South Africa

Prevention of Organised Crime Act, 1998

Act 121 of 1998

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South Africa

Prevention of Organised Crime Act, 1998

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[Amended by Prevention of Organised Crime Second Amendment Act, 1999 (Act 38 of 1999) on 7 September 1999]
[Amended by Financial Intelligence Centre Act, 2001 (Act 38 of 2001) on 3 February 2002]
[Amended by Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004) on 27 April 2004]
[Amended by Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act 33 of 2004) on 20 May 2005]
[Amended by Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007 (Act 32 of 2007) on 16 December 2007]
[Amended by Criminal Law (Sentencing) Amendment Act, 2007 (Act 38 of 2007) on 31 December 2007]
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[Amended by Criminal Matters Amendment Act, 2015 (Act 18 of 2015) on 1 June 2016]

(English text signed by the President)

ACT

To introduce measures to combat organised crime, money laundering and criminal gang activities; to prohibit certain activities relating to racketeering activities; to provide for the prohibition of money laundering and for an obligation to report certain information; to criminalise certain activities associated with gangs; to provide for the recovery of the proceeds of unlawful activity; for the civil forfeiture of criminal property that has been used to commit an offence, property that is the proceeds of unlawful activity or property that is owned or controlled by, or on behalf of, an entity involved in terrorist and related activities; to provide for the establishment of a Criminal Assets Recovery Account; to amend the Drugs and Drug Trafficking Act, 1992; to amend the international Co-operation in Criminal Matters Act, 1996; to repeal the Proceeds of Crime Act, 1996; to incorporate the provisions contained in the Proceeds of Crime Act, 1996; and to provide for matters connected therewith.

[longtitle substituted by section 27 of Act 33 of 2004]

WHEREAS the Bill of Rights in the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996), enshrines the rights of all people in the Republic and affirms the democratic values of human dignity, equality and freedom;

AND WHEREAS the Constitution places a duty on the State to respect, protect, promote and fulfil the rights in the Bill of Rights;

AND WHEREAS there is a rapid growth of organised crime, money laundering and criminal gang activities nationally and internationally and since organised crime has internationally been identified as an international security threat;

AND WHEREAS organised crime, money laundering and criminal gang activities infringe on the rights of the people as enshrined in the Bill of Rights;

AND WHEREAS it is the right of every person to be protected from fear, intimidation and physical harm caused by the criminal activities of violent gangs and individuals;

AND WHEREAS organised crime, money laundering and criminal gang activities, both individually and collectively, present a danger to public order and safety and economic stability, and have the potential to inflict social damage;

AND WHEREAS the South African common law and statutory law fail to deal effectively with organised crime, money laundering and criminal gang activities, and also fail to keep pace with international measures aimed at dealing effectively with organised crime, money laundering and criminal gang activities;

AND BEARING IN MIND that it is usually very difficult to prove the direct involvement of organised crime leaders in particular cases, because they do not perform the actual criminal activities themselves, it is necessary to criminalise the management of, and related conduct in connection with enterprises which are involved in a pattern of racketeering activity;

AND WHEREAS no person convicted of an offence should benefit from the fruits of that or any related offence, whether such offence took place before or after the commencement of this Act, legislation is necessary to provide for a civil remedy for the restraint and seizure, and confiscation of property which forms the benefits derived from such offence;

AND WHEREAS no person should benefit from the fruits of unlawful activities, nor is any person entitled to use property for the commission of an offence, whether such activities or offence took place before or after the commencement of this Act, legislation is necessary to provide for a civil remedy for the preservation and seizure, and forfeiture of property which is derived from unlawful activities or is concerned in the commission or suspected commission of an offence;

AND WHEREAS effective legislative measures are necessary to prevent and combat the financing of terrorist and related activities and to effect the preservation, seizure and forfeiture of property owned or controlled by, or on behalf of, an entity involved in terrorist and related activities;

AND WHEREAS there is a need to devote such forfeited assets and proceeds to the combating of organised crime, money laundering and the financing of terrorist and related activities;

AND WHEREAS the pervasive presence of criminal gangs in many communities is harmful to the well being of those communities, it is necessary to criminalise participation in or promotion of criminal gang activities;

[preamble amended by section 13 of Act 38 of 1999 and by section 27 of Act 33 of 2004]

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

Chapter 1
Definitions and interpretation

1. Definitions and interpretation of Act

(1) In this Act, unless the context otherwise indicates—

"**Account**" means the Criminal Assets Recovery Account established under section 63;

"**authorised police official**" means any official of the South African Police Service who is authorised by the National Director or the National Commissioner of Police to act under this Act;

"**Committee**" means the Criminal Assets Recovery Committee established in terms of section 65;

[definition of "Committee" substituted by section 3(a) of Act 24 of 1999]

"**criminal gang**" includes any formal or informal ongoing organisation, association, or group of three or more persons, which has as one of its activities the commission of one or more criminal offences, which has an identifiable name or identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity;

"**enterprise**" includes any individual, partnership, corporation, association, or other juristic person or legal entity, and any union or group of individuals associated in fact, although not a juristic person or legal entity;

"**entity**" has a corresponding meaning with the expression in section 1 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004;

[definition of "entity" inserted by section 27 of Act 33 of 2004]

"**High Court**", includes for the purposes of Chapters 2, sections 25 to 29 of Chapter 5 and Chapter 6 any judge thereof;

"**instrumentality of an offence**" means any property which is concerned in the commission or suspected commission of an offence at any time before or after the commencement of this Act, whether committed within the Republic or elsewhere;

[definition of "instrumentality of an offence" substituted by section 3(b) of Act 24 of 1999 and by section 1(a) of Act 38 of 1999]

"**interest**" includes any right;

"**Minister**" means the Minister of Justice;

"**National Director**", means—

(a) for the purposes of section 65(2)(d), the National Director of Public Prosecutions appointed in terms of section 179(1)(a) of the Constitution;

(b) for the purposes of sections 2(4), 71 or 72 the National Director of Public Prosecutions appointed as contemplated in paragraph (a) and includes a Director of Public Prosecutions, an Investigating Director of Public Prosecutions and a Special Director of Public Prosecutions referred to in section 1 of the National Prosecution Authority Act, 1998 (Act No. 32 of 1998), who is authorised thereto in writing by the National Director in a specific case or in general;

(c) for the purposes of all other relevant provisions of this Act, the National Director of Public Prosecutions appointed as contemplated in paragraph (a) and includes any functionary referred to in section 1 of the National Prosecuting Authority Act, 1998, which is under the control of the National Director and authorised thereto by the National Director in a specific case or in general;

"**pattern of criminal gang activity**" includes the commission of two or more criminal offences referred to in Schedule 1: Provided that at least one of those offences occurred after the date of commencement of Chapter 4 and the last of those offences occurred within three years after a prior offence and the offences were committed—

(a) on separate occasions; or

(b) on the same occasion, by two or more persons who are members of, or belong to, the same criminal gang;

"**pattern of racketeering activity**" means the planned, ongoing, continuous or repeated participation or involvement in any offence referred to in Schedule 1 and includes at least two offences referred to in Schedule 1, of which one of the offences occurred after the commencement of this Act and the last offence occurred within 10 years (excluding any period of imprisonment) after the commission of such prior offence referred to in Schedule 1;

"**prescribed**" means prescribed by regulation under section 77;

