

## **Application for forfeiture order**

**48.** (1) If a preservation of property order is in force the National Director, may apply to a High Court for an order forfeiting to the State all or any of the property that is subject to the preservation of property order.

(2) The National Director shall give 14 days notice of an application under subsection (1) to every person who entered an appearance in terms of section 42(3).

### **Option for new subsection (3) in relation to default order**

(3) A notice under subsection (2) 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 entered an appearance in terms of section 41(3) may appear at the application under subsection (1)—

(a) to oppose the making of the order; or

(b) to apply for an order—

(i) excluding his or her interest in that property from the operation of the order; or

(ii) varying the operation of the order in respect of that property,

and may adduce evidence at the hearing of the application.

**[(4) Any person who, for any reason, did not enter an appearance in terms of section 42(3) may appear at the application under subsection (1) on good cause shown for the purposes stated in subsection (3).]**

## **Late entry of appearance**

**49.** (1) Any person who, for any reason, did not enter an appearance in terms of section 41(3) may apply to the High Court for leave to enter such an appearance.

(2) An application in terms of subsection (1) may be made before or after the date on which an application for a forfeiture order is made under section 50(1), but shall be made before judgment is given in respect of such an application for a forfeiture order.

(3) The High Court may grant a person referred to in subsection (1) leave to enter an appearance in terms of section 41(3) within the period which the Court deems appropriate, if the Court is satisfied on good cause shown that such person has an interest in the property which is subject to the preservation of property order.

(4) An appearance entered after leave has been obtained under this section shall contain full particulars of the chosen address of the person who enters such appearance for the delivery of documents concerning further proceedings under this Chapter and shall be accompanied by an affidavit referred to in section 41(5).

(5) A person who enters an appearance in terms of this section may appear at the proceedings of an application for a forfeiture order—

(a) to oppose the making of the order; or

(b) to apply for an order—

(i) excluding his or her interest in that property from the operation of the order; or

(ii) varying the operation of the order in respect of that property,

and may adduce evidence at the hearing of the application.

## Making of forfeiture order

50. (1) The High Court shall, subject to section 54 make an order applied for under section 50(1) if the Court finds on a balance of probabilities that the property concerned—
- (a) is an instrumentality of an offence referred to in Schedule 1; or
  - (b) is the proceeds of unlawful activities.
- (2) The High Court may, when it makes a forfeiture order or at any time thereafter, make any ancillary orders that it considers appropriate, including orders for and with respect to facilitating the transfer to the State of property forfeited to the State under such an order.
- (3) The absence of a person whose interest in property may be affected by a forfeiture order does not prevent the High Court from making the order.
- (4) The **[setting aside of a conviction for an offence referred to in Schedule 1 does not affect the ]**validity of an order under subsection (1) **[that was made before or after the conviction was set aside and was based on that offence]** is not affected by the outcome of criminal proceedings, or of an investigation with a view to institute such proceedings, in respect of an offence with which the property concerned is in some way associated.
- (5) The Registrar of the Court making a forfeiture order must publish a notice **[of the making of the order]** thereof in the *Gazette* as soon as practicable after the order is made.
- (6) A forfeiture order shall not take effect—
- (a) before the period allowed for an application under section 55 or an appeal under section 58 has expired; or
  - (b) before such an application or appeal has been disposed of.

## Notice of suspicion concerning property

51. (1) The National Director may apply to a judge in chambers or a magistrate for an order notifying a person having an interest in or control over property that there are reasonable grounds to believe that such property is an instrumentality of an offence referred to in Schedule 1.
- (2) The judge or magistrate shall make an order referred to in subsection (1) if—
- (a) **the application is supported by an affidavit of an authorised police official stating—**
    - (i) **that the said official suspects that the property referred to in the affidavit is [concerned in the commission or suspected commission of an offence which forms part of a pattern of illegal conduct] an instrumentality of an offence referred to in Schedule 1; and**
    - (ii) **the facts on which that suspicion is based; and**
  - (b) **the judge or magistrate 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) and (ii) are true] the property concerned is an instrumentality of an offence referred to in Schedule 1.**
- (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 is an instrumentality of an offence referred to in Schedule 1; and

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

[(3)](4) When a judge or magistrate makes an order under subsection (1) the registrar of the division of the High Court or clerk of the Magistrate's Court for the district concerned shall issue a notice in the prescribed form to the person referred to in the order, informing him or her that **[a reasonable suspicion exists]** there are reasonable grounds to believe that property in which he or she has an interest or over which he or she has control, is an instrumentality of an offence referred to in Schedule 1.

[(4)](5) A notice issued under subsection (3) shall be served on the person concerned in the manner in which a summons whereby civil proceedings in the High Court are commenced is served.

### **Exclusion of interests in property**

52. (1) The High Court may, on application under section 50(3) or 51(5) and when it makes a forfeiture order, make an order excluding certain interests in property which is subject to the order, from the operation thereof.

(2) The High Court may make an order under subsection (1) if it finds on a balance of probabilities that the applicant for such an order—

(a) had acquired the interest concerned **[was not acquired illegally]** legally; and

(b) **[the person holding that interest]** did not know or did not have reasonable grounds to suspect that the property in which the interest is held—

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

(ii) is the proceeds of unlawful activities.

