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GOVERNMENT NOTICE

DEPARTMENT OF JUSTICE

No. R. 1478

6 October 1995

REGULATIONS MADE UNDER THE DRUGS AND DRUG TRAFFICKING ACT, 1992 (ACT No. 140 OF 1992)

The Minister of Justice has under section 61 of the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992), made the regulations in the Schedule.

SCHEDULE

Definitions

1. (1) In these regulations any word or expression to which a meaning has been assigned in Chapter VI of the Act shall bear the meaning so assigned to it and, unless the context otherwise indicates, "the Act" means the Drugs and Drug Trafficking Act, 1992 (Act No. 140 of 1992).

(2) In these regulations, except where it is inconsistent with the context or clearly inappropriate, any reference to proceedings which have been or are to be instituted in a designated country shall be construed as a reference to proceedings which either—

(a) have resulted in the making of a foreign confiscation order in the designated country; or

(b) may result in a foreign confiscation order being made in the designated country,

as the case may be.

GOEWERMENTSKENNISGEWING

DEPARTEMENT VAN JUSTISIE

No. R. 1478

6 Oktober 1995

REGULASIES UITGEVAARDIG KRAGTENS DIE WET OP DWELMMIDDELS EN DWELMSMOKKELARY, 1992 (WET No. 140 VAN 1992)

Die Minister van Justisie het kragtens artikel 61 van die Wet op Dwelmmiddels en Dwelmsmokkelary, 1992 (Wet No. 140 van 1992), die regulasies in die Bylae uitgevaardig.

BYLAE

Woordomskrywing

1. (1) In hierdie regulasies het enige woord of uitdrukking waaraan 'n betekenis in Hoofstuk VI van die Wet geheg is, die betekenis aldus daaraan geheg en, tensy uit die samehang anders blyk, beteken "die Wet" die Wet op Dwelmmiddels en Dwelmsmokkelary, 1992 (Wet No. 140 van 1992).

(2) In hierdie regulasies, behalwe waar dit onbestaanbaar met die samehang of duidelik onvanpas is, word 'n verwysing na verrigtinge wat in 'n aangewese land ingestel is of ingestel staan te word, uitgelê as 'n verwysing na verrigtinge wat óf—

(a) die verlening van 'n buitelandse inbeslagnemingsbevel in die aangewese land tot gevolg gehad het; óf

(b) die verlening van 'n buitelandse inbeslagnemingsbevel in die aangewese land tot gevolg kan hê,

na gelang van die geval.

Proceedings instituted in designated countries

2. For the purposes of these regulations, proceedings shall be deemed to have been instituted in the designated country in question—

- (a) on the date on which—
 - (i) an application for a foreign confiscation order has been made to a court of that designated country; or
 - (ii) under the law of that designated country specified in column 1 of Annexure 1, any of the steps specified in column 2 of Annexure 1 in respect of that designated country has been taken in such country; and
- (b) where there are two or more dates on which proceedings were instituted in that designated country, on the earliest of those dates.

Application of provisions of Chapter V of the Act to foreign confiscation orders or to certain proceedings in designated countries

3. The provisions of Chapter V of the Act (except sections 29, 30, 35, 36, 37 (1) and (4), 38, 39, 40, 50 and 53) shall, in the amended or adapted form thereof as stated in Annexure 3, apply to foreign confiscation orders or to proceedings which have been or are to be instituted in a designated country.

Proof of foreign documents

4. (1) For the purposes of Chapter VI of the Act and of these regulations a document purporting to be—

- (a) an order made or judgment given by a court in a designated country and purporting to be signed by any person in his or her capacity as a judge, magistrate or presiding officer of that court; or
- (b) a certificate or document issued by or on behalf of the appropriate authority of a designated country,

shall be admissible as evidence and *prima facie* proof of any fact stated therein.

(2) For the purposes of Chapter VI of the Act and of these regulations a statement contained in a document purporting—

- (a) to have been received in evidence or to set out or summarise evidence given in proceedings in a court of a designated country; and
- (b) to be certified by any person in his or her capacity as a judge, magistrate, presiding officer or officer of the court in question, or by or on behalf of the appropriate authority of a designated country, as having been received in evidence or setting out or summarising the evidence given in the afore-mentioned proceedings,

shall be admissible as evidence and *prima facie* proof of any fact stated therein.

(3) For the purposes of Chapter VI of the Act and of these regulations a document purporting to be a copy of any order, judgment, certificate, statement contained in a document, or another document contemplated in subregulations (1) and (2), and purporting to

Verrigtinge in aangewese lande ingestel

2. Vir doeleindes van hierdie regulasies word verrigtinge in die betrokke aangewese land geag ingestel te wees—

- (a) op die datum waarop—
 - (i) 'n aansoek om 'n buitelandse inbeslagnemingsbevel by 'n hof van daardie aangewese land gedoen is; of
 - (ii) ingevolge die reg van daardie aangewese land vermeld in kolom 1 van Aanhangel 1, enige van die stappe vermeld in kolom 2 van Aanhangel 1 ten opsigte van daardie aangewese land, in sodanige land gedoen is; en
- (b) waar daar twee of meer datums is waarop verrigtinge in daardie aangewese land ingestel is, op die vroegste van daardie datums.

Toepassing van bepalings van Hoofstuk V van die Wet op buitelandse inbeslagnemingsbevele of op sekere verrigtinge in aangewese lande

3. Die bepalings van Hoofstuk V van die Wet (met uitsondering van artikels 29, 30, 35, 36, 37 (1) en (4), 38, 39, 40, 50 en 53) is, in die gewysigde of aangepaste vorm daarvan soos vervat in Aanhangel 3, op buitelandse inbeslagnemingsbevele of op verrigtinge wat ingestel is of ingestel staan te word in 'n aangewese land, van toepassing.

Bewys van buitelandse dokumente

4. (1) Vir doeleindes van Hoofstuk VI van die Wet en hierdie regulasies is 'n dokument wat voorgee—

- (a) 'n bevel verleen of uitspraak gegee deur 'n hof in 'n aangewese land, te wees en voorgee geteken te wees deur enige persoon in sy of haar hoedanigheid van regter, landdros of voorsittende beamppte van daardie hof; of
- (b) 'n sertifikaat of dokument uitgereik deur of ten behoeve van die toepaslike gesag van 'n aangewese land, te wees,

as getuïenis toelaatbaar en *prima facie*-bewys van enige feit daarin vermeld.

(2) Vir doeleindes van Hoofstuk VI van die Wet en hierdie regulasies is 'n verklaring vervat in 'n dokument wat voorgee—

- (a) as getuïenis ontvang te gewees het of getuïenis in verrigtinge in 'n hof van 'n aangewese land uiteen te sit of op te som; en
- (b) deur enige persoon in sy of haar hoedanigheid van regter, landdros, voorsittende beamppte of beamppte van die betrokke hof, of deur of ten behoeve van die toepaslike gesag van 'n aangewese land, gewaarmerk te wees as getuïenis wat ontvang is of 'n opsomming of uiteensetting van getuïenis gelewer in die betrokke verrigtinge,

as getuïenis toelaatbaar en *prima facie*-bewys van enige feit daarin vermeld.

(3) Vir doeleindes van Hoofstuk VI van die Wet en hierdie regulasies is 'n dokument wat voorgee 'n afskrif te wees van enige bevel, uitspraak, sertifikaat, verklaring vervat in 'n dokument, of ander dokument bedoel in subregulasies (1) en (2) en wat voorgee as 'n juiste

be certified a true copy by any person in his or her capacity as a judge, magistrate, presiding officer or officer of the court in question, or by or on behalf of the appropriate authority of the designated country concerned, shall be admissible as evidence and *prima facie* proof of any fact stated therein.

(4) For the purposes of Chapter VI of the Act and of these regulations a document purporting to be a translation of any order, judgment, certificate, statement contained in a document, or another document contemplated in subregulations (1) and (2) and purporting to—

(a) be certified to be a true translation by the translator concerned; and

(b) contain a certification by or on behalf of the appropriate authority of the designated country concerned that the translator concerned is an official translator of that designated country; that appropriate authority or a court of that designated country, or that the translator concerned was appointed or designated by that designated country, that appropriate authority or a court of that designated country to translate the document concerned,

shall be admissible as evidence and *prima facie* proof of any fact stated therein: Provided that the translation is accompanied by the original document or a copy certified to be a true copy thereof in accordance with the provisions of subregulation (3).

General provisions regarding admissibility

5. (1) Any document admissible under regulation 4 shall not require further certification, authentication or legalisation.

(2) The provisions of subregulation (1) and regulation 4 shall not affect the admission of any evidential material which is otherwise admissible.

Proof of exchange rate

6. For the purposes of Chapter VI of the Act and of these regulations an exchange rate furnished in respect of a particular day in a document purporting to be—

(a) a facsimile received from the South African Reserve Bank shall be *prima facie* proof of the exchange rate prevailing on that particular day; and

(b) an affidavit made by a person in his or her capacity as an officer of the South African Reserve Bank shall be conclusive proof of the exchange rate prevailing on that particular day.

Representation of government of a designated country

7. A request for assistance sent to the Department of Foreign Affairs by the appropriate authority of a designated country shall, unless the contrary is proved, be deemed to constitute the authorisation of the government of that country for the government of the Republic to act on that designated country's behalf in any proceedings under Chapter VI of the Act and these regulations.

afskrif gewaarmerk te wees deur enige persoon in sy of haar hoedanigheid van regter, landdros, voorsittende beampte of beampte van die betrokke hof, of deur of ten behoeve van die toepaslike gesag van die betrokke aangewese land, as getuienis toelaatbaar en *prima facie*-bewys van enige feit daarin vermeld.