"**preservation of property order**" means an order referred to in section 38;

"**proceeds of unlawful activities**" means any property or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in the Republic or elsewhere, at

any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, and includes any property representing property so derived;

[definition of "proceeds of unlawful activities" amended by section 3(c) of Act 24 of 1999 and substituted by section 1(b) of Act 38 of 1999]

"**property**" means money or any other movable, immovable, corporeal or incorporeal thing and includes any rights, privileges. claims and securities and any interest therein and all proceeds thereof;

"**property associated with terrorist and related activities**" means property which—

(a) was acquired, collected, used, possessed, owned or provided for the benefit of, or on behalf of, or at the direction of, or under the control of an entity which commits or attempts to commit or facilitates the commission of a specified offence as defined in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; or

(b) has provided financial or economic support to an entity in the commission or facilitation of an offence referred to in paragraph (a);

[definition of "property associated with terrorist and related activities" inserted by section 27 of Act 33 of 2004]

"**unlawful activity**" means any conduct which constitutes a crime or which contravenes any law whether such conduct occurred before or after the commencement of this Act and whether such conduct occurred in the Republic or elsewhere.

[definition of "unlawful activity" added by section 1(c) of Act 38 of 1999]

(2) For purposes of this Act a person has knowledge of a fact if—

(a) the person has actual knowledge of that fact; or

(b) the court is satisfied that—

(i) the person believes that there is a reasonable possibility of the existence of that fact; and

(ii) he or she fails to obtain information to confirm the existence of that fact.

(3) For the purposes of this Act a person ought reasonably to have known or suspected a fact if the conclusions that he or she ought to have reached are those which would have been reached by a reasonably diligent and vigilant person having both—

(a) the general knowledge, skill, training and experience that may reasonably be expected of a person in his or her position; and

(b) the general knowledge, skill, training and experience that he or she in fact has.

[subsection (3) amended by section 3(d) of Act 24 of 1999]

(4) Nothing in Chapters 2, 3 and 4 shall be construed to limit prosecution under any other provision of the law.

(5) Nothing in this Act or in any other law, shall be construed so as to exclude the application of any provision of Chapter 5 or 6 on account of the fact that—

(a) any offence or unlawful activity concerned occurred; or

(b) any proceeds of unlawful activities were derived, received or retained, before the commencement of this Act.

[subsection (5) added by section 1(d) of Act 38 of 1999]

Chapter 2
Offences relating to racketeering activities

2. Offences

(1) Any person who—

(a) (i) receives or retains any property derived, directly or indirectly, from a pattern of racketeering activity; and

[subparagraph (i) substituted by section 4(a) of Act 24 of 1999]

(ii) knows or ought reasonably to have known that such property is so derived; and

[subparagraph (ii) substituted by section 4(a) of Act 24 of 1999]

(iii) uses or invests, directly or indirectly, any part of such property in acquisition of any interest in, or the establishment or operation or activities of, any enterprise;

(b) (i) receives or retains any property, directly or indirectly, on behalf of any enterprise; and

(ii) knows or ought reasonably to have known that such property derived or is derived from or through a pattern of racketeering activity;

[subparagraph (ii) substituted by section 4(b) of Act 24 of 1999]

(c) (i) uses or invests any property, directly or indirectly, on behalf of any enterprise or in acquisition of any interest in. or the establishment or operation or activities of any enterprise; and

(ii) knows or ought reasonably to have known that such property derived or is derived from or through a pattern of racketeering activity;

[subparagraph (ii) substituted by section 4(c) of Act 24 of 1999]

(d) acquires or maintains, directly or indirectly, any interest in or control of any enterprise through a pattern of racketeering activity;

(e) whilst managing or employed by or associated with any enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affair through a pattern of racketeering activity;

(f) manages the operation or activities of an enterprise and who knows or ought reasonably to have known that any person, whilst employed by or associated with that enterprise, conducts or participates in the conduct, directly or indirectly, of such enterprise's affairs through a pattern of racketeering activity; or

[paragraph (f) amended by section 4(d) of Act 24 of 1999]

(g) conspires or attempts to violate any of the provisions of paragraphs (a), (b), (c), (d), (e) or (f),

within the Republic or elsewhere, shall be guilty of an offence.

(2) The court may hear evidence, including evidence with regard to hearsay, similar facts or previous convictions, relating to offences contemplated in subsection (1), notwithstanding that such evidence might otherwise be inadmissible, provided that such evidence would not render a trial unfair.

(3) For purposes of proving a previous conviction during a trial in respect of an offence contemplated in subsection (1), it shall be sufficient to prove the original record of judicial proceedings if a copy of such record, certified or purporting to be certified by the registrar or clerk of the court or other official having the custody of the record of such judicial proceedings or by the deputy of

such registrar, clerk or other official or, in the case where judicial proceedings are taken down in shorthand or by mechanical means, by the person who transcribed such proceedings, as a true copy of such record, is produced in evidence at such trial, and such copy shall be *prima facie* proof that arty matter purporting to be recorded thereon was correctly recorded.

(4) A person shall only be charged with committing an offence contemplated in subsection (1) if a prosecution is authorised in writing by the National Director.

3. Penalties

(1) Any person convicted of an offence referred to in section 2(1) shall be liable to a fine not exceeding R 1 000 million, or to imprisonment for a period up to imprisonment for life.

(2) Notwithstanding any other law dealing with the penal jurisdiction of the regional court, if a regional court, after it has convicted an accused of an offence referred to in section 2(1) following on—

(a) a plea of guilty; or

(b) a plea of not guilty,

but before sentence, is of the opinion that the offence in respect of which the accused has been convicted merits punishment—

(i) in excess of the penal jurisdiction of the regional court but not exceeding a fine of R 100 million or a period of 30 years imprisonment, the regional court shall have jurisdiction to impose such penalty even though that penalty exceeds the penal jurisdiction of that court; or

(ii) *[subparagraph (ii) deleted by section 8(a) of Act 38 of 2007]*

(3) *[subsection (3) deleted by section 8(b) of Act 38 of 2007]*

Chapter 3
Offences relating to proceeds of unlawful activities

4. Money laundering

Any person who knows or ought reasonably to have known that property is or forms part of the proceeds of unlawful activities and—

(a) enters into any agreement or engages in any arrangement or transaction with anyone in connection with that property, whether such agreement, arrangement or transaction is legally enforceable or not; or

(b) performs any other act in connection with such property, whether it is performed independently or in concert with any other person,

which has or is likely to have the effect—

(i) of concealing or disguising the nature, source, location, disposition or movement of the said property or the ownership thereof or any interest which anyone may have in respect thereof; or

[paragraph (i) substituted by section 6(b) of Act 24 of 1999]

(ii) of enabling or assisting any person who has committed or commits an offence, whether in the Republic or elsewhere—

(aa) to avoid prosecution; or

(bb) to remove or diminish any property acquired directly, or indirectly, as a result of the commission of an offence,

shall be guilty of an offence.

5. Assisting another to benefit from proceeds of unlawful activities

Any person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into any agreement with anyone or engages in any arrangement or transaction whereby—

(a) the retention or the control by or on behalf of the said other person of the proceeds of unlawful activities is facilitated; or

(b) the said proceeds of unlawful activities are used to make funds available to the said other person or to acquire property on his or her behalf or to benefit him or her in any other way,

shall be guilty of an offence.