(3) (a) If, [in an application] an applicant for an order under subsection (1) adduces evidence to show that he or she did not know or did not have reasonable grounds to suspect that the property in which the interest is held, is an instrumentality of an offence referred to in Schedule 1 the State may submit a return of the service on the applicant of a notice issued under section 54(3) **[as evidence that on a balance of probabilities the applicant knew or had reasonable grounds to suspect that at any time since the date of such service the property in which the interest is held had been an instrumentality of an offence referred to in Schedule 1]** in rebuttal of that evidence in respect of the period since the date of such service.

(b) If the State submits a return of the service on the applicant of a notice issued under section 53(3) as contemplated in paragraph (a), the applicant for an order under subsection (1) must, in addition to the facts referred to in subsection (2)(a) and (2)(b)(i), also prove on a balance of probabilities that, since such service, he or she has taken all reasonable steps to prevent the future use of the property concerned as an instrumentality of an offence referred to in Schedule 1.

(4) A High Court making an order for the exclusion of an interest in property under subsection (1) may, in the interest of the administration of justice or in the public interest, make that order upon the conditions that the Court deems



appropriate including a condition requiring the person who applied for the exclusion to take all reasonable steps, within a period that the Court may determine, to prevent the future use of the property **[in illegal conduct]** as an instrumentality of an offence referred to in Schedule 1.

#### **Option 1**

##### **[Forfeiture order by default**

**52. (1) If no person appears on the date upon which an application under section 54(1) is to be heard—**

- (a) to oppose the making of the order; or**
- (b) to apply for an order excluding his or her interest in that property from the operation of the order,**

**the National Director may file a written application with the registrar for a forfeiture order under section 55(1).**

**(2) The registrar may upon an application under subsection (1)—**

- (a) grant a forfeiture order as requested;**
- (b) refuse judgment wholly or in part;**
- (c) postpone the application for a forfeiture order on such terms as he or she may consider just;**
- (d) request or receive oral or written submissions;**
- (e) require that the matter be set down for hearing in court.**

**(3) The registrar shall record any judgment granted or direction given by him or her.**

**(4) Any person whose interest in the property concerned is affected by the forfeiture order or other direction given by the registrar may, within 20 days after he or she has acquired knowledge of such order or direction, set the matter down for variation or rescission by the court.**

**(5) The court may, upon good cause shown, vary or rescind the default order or give some other direction on such terms as it deems appropriate.]**

#### **Option 2**

##### **Forfeiture order by default**

**53. (1) If no person appears on the date upon which an application under section 50(1) is to be heard—**

- (a) to oppose the making of the order; or**
- (b) to apply for an order—**
  - (i) excluding his or her interest in that property from the operation of the order; or**
  - (ii) varying the operation of the order in respect of that property,**

**the National Director may file a written application with the registrar for a forfeiture order under section 50(1).**

**(2) The registrar may upon an application under subsection (1)—**

- (a) grant a forfeiture order as requested;**
- [(b) refuse judgment wholly or in part;**

- (c) postpone the application for a forfeiture order on such terms as he or she may consider just;
- (d) request or receive oral or written submissions;] or
- (e) require that the matter be set down for hearing in court.
- (3) The registrar shall record any judgment granted or direction given by him or her.
- (4) Any person whose interest in the property concerned is affected by the forfeiture order or other direction given by the registrar may, within 20 days after he or she has acquired knowledge of such order or direction, set the matter down for variation or rescission by the court.
- (5) The court may, upon good cause shown, vary or rescind the default order or give some other direction on such terms as it deems appropriate.

### **Option 3**

#### **Forfeiture order by default**

- 53. (1) If [no person appears on the date upon which an application under section 54(1) is to be heard]—**
- (a) no person appears on the date upon which an application under section 50(1) is to be heard—
    - (i) to oppose the making of the order; or
    - (ii) to apply for an order—
      - (aa) excluding his or her interest in that property from the operation of the order; or
      - (bb) varying the operation of the order in respect of that property, and
  - (b) the High court is satisfied, on the grounds of sufficient proof or otherwise, that all persons who entered appearances in terms of section 41(3) have knowledge of notices given under section 50(2),  
the Court may, on application by the National Director, [may file a written application with the registrar for a forfeiture order under section 55(1)] call upon the National Director to adduce such evidence, either in writing or orally, in support of his or her application as the Court may consider necessary.
  - (2) **[The registrar may upon an application under subsection (1)—**
    - (a) grant a forfeiture order as requested;
    - (b) refuse judgment wholly or in part;
    - (c) postpone the application for a forfeiture order on such terms as he or she may consider just;
    - (d) request or receive oral or written submissions;
    - (e) require that the matter be set down for hearing in court.] After consideration of the evidence the Court may—
      - (a) make any order by default which the Court could have made under sections 52(1) and (2);
      - (b) make such order as the Court may consider appropriate in the circumstances;  
or
      - (c) make no order.
  - [(3) The registrar shall record any judgment granted or direction given by him or her.]**

**[(4)](3)** Any person whose interest in the property concerned is affected by the forfeiture order or other **[direction given by the registrar]** order made by the Court under subsection (2) may, within 20 days after he or she has acquired knowledge of such order or direction, set the matter down for variation or rescission by the court.