(4) Vir doeleindes van Hoofstuk VI van die Wet en hierdie regulasies is 'n dokument wat voorgee 'n vertaling te wees van enige bevel, uitspraak, sertifikaat, verklaring vervat in 'n dokument, of ander dokument bedoel in subregulasies (1) en (2) en wat voorgee—

(a) as 'n juiste vertaling gewaarmerk te wees deur die betrokke vertaler; en

(b) 'n waarmerk deur of ten behoeve van die toepaslike gesag van die betrokke aangewese land te bevat dat die betrokke vertaler 'n amptelike vertaler van die aangewese land, die toepaslike gesag of 'n hof van die aangewese land is of dat die betrokke vertaler deur die aangewese land, toepaslike gesag of hof van die aangewese land aangestel of aangewys is om die betrokke dokument te vertaal,

as getuienis toelaatbaar en *prima facie*-bewys van enige feit daarin vermeld: Met dien verstande dat die vertaling vergesel gaan van die oorspronklike dokument of van 'n afskrif daarvan, gewaarmerk as 'n juiste afskrif ooreenkomstig die bepalings van subregulasie (3).

Algemene bepalings rakende toelaatbaarheid

5. (1) 'n Dokument toelaatbaar ingevolge regulasie 4 benodig nie verdere sertifisering, waarmerking of wettiging nie.

(2) Die bepalings van subregulasie (1) en regulasie 4 raak nie die toelating van enige bewysmateriaal wat andersins toelaatbaar is nie.

Bewys van wisselkoers

6. Vir doeleindes van Hoofstuk VI van die Wet en hierdie regulasies is 'n wisselkoers verstrek ten opsigte van 'n bepaalde dag in 'n dokument wat voorgee—

(a) 'n faksimile te wees ontvang van die Suid-Afrikaanse Reserwe Bank, *prima facie*-bewys van die wisselkoers wat op daardie bepaalde dag geheers het; en

(b) 'n beëdigde verklaring te wees gemaak deur 'n persoon in sy of haar hoedanigheid van beampte van die Suid-Afrikaanse Reserwebank, afdoende bewys van die wisselkoers wat op daardie bepaalde dag geheers het.

Verteenwoordiging van regering van 'n aangewese land

7. 'n Versoek om bystand deur die toepaslike gesag van 'n aangewese land aan die Departement van Buitelandse Sake gestuur, word, tensy die teendeel bewys word, geag die magtiging uit te maak van die regering van daardie land vir die regering van die Republiek om namens daardie aangewese land in enige verrigtinge ingevolge Hoofstuk VI van die Wet en hierdie regulasies op te tree.

Registration of foreign confiscation orders

8. Whenever a certified copy or translation, of a foreign confiscation order is lodged with a clerk, of a lower court in the Republic, that clerk shall register that foreign confiscation order—

(a) by numbering the foreign confiscation order with a consecutive case number for the year during which it is lodged; and

(b) by recording—

(i) where the foreign confiscation order was made for the payment of money, the balance in the currency of the Republic of the amount payable thereunder; and

(ii) where the foreign confiscation order was made for the recovery of particular property, full particulars of that property, in so far as such particulars are available,

on the case cover in which the foreign confiscation order is filed.

Application for setting aside of registration of foreign confiscation orders

9. An application for the setting aside of the registration of a foreign confiscation order contemplated in paragraph (b) of section 56 (2) of the Act shall be made within 21 court days from the date of service of a notice issued in terms of the said section.

Service of notices on persons against whom foreign confiscation orders may be enforced

10. (1) A notice issued in terms of section 56 (2) of the Act shall correspond substantially to Form 1 of Annexure 2, and shall contain—

(a) a consecutive case number referred to in regulation 8 (a);

(b) the date on which the foreign confiscation order was registered;

(c) in the case of the payment of money, the balance in the currency of the Republic of the amount payable under the foreign confiscation order; and

(d) in the case of the recovery of particular property, full particulars of the property specified in the foreign confiscation order in so far as such particulars are available.

(2) A notice shall, subject to the provisions of sub-regulation (8), be served on any person against whom a foreign confiscation order may be enforced and such notice, together with as many copies thereof as there are persons upon whom the notice is to be served, shall be delivered to the sheriff.

Registrasie van buitelandse inbeslagnemingsbevele

8. Wanneer 'n gewaarmerkte afskrif of vertaling van 'n buitelandse inbeslagnemingsbevel by 'n klerk van 'n laer hof in die Republiek ingedien word, registreer daardie klerk daardie buitelandse inbeslagnemingsbevel—

(a) deur die buitelandse inbeslagnemingsbevel te nommer met 'n saakvolgnommer vir die jaar waarin dit ingedien word; en

(b) deur—

(i) waar die buitelandse inbeslagnemingsbevel vir die betaling van geld verleen is, die balans van die bedrag wat daarkragtens betaalbaar is in die geldeenheid van die Republiek; en

(ii) waar die buitelandse inbeslagnemingsbevel vir die verhaal van bepaalde eiendom verleen is, volle besonderhede van daardie eiendom, in soverre sodanige besonderhede beskikbaar is,

op die saakomslag waarin die buitelandse inbeslagnemingsbevel geliasseer is, aan te teken.

Aansoek om tersydestelling van registrasie van buitelandse inbeslagnemingsbevele

9. 'n Aansoek om die tersydestelling van die registrasie van 'n buitelandse inbeslagnemingsbevel bedoel in paragraaf (b) van artikel 56 (2) van die Wet moet binne 21 hofdae vanaf die datum van betekening van 'n kennisgewing ingevolge genoemde artikel gedoen word.

Betekening van kennisgewings aan persone teen wie buitelandse inbeslagnemingsbevele afgedwing kan word

10. (1) 'n Kennisgewing uitgereik ingevolge artikel 56 (2) van die Wet stem wesenlik met Vorm 1 van Aanhangsel 2 ooreen en bevat—

(a) die saakvolgnommer bedoel in regulasie 8 (a);

(b) die datum waarop die buitelandse inbeslagnemingsbevel geregistreer is;

(c) in geval van die betaling van geld, die balans in die geldeenheid van die Republiek van die bedrag wat kragtens die buitelandse inbeslagnemingsbevel betaalbaar is; en

(d) in die geval van die verhaal van bepaalde eiendom, volle besonderhede van die eiendom wat in die buitelandse inbeslagnemingsbevel gespesifiseer word in soverre sodanige besonderhede beskikbaar is.

(2) 'n Kennisgewing word, behoudens die bepalings van subregulasie (8), aan enige persoon teen wie 'n buitelandse inbeslagnemingsbevel afgedwing kan word, beteken en sodanige kennisgewing, tesame met soveel afskrifte daarvan as wat daar persone is aan wie daardie kennisgewing beteken moet word, word aan die balju gelever.

(3) Subject to the provisions of this regulation, a notice shall forthwith be served by a sheriff upon the person against whom a foreign confiscation order may be enforced by delivery of a copy of the notice in one of the following manners:

(a) To the said person personally or to his or her duly authorised agent;

(b) at the said person's residence or place of business to a person apparently not less than 16 years of age and apparently residing or employed there: Provided that for the purpose of this paragraph, "residence" means, when a building is occupied by more than one person or family, that portion of the building occupied by the person upon whom service is to be effected;

(c) at the said person's place of employment to a person apparently not less than 16 years of age and apparently in authority over the said person or, in the absence of such a person in authority, to a person apparently not less than 16 years of age and apparently in charge at the said person's place of employment;

(d) in the case of a juristic person at its registered office or main place of business within the area of jurisdiction of the court concerned to a director or a responsible employee or servant thereof;

(e) in the case of a Minister, Deputy Minister or Premier in his or her official capacity, the State or a provincial government, at the Office of the State Attorney in Pretoria, or a branch of that Office which serves the area of jurisdiction of the court from which the notice has been issued.

(4) A sheriff shall, on request by the person upon whom a notice is served, exhibit to him or her the original of the notice.

(5) Where the person upon whom a notice is to be or may be served keeps his or her residence or place of business closed and thereby prevents the sheriff from serving the notice, it shall be sufficient to affix a copy thereof to the outer or principal door of such residence or place of business.

(6) Where the sheriff is unable after diligent search to find at the residence or place of business of the person upon whom a notice is to be served, either that person or a person referred to in subregulation (3) (b) or, in the case of a juristic person referred to in subregulation (3) (d), a director or a responsible employee or servant, it shall be sufficient to affix a copy of the notice to the outer or principal door of such residence, place of business, registered office or main place of business.

(7) If it comes to the knowledge of a sheriff that the person upon whom service of a notice is to be effected has moved to a new residential address within the area for which the sheriff has been appointed or which has been allocated to the sheriff, the sheriff shall effect service at that address.