[section 5 amended by section 7 of Act 24 of 1999]

6. Acquisition, possession or use of proceeds of unlawful activities

Any person who—

(a) acquires;

(b) uses; or

(c) has possession of,

property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities of another person, shall be guilty of an offence.

[section 6 substituted by section 8 of Act 24 of 1999]

7. ***

[section 7 repealed by section 79 of Act 38 of 2001]

7A. Defence

(1) If a person is charged with committing an offence under section 2(1)(a) or (b), 4, 5 or 6, that person may raise as a defence the fact that he or she had reported a knowledge or suspicion in terms of section 29 of the Financial Intelligence Centre Act, 2001.

(2) If a person who is an employee of an accountable institution as defined in the Financial Intelligence Centre Act, 2001, is charged with committing an offence under section 2(1)(a) or (b), 4, 5 or 6, that person may also raise as a defence that fact that he or she had—

(a) complied with the applicable obligations in terms of the internal rules relating to the reporting of information of the accountable institution; or

(b) reported the matter to the person charged with the responsibility of ensuring compliance by the accountable institution with its duties under that Act; or

(c) reported a suspicion to his or her superior, if any, if—

(i) the accountable institution had not appointed such a person or established such rules;

(ii) the accountable institution had not complied with its obligations in section 42(3) of that Act in respect of that person; or

(iii) those rules were not applicable to that person.

[section 7A inserted by section 10 of Act 24 of 1999 and substituted by section 79 of Act 38 of 2001]

8. Penalties

(1) Any person convicted of an offence contemplated in section 4, 5 or 6 shall be liable to a fine not exceeding R 100 million, or to imprisonment for a period not exceeding 30 years.

(2) *[subsection (2) deleted by section 79 of Act 38 of 2001]*

Chapter 4
Offences relating to criminal gang activities

9. Gang related offences

(1) Any person who actively participates in or is a member of a criminal gang and who—

(a) wilfully aids and abets any criminal activity committed for the benefit of, at the direction of, or in association with any criminal gang;

(b) threatens to commit, bring about or perform any act of violence or any criminal activity by a criminal gang or with the assistance of a criminal gang; or

(c) threatens any specific person or persons in general, with retaliation in any manner or by any means whatsoever, in response to any act or alleged act of violence,

shall be guilty of an offence.

(2) Any person who—

(a) performs any act which is aimed at causing, bringing about, promoting or contributing towards a pattern of criminal gang activity;

(b) incites, instigates, commands, aids, advises, encourages or procures any other person to commit, bring about, perform or participate in a pattern of criminal gang activity; or

(c) intentionally causes, encourages, recruits, incites, instigates, commands, aids or advises another person to join a criminal gang,

shall be guilty of an offence.

[subsection (2) amended by section 11 of Act 24 of 1999]

10. Penalties

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

(a) section 9(1) or (2)(a) shall be liable to a fine, or to imprisonment for a period not exceeding six years;

(b) section 9(2)(b) or (c), shall be liable to a fine, or to imprisonment for a period not exceeding three years;

(c) section 9(1) or (2)(a) and if the offence was committed under circumstances referred to in subsection (2) shall be liable to a fine, or to imprisonment for a period not exceeding eight years;

(d) section 9(2)(b) or (c), and if the offence was committed under circumstances referred to in subsection (2) shall be liable to a fine or to imprisonment for a period not exceeding five years.

(2) If the offence contemplated in section 9 is committed on the premises or grounds of, or within 500 metres of a public or private school, or any other educational institution, during hours in which the facility is open for classes or school related programmed or when minors are using the facility, such fact shall be regarded as an aggravating circumstance.

[subsection (2) substituted by section 12 of Act 24 of 1999]

(3) If a court, after having convicted an accused of any offence, other than an offence contemplated in this Chapter, finds that the accused was a member of a criminal gang at the time of the commission of the offence, such finding shall be regarded as an aggravating circumstance for sentencing purposes.

[subsection (3) substituted by section 12 of Act 24 of 1999]

11. Interpretation of member of criminal gang

In considering whether a person is a member of a criminal gang for purposes of this Chapter the court may, have regard to the following factors, namely that such person—

(a) admits to criminal gang membership;

(b) is identified as a member of a criminal gang by a parent or guardian;

(c) resides in or frequents a particular criminal gang's area and adopts their style of dress, their use of hand signs, language or their tattoos, and associates with known members of a criminal gang;

(d) has been arrested more than once in the company of identified members of a criminal gang for offences which are consistent with usual criminal gang activities;

[paragraph (d) amended by section 13(b) of Act 24 of 1999]

(e) is identified as a member of a criminal gang by physical evidence such as photographs or other documentation.

Chapter 5
Proceeds of unlawful activities

Part 1 – Application of Chapter

12. Definitions and interpretation of Chapter

(1) In this Chapter, unless the context indicates otherwise—

(i) "**affected gift**" means any gift—

(a) made by the defendant concerned not more than seven years before the fixed date; or

[paragraph (a) amended by section 14(a) of Act 24 of 1999]

(b) made by the defendant concerned at any time, if it was a gift—

(i) of property received by that defendant in connection with an offence committed by him or her or any other person; or

(ii) of property, or any part thereof, which directly or indirectly represented in that defendant's hands property received by him or her in that connection,

whether any such gift was made before or after the commencement of this Act;

(ii) "**confiscation order**" means an order referred to in section 18(1);

(iii) "**defendant**" means a person against whom a prosecution for an offence has been instituted, irrespective of whether he or she has been convicted or not, and includes a person referred to in section 25(1)(b);

(iv) "**fixed date**", in relation to a defendant—

(a) if a prosecution for an offence has been instituted against the defendant, means the date on which such prosecution has been instituted; or

[paragraph (a) amended by section 14(b) of Act 24 of 1999]

(b) if a restraint order has been made against the defendant, means the date of such restraint order,

whichever is the earlier date;

(v) "**realizable property**" means property referred to in section 14;

(vi) "**restraint order**" means an order referred to in section 26(1);

(2) In this Chapter, except where it is inconsistent with the context or clearly inappropriate, any reference—

(a) to a person who holds property shall be construed as a reference to a person who has any interest in the property, and—

(i) if the estate of such person has been sequestrated, also to the trustee of his or her insolvent estate; or

[subparagraph (i) substituted by section 2 of Act 38 of 1999]

(ii) if such person is a company or other juristic person which is being wound up, also to the liquidator thereof;

(b) to a person who transfers property to any other person shall be construed as a reference to a person who transfers or grants to any other person any interest in the property;

(c) to anything received in connection with an offence shall be construed as a reference also to anything received both in that connection and in some other connection.

(3) For the purposes of this Chapter, a person has benefited from unlawful activities if he or she has at any time, whether before or after the commencement of this Act, received or retained any proceeds of unlawful activities.

[subsection (3) substituted by section 14(d) of Act 24 of 1999]

13. Proceedings are civil, not criminal

(1) For the purposes of this Chapter proceedings on application for a confiscation order or a restraint order are civil proceedings, and are not criminal proceedings.

(2) The rules of evidence applicable in civil proceedings apply to proceedings on application for a confiscation order or a restraint order.

(3) No rule of evidence applicable only in criminal proceedings shall apply to proceedings on application for a confiscation order or restraint order.

