have not been concluded; or

(ii) if the property of such other person is subject to a restraint order;

(b) any court which sets aside any disposition contemplated in paragraph (a) after the conclusion of the proceedings against the defendant, shall take into account any realisation of the property of such other person in terms of this Chapter.

(3) Where the estate of an insolvent has been sequestrated, the powers conferred upon a High Court by sections 28 to 33 and 35(2) or upon a *curator bonis* appointed under this Chapter, shall not be exercised—

(a) in respect of any property which forms part of that estate; or

(b) in respect of any property which the trustee concerned is entitled to claim from the insolvent under section 23 of the Insolvency Act, 1936.

(4) Nothing in the Insolvency Act, 1936, shall be construed as prohibiting any High Court or *curator bonis* appointed under this Chapter from exercising any power contemplated in subsection (3) in respect of any property or proceeds mentioned in subsection (1).

Effect of winding-up of companies or other juristic persons on realisable property

36. (1) When any competent court has made an order for the winding-up of any company or other juristic person which holds realisable property or a resolution for the voluntary winding-up of any such company or juristic person has been registered in terms of any applicable law—

(a) no property for the time being subject to a restraint order made before the relevant time; and

(b) no proceeds of any realisable property realised by virtue of section 32 and for the time being in the hands of a *curator bonis* appointed under this Chapter, shall form part of the assets of any such company or juristic person.

(2) Where an order mentioned in subsection (1) has been made in respect of a company or other juristic person or a resolution mentioned in that subsection has been registered in respect of such company or juristic person, the powers conferred upon a High Court by sections 28 to 33 and 35(2) or upon a *curator bonis* appointed under this Chapter, shall not be exercised in respect of any property which forms part of the assets of such company or juristic person.

(3) Nothing in the Companies Act, 1973 (Act No. 61 of 1973), or any other law relating to juristic persons in general or any particular juristic person, shall be construed as prohibiting any High Court or *curator bonis* appointed under this Chapter from exercising any power contemplated in subsection (2) in respect of any property or proceeds mentioned in subsection (1).

(4) For the purposes of subsection (1), "the relevant time" means—

(a) where an order for the winding-up of the company or juristic person, as the case may be, has been made, the time of the presentation to the court concerned of the application for the winding-up; or

(b) where no such order has been made, the time of the registration of the resolution authorising the voluntary winding-up of the company or juristic person, as the case may be.

(5) The provisions of section 37(2) are with the necessary changes applicable to a company or juristic person who has directly or indirectly made an affected gift.

CHAPTER 6

PRESERVATION AND CIVIL RECOVERY OF PROPERTY

PART 1

PROCEEDINGS ARE CIVIL

Proceedings are civil, not criminal

37. (1) For the purposes of this Chapter all proceedings under this Chapter are civil proceedings, and are not criminal proceedings.

(2) The rules of evidence applicable in civil proceedings apply to proceedings under this Chapter.

(3) No rule of evidence applicable only in criminal proceedings shall apply to proceedings under this Chapter.

(4) No rule of construction applicable only in criminal proceedings shall apply to proceedings under this Chapter.

PART 2

PRESERVATION OF PROPERTY

Preservation of property orders

38. (1) The National Director may by way of an *ex parte* application apply to a High Court for an order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property.

(2) The High Court shall make an order referred to in subsection (1) if—

(a) **the application is supported by an affidavit of an authorised police [officer] official stating—**

(i) **that the said [officer] official suspects that the property referred to in the affidavit—**

(aa) **is [concerned in the commission or suspected commission] an**

instrumentality of an offence [which forms part of a pattern of illegal conduct] referred to in Schedule 1; or

(bb) is the proceeds of unlawful activities[,

whether within the Republic or elsewhere]; and

(ii) the facts on which that suspicion is based; and

(b) the court is satisfied that, having regard to the matters contained in that affidavit,] there are reasonable grounds to believe that [the facts referred to in subparagraphs (a)(i)(aa) and (bb) are true] the property concerned—

(i) is an instrumentality of an offence referred to in Schedule 1; or

(ii) is the proceeds of unlawful activities.

(3) The National Director may produce an affidavit of an authorised police official in support of an application under subsection (1) stating—

(a) that the said official suspects that the property referred to in the affidavit—

(i) is an instrumentality of an offence referred to in Schedule 1; or

(ii) is the proceeds of unlawful activities; and

(b) the facts on which that suspicion is based.

(4) A High Court making a preservation of property order may, when it makes the order or at any time thereafter, make any ancillary orders that the court considers appropriate for the proper, fair and effective execution of the order, including an order authorising the seizure of the property concerned by a police official.