(3) Behoudens die bepalings van hierdie regulasie word 'n kennisgewing onverwyld deur 'n balju aan die persoon teen wie 'n buitelandse inbeslagnemingsbevel afgedwing kan word, beteken deur 'n afskrif van die kennisgewing op een van die volgende wyses af te lewer:

(a) Aan bedoelde persoon self of aan sy of haar gevolmagtigde;

(b) by bedoelde persoon se woon- of besigheidsplek aan iemand wat oënskynlik nie jonger as 16 jaar is nie en oënskynlik daar woon of in diens is: Met dien verstande dat, vir doeleindes van hierdie paragraaf, "woonplek", waar 'n gebou deur meer as een persoon of gesin bewoon word, dié gedeelte van die gebou beteken wat deur die persoon aan wie betekening moet geskied, bewoon word;

(c) by bedoelde persoon se werkplek aan 'n persoon wat oënskynlik nie jonger as 16 jaar is nie en wat oënskynlik in 'n gesagsposisie oor bedoelde persoon is of, in die afwesigheid van so 'n persoon in 'n gesagsposisie, aan 'n persoon wat oënskynlik nie jonger as 16 jaar is nie en wat oënskynlik in beheer is by bedoelde persoon se werkplek;

(d) in die geval van 'n regspersoon, by die regspersoon se geregistreerde kantoor of belangrikste besigheidsplek binne die regsgebied van die betrokke hof aan 'n direkteur of 'n verantwoordelike werknemer of dienaar van die regspersoon;

(e) in die geval van 'n Minister, Adjunkminister of Premier in sy of haar amptelike hoedanigheid, die Staat of 'n provinsiale regering, aan die Kantoor van die Staatsprokureur te Pretoria, of 'n tak van daardie Kantoor wat die regsgebied bedien van die hof waaruit die kennisgewing uitgereik is.

(4) 'n Balju moet op versoek van die persoon aan wie 'n kennisgewing beteken word, die oorspronklike kennisgewing aan hom of haar toon.

(5) Indien die persoon aan wie 'n kennisgewing beteken moet of kan word, sy of haar woon- of besigheidsplek gesluit hou en sodoende die balju verhoed om die kennisgewing te beteken, is dit voldoende om 'n afskrif van die kennisgewing aan die buite- of hoofdeur van sodanige woon- of besigheidsplek aan te bring.

(6) Indien die balju na sorgvuldige deursoeking nie in staat is om by die woon- of besigheidsplek van die persoon aan wie 'n kennisgewing beteken moet word, daardie persoon of 'n persoon in subregulasie (3) (b) bedoel of, in die geval van 'n regspersoon in subregulasie (3) (d) bedoel, 'n direkteur of 'n verantwoordelike werknemer of dienaar te vind nie, is dit voldoende om 'n afskrif van die kennisgewing aan die buite- of hoofdeur van sodanige woon- of besigheidsplek, geregistreerde kantoor of belangrikste besigheidsplek aan te bring.

(7) Indien dit tot die kennis van 'n balju kom dat die persoon aan wie betekening moet geskied, verhuis het na 'n nuwe woonadres binne die gebied waarvoor daardie balju aangestel is of wat aan daardie balju toegewys is, moet die balju die kennisgewing by daardie adres beteken.

(8) Where two or more persons are to be served with the same notice, service shall be effected upon each, except—

(a) in the case of a partnership, when service may be effected by delivery at the office or place of business of the partnership, or, if there be none such, then by service on any member of the partnership in any manner prescribed in this regulation;

(b) in the case of two or more persons upon whom a notice is to be served in their capacity as trustees of an insolvent estate, liquidators of a company, executors, curators or guardians, when service may be effected by delivery to any one of such persons in any manner prescribed in this regulation;

(c) in the case of a syndicate, unincorporated company, club, society or church, when service may be effected by delivery at the local office or place of business of such body or, if there be none such, by service on the chairman or secretary or other responsible officer thereof in any manner prescribed in this regulation.

(9) The sheriff shall, on a form substantially corresponding to Form 2 of Annexure 2, endorse the manner in which the copy of the notice was served, and shall attach the form to the notice and return it to the clerk of the lower court from whom he received such notice: Provided that where such service has been effected in the manner prescribed by subregulation (3) (b), (c), (d) or (e), the sheriff shall indicate in the return of service of the notice concerned the name of the person on whom it has been served and the capacity in which that person stands in relation to the person, juristic person or institution to whom the notice is addressed, and where such service has been effected in the manner prescribed by subregulation (3) (b) or (c) the court may, if there is reason to doubt whether the notice served has come to the actual knowledge of the person on whom it is to be served, and in the absence of satisfactory evidence, treat such service as invalid.

(10) Where a court is satisfied that service cannot be effected in any manner prescribed in this regulation and that the action is within its jurisdiction, the court may make an order allowing service to be effected by the person and in the manner specified in such order.

(11) Any member of the Force as defined in section 1 of the Police Act, 1958 (Act No. 7 of 1958), may, if so requested by a sheriff, assist that sheriff to effect service of a notice.

Short title

11. These regulations shall be called the Drug Trafficking (Mutual Assistance) Regulations, 1995, and shall come into operation on 1 November 1995.

(8) Waar dieselfde kennisgewing aan twee of meer persone beteken moet word, word dit aan elkeen beteken, behalwe—

(a) in die geval van 'n vennootskap, in welke geval betekening kan geskied deur aflewering by die kantoor of besigheidsplek van die vennootskap of, indien daar nie so 'n kantoor of besigheidsplek is nie, deur betekening aan enige lid van die vennootskap op enigeen van die wyses voorgeskryf in hierdie regulasie;

(b) in die geval van twee of meer persone aan wie die kennisgewing in hul hoedanigheid van kurators van 'n insolvente boedel, likwidadeurs van 'n maatskappy, eksekuteurs, kurators of voogde beteken moet word, in welke geval betekening kan geskied deur aflewering aan enigeen van sodanige persone op enigeen van die wyses voorgeskryf in hierdie regulasie;

(c) in die geval van 'n sindikaat, oningelyfde maatskappy, klub, vereniging of kerk, in welke geval betekening kan geskied deur aflewering by die plaaslike kantoor of besigheidsplek van sodanige liggaam of, indien daar nie sodanige kantoor of plek is nie, deur betekening aan die voorsitter of sekretaris of ander verantwoordelike amptenaar van sodanige liggaam op enigeen van die wyses voorgeskryf in hierdie regulasie.

(9) Die balju moet, op 'n vorm wat wesenlik met Vorm 2 van Aanhangel 2 ooreenstem, die wyse waarop die afskrif van die kennisgewing beteken is, aanteken en die vorm aan die kennisgewing heg en aan die klerk van die laer hof van wie hy sodanige kennisgewing ontvang het, terugbesorg: Met dien verstande dat waar sodanige betekening geskied het op die wyse by subregulasie (3) (b), (c), (d) of (e) voorgeskryf, die balju op die relaas van betekening van die betrokke kennisgewing die naam van die persoon aan wie hy die kennisgewing beteken het en die hoedanigheid waarin daardie persoon staan tot die persoon, regspersoon of instelling aan wie die kennisgewing gerig is, moet aandui, en waar sodanige betekening geskied op die wyse by subregulasie (3) (b) of (c) voorgeskryf, die hof, indien daar rede is om te twyfel of die kennisgewing wat beteken is, werklik tot die kennis van die persoon aan wie beteken moet word, gekom het en by onstentenis van bevredigende bewys, sodanige betekening as ongeldig kan beskou.

(10) Indien 'n hof oortuig is dat betekening nie op enigeen van die wyses voorgeskryf in hierdie regulasie kan geskied nie, en dat die aksie binne sy regsbevoegdheid is, kan die hof 'n bevel gee ingevolge waarvan betekening deur die persoon en op die wyse in die bevel vermeld, kan geskied.

(11) Enige lid van die Mag soos in artikel 1 van die Polisiewet, 1958 (Wet No. 7 van 1958), omskryf, mag, indien daartoe versoek deur 'n balju, daardie balju met die betekening van 'n kennisgewing bystaan.

Kort titel

11. Hierdie regulasies heet die Regulasies insake Dwelmsmokkelary (Onderlinge Bystand), 1995, en tree op 1 November 1995 in werking.

ANNEXURE 1

[illegible]

ANNEXURE 2**FORM 1****NOTICE**

Case No.

NOTICE IN TERMS OF SECTION 56 (2) OF THE DRUGS AND DRUG TRAFFICKING ACT, 1992 (ACT No. 140 OF 1992)

To

(NAME)

(RESIDENTIAL ADDRESS)

(BUSINESS/EMPLOYMENT ADDRESS)

You are hereby notified that a foreign confiscation order *in respect of the property described hereunder/for the payment of the amount of has been registered at the lower court for the district of on the day of 19.....

Description of property:

Note: (1) The registered foreign confiscation order has the effect of a civil judgment of the above-mentioned lower court.

(2) In terms of regulation 9 of the Drug Trafficking (Mutual Assistance) Regulations, 1995, you may, within 21 court days from the date of service of this notice, apply to the above-mentioned court for the setting aside of the registration of the said order.

Signed at on this day of 19.....

Clerk of the Court

* Delete whichever is not applicable.

FORM 2
RETURN OF SERVICE OF NOTICE

Case No.

I,, certify that
I have—

* (a) delivered a copy of the notice to personally [regulation 10 (3) (a)];

or

* (b) delivered a copy of the notice to the duly authorised agent of
..... [regulation 10 (3) (a)];

or

* (c) delivered a copy of the notice to a person
apparently not less than 16 years of age and apparently residing or employed at the residence or place of business
of in his or her capacity as
..... of
[regulation 10 (3) (b)];

or

* (d) delivered a copy of the notice to a person apparently not less than 16 years of age and who is apparently in authority over or in charge at
place of employment and in his or her capacity as
of [regulation 10 (3) (c)];

or

* (e) delivered a copy of the notice to a *director/responsible employee/servant of
..... at the latter's *registered office/
main place of business [regulation 10 (3) (d)];

or

* (f) delivered a copy of the notice to the State Attorney in in his or her capacity as
..... of [regulation 10 (3) (e)];

or

* (g) affixed a copy of the notice to the *outer/principal door of the *residence/place of business of
because he or she prevented the service of the notice by keeping the *residence/place of business closed [regulation 10 (5)];

or

* (h) affixed a copy of the notice to the *outer/principal door or the *residence/place of business/registered office/main
place of business of as he or she or a person apparently not less than 16 years of age or a director, responsible employee or servant
could not be found after a diligent search of the *residence/place of business of the person on whom notice is to be
served [regulation 10 (6)];

or

* (i) served a copy of the notice in the manner ordered by court [regulation 10 (10)].