(4) No rule of construction applicable only in criminal proceedings shall apply to proceedings on application for a confiscation order or restraint order.

(5) Any question of fact to be decided by a court in any proceedings in respect of an application contemplated in this Chapter shall be decided on a balance of probabilities.

14. Realizable property

(1) Subject to the provisions of subsection (2), the following property shall be realizable in terms of this Chapter, namely—

(a) any property held by the defendant concerned; and

(b) any property held by a person to whom that defendant has directly or indirectly made any affected gift.

(2) Property shall not be realizable property if a declaration of forfeiture is in force in respect thereof.

15. Value of property

(1) For the purposes of this Chapter, the value of property, other than money, in relation to any person holding the property, shall be—

(a) where any other person holds an interest in the property—

(i) the market value of the property; less

(ii) the amount required to discharge any encumbrance on the property; and

(b) where no other person holds an interest in the property, the market value of the property.

(2) Notwithstanding the provisions of subsection (1), any reference in this Chapter to the value at a particular time of a payment or reward, shall be construed as a reference to—

(a) the value of the payment or reward at the time when the recipient received it, as adjusted to take into account subsequent fluctuations in the value of money or

(b) where subsection (3) applies the value mentioned in that subsection, whichever is the greater value.

(3) If at the particular time referred to in subsection (2) the recipient holds—

(a) the property, other than cash, which he or she received, the value concerned shall be the value of the property at the particular time; or

(b) property which directly or indirectly represents in his or her hands the property which he or she received, the value concerned shall be the value of the property, in so far as it represents the property which he or she received, at the relevant time.

[subsection (3) substituted by section 15 of Act 24 of 1999]

16. Gifts

(1) For the purposes of this Chapter, a defendant shall be deemed to have made a gift if he or she has transferred any property to any other person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration supplied by the defendant.

(2) For the purposes of section 20(2) the gift which a defendant is deemed to have made shall consist of that share in the property transferred by the defendant which is equal to the difference between the value of that property as a whole and the consideration received by the defendant in return.

17. Conclusion of proceedings against defendant

For the purposes of this chapter, the proceedings contemplated in terms of this chapter against a defendant shall be concluded when—

(a) the defendant is acquitted or found not guilty of an offence;

(b) subject to section 18(2), the court convicting the defendant of an offence, sentences the defendant without making a confiscation order against him or her;

(c) the conviction in respect of an offence is set aside on review or appeal; or

(d) the defendant satisfies the confiscation order made against him or her.

Part 2 – Confiscation orders

18. Confiscation orders

(1) Whenever a defendant is convicted of an offence the court convicting the defendant may, on the application of the public prosecutor, enquire into any benefit which the defendant may have derived from—

(a) that offence;

(b) any other offence of which the defendant has been convicted at the same trial; and

(c) any criminal activity which the court finds to be sufficiently related to those offences,

and, if the court finds that the defendant has so benefited, the court may, in addition to any punishment which it may impose in respect of the offence, make an order against the defendant for the payment to the State of any amount it considers appropriate and the court may make any further orders as it may deem fit to ensure the effectiveness and fairness of that order.

(2) The amount which a court may order the defendant to pay to the State under subsection (1)—

(a) shall not exceed the value of the defendant's proceeds of the offences or related criminal activities referred to in that subsection, as determined by the court in accordance with the provisions of this Chapter; or

(b) if the court is satisfied that the amount which might be realised as contemplated in section 20(1) is less than the value referred to in paragraph (a), shall, not exceed an amount which in the opinion of the court might be so realised.

(3) A court convicting a defendant may, when passing sentence, indicate that it will hold an enquiry contemplated in subsection (1) at a later stage if—

(a) it is satisfied that such enquiry will unreasonably delay the proceedings in sentencing the defendant; or

(b) the public prosecutor applies to the court to first sentence the defendant and the court is satisfied that it is reasonable and justifiable to do so in the circumstances.

(4) If the judicial officer who convicted the defendant is absent or for any other reason not available, any judicial officer of the same court may consider an application referred to in subsection (1) and hold an enquiry referred to in that subsection and he or she may in such proceedings take such steps as the judicial officer who is absent or not available could lawfully have taken.

(5) No application referred to in subsection (1) shall be made without the written authority of the National Director.

(6) A court before which proceedings under this section are pending, may—

(a) in considering an application under subsection (1)—

(i) refer to the evidence and proceedings at the trial;

(ii) hear such further oral evidence as the court may deem fit;

(iii) direct the public prosecutor to tender to the court a statement referred to in section 21(1)(a); and

(iv) direct a defendant to tender to the court a statement referred to in subsection (3)(a) of that section;

(b) subject to subsection (1)(b) or (3)(b) of section 21, adjourn such proceedings to any day on such conditions not inconsistent with a provision of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), as the court may deem fit.

19. Value of proceeds of unlawful activities

(1) Subject to the provisions of subsection (2), the value of a defendant's proceeds of unlawful activities shall be the sum of the values of the property, services, advantages, benefits or rewards received, retained or derived by him or her at any time, whether before or after the commencement of this Act, in connection with the unlawful activity carried on by him or her or any other person.

[subsection (1) substituted by section 16(a) of Act 24 of 1999]

(2) In determining the value of a defendants proceeds of unlawful activities the court shall—

(a) where it has made a declaration of forfeiture or where a declaration of forfeiture has previously been made in respect of property which is proved to the satisfaction of the court—

(i) to have been the property which the defendant received in connection with the criminal activity carried on by him or her or any other person; or

(ii) to have been property which directly or indirectly represented in the defendant's hands the property which he or she received in that connection

leave the property out of account;

(b) where a confiscation order has previously been made against the defendant leave out of account those proceeds of unlawful activities which are proved to the satisfaction of the court to have been taken into account in determining the amount to be recovered under that confiscation order.

20. Amounts which might be realised

(1) For the purposes of section 18(2)(b) or 21 (3)(a), the amount which might be realised at the time of the making of a confiscation order against a defendant shall be the amount equal to the sum of—

(a) the values at that time of all realizable property held by the defendant; and

(b) the values at that time of all affected gifts made by the defendant,

less the sum of all obligations, if any, of the defendant having priority and which the courtmay recognise for this purpose.

[subsection (1) amended by section 17(a) of Act 24 of 1999]

(2) Notwithstanding the provisions of section 15(1) but subject to the provisions of section 16(2), the value of an affected gift at the time of the making of the relevant confiscation order shall be—

(a) the value of the affected gift at the time when the recipient received it, as adjusted to take into account subsequent fluctuations in the value of money; or

(b) where subsection (3) applies, the value mentioned in that subsection,

whichever is the greater value.

(3) If at the time of the making of the relevant confiscation order the recipient holds—

(a) the property, other than cash, which he or she received, the value concerned shall be the value of the property at that time; or

(b) the property which directly or indirectly represents in his or her hands the property which he or she received, the value concerned shall be the value of the property, in so far as it represents the property which he or she received, at the time.

(4) For the purposes of subsection (1), an obligation has priority at the time of the making of the relevant confiscation order—

(a) if it is an obligation of the defendant, where he or she has been convicted by a court of any offence—

(i) to pay a fine imposed before that time by the court; or

(ii) to pay any other amount under any resultant order made before that time by the court;

(b) if it is an obligation which—

(i) if the estate of the defendant had at that time been sequestrated; or

(ii) where the defendant is a company or other juristic person, if such company or juristic person is at that time being wound up,

would be payable in pursuance of any secured or preferent claim against the insolvent estate or against such company or juristic person, as the case may be.