(5) Property seized under subsection (3) shall be dealt with in accordance with the directions of the High Court which made the relevant preservation of property order.

Notice of preservation of property order

39. (1) If a High Court makes a preservation of property order, the National Director shall, as soon as practicable after the making of the order—

(a) give notice of the order to all persons known to the National Director to have an interest in property which is subject to the order; and

(b) publish a notice of the order in the *Gazette*.

(2) A notice under subsection (1)(a) shall be served in the manner in which a summons whereby civil proceedings in the High Court are commenced, is served.

(3) Any person who has an interest in the property which is subject to the preservation of property order may enter an appearance giving notice of his or her intention to oppose the making of a forfeiture order or to apply for an order excluding his or her interest in the property concerned from the operation thereof.

(4) An appearance under subsection (3) shall be delivered to the National Director within, in the case of—

(a) a person upon whom a notice has been served under subsection (1)(a), 14 days after such service; or

(b) any other person, 14 days after the date upon which a notice under subsection (1)(b) was published in the *Gazette*.

(5) An appearance under subsection (3) shall contain full particulars of the chosen address for the delivery of documents concerning further proceedings under this Chapter and shall be accompanied by an affidavit stating—

- (a) full particulars of the identity of the person entering the appearance;
- (b) the nature and extent of his or her **[right or title]** interest in the property concerned;
- (c) the basis of the defence upon which he or she intends to rely in opposing a forfeiture order or applying for the exclusion of his or her interests from the operation thereof; and
- (d) **full particulars of the chosen address for the delivery of documents concerning further proceedings under this Chapter].**

Duration of preservation of property orders

40. A preservation of property order shall expire 90 days after the date on which notice of the making of the order is published in the *Gazette* unless—

- (a) there is an application for a forfeiture order pending before the High Court in respect of the property, subject to the preservation of property order;
- (b) there is an unsatisfied forfeiture order in force in relation to the property subject to the preservation of property order; or
- (c) the order is rescinded before the expiry of that period.

Seizure of property subject to **[restraining] preservation order**

41. (1) In order to prevent property subject to a **[restraining]** preservation order from being disposed of or removed contrary to that order, any police official may seize any such property if he or she has reasonable grounds to believe that such property will be so disposed of or removed.

(2) Property seized under subsection (1) shall be dealt with in accordance with the directions of the High Court which made the relevant **[restraining]** preservation order.

Appointment of *curator bonis* in respect of property subject to preservation of property order

42. (1) Where a High Court has made a preservation of property order, the High Court may at any time—

(a) appoint a *curator bonis* to do, subject to the directions of that High Court, any one or more of the following on behalf of the person against whom the preservation of property order has been made, namely—

- (i) to assume control over the property;
- (ii) to take care of the said property;
- (iii) to administer the said property and to do any act necessary for that purpose; and

(iv) where the said property is a business or undertaking, to carry on, with due regard to any law which may be applicable, the business or undertaking;

(b) order any person holding property subject to the preservation of property order to surrender forthwith, or within such period as that Court may determine, any such property into the custody of the *curator bonis*.

(2) The High Court which made an order under subsection (1) may make such

order relating to the fees and expenditure of the *curator bonis* as it deems fit, including an order for the payment of the fees of the *curator bonis*—

- (a) from the forfeited proceeds if a forfeiture order is made; or
- (b) by the State if no forfeiture order is made.

Orders in respect of immovable property subject to preservation of property order

43. (1) A High Court which has made a preservation of property order in respect of immovable property may at any time, with a view to ensuring the effective execution of a subsequent order, order the registrar of deeds concerned to endorse any one or more of the restrictions referred to in subsection (2) on the title deed of the immovable property.

(2) An order under subsection (1) may be made in respect of the following restrictions, namely—

- (a) that the immovable property shall not without the consent of the High Court be mortgaged or otherwise encumbered;
- (b) that the immovable property shall not without the consent of the High Court be attached or sold in execution; and
- (c) that the immovable property shall not without the consent of the High Court—
 - (i) vest in the Master of the High Court or trustee concerned, as the case may be, when the estate of the owner of that immovable property is sequestered; or
 - (ii) where the owner of that immovable property is a company or other corporate body which is being wound up, form part of the assets of such company or corporate body.

(3) In order to give effect to subsection (1), the registrar of deeds concerned shall—

(a) make the necessary entries in his or her registers and the necessary endorsement on the office copy of the title deed, and thereupon any such restriction shall be effective against all persons except, in the case of a restriction contemplated in subsection (2)(b), against any person in whose favour a mortgage bond or other charge was registered against the title deed of immovable property prior to the endorsement of the restriction on the title deed of the immovable property, but shall lapse on the transfer of ownership of the immovable property concerned;

(b) when the original of the title deed is produced to him or her, make the necessary endorsement thereon.