Time Day Month 19

Place

Signature of sheriff

AANHANGSEL 1

Kolom 1 Aangewese land	Kolom 2 Stappe

AANHANGSEL 2

VORM 1

KENNISGEWING

Saak No.

KENNISGEWING INGEVOLGE ARTIKEL 56 (2) VAN DIE WET OP DWELMMIDDELS EN DWELMSMOKKELARY, 1992
(WET No. 140 VAN 1992)

Aan

(NAAM)

(WOONADRES)

(BESIGHEIDS-/WERKSADRES)

U word hierby in kennis gestel dat 'n buitelandse inbeslagnemingsbevel *ten opsigte van die eiendom hieronder beskryf/vir die betaling van die bedrag van by die laer hof vir die

distrik op die
dag van 19..... geregistreer is.

Beskrywing van eiendom:

Let wel: (1) Die geregistreerde buitelandse inbeslagnemingsbevel het die uitwerking van 'n siviele vonnis van bovermelde laer hof.

(2) Ingevolge regulasie 9 van die Regulasies insake Dwelmsmokkalary (Onderlinge Bystand), 1995, kan u binne 21 hofdae vanaf die datum van betekening van hierdie kennisgewing by bovermelde hof om die tersydestelling van die registrasie van genoemde bevel aansoek doen.

Geteken te op hede die dag van
..... 19.....

Klerk van die hof

* Skrap wat nie van toepassing is nie.

VORM 2

RELAAS VAN BETEKENING VAN KENNISGEWING

Saak No.

Ek, , sertifiseer
dat ek—

*(a) 'n afskrif van die kennisgewing aan
..... persoonlike oorhandig het [regulasie 10 (3) (a)];

of

*(b) 'n afskrif van die kennisgewing aan
....., die gevolmagtigde van
....., oorhandig het [regulasie 10 (3) (a)];

of

*(c) 'n afskrif van die kennisgewing aan
....., 'n persoon
wat oënskynlik nie jonger as 16 jaar is nie en wat oënskynlik by
se *woonplek/besigheidsplek woon of in diens is en in sy of haar hoedanigheid van
..... van
oorhandig het [regulasie 10 (3) (b)];

of

*(d) 'n afskrif van die kennisgewing aan
....., 'n persoon wat oënskynlik nie jonger as 16
jaar is nie en wat oënskynlik in 'n gesagsposisie is oor, of in beheer is by die werkplek van en in sy of
haar hoedanigheid van van
....., oorhandig het [regulasie 10 (3) (c)];

of

*(e) 'n afskrif van die kennisgewing aan
'n *direkteur/verantwoordelike werknemer/dienaar van
by laasgenoemde se *geregisteerde kantoor/belangrikste besigheidsplek oorhandig het [regulasie 10 (3) (d)];

of

*(f) 'n afskrif van die kennisgewing aan die Staatsprokureur te
..... oorhandig het in sy of haar
hoedanigheid van van
..... [regulasie 10 (3) (e)];

of

*(g) 'n afskrif van die kennisgewing aan die *buite-/hoof deur van
..... se *woonplek/besigheidsplek aangebring
het aangesien laasgenoemde die *woonplek/besigheidsplek gesluit hou en sodoende betekening verhinder
[regulasie 10 (5)];

of

*(h) 'n afskrif van die kennisgewing aan die *buite-/hoof deur van
se *woonplek/geregisteerde kantoor/belangrikste besigheidsplek aangebring het aangesien
..... of 'n persoon wat oënskynlik nie jonger as 16 jaar is nie
of 'n direkteur, verantwoordelike werknemer of dienaar nie na sorgvuldige deursoeking van die *woonplek/besig-
heidsplek van die persoon aan wie die kennisgewing beteken moet word, gevind kan word nie [regulasie 10 (6)];

of

*(i) 'n afskrif van die kennisgewing beteken het op die wyse deur die hof beveel [regulasie 10 (10)].

Tyd Dag Maand 19.....

Plek.....

Handtekening van balju

ANNEXURE 3**CHAPTER V AS AMENDED OR ADAPTED UNDER
SECTION 61 OF THE ACT****PROCEEDS OF DRUG TRAFFICKING*****Application of Chapter to foreign confiscation orders or certain proceedings in designated countries*****Definitions**

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

“affected gift” means any gift—

(a) made by the defendant in question not more than five years before the fixed date; or

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

(i) of property received by that defendant in connection with drug trafficking carried on by him 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 in that connection,

whether any such gift was made before or after the commencement of the Drug Trafficking (Mutual Assistance) Regulations, 1995;

“defendant” means a person against whom a foreign confiscation order has been made, and includes a person against whom proceedings have been or are to be instituted in a designated country which may result in a foreign confiscation order being made in that designated country;

“drug trafficking” includes—

(a) any act in the Republic which constitutes a drug offence or an economic offence; or

(b) any act or omission outside the Republic which, if it had occurred in the Republic, would have constituted a drug offence or an economic offence,

or to be concerned in any such act or omission;

“fixed date”, in relation to a defendant—

(a) if proceedings in connection with drug trafficking have been instituted against the defendant in a designated country, means the date on which such proceedings have been instituted; or

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

whichever is the earlier date;

“foreign confiscation order” means an order made by a court of a designated country with a view to recovering any payment or other reward received in connection with drug trafficking, or the value of any such payment or reward;

“restraint order” means an order referred to in section 42 (1);

“superior court” means a provincial or local division of the Supreme Court of South Africa, and includes, for the purposes of sections 41 to 45, any judge thereof.

AANHANGSEL 3**HOOFSTUK V SOOS GEWYSIG OF AANGEPAS
KRAGTENS ARTIKEL 61 VAN DIE WET****OPBRENGS VAN DWELMSMOKKELARY*****Toepassing van Hoofstuk op buitelandse inbeslagnemingsbevele of sekere verrigtinge in aangewese lande*****Woordomskriving**

28. (1) In hierdie Hoofstuk, tensy uit die samehang anders blyk, beteken—

“aangetaste geskenk” 'n geskenk—

(a) wat hoogstens vyf jaar voor die vasgestelde datum deur die betrokke verweerder gegee is; of

(b) wat te eniger tyd deur die betrokke verweerder gegee is, indien dit 'n geskenk was—

(i) van eiendom wat deur daardie verweerder ontvang is in verband met dwelmsmokkelary wat deur hom of iemand anders bedryf is; of

(ii) van eiendom, of 'n deel daarvan, wat regstreeks of onregstreeks in daardie verweerder se hande eiendom verteenwoordig het wat deur hom in daardie verband ontvang is,

hetsy so 'n geskenk voor of na die inwerkingtreding van die Regulasies insake Dwelmsmokkelary (Onderlinge Bystand), 1995, gegee is;

“buitelandse inbeslagnemingsbevel” 'n bevel deur 'n hof van 'n aangewese land verleen met die doel om enige betaling of ander beloning wat in verband met dwelmsmokkelary ontvang is, of die waarde van so 'n betaling of beloning, te verhaal;

“dwelmsmokkelary” ook—

(a) 'n handeling in die Republiek wat 'n dwelmmisdryf of 'n ekonomiese misdryf uitmaak; of

(b) 'n handeling of versuim buite die Republiek wat, indien dit in die Republiek plaasgevind het, 'n dwelmmisdryf of 'n ekonomiese misdryf sou uitmaak het,

of om by so 'n handeling of versuim betrokke te wees;

“hoër hof” 'n provinsiale of plaaslike afdeling van die Hooggeregshof van Suid-Afrika, en ook, by die toepassing van artikels 41 tot 45, 'n regter daarvan;

“inkortingsbevel” 'n bevel in artikel 42(1) bedoel;

“vasgestelde datum”, met betrekking tot 'n verweerder—

(a) indien verrigtinge in verband met dwelmsmokkelary teen die verweerder in 'n aangewese land ingestel is, die datum waarop sodanige verrigtinge ingestel is; of

(b) indien 'n inkortingsbevel teen die verweerder gemaak is of gemaak word, die datum van so 'n inkortingsbevel,

na gelang van watter datum die vroegste is;

“verweerder” iemand teen wie 'n buitelandse inbeslagnemingsbevel verleen is en ook iemand teen wie verrigtinge wat tot gevolg kan hê dat 'n buitelandse inbeslagnemingsbevel in 'n aangewese land verleen word, ingestel is of ingestel staan te word in daardie aangewese land.

(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 insolvent estate; or

(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 drug trafficking shall be construed as a reference also to anything received both in that connection and in some other connection.

(Sections 29 and 30 shall not apply to foreign confiscation orders or certain proceedings in designated countries.)

Realizable property

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

(a) where a foreign confiscation order was made for the recovery of a particular property, the property which is specified in the foreign confiscation order; and

(b) where no such foreign confiscation order was made—

(i) any property held by the defendant in question; and

(ii) 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 of the property.