(5) A court shall not determine the amounts which might be realised as contemplated in subsection (1) unless it has afforded all persons holding any interest in the property concerned an opportunity to make representations to it in connection with the realisation of that property.

21. Statements relating to proceeds of unlawful activities

(1) (a) The public prosecutor may or, if so directed by the court, shall tender to the court a statement in writing under oath or affirmation by him or her or any other person in connection with any matter which is being enquired into by the court under section 18(1), or which relates to the determination of the value of a defendant's proceeds of unlawful activities.

(b) A copy of such statement shall be served on the defendant at least 14 days before the date on which that statement is to be tendered to the court.

(2) (a) The defendant may dispute the correctness of any allegation contained in a statement referred to in subsection (1)(a), and if the defendant does so dispute the correctness of any such allegation, he or she shall state the grounds on which he or she relies.

(b) In so far as the defendant does not dispute the correctness of any allegation contained in such statement, that allegation shall be deemed to be conclusive proof of the matter to which it relates.

(3) (a) A defendant may or, if so directed by the court, shall tender to the court a statement in writing under oath or affirmation by him or her or by any other person in connection with any matter which relates to the determination of the amount which might be realised as contemplated in section 20(1).

(b) A copy of such statement shall be served on the public prosecutor at least 14 days before the date on which that statement is to be tendered to the court.

(4) (a) The public prosecutor may admit the correctness of any allegation contained in a statement referred to in subsection (3)(a).

(b) In so far as the public prosecutor admits the correctness of any allegation contained in such statement, that allegation shall be deemed to be conclusive proof of the matter to which it relates.

22. Evidence relating to proceeds of unlawful activities

(1) For the purposes of determining whether a defendant has derived a benefit in an enquiry under section 18(1), if it is found that the defendant did not at the fixed date, or since the beginning of a period of seven years before the fixed date, have legitimate sources of income sufficient to justify the interests in any property that the defendant holds, the court shall accept this fact as *prima facie* evidence that such interests form part of such a benefit.

(2) For the purposes of an enquiry under section 18(1), if it is found that a court had ordered the defendant to disclose any facts under section 26(7) and that the defendant had without sufficient cause failed to disclose such facts or had, after being so ordered, furnished false information, knowing such information to be false or not believing it to be true, the court shall accept these facts as *prima facie* evidence that any property to which the information relates—

(a) forms part of the defendants benefit, in determining whether he or she has derived a benefit from an offence; or

(b) is held by the defendant as an advantage, payment, service or reward in connection with the offences or related criminal activities referred to in section 18(1).

(3) For the purposes of determining the value of a defendant's proceeds of unlawful activities in an enquiry under section 18(1)—

(a) if the court finds that he or she has benefited from an offence and that—

(i) he or she held property at any time at, or since, his or her conviction; or

(ii) property was transferred to him or her at any time since the beginning of a period of seven years before the fixed date,

the court shall accept these facts as *prima facie* evidence that the property was received by him or her at the earliest time at which he or she held it, as an advantage, payment, service or reward in connection with the offences or related criminal activities referred to in section 18(1);

(b) if the court finds that he or she has benefited from an offence and that expenditure had been incurred by him or her since the beginning of the period contemplated in paragraph (a), the court shall accept these facts as *prima facie* evidence that any such expenditure was met out of the advantages, payments, services or rewards, including any property received by him or her in connection with the offences or related criminal activities referred to in section 18(1) committed by him or her.

[subsection (3) substituted by section 18(c) of Act 24 of 1999]

(4) For the purpose of determining the value of any property in an enquiry under section 18(1), if the court finds that the defendant received property at any time as an advantage, payment, service or reward in connection with the offences or related criminal activities referred to in that subsection committed by him or her or by any other person the court shall accept this fact as *prima facie* evidence that he or she received that property free of any other interest therein.

23. Effect of confiscation orders

(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 magistrates 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 magistrates court.

24. Procedure where person absconds or dies

(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 subsection (1) or (2) 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;

[paragraph (a) substituted by section 19(a) of Act 24 of 1999]

(b) if a *curator bonis* has not been appointed in respect of any of the property concerned, appoint a *curator bonis* in respect of realizable 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 this section shall not apply sections 21 and 22.

[subsection (5) substituted by section 19(b) of Act 24 of 1999]

(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 18 and make an appropriate order;

[paragraph (a) substituted by section 19(c) of Act 24 of 1999]

(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

24A. Order to remain in force pending appeal

A restraint order and an order authorizing the seizure of the property concerned or other ancillary order which is in force at the time of any decision by the court in relation to the making of a confiscation order, shall remain in force pending the outcome of any appeal against the decision concerned.

[section 24A inserted by section 3 of Act 38 of 1999]

25. Cases in which restraint orders may be made

(1) A High Court may exercise the powers conferred on it by section 26(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.

26. Restraint orders

(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 realizable 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 realizable 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 realizable 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) *[paragraph (b) deleted by section 4(a) of Act 38 of 1999]*

(5) *[subsection (5) deleted by section 4(b) of Act 38 of 1999]*

(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 shall at the same time make an order authorizing the seizure of all movable property concerned by a police official, and any other ancillary orders that the court considers appropriate for the proper, fair and effective execution of the order.

[subsection (8) substituted by section 4(c) of Act 38 of 1999]

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

[subsection (9) substituted by section 20(b) of Act 24 of 1999]

(10) A High Court which made a restraint order—

(a) may on application by a person affected by that order vary or rescind the restraint order or an order authorizing the seizure of the property concerned or other ancillary order if it is satisfied—

(i) that the operation of the order concerned will deprive the applicant of the means to provide for his or her reasonable living expenses and cause undue hardship for the applicant; and

(ii) that the hardship that the applicant will suffer as a result of the order outweighs the risk that the property concerned may be destroyed, lost, damaged, concealed or transferred; and

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

[subsection (10) added by section 4(d) of Act 38 of 1999]

(11) When a court orders the rescission of an order authorizing the seizure of property in terms of subsection (10)(a) the court shall make such other order as it considers appropriate for the proper, fair and effective execution of the restraint order concerned.

[subsection (11) added by section 4(d) of Act 38 of 1999]

27. Seizure of property subject to restraint order

(1) In order to prevent any realizable 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.

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

(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.

29. Orders in respect of immovable property subject to restraint order

(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.

29A. Variation and rescission of certain orders suspended by appeal

The noting of an appeal against a decision to vary or rescind any order referred to in sections 26(10), 28(3) and 29(7) shall suspend such a variation or rescission pending the outcome of the appeal.

[section 29A added by section 5 of Act 38 of 1999]

Part 4 – Realisation of property

30. Realisation of property

(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 realizable 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 realizable property in such manner as that court may determine;

(c) order any person who holds realizable 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 realizable 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 (5)(a) have been disposed of; or

(ii) the judgement referred to in subsection (5)(b) has been satisfied, as the case may be; or

[paragraph (a) substituted by section 21 of Act 24 of 1999]

(b) the period determined under subsection (5) has expired.

[paragraph (b) substituted by section 21 of Act 24 of 1999]

31. Application of certain sums of money

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

(a) the proceeds of any realizable 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 realizable 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.