(5) The court may, upon good cause shown, vary or rescind the default order or give some other direction on such terms as it deems appropriate.

### **Exclusion of interests in forfeited property**

**54.** (1) Any person affected by a forfeiture order who was entitled to receive notice of the application for the order under section 52(2), but did not receive such notice, may, within 60 days after the notice of the making thereof is published in the *Gazette*, apply for an order excluding his or her interest in the property concerned from the operation of the order.

(2) The application shall be accompanied by an affidavit setting forth—

(a) the nature and extent of the applicant's right, title or interest in the property concerned;

(b) the time and circumstances of the applicant's acquisition of the right, title, or interest in the property;

(c) any additional facts supporting the application; and

(d) the relief sought.

(3) The hearing of the application shall, to the extent practicable and consistent with the interests of justice be held within 30 days of the filing of the application.

(4) The High Court may consolidate the hearing of the application with a hearing of any other application filed by a person under this section.

(5) At the hearing, the applicant may testify and present evidence and witnesses on his or her own behalf, and may cross-examine any witness who appears at the hearing.

(6) The National Director or the *curator bonis* concerned, or a person authorised in writing thereto by them, may present evidence and witnesses in rebuttal and in defence of their claim to the property and may cross-examine a witness who appears at the hearing.

(7) In addition to the testimony and evidence presented at the hearing, the High Court may, upon application by the National Director or the *curator bonis* concerned, or a person authorised in writing thereto by them, order that the testimony of any witness relating to the property forfeited, be taken by commission and that any book, paper, document, record, recording, or other material not privileged be produced at the taking down of such testimony by commission.

(8) The High Court may upon an application under subsection (1), make an order excluding certain interests in property from the operation of a forfeiture order if it finds on a balance of probabilities that—

(a) the interest concerned was not acquired illegally; and

(b) the person holding that interest did not know or did not have reasonable grounds to suspect that the property in which the interest is held—

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

(ii) is the proceeds of unlawful activities.

(9) (a) When a person who testifies under this section—



- (i) fails to answer fully and to the best of his or her ability any question lawfully put to him or her; or
- (ii) gives false evidence knowing that evidence to be false or not believing it to be true,
- he or she shall be guilty of an offence.
- (b) When a person who furnishes an affidavit under subsection (2) makes a false statement in the affidavit knowing that statement to be false or not believing it to be true, he or she shall be guilty of an offence.
- (c) A person convicted of an offence under this subsection shall be liable to the penalty prescribed by law for perjury.
- Alternative to clause 59:

### **Appeal against forfeiture order**

- 55.** (1) Any person affected by a forfeiture order who appeared at the hearing of the application for a forfeiture order under section 50 may, within 30 days after the making thereof, appeal against such order.
- (2) Any person affected by a forfeiture order who appeared at the hearing of an application for the exclusion of interests in forfeited property under section 56 may, within 30 days after such application is dismissed, appeal against such dismissal.
- (3) On appeal such court may make such order in the matter as it deems fit.
- (4) The provisions of the Supreme Court Act, 1959 (Act No. 59 of 1959), and the rules made under section 43 of that Act shall, with the necessary changes, apply to an appeal made in terms of this section.

### **Effect of forfeiture order**

**56.** (1) Where a High Court has made a forfeiture order and a *curator bonis* has not been appointed in respect of any of the property concerned, the High Court may appoint a *curator bonis* to perform any of the functions referred to in section 59 in respect of such property.

**[(1)](2)** On the date when a forfeiture order takes effect the property subject to the order is forfeited to the State and vests in the *curator bonis* on behalf of the State.

**[(2)](3)** Upon a forfeiture order taking effect the *curator bonis* may take possession of that property on behalf of the State from any person in possession, or entitled to possession, of the property.

### **Fulfilment of forfeiture order**

**57.** (1) The *curator bonis* must, subject to any order for the exclusion of interests in forfeited property under section 54(2)(a) or 56(8) dispose of property forfeited under section 56 by sale or any other means subject to the directions of the High Court.

(2) Any right or interest in forfeited property not exercisable by or transferable to the State, shall expire and shall not revert to the person who has possession, or was

## **Procedure and rules of court**

**62.** (1) The Rules Board for Courts of Law referred to in section 1 of the Rules Board for Courts of Law Act, 1985 (Act No. 107 of 1985), shall, in consultation with the Minister and after consultation with the National Director, with due regard to the purpose of this Act make rules for—

- (a) the High Court regulating the proceedings contemplated in Chapters 5 and 6;
- (b) the magistrate's court regulating the proceedings referred to in section 53.

(2) In the absence of such rules the provisions of the Supreme Court, 1959 (Act No. 59 of 1959), and the rules made under section 43 of that Act and the provisions of the Magistrate's Court Act, 1944 (Act No. 32 of 1944), and the rules made under section 6 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), as the case may be, shall, with the necessary changes, apply in relation to proceedings in terms of such hearing except in so far as those rules are inconsistent with procedures prescribed in this Chapter.