Value of property

32. (1) For the purposes of this Chapter, the value of property, excluding any money, in relation to any person holding the property—

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

(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

(2) In hierdie Hoofstuk, behalwe waar dit onbestaanbaar met die samehang of duidelik onvanpas is, word 'n verwysing—

(a) na iemand wat eiendom besit, uitgelê as 'n verwysing na iemand wat 'n belang in die eiendom het, en—

(i) indien die boedel van so iemand gesekwestreer is, ook na die kurator van sy insolvente boedel; of

(ii) indien so iemand 'n maatskappy of ander regspersoon is wat gelikwadeer word, ook na die likwidateur daarvan;

(b) na iemand wat eiendom aan iemand anders oordra, uitgelê as 'n verwysing na iemand wat 'n belang in die eiendom aan iemand anders oordra of verleen;

(c) na enigiets wat in verband met dwelmsmokkelary ontvang is, uitgelê as 'n verwysing ook na enigiets wat in daardie verband sowel as in enige ander verband ontvang is.

(Artikels 29 en 30 is nie van toepassing op buitelandse inbeslagnemingsbevele of sekere verrigtinge in aangewese lande nie.)

Realiseerbare eiendom

31. (1) Behoudens die bepalings van subartikel (2) is die volgende eiendom realiseerbaar ingevolge die bepalings van hierdie Hoofstuk, naamlik—

(a) waar 'n buitelandse inbeslagnemingsbevel verleen is vir die verhaal van bepaalde eiendom, die eiendom wat in die buitelandse inbeslagnemingsbevel vermeld word; en

(b) waar geen so 'n buitelandse inbeslagnemingsbevel verleen is nie—

(i) enige eiendom wat in besit van die betrokke verweerder is; en

(ii) enige eiendom wat in besit is van iemand aan wie daardie verweerder regstreeks of onregstreeks 'n aangetaste geskenk gegee het.

(2) Eiendom is nie realiseerbare eiendom nie indien 'n verbeurdverklaring ten opsigte van die eiendom van krag is.

Waarde van eiendom

32. (1) By die toepassing van hierdie Hoofstuk is die waarde van eiendom, uitgesonderd geld, met betrekking tot iemand wat die eiendom besit—

(a) waar iemand anders 'n belang in die eiendom het—

(i) die markwaarde van die eiendom; min

(ii) die bedrag benodig om 'n beswaring op die eiendom op te hef; en

(b) waar niemand anders 'n belang in die eiendom het nie, die markwaarde van die eiendom.

(2) Ondanks die bepalings van subartikel (1) word 'n verwysing in hierdie Hoofstuk na die waarde van 'n betaling of beloning op 'n bepaalde tydstip uitgelê as 'n verwysing na—

(a) die waarde van die betaling of beloning op die tydstip waarop die ontvanger dit verkry het soos aangepas om daaropvolgende skommelings in die waarde van geld in berekening te bring; of

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

whichever is the greater value.

(3) If at the particular time the recipient holds—

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

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

Gifts

33. (1) For the purposes of this Chapter, a defendant shall be deemed to have made a gift if he 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 37 (2), such a defendant shall be deemed to have made a gift of that share in the property which bears to the property as a whole the same proportion as the difference between the values referred to in subsection (1) bears to the value of the consideration supplied by that defendant.

Conclusion of proceedings against defendant

34. For the purposes of this Chapter, the proceedings against a defendant shall be concluded when—

(a) there is no further possibility of a foreign confiscation order being made in those proceedings; or

(b) the defendant satisfies the foreign confiscation order made against him.

Foreign confiscation orders

(Sections 35 and 36 shall not apply to foreign confiscation orders or certain proceedings in designated countries.)

Amounts which might be realized

(Section 37 (1) shall not apply to foreign confiscation orders or certain proceedings in designated countries.)

37. (2) Notwithstanding the provisions of section 32 (1) but subject to the provisions of section 33 (2), the value of an affected gift at the time of the making of the relevant foreign 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.

(b) waar subartikel (3) van toepassing is, die waarde in daardie subartikel genoem, watter waarde ook al die grootste is.

(3) Indien die ontvanger op die bepaalde tydstip in besit is van—

(a) die eiendom, uitgesonderd kontant, wat hy ontvang het, is die betrokke waarde die waarde van die eiendom op die bepaalde tydstip; of

(b) eiendom, of 'n deel daarvan, wat regstreeks of onregstreeks in sy hande die eiendom verteenwoordig wat hy ontvang het, is die betrokke waarde die waarde van die eiendom, vir sover dit die eiendom verteenwoordig wat hy ontvang het, op die bepaalde tydstip.

Geskenke

33. (1) By die toepassing van hierdie Hoofstuk word 'n verweerder geag 'n geskenk te gee het indien hy regstreeks of onregstreeks eiendom aan iemand anders oorgedra het vir 'n teenprestasie waarvan die waarde aansienlik minder is as die waarde van die teenprestasie deur die verweerder gelewer.

(2) By die toepassing van artikel 37 (2) word so 'n verweerder geag 'n geskenk te gee het van daardie aandeel in die eiendom wat in dieselfde verhouding tot die eiendom in sy geheel staan as wat die verskil tussen die waardes in subartikel (1) bedoel tot die waarde van die teenprestasie gelewer deur daardie verweerder staan.

Afhandeling van verrigtinge teen verweerder

34. By die toepassing van hierdie Hoofstuk is die verrigtinge teen 'n verweerder afgehandel wanneer—

(a) daar geen verdere moontlikheid van die verlening van 'n buitelandse inbeslagnemingsbevel in daardie verrigtinge is nie; of

(b) die verweerder aan die buitelandse inbeslagnemingsbevel wat teen hom verleen is, voldoen.

Buitelandse inbeslagnemingsbevele

(Artikels 35 en 36 is nie van toepassing op buitelandse inbeslagnemingsbevele of sekere verrigtinge in aangewese lande nie.)

Bedrae wat opgelewer sou kon word

(Artikel 37 (1) is nie van toepassing op buitelandse inbeslagnemingsbevele of sekere verrigtinge in aangewese lande nie.)

37. (2) Ondanks die bepalinge van artikel 32 (1) maar behoudens die bepalinge van artikel 33 (2) is die waarde van 'n aangetaste geskenk ten tyde van die verlening van die betrokke buitelandse inbeslagnemingsbevel—

(a) die waarde van die aangetaste geskenk op die tydstip waarop die ontvanger dit verkry het soos aangepas om daaropvolgende skommelings in die waarde van geld in berekening te bring; of

(b) waar subartikel (3) van toepassing is, die waarde in daardie subartikel genoem, watter waarde ook al die grootste is.

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

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

(b) property, or any part thereof, which directly or indirectly represents in his hands the property which he received, the value in question shall be the value of the property, in so far as it represents the property which he received, at that time.

(Subsection (4) shall not apply to foreign confiscation orders or certain proceedings in designated countries.)

(Sections 38, 39 and 40 shall not apply to foreign confiscation orders or certain proceedings in designated countries.)

Restraint orders

Cases in which restraint orders may be made

41. (1) A superior court may exercise the powers conferred upon it by section 42 (1)—

(a) whenever—

(i) proceedings have been instituted against the defendant in question in a designated country;

(ii) either a foreign confiscation order has been made against that defendant or it appears to that court that there are reasonable grounds for believing that a foreign confiscation order may be made against that defendant; and

(iii) the proceedings against that defendant have not been concluded; or

(b) whenever—

(i) that court is satisfied that proceedings are to be instituted against the defendant in question in a designated country; and

(ii) it appears to that court that there are reasonable grounds for believing that a foreign confiscation order may be made against that defendant.

(2) Where a superior court has made a restraint order by virtue of the provisions of subsection (1) (b), that court shall rescind the restraint order if the relevant proceedings are not instituted within such period as that court may consider reasonable.

Restraint orders

42. (1) Any person acting on behalf of the government of a designated country may by way of an *ex parte* application apply to a competent superior court for an order prohibiting any other 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) where such order relates to a foreign confiscation order made for the recovery of particular property, in respect of the property which is specified in the foreign confiscation order; and

(3) Indien die ontvanger ten tyde van die verlening van die betrokke buitelandse inbeslagnemingsbevel in besit is van—

(a) die eiendom, uitgesonderd kontant, wat hy ontvang het, is die betrokke waarde die waarde van die eiendom op daardie tydstop; of

(b) eiendom, of 'n deel daarvan, wat regstreeks of onregstreeks in sy hande die eiendom verteenwoordig wat hy ontvang het, is die betrokke waarde die waarde van die eiendom, vir sover dit die eiendom verteenwoordig wat hy ontvang het, op daardie tydstop.

(Subartikel (4) is nie van toepassing op buitelandse inbeslagnemingsbevele of sekere verrigtinge in aangewese lande nie.)

(Artikels 38, 39 en 40 is nie van toepassing op buitelandse inbeslagnemingsbevele of sekere verrigtinge in aangewese lande nie.)

Inkortingsbevele

Gevalle waarin inkortingsbevele verleen kan word

41. (1) 'n Hoër hof kan die bevoegdhede by artikel 42 (1) aan hom verleen, uitoefen—

(a) wanneer—

(i) verrigtinge teen die betrokke verweerder in 'n aangewese land ingestel is;

(ii) óf 'n buitelandse inbeslagnemingsbevel teen daardie verweerder verleen is óf dit aan daardie hof blyk dat daar redelike gronde is om te glo dat 'n buitelandse inbeslagnemingsbevel teen daardie verweerder verleen kan word; en

(iii) die verrigtinge teen daardie verweerder nie afgehandel is nie; of

(b) wanneer—

(i) daardie hof oortuig is dat verrigtinge teen die betrokke verweerder in 'n aangewese land ingestel staan te word; en

(ii) dit aan daardie hof blyk dat daar redelike gronde is om te glo dat 'n buitelandse inbeslagnemingsbevel teen daardie verweerder verleen kan word.