32. Functions of *curator bonis*

(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 28(1)(b) or 30(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 No. 66 of 1965), shall with the necessary changes apply in respect of a *curator bonis* appointed under this Chapter.

33. Exercise of powers by High Court and *curator bonis*

(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 realizable property for satisfying any confiscation order made or which might be made against the defendant;

(b) in the case of realizable 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.

34. Variation of confiscation orders

(1) If the High Court is satisfied that the realizable 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 realizable 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 realizable 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.

35. Effect of sequestration of estates on realizable property

(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 realizable property realised by virtue of section 30 and for the time being in the hands of a *curator bonis* appointed under this Chapter,

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 29, 30 or 31 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;

[paragraph (a) amended by section 22 of Act 24 of 1999]

(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 26 to 31 and 33(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).

36. Effect of winding-up of companies or other juristic persons on realizable property

(1) When any competent court has made an order for the winding-up of any company or other juristic person which holds realizable 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 realizable property realised by virtue of section 30 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 26 to 31 and 33(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.

[subsection (2) substituted by section 23 of Act 24 of 1999]

(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 35(2) are with the necessary changes applicable to a company or juristic person who has directly or indirectly made an affected gift.

Chapter 6
Civil recovery of property

Part 1 – Introduction

37. Proceedings are civil, not criminal

(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

38. Preservation of property orders

(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 there are reasonable grounds to believe that the property concerned—

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

(b) is the proceeds of unlawful activities; or

(c) is property associated with terrorist and related activities.

[subsection (2) substituted by section 27 of Act 33 of 2004]

(3) A High Court making a preservation of property order shall at the same time make an order authorizing the seizure of the property concerned by a police official, and any other ancillary orders that the court considers appropriate for the proper, fair and effective execution of the order.

[subsection (3) substituted by section 6 of Act 38 of 1999]

(4) 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.

39. Notice of preservation of property orders

(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 interest in the property concerned; and

(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.

40. Duration of preservation of property orders

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.

41. Seizure of property subject to preservation of property order

(1) In order to prevent property subject to a preservation of property 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 preservation of property order.

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

(1) Where a High Court has made a preservation of property order, the High Court shall, if it deems it appropriate, at the time of the making of the order or at a later 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; and

(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*.

[subsection (1) amended by section 7 of Act 38 of 1999]

(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 property if a forfeiture order is made; or

(b) by the State if no forfeiture order is made.

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

(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 sequestrated; 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 sequestrated; 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.

44. Provision for expenses

(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 proceeding 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 property which is not subject to the preservation of property order; 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.

45. Maximum legal expenses that can be met from preserved property

(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 44 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.

46. Taxation of legal expenses

(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.

47. Variation and rescission of orders

(1) A High Court which made a preservation of property order—

(a) may on application by a person affected by that order vary or rescind the preservation of property order or an order authorising the seizure of the property concerned or other ancillary order if it is satisfied—

(i) that the operation of the order concerned will deprive the applicant of the means to provide for his or her reasonable living expenses and cause undue hardship for the applicant; and

(ii) that the hardship that the applicant will suffer as result of the order outweighs the risk that the property concerned may be destroyed, lost, damaged, concealed or transferred; and

(b) shall rescind the preservation of property order when the proceedings against the defendant concerned are concluded.

[subsection (1) substituted by section 8(a) of Act 38 of 1999]

(1A) When a court orders the rescission of an order authorising the seizure of property under paragraph (a) of subsection (1) the court shall make such other order as it considers appropriate for the proper, fair and effective execution of the preservation of property order concerned.

[subsection (1A) inserted by section 8(b) of Act 38 of 1999]

(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.

(4) The noting of an appeal against a decision to vary or rescind any order referred to in this section shall suspend such a variation or rescission pending the outcome of the appeal.

[subsection (4) added by section 8(c) of Act 38 of 1999]

Part 3 – Forfeiture of property

48. Application for forfeiture order

(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 39(3).

[subsection (2) substituted by section 26 of Act 24 of 1999]

(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.

(4) Any person who entered an appearance in terms of section 39(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.

49. Late entry of appearance

(1) Any person who, for any reason, did not enter an appearance in terms of section 39(3) may, within 14 days of him or her becoming aware of the existence of a presentation of property order, 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 48(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 an applicant referred to in subsection (1) leave to enter an appearance in terms of section 39(3) within the period which the Court deems appropriate, if the Court is satisfied on good cause shown that such applicant—

(a) has for sufficient reason failed to enter an appearance in terms of section 39(3); and

(b) has an interest in the property which is subject to the preservation of property order.

(4) When a High Court grants an applicant leave to enter an appearance, the Court—

(a) shall make any order as to costs against the applicant; and

(b) may make any order to regulate the further participation of the applicant in proceedings concerning an application for a forfeiture order,

which it deems appropriate.

(5) 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 39(5).

50. Making of forfeiture order

(1) The High Court shall, subject to section 52, make an order applied for under section 48(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;

(b) is the proceeds of unlawful activities; or

(c) is property associated with terrorist and related activities.

[subsection (1) substituted by section 27 of Act 33 of 2004]

(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 maybe affected by a forfeiture order does not prevent the High Court from making the order.

(4) The validity of an order under subsection (1) 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 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 54 or an appeal under section 55 has expired; or

(b) before such an application or appeal has been disposed of.

51. Notice of reasonable grounds that property is concerned in commission of offence or associated with terrorist and related activities

(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 or is property associated with terrorist and related activities.

(2) The judge or magistrate shall make an order referred to in subsection (1) if the judge or magistrate is satisfied that there are reasonable grounds to believe that property concerned is an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities.

(3) When a judge or magistrate makes an order under subsection (1), the registrar of the High Court concerned 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 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 or property associated with terrorist and related activities.

(4) 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.

[section 51 substituted by section 27 of Act 33 of 2004]

52. Exclusion of interests in property

(1) The High Court may, on application—

(a) under section 48(3); or

(b) by a person referred to in section 49(1),

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.

[paragraph (b) substituted by section 29(a) of Act 24 of 1999]

(2) The High Court may make an order under subsection (1), in relation to the forfeiture of the proceeds of unlawful activities, if it finds on a balance of probabilities that the applicant for the order—

(a) had acquired the interest concerned legally and for a consideration, the value of which is not significantly less than the value of that interest; and

(b) where the applicant had acquired the interest concerned after the commencement of the Act, that he or she neither knew nor had reasonable grounds to suspect that the property in which the interest is held is the proceeds of unlawful activities.

[subsection (2) substituted by section 9 of Act 38 of 1999]

(2A) The High Court may make an order under subsection (1), in relation to the forfeiture of an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities, if it finds on a balance of probabilities that the applicant for the order had acquired the interest concerned legally, and—

(a) neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities; or

(b) where the offence concerned had occurred before the commencement of this Act, the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned as an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities.

[subsection (2A) inserted by section 9 of Act 38 of 1999 and substituted by section 27 of Act 33 of 2004]

(3) (a) If 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 or property associated with terrorist and related activities, the State may submit a return of the service on the applicant of a notice issued under section 51(3) 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 51(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 further use of the property concerned as an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities.

[subsection (3) substituted by section 27 of Act 33 of 2004]

(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 as an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities.