## **[Offence**

**66.** Any person who hinders a *curator bonis*, a police official or any other person in the exercise, performance or carrying out of his or her powers, functions or duties under this Chapter, shall be guilty of an offence and an conviction liable to a fine or to imprisonment for a period not exceeding two years.]

## **CHAPTER 7**

### **CRIMINAL ASSETS RECOVERY FUND/ACCOUNT**

#### **Establishment of Criminal Assets Recovery Fund/Account**

**63.** There is hereby established in the National Revenue Fund a separate account to be known as the Criminal Assets Recovery Fund/Account.

#### **Finances of the Fund/Account**

**64.** The Fund/Account shall consist of—

- (a) all moneys derived from the execution of confiscation and forfeiture orders contemplated in Chapters 5 and 6;
- (b) the balance of all moneys derived from the execution of foreign confiscation orders as defined in the International Co-Operation in Criminal Matters Act, 1996 (Act No. 75 of 1996), after payments have been made to requesting States in terms of that Act;
- (c) any moneys appropriate by Parliament;
- (d) domestic and foreign grants;
- (e) any amount of money received or acquired from any source; and
- (f) all moneys transferred to the Fund/Account in terms of this Act.

#### **Establishment of Committee**



**65.** (1) There is hereby established a Committee to be known as the Criminal Assets Recovery Committee.

(2) The Committee shall consist of—

(a) the Minister, who shall be the chairperson of the Committee;

(b) the Minister of Safety and Security;

(c) the Minister of Finance;

**[(d) the Minister of Correctional Services;]**

(e) the National Director;

(f) if necessary, two other persons designated by the Minister; and

(g) one other person designated by the Minister of Finance.

(3) The members of the Committee referred to in paragraphs (b), (c), (d), and (e) may designate an alternate to attend a meeting of the Committee in their place.

(4) The Committee shall designate one of the members referred to in paragraphs (b), (c) or (d) as deputy chairperson of the Committee, and when the chairperson is not available, the deputy chairperson shall act as chairperson.

#### **Conditions of service, remuneration, allowances and other benefits of members of Committee**

**67.** The members of the Committee appointed in terms of section 67(2)(f) and (g) shall, if appropriate, receive such remuneration, allowances and other employment benefits and shall be appointed on such terms and conditions and for such periods as may be prescribed.

#### **Meetings, proceedings at and quorum of meetings of Committee**

**68.** (1) A meeting of the Committee shall be held at a time and place determined by the chairperson.

(2) The procedure, including the manner in which decisions shall be taken, to be followed at meetings of the Committee and the manner in which the Committee shall conduct its affairs shall be determined by the Committee, but decisions of the Committee must be supported by a majority of its members.

#### **Objects of Committee**

**69.** The objects of the Committee shall be—

(a) to advise Cabinet in connection with the rendering of financial assistance to law enforcement agencies in order to combat organised crime, money laundering, criminal gang activities and crime in general; and

(b) to advise Cabinet in connection with the rendering of financial assistance to any other institution, organisation or fund established with the object to render assistance in any manner to victims of crime.

#### **Powers and Functions of Committee**

**70.** The Committee may—

entitled to possession, of the property immediately before the forfeiture order took effect.

(3) No person who has possession, or was entitled to possession, of forfeited property immediately before the forfeiture order took effect, or any person acting in concert with, or on behalf of that person, shall be eligible to purchase forfeited property at any sale held by the *curator bonis*.

(4) The *curator bonis* shall deposit into the Criminal Assets Recovery Account/Fund any proceeds of any sale or disposition of forfeited property and any moneys forfeited.

(5) The expenses incurred in connection with the forfeiture and the sale, including expenses of seizure, maintenance and custody of the property pending its disposition, advertising and court costs shall be defrayed out of moneys appropriated by Parliament for that purpose.

#### **PART 4**

### **GENERAL PROVISIONS RELATING TO PRESERVATION AND RECOVERY OF PROPERTY**

#### **Offence may form the basis of multiple orders**

58. The fact that a preservation of property order or a forfeiture order has been made on the basis of an offence referred to in Schedule 1 in which a specific person has been involved does not prevent the making of another or other preservation of property orders or forfeiture orders on the basis of the **[conduct] offence referred to in Schedule 1.**

**[(2) The Court may hear evidence that may show that the defendant is involved in a pattern of illegal conduct/ racketeering activity, notwithstanding that such evidence might otherwise be inadmissible, provided that such evidence would not render a trial unfair.]**

#### **[Access to information**

58. (1) Any person or institution shall, notwithstanding anything to the contrary contained in any law or contrary to any agreement, custom or practice, which prohibits or precludes him, her or it—

(a) from disclosing any information relating to the activities, affairs or business of any other person; or

(b) from permitting any person to have access to any registers, records or other documents, or electronic data which have a bearing on the said activities, affairs or business,

disclose and furnish, or grant access to the National Director all information which such Director or authorised person may consider necessary for any investigation in terms of this Act, and permit such Director or authorised person to have access to any registers, records, documents, and electronic data, which in the opinion of such Director or authorised person, may be relevant to such investigation: Provided that this subsection shall not apply

when an obligation of secrecy or restriction is based on the common law right to professional privilege between an attorney and his or her client in respect of information communicated to the attorney so as to enable him or her to provide advice, to defend or to render other legal assistance to the client in connection with an offence under any law, of which the client is charged, in respect of which he or she has been arrested or summoned to appear in court or in respect of which an investigation with a view to instituting criminal proceedings is being conducted against him or her.