(4) Unless the High Court directs otherwise, the custody of immovable property on the title deed of which a restriction contemplated in subsection (2)(c) was endorsed shall vest as from the date on which—

- (a) the estate of the owner of the immovable property is sequestered; or
- (b) where the owner of the immovable property is a company or other corporate body, such company or corporate body is being wound up, in the person in whom the said custody would have vested if such a restriction were not so endorsed.

(5) Where the High Court granted its consent in respect of a restriction contemplated in subsection (2)(c) and endorsed on the title deed of immovable

property, the immovable property shall be deemed—

- (a) if the estate of the owner of the immovable property was sequestrated, to have vested in the Master of the High Court or trustee concerned, as the case may be, as if such a restriction were not so endorsed; or
 - (b) if the owner of the immovable property is a company or other juristic person which is being wound up, to have formed part of the assets of such company or juristic person as if such a restriction were not so endorsed.
- (6) Any person affected by an order contemplated in subsection (1) may at any time apply for the rescission of the order.

Provision for expenses

44. (1) A preservation of property order may make provision as the High Court deems fit for—

- (a) reasonable living expenses of a person holding an interest in property subject to a preservation of property order and his or her family or household; and
- (b) reasonable legal expenses of such a person in connection with any proceedings instituted against him or her in terms of this Act or any other related criminal proceedings.

(2) A High Court shall not make provision for any expenses under subsection (1) unless it is satisfied that—

- (a) the person cannot meet the expenses concerned out of his or her unrestrained property; and
- (b) the person has disclosed under oath all his or her interests in the property and has submitted to that Court a sworn and full statement of all his or her assets and liabilities.

Maximum legal expenses that can be met from restrained property

45. (1) Despite provision in a preservation of property order for the meeting of legal expenses out of any property to which the order applies, a legal expense is not to be met out of that property to the extent that the amount payable for any legal service concerned exceeds any prescribed maximum allowable cost for that service.

(2) This section operates only to limit the amount of the legal expenses that a High Court may provide for under section 46 to be met out of property that is subject to a preservation of property order and does not limit or otherwise affect any entitlement of a legal practitioner to be paid or to recover for a legal service any amount that exceeds any applicable maximum.

Taxation of legal expenses

46. (1) If a High Court granting a preservation of property order makes provision for a person's reasonable legal expenses—

- (a) the National Director; or
 - (b) the *curator bonis*, may apply to the High Court for an order under this section.
- (2) The *curator bonis* or the National Director must give notice of an application under this section to the person concerned.

- (3) On an application under this section, the High Court must order that the expenses be taxed as provided in the order.
- (4) After an application is made for an order under this section, the *curator bonis* need not, unless ordered by the Court to do so, take any steps for the purpose of meeting the expenses as provided by the preservation of property order unless and until—
- (a) an order under this section in relation to the expenses is complied with; or
- (b) the application, and any appeal arising out of it, are finally determined, or otherwise disposed of, other than by the making of such an order.

Variation and rescission of orders

47. (1) (a) Any person affected by a preservation of property order may at any time apply for the variation or rescission of the order.
- (b) A High Court which made a preservation of property order—
- (i) may at any time vary or rescind the preservation of property order if it deems it necessary in the interests of justice; or
- (ii) shall rescind the preservation of property order if the proceedings against the defendant concerned are concluded.
- (2) (a) Any person affected by an order for the appointment of a *curator bonis* may at any time apply—
- (i) for the variation or rescission of the order;
- (ii) for the variation of the terms of the appointment of the *curator bonis* concerned; or
- (iii) for the discharge of the *curator bonis*.
- (b) A High Court which made an order for the appointment of a *curator bonis*—
- (i) may, if it deems it necessary in the interests of justice, at any time—
- (aa) vary or rescind the order;
- (bb) vary the terms of the appointment of the *curator bonis* concerned; or
- (cc) discharge that *curator bonis*;
- (ii) shall rescind the order and discharge the *curator bonis* concerned if the relevant preservation of property order is rescinded.
- (3) (a) Any person affected by an order in respect of immovable property may at any time apply for the rescission of the order.
- (b) A High Court which made an order in respect of immovable property—
- (i) may, if it deems it necessary in the interests of justice, at any time rescind the order; or
- (ii) shall rescind the order if the relevant preservation of property order is rescinded.
- (c) If an order in respect of immovable property is rescinded, the High Court shall direct the registrar of deeds concerned to cancel any restriction endorsed by virtue of that order on the title deed of immovable property, and that registrar of deeds shall give effect to any such direction.

PART 3 RECOVERY OF PROPERTY