(2) Waar 'n hoër hof 'n inkortingsbevel uit hoofde van die bepalings van subartikel (1) (b) verleen het, moet daardie hof die inkortingsbevel intrek indien die betrokke verrigtinge nie binne die tydperk wat daardie hof redelik ag, ingestel word nie.

Inkortingsbevele

42. (1) Iemand wat namens die regering van 'n aangewese land optree, kan by wyse van 'n *ex parte*-aansoek 'n bevel by 'n bevoegde hoër hof aanvra wat enige ander persoon verbied om, onderworpe aan die voorwaardes en uitsonderings wat in die bevel vermeld word, op enige wyse te handel met enige eiendom waarop die bevel betrekking het.

(2) 'n Inkortingsbevel kan verleen word—

(a) waar sodanige bevel betrekking het op 'n buitelandse inbeslagnemingsbevel verleen vir die verhaal van bepaalde eiendom, ten opsigte van die eiendom wat in daardie bevel vermeld word; en

(b) where such order does not relate to any such foreign confiscation order—

(i) 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;

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

(iii) 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 restraint order shall provide for service of the order on, or notice to be given to, persons affected by the order in such manner as the superior court may direct.

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

(4) The superior court which made a restraint order—

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

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

(5) Without derogating from the generality of the powers conferred by subsection (1), a restraint order may make such provision as the superior court thinks fit—

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

(b) for the reasonable legal expenses of such a person in connection with any proceedings instituted against him in terms of the Drug Trafficking (Mutual Assistance) Regulations, 1995.

(6) An application referred to in subsection (1) shall be supported by a statement under oath or affirmation—

(a) stating, where applicable, the grounds for believing that a foreign confiscation order may be made in the proceedings instituted or to be instituted in the designated country concerned;

(b) containing full particulars of the realizable property in respect of which the order is sought in so far as such particulars are available;

(c) specifying the person or persons holding such property; and

(d) indicating, in a case to which section 41(1)(b) applies, when the intended proceedings are to be instituted in the designated country concerned.

(b) waar sodanige bevel nie betrekking het op so 'n buitelandse inbeslagnemingsbevel nie—

(i) ten opsigte van die realiseerbare eiendom wat in die inkortingsbevel vermeld word en wat in besit is van die persoon teen wie die inkortingsbevel verleen word;

(ii) ten opsigte van alle realiseerbare eiendom wat in besit van so 'n persoon is, hetsy dit in die inkortingsbevel vermeld word al dan nie; en

(iii) ten opsigte van alle eiendom wat, indien dit na die verlening van die inkortingsbevel aan so 'n persoon oorgedra word, realiseerbare eiendom sal wees.

(3) (a) 'n Inkortingsbevel moet voorsiening maak vir betekening van die bevel aan, of vir kennisgewing aan, persone wat deur die bevel geraak word, op sodanige wyse as wat die hoër hof voorskryf.

(b) Iemand wat deur 'n inkortingsbevel geraak word, kan te eniger tyd aansoek doen om die wysiging of intrekking van die bevel.

(4) Die hoër hof wat 'n inkortingsbevel verleen het—

(a) kan te eniger tyd die inkortingsbevel wysig of intrek; of

(b) moet die inkortingsbevel intrek indien die verrigtinge teen die betrokke verweerder afgehandel is.

(5) Sonder om afbreuk te doen aan die algemeenheid van die bevoegdhede by subartikel (1) verleen, kan 'n inkortingsbevel die voorsiening wat die hoër hof goëddink, maak—

(a) vir die redelike lewenskoste van 'n persoon teen wie die inkortingsbevel verleen word en sy familie of gesin; en

(b) vir die redelike regsonkoste van so 'n persoon in verband met enige geregtelike stappe wat ingevolge die Regulasies insake Dwelmsmokkelaar (Onderlinge Bystand), 1995, teen hom gedoen word.

(6) 'n Aansoek in subartikel (1) bedoel, moet ondersteun word deur 'n beëdigde of bevestigde verklaring wat—

(a) waar toepaslik, die gronde vermeld waarop veronderstel word dat 'n buitelandse inbeslagnemingsbevel verleen kan word in die verrigtinge wat ingestel is of ingestel staan te word in die betrokke aangewese land;

(b) volle besonderhede van die realiseerbare eiendom ten opsigte waarvan die bevel verlang word, in soverre sodanige besonderhede beskikbaar is, bevat;

(c) die persoon of persone in besit van sodanige eiendom spesifiseer; en

(d) in 'n geval waarop artikel 41(1)(b) van toepassing is, aandui wanneer die beoogde verrigtinge in die betrokke aangewese land ingestel staan te word.

Seizure of property subject to restraint order

43. (1) In order to prevent any realizable property from being disposed of or removed contrary to a restraint order, any police officer may seize any such property.

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

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

44. (1) Where a superior 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; and

(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 superior 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*; or

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

Orders in respect of immovable property subject to restraint order

45. (1) A superior 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 foreign confiscation order has been made for the payment of a fixed amount, of an amount not exceeding the amount payable under the foreign confiscation order; or

Inbeslagneming van eiendom onderworpe aan inkortingsbevel

43. (1) Ten einde te voorkom dat enige realiseerbare eiendom in stryd met 'n inkortingsbevel vervreem of verwyder word, kan 'n polisiebeampte bedoelde eiendom in beslag neem.

(2) Met eiendom wat kragtens subartikel (1) in beslag geneem is, word gehandel ooreenkomstig die voorskrifte van die hoër hof wat die betrokke inkortingsbevel verleen het.

Aanstelling van *curator bonis* ten opsigte van eiendom onderworpe aan inkortingsbevel

44. (1) Waar 'n hoër hof 'n inkortingsbevel verleen het, kan daardie hof te eniger tyd—

(a) 'n *curator bonis* aanstel om, behoudens die voorskrifte van daardie hof, namens die persoon teen wie die inkortingsbevel verleen is een of meer van die volgende te doen, naamlik—

(i) om 'n bepaalde handeling te verrig ten opsigte van enige van of al die eiendom waarop die inkortingsbevel betrekking het;

(ii) om vir bedoelde eiendom te sorg;

(iii) om bedoelde eiendom te administreer; en

(iv) waar bedoelde eiendom 'n besigheid of onderneming is, om, met inagneming van enige toepaslike wetsbepaling, die besigheid of onderneming voort te sit;

(b) die persoon teen wie die inkortingsbevel verleen is, beveel om onverwyld, of binne die tydperk wat daardie hof bepaal, enige eiendom ten opsigte waarvan 'n *curator bonis* kragtens paragraaf (a) aangestel is in die bewaring van daardie *curator bonis* af te gee.

(2) Iemand wat geraak word deur 'n bevel in subartikel (1)(b) beoog, kan te eniger tyd aansoek doen—

(a) om die wysiging of intrekking van die bevel; en

(b) om die wysiging van die bewoording van die aanstelling van die betrokke *curator bonis* of om die ontslag van daardie *curator bonis*.

(3) Die hoër hof wat 'n bevel beoog in subartikel (1)(b) verleen het—

(a) kan te eniger tyd—

(i) die bevel wysig of intrek; of

(ii) die bewoording van die aanstelling van die betrokke *curator bonis* wysig of daardie *curator bonis* ontslaan; of

(b) moet die bevel intrek en die betrokke *curator bonis* ontslaan indien die betrokke inkortingsbevel ingetrek word.

Bevele ten opsigte van onroerende eiendom onderworpe aan inkortingsbevel

45. (1) 'n Hoër hof wat 'n inkortingsbevel ten opsigte van onroerende eiendom verleen het, kan te eniger tyd, met die doel om die betaling aan die Staat—

(a) waar 'n buitelandse inbeslagnemingsbevel verleen is vir die betaling van 'n vasgestelde bedrag, van 'n bedrag van hoogstens die bedrag wat kragtens die buitelandse inbeslagnemingsbevel betaalbaar is; of

(b) where no such foreign confiscation order has been made, of an amount equal to the most recent value of the immovable property,

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 superior court be mortgaged or otherwise encumbered;

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

(c) that the immovable property shall not without the consent of the superior court—

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

(ii) where the owner of that immovable property is a company or other 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 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 paragraph (b) of subsection (2), 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 in question;

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

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

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

(b) where the owner of the immovable property is a company or other 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.

(b) waar geen sodanige buitelandse inbeslagnemingsbevel verleen is nie, van 'n bedrag gelyk aan die jongste waarde van die onroerende eiendom,

te verseker, die betrokke registrateur van aktes beveel om een of meer van die beperkings in subartikel (2) beoog op die titelbewys van die onroerende eiendom aan te teken.

(2) 'n Bevel in subartikel (1) beoog, kan ten opsigte van die volgende beperkings verleen word, naamlik—

(a) dat die onroerende eiendom nie sonder die toestemming van die hoër hof met verband of andersins beswaar mag word nie;

(b) dat die onroerende eiendom nie sonder die toestemming van die hoër hof vir beslaglegging vatbaar is of uitgewin mag word nie; en

(c) dat die onroerende eiendom nie sonder die toestemming van die hoër hof—

(i) op die betrokke Meester van die Hoogeregshof of kurator, na gelang van die geval, oorgaan nie wanneer die boedel van die eienaar van daardie onroerende eiendom gesekwestreer word; of

(ii) waar die eienaar van daardie onroerende eiendom 'n maatskappy of ander regspersoon is wat gelikwedeer word, deel uitmaak van die bates van so 'n maatskappy of regspersoon nie,

indien die eienaar van daardie onroerende eiendom nog nie die betaling in daardie subartikel bedoel aan die Staat gemaak het nie.