(2) The provisions of subsection (1) shall not be construed as prohibiting any Minister by whom or any other departmental or institutional authority by which, or under the control of whom or which, any law referred to in that subsection is administered, or any board, institution or body established by or under any such law, from making any practical and reasonable procedural arrangements with regard to the furnishing of such information or the granting of the access contemplated in that subsection and according to which the information or access shall be furnished or granted or with regard to any reasonable safeguards which any such Minister, authority, board, institution, body or person, subject to the provisions of subsection (4), requires to maintain the confidentiality of such information, registers, records, documents or electronic data.

(3) Any person or institution who or which, without just cause shown by him, her or it, refuses, fails or neglects to—

(a) disclose, furnish, produce or make available any information, registers, records, documents or electronic data or permit any access thereto;

(b) reply to or answer truly and fully to any questions put to him or her by any Director or authorised person referred to in subsection (1), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 2 years.

(4) (a) No person shall without the (written) permission of the National Director, Investigating Director or Director disclose to any other person any confidential information, registers, records, documents or electronic data which came to his or her knowledge in the performance of his or her functions in terms of this Act and relating to the activities, affairs or business of any other person, except—

(i) for the purpose of performing his or her functions in terms of this Act;

(ii) in any criminal proceedings or proceedings in terms of this Act; or

(iii) when required to do so by an order of a court of law.

(b) Any person who contravenes paragraph (a) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 2 years.

## Investigations

59. Whenever the National Director has reason to believe that any person may be in possession of information relevant to the commission or intended commission of such alleged offences, or any person or enterprise may be in



possession, custody or control of any documentary material relevant to such alleged offences, he or she may, prior to the institution of any civil or criminal proceeding, under written authority direct that a particular Director of Public Prosecutions shall have, in respect of a specific investigation, [institution] the power to institute an investigation in terms of the provisions of Chapter 5 of the National Prosecuting Authority Act, 1998.

### Sharing of information

60. Notwithstanding the provisions of section 4 of the Income Tax Act and with regard to any other secrecy provision in similar legislation, whenever any investigation is instituted in terms of this Act, including an investigation into any offence referred to in Schedule 2, and an investigation into the property, financial activities, affairs or business of any person, the Commissioner of the South African Revenue Services or any official designated by him or her for this purpose, shall be notified of such investigation with a view to mutual co-operation and the sharing of information.]

### Application of Chapter to deceased persons

59. (1) Any notice authorised or required to be given to a person under this Chapter is, in the case of a deceased person, sufficiently given to the **[person's legal representative]** executor of that person's estate.

(2) A reference in this Chapter to property **[or an interest in property]** of a person is, in the case of a person who is deceased, a reference to property **[or an interest in property]** that the person **[had]** held immediately before **[death]** his or her demise.

(3) An order may be applied for and made under this Chapter—

(a) in respect of **[a person's]** property **[or interest in property even if the person is deceased]** which forms part of a deceased estate; and

(b) on **[the basis of]** evidence adduced concerning the activities of a person who is deceased.

### Effect of death of joint owner of restrained property

60. (1) If a person has an interest in property as joint owner of the property, the person's death after a preservation of property order is made in respect of the interest does not (while the order is in force) operate to vest the interest in the surviving joint owner or owners and the preservation of property order continues to apply to the interest as if the person had not died.

(2) A forfeiture order made in respect of that interest applies as if the order took effect in relation to the interest immediately before the person died.

(3) Subsection (1) does not apply to an interest in property if a preservation of property order ceases to apply to that interest without a forfeiture order being made in respect of that interest.

## **Expedition of actions**

**61.** (a) In any application instituted under this Chapter by the State, the National Director may file with the Registrar of the High Court concerned a certificate stating that in his or her opinion the case is of general public importance.

(b) A copy of that certificate shall be furnished immediately by such Registrar to the Judge President of the High Court concerned or in his or her absence to the Acting Judge President or the Deputy Judge President of that Court.

(c) Upon receipt of such copy, such Judge President, Acting Judge President or Deputy Judge President, as the case may be, shall designate immediately a judge of that Division of the High Court to hear and determine the application.

## **[Hearings of court to be open to public**

**64.** (1) (a) Subject to the provisions of this section, the hearings of the court contemplated in this Act, except for *ex parte* applications, shall be open to the public.

(b) If the High Court, in any proceedings before it, is satisfied that—

(i) it would be in the interest of justice; or

(ii) there is a likelihood that harm may ensue to any person as a result of the proceedings being open,

it may direct that such proceedings be held behind closed doors and that the public or any category thereof shall not be present at such proceedings or any part thereof.

(c) An application for proceedings to be held behind closed doors may be brought by the National Director or the Director or a person authorised thereto by the National Director or the Director concerned, the *curator bonis* referred to in section 32 or 48 and any other person referred to in paragraph (b)(ii), and such application shall be heard behind closed doors.