[subsection (4) substituted by section 27 of Act 33 of 2004]

53. Forfeiture order by default

(1) If the National Director applies for a forfeiture order by default and the High Court is satisfied that no person has appeared on the date upon which an application under section 48(1) is to be heard

and, on the grounds of sufficient proof or otherwise, that all persons who entered appearances in terms of section 39(3) have knowledge of notices given under section 48(2), the Court may—

(a) make any order by default which the Court could have made under sections 50(1) and (2);

(b) make such order as the Court may consider appropriate in the circumstances; or

(c) make no order.

(2) The High Court may, before making an order in terms of subsection (1), call upon the National Director to adduce such further evidence, either in writing or orally, in support of his or her application as the Court may consider necessary.

(3) Any person whose interest in the property concerned is affected by the forfeiture order or other order made by the Court under subsection (1) 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.

(4) 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.

54. Exclusion of interests in forfeited property

(1) Any person affected by a forfeiture order who was entitled to receive notice of the application for the order under section 48(2), but did not receive such notice, may, within 45 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, or varying the operation of the order in respect of such property.

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

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

(b) the time and circumstances of the applicants 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 make an order under subsection (1), in relation to the forfeiture of the proceeds of unlawful activities, if it finds on a balance of probabilities that the applicant for the order—

(a) had acquired the interest concerned legally and for a consideration, the value of which is not significantly less than the value of that interest; and

(b) where the applicant had acquired the interest concerned after the commencement of the Act, that he or she neither knew nor had reasonable grounds to suspect that the property in which the interest is held is the proceeds of unlawful activities.

[subsection (8) substituted by section 10 of Act 38 of 1999]

(8A) The High Court may make an order under subsection (1), in relation to the forfeiture of an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities, if it finds on a balance of probabilities that the applicant for the order had acquired the interest concerned legally, and—

(a) neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities; or

(b) where the offence concerned had occurred before the commencement of this Act, the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned as an instrumentality of an offence referred to in Schedule 1 or property associated with terrorist and related activities.

[subsection (8A) inserted by section 10 of Act 38 of 1999 and substituted by section 27 of Act 33 of 2004]

(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.

55. Appeal against forfeiture order

Any preservation of property order and any order authorising the seizure of the property concerned or other ancillary order which is in force at the time of any decision regarding the making of a forfeiture order under section 50(1) shall remain in force pending the outcome of any appeal against the decision concerned.

[section 55 substituted by section 11 of Act 38 of 1999]

56. Effect of forfeiture order

(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 57 in respect of such property.

[subsection (1) substituted by section 32 of Act 24 of 1999]

(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.

(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.

57. Fulfillment of forfeiture order

(1) The *curator bonis* must, subject to any order for the exclusion of interests in forfeited property under section 52(2)(a) or 54(8) and in accordance with the directions of the Committee—

(a) deposit any moneys forfeited under section 56(2) into the Account;

(b) deliver property forfeited under section 56(2) to the Account; or

(c) dispose of property forfeited under section 56(2) by sale or any other means and deposit the proceeds of the sale or disposition into the Account.

[subsection (1) substituted by section 33(a) of Act 24 of 1999]

(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 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) *[subsection (4) deleted by section 33(b) of Act 24 of 1999]*

(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 forfeiture of property

58. Offence may form the basis of multiple orders

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 same offence.

59. Application of Chapter to deceased estates

(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 executor of that person's estate.

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

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

(a) in respect of property which forms part of a deceased estate; and

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

60. Effect of death of joint owner of preserved property

(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.

61. Expedition of applications

(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 High Court to hear and determine the application.

62. Procedure and rules of court

(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 51.

[paragraph (b) substituted by section 34 of Act 24 of 1999]

(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 No. 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.

Chapter 7
Criminal Assets Recovery Account

63. Establishment of Criminal Assets Recovery Account

There is hereby established in the national revenue fund a separate account to be known as the Criminal Assets Recovery Account.

64. Finances of Account

The account shall consist of—

(a) all moneys derived from the fulfillment of confiscation and forfeiture orders contemplated in Chapters 5 and 6;

[paragraph (a) substituted by section 35(a) of Act 24 of 1999]

(aA) all property derived from the fulfillment of forfeiture orders as contemplated in section 57;

[paragraph (aA) inserted by section 35(b) of Act 24 of 1999]

(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 property or moneys appropriated by Parliament, or paid into, or allocated to, the Account in terms of any other Act;

[paragraph (c) substituted by section 35(c) of Act 24 of 1999]

(d) domestic and foreign grants;

(e) any property or amount of money received or acquired from any source; and

[paragraph (e) substituted by section 35(d) of Act 24 of 1999]

(f) all property or moneys transferred to the Account in terms of this Act.

[paragraph (f) substituted by section 35(e) of Act 24 of 1999]

65. Establishment of Committee

(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 National Director; and

(e) if necessary, two other persons designated by the Minister.

(3) The members of the Committee may designate an alternate to attend a meeting of the Committee in their place.

(4) The Committee shall designate one of its members as deputy chairperson of the Committee, and when the chairperson is not available, the deputy chairperson shall act as chairperson.

66. Conditions of service, remuneration, allowances and other benefits of certain members of Committee

The members of the Committee appointed in terms of section 65(2)(c) 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.

67. Meetings of Committee

(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, if such procedure is not prescribed.

68. Objects of Committee

The objects of the committee shall be—

(a) to advise Cabinet in connection with all aspects of forfeiture of property to the State in terms of Chapter 6 and the transfer of forfeited property to the Account in terms of any other Act;

(b) 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, the financing of terrorist and related activities and crime in general; and

[paragraph (b) substituted by section 27 of Act 33 of 2004]

(c) 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.

69. Powers and functions of Committee

The Committee may—

(a) make recommendations to Cabinet with regard to a policy to be adopted concerning the forfeiture and realisation of property, other than moneys, in terms of Chapter 6 and the transfer of such property to the Account in terms of any other Act;

(b) make recommendations to Cabinet with regard to the allocation of property and moneys from the Account to specific law enforcement agencies;

[paragraph (b) substituted by section 36(a) of Act 24 of 1999]

(c) make recommendations to Cabinet with regard to 'the allocation of property and moneys from the Account to any institution, organisation or fund contemplated in section 68(c);

[paragraph (c) substituted by section 36(b) of Act 24 of 1999]

(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; and

(f) 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), (c) and (d).

69A. Utilisation of Account and accountability

(1) The property and money allocated to, or standing to the credit of, the Account may be utilised by Cabinet, after considering the recommendations of the Committee, for—

(a) the allocation of property and amounts of money from the Account to specific law enforcement agencies;

(b) the allocation of property and amounts of money from the Account to any institution, organisation or fund contemplated in section 68(c); and

(c) the administration of the Account.

(2) All amounts of money withdrawn, or property allocated, from the Account under subsection (1) shall be so withdrawn or allocated as a direct charge against the National Revenue Fund.

(3) (a) Whenever Cabinet allocates property or money under subsection (1) to a specific law enforcement agency or to an institution, organisation or fund contemplated in section 68(c) —

(i) Cabinet shall indicate the specific purpose for which that property or money is to be utilised; and

(ii) the Minister shall forthwith cause all particulars of such allocation to be tabled in Parliament.

(b) Property or money allocated under subsection (1) may not be utilised for any other purpose than that specified in terms of paragraph (a)(i).