(3) Ten einde aan subartikel (1) gevolg te gee, moet die betrokke registrateur van aktes—

(a) die nodige aantekeninge in sy registers en die nodige endossement op die kantoorafskrif van die titelbewys aanbring, en daarna is so 'n beperking teenoor alle persone van krag behalwe, in die geval van 'n beperking in paragraaf (b) van subartikel (2) beoog, teenoor iemand ten gunste van wie 'n verband of ander las teen die titelbewys van onroerende eiendom geregistreer was voordat die beperking op die titelbewys van die onroerende eiendom aangeteken is, maar verval so 'n beperking by die oordrag van eiendomsreg van die betrokke onroerende eiendom;

(b) wanneer die oorspronklike titelbewys aan hom voorgelê word, die nodige endossement daarop aanbring.

(4) Tensy die hoër hof anders gelas, berus die bewaring van onroerende eiendom op die titelbewys waarvan 'n beperking beoog in paragraaf (c) van subartikel (2) aangeteken is, vanaf die datum waarop—

(a) die boedel van die eienaar van die onroerende eiendom gesekwestreer word; of

(b) waar die eienaar van die onroerende eiendom 'n maatskappy of ander regspersoon is, so 'n maatskappy of regspersoon gelikwedeer word,

by die persoon by wie bedoelde bewaring sou berus het indien so 'n beperking nie aldus aangeteken was nie.

(5) Where the superior court granted its consent in respect of a restriction contemplated in paragraph (c) of subsection (2) 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 Supreme 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 superior court which made an order contemplated in subsection (1)—

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

(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 superior 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.

Realization of property

Realization of property

46. (1) A superior court may exercise the powers conferred upon it by subsection (2) whenever—

(a) a foreign confiscation order has been made against the defendant in question;

(b) such foreign confiscation order has been registered in terms of section 56;

(c) such foreign confiscation order is executable in law; and

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

(2) A competent superior court may, on the application of the attorney-general concerned or any public prosecutor authorized thereto in writing by that attorney-general—

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

(b) subject to subsection (3), authorize a *curator bonis* appointed under paragraph (a) of section 44 (1) or under paragraph (a) of this subsection, as the case may be, to realize any realizable property in such manner as that court may determine;

(5) Waar die hoër hof sy toestemming verleen het ten opsigte van 'n beperking in paragraaf (c) van subartikel (2) beoog en wat op die titelbewys van onroerende eiendom aangeteken is, word die onroerende eiendom geag—

(a) indien die boedel van die eienaar van die onroerende eiendom gesekwestreer is, op die betrokke Meester van die Hooggeregshof of kurator, na gelang van die geval, oor te gegaan het asof so 'n beperking nie aldus aangeteken was nie; of

(b) indien die eienaar van die onroerende eiendom 'n maatskappy of ander regspersoon is wat gelikwieder is, deel uit te maak het van die bates van so 'n maatskappy of regspersoon asof so 'n beperking nie aldus aangeteken was nie.

(6) Iemand wat geraak word deur 'n bevel in subartikel (1) beoog, kan te eniger tyd aansoek doen om die intrekking van die bevel.

(7) (a) Die hoër hof wat 'n bevel beoog in subartikel (1) verleen het—

(i) kan te eniger tyd die bevel intrek; of

(ii) moet die bevel intrek indien die betrokke inkortingsbevel ingetrek word of die bedrag waarvan die betaling deur die bevel verseker word met die toestemming van daardie hof geregtelik inbetaal is.

(b) Indien so 'n bevel ingetrek word, moet die hoër hof die betrokke registrateur van aktes gelas om enige beperking wat uit hoofde van daardie bevel op die titelakte van onroerende eiendom aangeteken is, te roeier en daardie registrateur van aktes gee aan so 'n lasgewing gevolg.

Tegeldemaking van eiendom

Tegeldemaking van eiendom

46. (1) 'n Hoër hof kan die bevoegdhede by subartikel (2) aan hom verleen, uitoefen wanneer—

(a) 'n buitelandse inbeslagnemingsbevel teen die betrokke verweerder verleen is;

(b) sodanige buitelandse inbeslagnemingsbevel ingevolge artikel 56 geregistreer is;

(c) sodanige buitelandse inbeslagnemingsbevel in die reg uitvoerbaar is; en

(d) die verrigtinge teen daardie verweerder nie afgehandel is nie.

(2) 'n Bevoegde hoër hof kan, op aansoek van die betrokke prokureur-generaal of 'n staatsaanklaer wat skriftelik deur daardie prokureur-generaal daartoe gemagtig is—

(a) indien 'n *curator bonis* nog nie ten opsigte van enige van die betrokke eiendom aangestel is nie, 'n *curator bonis* ten opsigte van realiseerbare eiendom aanstel;

(b) behoudens subartikel (3), 'n *curator bonis* kragtens paragraaf (a) van artikel 44 (1) of kragtens paragraaf (a) van hierdie subartikel aangestel, na gelang van die geval, magtig om enige realiseerbare eiendom te gelde te maak op die wyse wat daardie hof bepaal;

(c) order any person who holds realizable property to surrender the said property forthwith into the custody of a *curator bonis* appointed under paragraph (a) of section 44 (1) or under paragraph (a) of this subsection, as the case may be.

(3) A superior court shall not exercise its powers under subsection (2) (b) unless it has afforded all persons having any interest in the property in question an opportunity to make representations to it in connection with the realization of that property.

Application of certain sums of money

47. (1) Subject to the provisions of subsection (2), the following sums of money in the hands of a *curator bonis* appointed under this Chapter, namely—

(a) the proceeds of any realizable property realized by virtue of section 46; and

(b) any other sums of money, being property held by the defendant in question,

shall, after such payments as the superior court may direct have been made out of such sums of money, be paid into the State Revenue Fund in satisfaction of the foreign confiscation order made against that defendant.

(2) If—

(a) a fixed amount is payable under a foreign confiscation order; and

(b) after that amount has been fully paid into the State Revenue Fund, any sums of money remain in the hands of the *curator bonis* concerned, those sums of money shall be distributed by that *curator bonis*—

(i) among such persons who held realizable property which has been realized by virtue of section 46; and

(ii) in such proportions,

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

General

Functions of *curator bonis*

48. (1) Immediately after letters of curatorship have been granted to a *curator bonis* appointed under this Chapter, the *curator bonis* shall take into his custody all the property in respect of which he 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 44 (1) (b) or 46 (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 *mutatis mutandis* apply in respect of a *curator bonis* appointed under this Chapter.

(c) 'n persoon wat realiseerbare eiendom in sy besit het, beveel om bedoelde eiendom onverwyld af te gee in die bewaring van 'n *curator bonis* kragtens paragraaf (a) van artikel 44 (1) of kragtens paragraaf (a) van hierdie subartikel aangestel, na gelang van die geval.

(3) 'n Hoër hof oefen nie sy bevoegdhede kragtens subartikel (2) (b) uit nie tensy hy alle persone wat 'n belang in die betrokke eiendom het 'n geleentheid gegee het om verhoë in verband met die tegeldemaking van daardie eiendom aan hom te rig.

Aanwending van sekere somme geld

47. (1) Behoudens die bepalings van subartikel (2) word die volgende somme geld wat in besit is van 'n *curator bonis* kragtens hierdie Hoofstuk aangestel, naamlik—

(a) die opbrengs van enige realiseerbare eiendom wat uit hoofde van artikel 46 te gelde gemaak is; en

(b) enige ander somme geld, synde eiendom besit deur die betrokke verweerder,

nadat die betalings wat die hoër hof gelas uit bedoelde somme geld gemaak is, in die Staatsinkomstefonds inbetaal ter voldoening aan die buitelandse inbeslag-nemingsbevel wat teen daardie verweerder verleen is.

(2) Indien—

(a) 'n vasgestelde bedrag ingevolge 'n buitelandse inbeslagnemingsgevel betaalbaar is; en

(b) nadat daardie bedrag ten volle in die Staatsinkomstefonds inbetaal is, daar enige somme geld in die betrokke *curator bonis* se besit oorbly, word daardie somme geld deur daardie *curator bonis* verdeel—

(i) onder dié persone wat in besit was van realiseerbare eiendom wat uit hoofde van artikel 46 te gelde gemaak is; en

(ii) in die verhoudings,

wat die hoër hof, nadat hy bedoelde persone 'n geleentheid gegee het om verhoë in verband met die verdeling van daardie somme geld tot hom te rig, gelas.

Algemeen

Werkzaamhede van *curator bonis*

48. (1) Onmiddellik nadat 'n brief van kuratele uitgereik is aan 'n *curator bonis* kragtens hierdie Hoofstuk aangestel, moet die *curator bonis* al die eiendom ten opsigte waarvan hy aangestel is, asook enige boek, aantekening of ander stuk in die besit of bewaring of onder die beheer van 'n persoon in artikel 44 (1) (b) of 46 (2) (c) bedoel wat op bedoelde eiendom betrekking het, in sy bewaring neem.

(2) Behalwe vir sover hierdie Hoofstuk anders bepaal, is die bepalings van die Boedelwet, 1965 (Wet No. 66 van 1965), *mutatis mutandis* van toepassing ten opsigte van 'n *curator bonis* kragtens hierdie Hoofstuk aangestel.