(d) The High Court may at any time review its decision with regard to the question whether or not the proceedings shall be held behind closed doors.

(2) Where the High Court under subsection (1)(b) on any grounds referred to in that subsection directs that the public or any category thereof shall not be present at any proceedings or part thereof, the High Court may—

(a) direct that no information relating to the proceedings, or any part thereof held behind closed doors, shall be made public in any manner;

(b) direct that no person, in any manner, make public any information which may reveal the identity of any witness in the proceedings,

(c) give such directions in respect of the record of proceedings as may be necessary to protect the identity of any witness:

Provided that the High Court may authorize the publication of so much information as it considers would be just and equitable.

(3) Any person who discloses any information in contravention of subsection (2) shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding two years.]

- (a) make recommendations to Cabinet with regard to the allocation of moneys from the Fund/Account to the specific law enforcement agencies;
- (b) make recommendations to Cabinet with regard to the allocation of moneys from the Fund/Account to any institution, organisation or fund contemplated in section 70(b);
- (d) make recommendations to Cabinet regarding the allocation of moneys for the administration of the Committee;
- (e) exercise such powers and shall perform such functions as may be conferred or imposed upon it by this Chapter, and may exercise such powers as may be necessary or expedient for or incidental to the achievement of its objects;
- (d) exercise such powers and perform such functions as may be conferred or imposed upon it by regulations as may be necessary or expedient for or incidental to the achievement of its objects or the powers and functions referred to in paragraphs (a), (b) and (c).

#### **Other matters to be prescribed**

70. All other matters in connection with the powers, functions and duties of the Committee shall be prescribed.

### **CHAPTER 8 GENERAL PROVISIONS**

#### **Access to information**

**71. (1)** The National Director may request any person employed in or associated with a [or institution] Government Department or statutory body [shall,] to furnish him or her with all information that may reasonably be required for any investigation in terms of this Act and such person shall notwithstanding anything to the contrary contained in any law [or contrary to any agreement, custom or practice, which prohibits or precludes him, her or it]—

(a) from disclosing any information relating to the activities, affairs or business of any other person; or

(b) from permitting any person to have access to any registers, records or other documents, or electronic data which have a bearing on the said activities, affairs or business.

[disclose and] furnish[, or grant access to] the National Director with [all] such information [which consider necessary for any investigation in terms of this Act,] and permit [such] the National Director [or authorised person] to have access to any registers, records, documents, and electronic data, which [in the opinion of such Director or authorised person, may be relevant to such investigation: Provided that this subsection shall not apply when an obligation of secrecy or restriction is based on the common law right to professional privilege between an attorney and his or her client in respect of information communicated to the attorney so as to enable him or her to provide advice, to defend or to render other legal assistance to the client in



connection with an offence under any law, of which the client is charged, in respect of which he or she has been arrested or summoned to appear in court or in respect of which an investigation with a view to instituting criminal proceedings is being conducted against him or her] may contain such information.

(2) The provisions of subsection (1) shall not be construed as prohibiting any Minister by whom or any other departmental or institutional authority by which, or under the control of whom or which, any law referred to in that subsection is administered, or any board, institution or body established by or under any such law, from making any practical and reasonable procedural arrangements with regard to the furnishing of such information or the granting of the access contemplated in that subsection and according to which the information or access shall be furnished or granted or with regard to any reasonable safeguards which any such Minister, authority, board, institution, body or person, subject to the provisions of subsection (4), requires to maintain the confidentiality of such information, registers, records, documents or electronic data.

[(3) Any person or institution who or which, without just cause shown by him, her or it, refuses, fails or neglects to—

(a) disclose, furnish, produce or make available any information, registers, records, documents or electronic data or permit any access thereto;

(b) reply to or answer truly and fully to any questions put to him or her by any Director or authorised person referred to in subsection (1), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 2 years.]

[(4)](3) (a) No person shall without the written permission of the National Director disclose to any other person any confidential information, registers, records, documents or electronic data which came to his or her knowledge in the performance of his or her functions in terms of this Act and relating to the activities, affairs or business of any other person, except—

(i) for the purpose of performing his or her functions in terms of this Act;

(ii) in the course of adducing evidence in any criminal proceedings or proceedings in terms of this Act; or

(iii) when required to do so by an order of a court of law.

(b) Any person who contravenes paragraph (a) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding 2 years.

## **Investigations**

72. Whenever the National Director has reason to believe that any person may be in possession of information relevant to the commission or intended commission of such alleged offences, or any person or enterprise may be in possession, custody or control of any documentary material relevant to such alleged offences, he or she may, prior to the institution of any civil or criminal proceeding, under written authority direct a particular Director of Public Prosecutions shall have, in respect of a specific investigation, [institution] the power to institute an investigation in terms of the provisions of Chapter 5 of the National Prosecuting Authority Act, 1998.

### **Hearings of court to be open to public**

**73. (1) (a)** Subject to the provisions of this section, the hearings of the court contemplated in this Act, except for *ex parte* applications, shall be open to the public.