(4) No allocation of property or money shall be made under subsection (1) to an institution, organisation or fund contemplated in section 68(c) unless an accounting officer for that institution, organisation or fund is appointed or designated for such institution, organisation or fund.

(5) An accounting officer appointed or designated under subsection (4) shall be charged with the responsibility of accounting for all money allocated under subsection (1), the acquisition, receipt, custody and disposal of all property so allocated and all payments made by him or her in respect of the purpose for which the allocation had been made.

(6) The Committee may, after consultation with the Treasury and the Auditor-General, in such manner as it deems necessary, issue guidelines to accounting officers appointed or designated under subsection (4) in connection with the systems of book-keeping and accounting to be followed by them.

(7) Accounting by a law enforcement agency or institution, organisation or fund for property and money allocated to it from the Account under subsection (1) shall be done separately from accounting for money and property received from any other source.

(8) The Auditor-General shall audit the books of accounts, accounting statements, financial statements and financial management of each law enforcement agency or institution, organisation or fund to which property or money had been allocated under subsection (1) in respect of that allocation, and the provisions of section 6 of the Auditor-General Act, 1989 (Act 52 of 1989), shall apply in respect of any such audit.

(9) The Auditor-General shall submit a copy of the report on an audit under subsection (8) to the Committee.

[section 69A inserted by section 37 of Act 24 of 1999]

70. Other matters to be prescribed

All other matters in connection with the Committee or arising from this Chapter shall be prescribed.

Chapter 8
General provisions

71. Access to information

(1) The National Director may request any person employed in or associated with a Government Department or statutory body 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 which prohibits or precludes him or her—

(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,

furnish the National Director with such information and permit the National Director to have access to any registers, records, documents, and electronic data, which 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 (3), requires to maintain the confidentiality of such information, registers, records, documents or electronic data.

(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 20 years.

72. Investigations

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 an alleged offence in terms of this act, or any person or enterprise may be in possession, custody or control of any documentary material relevant to such alleged offence, 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, the power to institute an investigation in terms of the provisions of Chapter 5 of the National Prosecuting Authority Act, 1998.

73. Sharing of information

Notwithstanding the provisions of section 4 of the Income Tax Act, 1962 (Act No. 58 of 1962), 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 1, 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.

[section 73 substituted by section 38 of Act 24 of 1999]

74. Hearings of court to be open to public

(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, the *curator bonis* referred to in section 28 or 42 and any other person referred to in paragraph (b)(ii), and such application shall be heard behind closed doors.

[paragraph (c) substituted by section 39 of Act 24 of 1999]

(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 authorise 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.

75. Offences relating to misuse of information, failure to comply with order of court, and hindering person in performance of functions

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

(a) that information has been disclosed under the provisions of 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, or brings information to the attention of another person 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 Chapter 5 or 6, shall be guilty of an offence.

(3) 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 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; or

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

76. Jurisdiction of courts

(1) A regional court shall have penal jurisdiction to impose any penalty mentioned in section 8 or 71 (3)(b), even though that penalty may exceed the penal jurisdiction of that court.

[subsection (1) substituted by section 40 of Act 24 of 1999]

(2) A magistrate's court shall have penal jurisdiction to impose any penalty mentioned in section 10, even though that penalty may exceed the penal jurisdiction of that court.

(3) A magistrate's court or regional court shall have jurisdiction to make any order referred to in section 18(1), even though the amount payable under that order may exceed the civil jurisdiction of a magistrate's court or regional court.

77. Regulations

(1) The Minister may make regulations—

(a) with regard to the fees referred to in section 28(3) (c);

(b) *[paragraph (b) deleted by section 79 of Act 38 of 2001]*;

(c) *[paragraph (c) deleted by section 79 of Act 38 of 2001]*;

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

(e) providing for any matter which is required or permitted to be or may be prescribed under any provision of this Act; and

(f) 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.

78. Liability

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.

79. Amendment and repeal of laws

(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.

80. Transitional arrangements

(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.

(3) An investigation, or prosecution or other legal proceedings, in respect of conduct which would have constituted an offence under the Proceeds of Crime Act, 1996, and which occurred after the commencement of that Act but before the commencement of this Act, may be instituted and continued as if this Act had not been passed.

[subsection (3) added by section 12 of Act 38 of 1999]

81. Short title and commencement

(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, 38, 50, 51, 52, 54, 58 and 73)

[Schedule 1 amended by section 36 of Act 12 of 2004, by section 27 of Act 33 of 2004, substituted by section 68 of Act 32 of 2007 and amended by section 11 of Act 13 of 2013]

1. murder;
2. rape or compelled rape as contemplated in section 3 or 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively;
3. kidnapping;
4. arson;
5. public violence;
6. robbery;
7. assault with intent to do grievous bodily harm;
8. sexual assault, compelled sexual assault or compelled self-sexual assault as contemplated in section 5, 6 or 7 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007, respectively;
9. any offence contemplated in Part 2 of Chapter 3 or the whole of Chapter 4 of the Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007;
10. any offence under any legislation dealing with gambling, gaming or lotteries;
11. contravention of section 20(1) of the Sexual Offences Act, 1957 (Act No. 23 of 1957);
12. any offence contemplated in Part 1 to 4, or section 17, 18, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004);
13. extortion;

14. childstealing;

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

16. malicious injury to property;

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

18. any offence under section 36 or 37 of the General Law Amendment Act, 1955 (Act No. 62 of 1955);

19. fraud;

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

21. offences relating to the coinage;

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

23. 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;

24. any offence in contravention of section 36 of the Arms and Ammunition Act, 1969 (Act No. 75 of 1969);

25. 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;

26. any offence relating to exchange control;

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

28. any offence contemplated in sections 1(1) and 1A(1) of the Intimidation Act, 1982 (Act No. 72 of 1982);

29. defeating or obstructing the course of justice;

30. perjury;

31. subornation of perjury;

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

32A. Any specified offence as defined in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004;

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

33A. Any offence under Chapter 2 of the Prevention and Combating of Trafficking in Persons Act, 2013;

[item 33A inserted by section 48 of Act 7 of 2013]

33B. Any offence referred to in section 3 of the Criminal Matters Amendment Act, 2015;

[item 33B inserted by section 9 of Act 18 of 2015]

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

35. commits torture;

36. attempts to commit torture; or

37. incites, instigates, commands or procures any person to commit torture, is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life;

38. any person who participates in torture, or who conspires with a public official to aid or procure the commission of or to commit torture, is guilty of the offence of torture and is on conviction liable to imprisonment, including imprisonment for life.

Schedule 2 (Section 79)

Amendment to sections of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992)

[Schedule 2 repealed by section 42 of Act 24 of 1999]

[Schedule 2, previously Schedule 3, renumbered by section 42 of Act 24 of 1999]

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,

   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.**]".

5. The amendment of section 10 by the deletion of subsection (2).

Schedule 3 (Section 79)

Amendment of the International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996)

[Schedule 3 added by section 43 of Act 24 of 1999]

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 or forfeiture order made under the [Proceeds of Crime Act, 1996] Prevention of Organised Crime Act, 1998 (Act 121 of 1998);"; and

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

‘‘ ‘restraint order’ means a restraint order or preservation of property order made under the [Proceeds of Crime Act, 1996] Prevention of Organised Crime Act, 1998 (Act 121 of 1998);”.