Exercise of powers by superior court and *curator bonis*

49. (1) The powers conferred upon a superior court by sections 42 to 47, or upon a *curator bonis* appointed under this Chapter, shall—

(a) subject to paragraphs (b) and (c), be exercised with a view to recovering property which is liable to be recovered under a foreign confiscation order which has been made against the defendant in question and registered in terms of section 56 or with a view to making available for recovery property which may become liable to be recovered under any foreign confiscation order which may be made against that defendant, as the case may be;

(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 realizing no more than the value for the time being 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 value of any property held by him,

and, except as provided in section 42 (5), any obligation of that defendant or the recipient of such gift which conflicts with the obligation to satisfy a foreign confiscation order shall be left out of account.

(2) The provisions of subsection (1) shall not be construed as prohibiting any superior court from making any additional order in respect of a debt owed to the State.

(Section 50 shall not apply to foreign confiscation orders or certain proceedings in designated countries.)

Effect of sequestration of estates on realizable property

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

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

(b) no proceeds of any realizable property realized by virtue of section 46 and for the time being in the hands of a *curator bonis* appointed under this Chapter,

shall vest in the Master of the Supreme 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), if the property of such other person is subject to a restraint order;

(b) any court which sets aside any disposition contemplated in paragraph (a) after the discharge of the restraint order against the defendant, shall take into account any realization of the property of such other person under this Chapter.

Uitoefening van bevoegdheid deur hoër hof en *curator bonis*

49. (1) Die bevoegdheid verleen aan 'n hoër hof by artikels 42 tot 47, of aan 'n *curator bonis* kragtens hierdie Hoofstuk aangestel, word—

(a) behoudens paragrawe (b) en (c), uitgeoefen met die oog op die verhaal van eiendom wat vatbaar is vir verhaling ingevolge 'n buitelandse inbeslagnemingsbevel wat teen die betrokke verweerder verleen is en ingevolge artikel 56 geregistreer is, of met die oog op die beskikbaarstelling vir verhaling van eiendom wat vatbaar kan word vir verhaling ingevolge 'n buitelandse inbeslagnemingsbevel wat teen daardie verweerder verleen kan word, na gelang van die geval;

(b) in die geval van realiseerbare eiendom besit deur iemand aan wie daardie verweerder regstreeks of onregstreeks 'n aangetaste geskenk gegee het, uitgeoefen met die oog op die tegeldemaking van hoogstens die heersende waarde van so 'n geskenk;

(c) uitgeoefen met die oog daarop om 'n ander persoon as daardie verweerder of die ontvanger van so 'n geskenk in staat te stel om die waarde van enige eiendom deur hom besit, te behou of te verhaal,

en, behalwe soos in artikel 42 (5) bepaal, word 'n verpligting van daardie verweerder of die ontvanger van so 'n geskenk wat in stryd is met die verpligting om aan 'n buitelandse inbeslagnemingsbevel te voldoen, buite rekening gelaat.

(2) Die bepalings van subartikel (1) word nie so uitgelê nie dat dit 'n hoër hof verbied om 'n bykomende bevel te verleen ten opsigte van 'n skuld wat aan die Staat verskuldig is.

(Artikel 50 is nie van toepassing op buitelandse inbeslagnemingsbevele of sekere verrigtinge in 'n aangewese land nie.)

Uitwerking van sekwestrasie van boedels op realiseerbare eiendom

51. (1) Wanneer die boedel van iemand wat realiseerbare eiendom besit, gesekwestreer word, gaan—

(a) geen eiendom wat dan onderworpe is aan 'n inkortingsbevel wat voor die datum van sekwestrasie verleen is; en

(b) geen opbrengs van enige realiseerbare eiendom wat uit hoofde van artikel 46 te gelde gemaak is en wat dan in besit is van 'n *curator bonis* kragtens hierdie Hoofstuk aangestel,

oor op die betrokke Meester van die Hooggeregshof of kurator, na gelang van die geval, nie.

(2) Wanneer die boedel van 'n verweerder wat regstreeks of onregstreeks 'n aangetaste geskenk aan iemand anders gegee het, gesekwestreer word—

(a) mag 'n hof nie kragtens artikel 29, 30 of 31 van die Insolvensiewet, 1936 (Wet No. 24 van 1936), die vervreemding van so 'n geskenk tot niet maak nie indien die eiendom van so 'n ander persoon aan 'n inkortingsbevel onderworpe is;

(b) moet 'n hof wat 'n vervreemding in paragraaf (a) beoog na die opheffing van die inkortingsbevel teen die verweerder tot niet maak, enige tegeldemaking van die eiendom van so 'n ander persoon ingevolge hierdie Hoofstuk in aanmerking neem.

(3) Where the estate of an insolvent has been sequestrated, the powers conferred upon a superior court by sections 42 to 47 and 49 (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 superior court or *curator bonis* appointed under this Chapter from exercising any power contemplated in subsection (3) in respect of any property or proceeds mentioned in subsection (1).

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

52. (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 realized by virtue of section 46 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 superior court by sections 42 to 47 and 49 (2), or upon a *curator bonis* appointed under this Chapter, shall not be exercised in respect of any property which forms part of the assets of such company or juristic person.

(3) Nothing in the Companies Act, 1973 (Act No. 61 of 1973), or any other law relating to juristic persons in general or any particular juristic person, shall be construed as prohibiting any superior 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 authorizing the voluntary winding-up of the company or juristic person, as the case may be.

(Section 53 shall not apply to foreign confiscation orders or certain proceedings in designated countries.)

(3) Waar die boedel van 'n insolvent gesekwestreer is, word die bevoegdhede verleen aan 'n hoër hof by artikels 42 tot 47 en 49 (2), of aan 'n *curator bonis* kragtens hierdie Hoofstuk aangestel, nie uitgeoefen nie—

(a) ten opsigte van enige eiendom wat deel van daardie boedel uitmaak; of

(b) ten opsigte van enige eiendom wat die betrokke kurator kragtens artikel 23 van die Insolvensiewet, 1936, van die insolvent mag invorder.

(4) Die Insolvensiewet, 1936, word nie so uitgelê nie dat dit 'n hoër hof of *curator bonis* kragtens hierdie Hoofstuk aangestel, verbied om 'n bevoegdheid in subartikel (3) beoog ten opsigte van enige eiendom of opbrengs in subartikel (1) vermeld, uit te oefen.

Uitwerking van likwidasie van maatskappye of ander regspersone op realiseerbare eiendom

52. (1) Wanneer die een of ander bevoegde hof 'n bevel vir die likwidasie van 'n maatskappy of ander regspersoon wat realiseerbare eiendom besit, verleen het of 'n besluit vir die vrywillige likwidasie van so 'n maatskappy of regspersoon ingevolge 'n toepaslike wetsbepaling geregistreer is, maak—

(a) geen eiendom wat dan onderworpe is aan 'n inkortingsbevel wat voor die betrokke tydstop verleen is; en

(b) geen opbrengs van enige realiseerbare eiendom wat uit hoofde van artikel 46 te gelde gemaak is en wat dan in besit is van 'n *curator bonis* kragtens hierdie Hoofstuk aangestel,

deel van die bates van so 'n maatskappy of regspersoon uit nie.

(2) Waar 'n bevel in subartikel (1) vermeld ten opsigte van 'n maatskappy of ander regspersoon verleen is of 'n besluit in daardie subartikel vermeld ten opsigte van so 'n maatskappy of regspersoon geregistreer is, word die bevoegdhede verleen aan 'n hoër hof by artikels 42 tot 47 en 49 (2), of aan 'n *curator bonis* kragtens hierdie Hoofstuk aangestel, nie ten opsigte van enige eiendom wat deel van die bates van so 'n maatskappy of regspersoon uitmaak, uitgeoefen nie.

(3) Die Maatskappywet, 1973 (Wet No. 61 van 1973), of 'n ander wet wat op regspersone in die algemeen of 'n bepaalde regspersoon betrekking het, word nie so uitgelê nie dat dit 'n hoër hof of *curator bonis* kragtens hierdie Hoofstuk aangestel, verbied om 'n bevoegdheid in subartikel (2) beoog ten opsigte van enige eiendom of opbrengs in subartikel (1) vermeld, uit te oefen.

(4) By die toepassing van subartikel (1) beteken "die betrokke tydstop"—

(a) waar 'n bevel vir die likwidasie van die maatskappy of regspersoon, na gelang van die geval, verleen is, die tydstop van die voorlegging aan die betrokke hof van die aansoek om likwidasie; of

(b) waar so 'n bevel nie verleen is nie, die tydstop van die registrasie van die besluit wat die vrywillige likwidasie van die maatskappy of regspersoon, na gelang van die geval, magtig.

(Artikel 53 is nie van toepassing op buitelandse inbeslagnemingsbevele of sekere verrigtinge in aangewese lande nie.)

CONTENTS

No.	Page No.	Gazette No.
GOVERNMENT NOTICE		
Justice, Department of		
<i>Government Notice</i>		
R. 1478 Drugs and Drug Trafficking Act (140/1992): Regulations made.....	1	16700

INHOUD

No.	Bladsy No.	Koerant No.
GOEWERMENTSKENNISGEWING		
Justisie, Departement van		
<i>Goewermentskennisgewing</i>		
R. 1478 Wet op Dwelmmiddels en Dwelmsmok- kelary (140/1992): Regulasies uitgevaar- dig.....	1	16700