**(b)** If the High Court, in any proceedings before it, is satisfied that—

**(i)** it would be in the interest of justice; or

**(ii)** there is a likelihood that harm may ensue to any person as a result of the proceedings being open,

it may direct that such proceedings be held behind closed doors and that the public or any category thereof shall not be present at such proceedings or any part thereof.

**(c)** An application for proceedings to be held behind closed doors may be brought by the National Director or the Director or a person authorised thereto by the National Director or the Director concerned, the *curator bonis* referred to in section 32 or 48 and any other person referred to in paragraph (b)(ii), and such application shall be heard behind closed doors.

**(d)** The High Court may at any time review its decision with regard to the question whether or not the proceedings shall be held behind closed doors.

**(2)** Where the High Court under subsection (1)(b) on any grounds referred to in that subsection directs that the public or any category thereof shall not be present at any proceedings or part thereof, the High Court may—

**(a)** direct that no information relating to the proceedings, or any part thereof held behind closed doors, shall be made public in any manner;

**(b)** direct that no person, in any manner, make public any information which may reveal the identity of any witness in the proceedings,

**(c)** give such directions in respect of the record of proceedings as may be necessary to protect the identity of any witness;

Provided that the High Court may authorize the publication of so much information as it considers would be just and equitable.

**(3)** Any person who discloses any information in contravention of subsection (2) shall be guilty of an offence and liable on conviction to a fine, or to imprisonment for a period not exceeding two years.

### **Misuse of information, failure to comply with order of court, and hindering person in performance of functions**

**74. (1)** Any person who knows or ought reasonably to have known—

**(a)** that information has been disclosed under the provisions of this Chapter 3 or 5; or

**(b)** that an investigation is being, or may be, conducted as a result of such a disclosure,

directly or indirectly alerts another or brings information to the attention of another which will or is likely to prejudice such an investigation, shall be guilty of an offence.

**(2)** Any person who intentionally refuses or fails to comply with an order of court made in terms of **[this Act]** Chapter 5 or 6, shall be guilty of an offence.

**(3)** Any person who hinders a *curator bonis*, a police officer or any other person in the exercise, performance or carrying out of his or her powers, functions or duties

under **[this Act]** Chapter 5 or 6, shall be guilty of an offence.

(4) Any person convicted of an offence contemplated in—

(a) subsection (1) or (2) shall be liable to a fine, or to imprisonment for a period not exceeding 15 years;

(b) subsection (3) shall be liable to a fine, or to imprisonment for a period not exceeding two years.

### **Jurisdiction of courts [in respect of penalties]**

**75. (1)** A regional court shall, subject to paragraph (b), have penal jurisdiction to impose any penalty mentioned in sections 11 and 13, even though that penalty may exceed the punitive jurisdiction of that court.

**(2)** A magistrate's court shall have penal jurisdiction to impose any penalty mentioned in section 13, even though that penalty may exceed the punitive jurisdiction of that court.

**(3)** A magistrates' court or regional court shall have jurisdiction to make any order referred to in section 22(1), even though the amount payable under that order may exceed the civil jurisdiction of a magistrate's court or regional court.

### **Regulations**

**76. (1)** The Minister may make regulations—

(a) with regard to the fees referred to in section 32(3)(c);

(b) with regard to the nature of the information contemplated in section 7 and the manner in which it is to be reported;

(c) with regard to the designation of persons for purposes of section 7.

(d) to prescribe from time to time the maximum allowable costs for legal services provided in connection with an application for a restraining order or forfeiture order or the defending of a criminal charge which may be met out of property that is subject to a restraining order;

(e) providing for any matter which is required or permitted to be or may be prescribed under any provision of this Act, providing for any matter which he or she may consider necessary or expedient to prescribe or to regulate in order to achieve the objects of this Act.

**(2)** Regulations under subsection (1)(a) may prescribe costs by applying, adopting or incorporating, with or without modification, the provisions of any act or any instrument made under an act or of any other publication, whether of the same or a different kind, as in force on a particular day or as in force for the time being.

**(3)** Any regulation made under this section, which may result in financial expenditure for the state shall be made in consultation with the Minister of Finance.

**(4)** Any regulation made under this section may provide that any person who contravenes a provisions thereof or fails to comply therewith, shall be guilty of an offence and on conviction be liable to a fine or to imprisonment for a period not exceeding three years.

**(5)** Any regulation made under this section shall, before publication thereof in the Gazette, be submitted to Parliament."



## Liability

77. Any person generally or specifically authorised to perform any function in terms of this Act, shall not, in his or her personal capacity, be liable for anything done in good faith under this Act.

## Amendment and repeal of laws

78. (a) The International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996), is hereby amended to the extent set out in Schedule 2.

(b) The Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), is hereby amended to the extent set out in Schedule 3.

(c) The Proceeds of Crime Act, 1996 (Act No. 76 of 1996), is hereby repealed.

## Transitional arrangements

79. (1) The person designated for purposes of section 31 of the Proceeds of Crime Act, 1996 (Act No. 76 of 1996), and any *curator bonis*, trustee or other functionary appointed in terms of the provisions of that Act shall, at the commencement of this Act, be deemed to have been duly designated or appointed to the corresponding position under this Act and shall continue to hold office in accordance with the applicable laws.

(2) All proceedings which immediately before the commencement of this Act were instituted in terms of the provisions of the Proceeds of Crime Act, 1996, and which proceedings were pending before any court of law or reviewing authority shall be dealt with as if this Act had not been passed.

## Short title and commencement

80. (1) This Act shall be called the Prevention of Organised Crime Act, 1998, and shall come into operation on a date fixed by the President in the *Gazette*.

(2) Different dates may be fixed in respect of different provisions of this Act.

## SCHEDULE 1

**[(Sections 1, 27 and 28)] (Sections 1, 64 and 65)**

**[Any act or threat, within the Republic or elsewhere, involving—]**

1. murder;
2. rape;
3. kidnapping;
4. arson;
5. public violence;
6. robbery;
7. assault with intent to do grievous bodily harm;
- [8. assault with intent to commit an offence;**
9. indecent assault;
10. the statutory offence of—
  - (a) unlawful carnal intercourse with a girl under a specified age;
  - (b) committing an immoral or indecent act with a girl or a boy under a specified

age;

(c) soliciting or enticing such girl or boy to the commission of an immoral or indecent act;

(d) unlawful carnal intercourse with a female idiot or imbecile;

(e) committing an immoral or indecent act with such a female;

(f) soliciting or enticing such a female to the commission of an immoral or indecent act;

11. the conducting of any gambling activity without the authority of a licence contemplated in the National Gambling Act, 1996 (Act No. 33 of 1996);

12. contravention of section 20(1) of the Sexual Offences Act, 1957 (Act No. 23 of 1951);

13. **[corruption]** any offence contemplated in section 1(1) of the Corruption Act, 1992 (Act No. 94 of 1992);

14. extortion;

15. childstealing;

16. breaking or entering any premises whether under the common law or a statutory provision, with intent to commit an offence;

17. malicious injury to property;

18. theft, whether under the common law or a statutory provision;

19. any offence under section 36 or 37 of the General Law Amendment Act, 1955 (Act No. 62 of 1955), or receiving stolen property knowing it to be stolen;

20. fraud;

21. forgery or uttering a forged document knowing it to have been forged;

22. offences relating to the coinage;

23. any offence referred to in section [13(f)] 13 of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992);

24. any offence relating to the dealing in or smuggling of ammunition, firearms, explosives or armament and the unlawful possession of such firearms, explosives or armament;

25. any offence in contravention of section 36 of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969), on account of being in possession of more than 100 rounds of ammunition intended for firing an arm contemplated in section 39(2)(a)(i) of that Act;

26. dealing in, being in possession of or conveying endangered, scarce and protected game or plants or parts or remains thereof in contravention of a statute or provincial ordinance.

27. any offence relating to exchange control, extortion, forgery or uttering;

28. any offence under any law relating to the illicit dealing in or possession of precious metals or precious stones;

29. contravention of an offence contemplated in section 1(1) and 1A(1) of the Intimidation Act, 1982 (Act No. 72 of 1982);

30. the defeating or obstructing the course of justice;

31. perjury;

32. subornation of perjury;

33. any offence referred to in Chapter 3 or 4 of this Act;

34. any conspiracy, incitement or attempt to commit any offence referred to in this Schedule;

35. any offence the punishment wherefor may be a period of imprisonment exceeding one year without the option of a fine;

## **SCHEDULE 2**

### **Amendment of the International Co-operation in Criminal Matters Act, 1996**

**(Act No. 75 of 1996)**

**(Section [47] 82)**

1. The amendment of section 1 by—

(a) the substitution for the definition of "confiscation order" of the following definition:

"confiscation order" means a confiscation order made under the Proceeds of Crime Act, 1996, and includes a forfeiture order made under the Prevention of Organised Crime Act, 1998;".

(b) the substitution for the definition of "restraint order", of the following definition:

"restraint order" means a restraint order made under the Proceeds of Crime Act, 1996, and includes a restraining order made under the Prevention of Organised Crime Act, 1998;".

## **SCHEDULE 3**

### **Amendment to Sections of the Drugs and Drug Trafficking Act, 1992**

**(Act No. 140 of 1992)**

**(Section [47] 82)**

1. Amendment of section 1 by—

(a) the deletion of the definition of "convert";

(b) the deletion of the definition of "defined crime";

(c) the deletion of the definition of "economic offence";

(d) the deletion of the definition of "financial institution"; and

(e) the deletion of the definition of "proceeds".

2. The repeal of section 6.

3. The repeal of section 7.

4. The amendment of section 9 by the substitution for subsection (1) of the following subsection:

**"(1) Any person may, notwithstanding anything to the contrary contained in any law which prohibits him or her—**

**(a) from disclosing any information relating to the affairs or business of any other person; or**

**(b) from permitting any person to have access to any registers, records or other documents which have a bearing on the said affairs or business,  
or to disclose to any attorney-general or designated officer such information as he or she may consider necessary for the prevention or combatting, whether in the Republic or elsewhere, of a drug offence [or an economic offence, or permit any designated officer to have access to any registers, records or other documents which may in his opinion have a bearing on the latter information.]"**