



Anti-Money Laundering and Counter-Terrorism Financing Legislation



financial intelligence centre
REPUBLIC OF SOUTH AFRICA



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The Financial Intelligence Centre Act

THIS IS AN UNOFFICIAL TEXT OF THE FINANCIAL INTELLIGENCE CENTRE ACT, 2001, THE MONEY LAUNDERING AND TERRORIST FINANCING CONTROL REGULATIONS AND THE EXEMPTIONS IN TERMS OF THE FINANCIAL INTELLIGENCE CENTRE ACT.

Financial Intelligence Centre Act, 2001 (Act 38 of 2001)

As amended by

The Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004 (Act 33 of 2004); and

The Financial Intelligence Centre Amendment Act, 2008 (Act 11 of 2008).

ACT

To establish a Financial Intelligence Centre and a Counter-Money Laundering Advisory Council in order to combat money laundering activities and the financing of terrorist and related activities; to impose certain duties on institutions and other persons who might be used for money laundering purposes and the financing of terrorist and related activities; to clarify the application of the Act in relation to other laws; to provide for the sharing of information by the Centre and supervisory bodies; to provide for the issuance of directives by the Centre and supervisory bodies; to provide for the registration of accountable and reporting institutions; to provide for the roles and responsibilities of supervisory bodies; to provide for written arrangements relating to the respective roles and responsibilities of the Centre and supervisory bodies; to provide the Centre and supervisory bodies with powers to conduct inspections; to regulate certain applications to Court; to provide for administrative sanctions that may be imposed by the Centre and supervisory bodies; to establish an appeal board to hear appeals against decisions of the Centre or supervisory bodies; to amend the Prevention of Organised Crime Act, 1998, and the Promotion of Access to Information Act, 2000; and to provide for matters connected therewith.

[Long title amended by Act 11 of 2008.]

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

“**accountable institution**” means a person referred to in Schedule 1;

“**administrative sanction**” means a sanction referred to in section 45C;

[Definition inserted by s. 1 (a) of Act 11 of 2008.]

“**appeal board**” means the appeal board established by section 45E;

[Definition inserted by s. 1 (a) of Act 11 of 2008.]

“**authorised officer**” means any official of—

- (a) the South African Police Service authorised by the National Commissioner to act under this Act;
- (b) the national prosecuting authority authorised by the National Director of Public Prosecutions to act under this Act;
- (c) an intelligence service authorised by the Director-General of that service to act under this Act; or
- (d) the South African Revenue Service authorised by the Commissioner for that Service to act under this Act;

“**bearer negotiable instrument**”, for the purposes of this Act, means any instrument that may on demand by the bearer thereof be converted to the currency of the Republic or that of another country, and includes, amongst others, cheques, promissory notes or money orders;

[Definition inserted by s. 1 (b) of Act 11 of 2008.]

“**business relationship**” means an arrangement between a client and an accountable institution for the purpose of concluding transactions on a regular basis;

“**cash**” means—

- (a) coin and paper money of the Republic or of another country that is designated as legal tender and that circulates as, and is customarily used and accepted as, a medium of exchange in the country of issue;
- (b) travellers' cheques;

“**Centre**” means the Financial Intelligence Centre established by section 2;

“**Council**” means the Counter-Money Laundering Advisory Council established by section 17;

[Definition inserted by s. 1 (c) of Act 11 of 2008.]

“**Director**” means the Director of the Centre appointed in terms of section 6;

“**entity**” has a corresponding meaning with the definition in section 1 of the

Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004;

[Definition inserted by s. 27 (1) of Act 11 of 2008.]

“inspector” means a person appointed in terms of section 45A

[Definition inserted by s. 1 (c) of Act 11 of 2008.]

“intelligence service” means the National Intelligence Agency or the South African Secret Service established by section 3 of the Intelligence Services Act, 1994 (Act No. 38 of 1994);

“investigating authority” means an authority that in terms of national legislation may investigate unlawful activities;

“Minister” means the Minister of Finance;

“money laundering” or “money laundering activity” means an activity which has or is likely to have the effect of concealing or disguising the nature, source, location, disposition or movement of the proceeds of unlawful activities or any interest which anyone has in such proceeds, and includes any activity which constitutes an offence in terms of section 64 of this Act or section 4, 5 or 6 of the Prevention Act;

“National Commissioner” means the National Commissioner of the South African Police Service referred to in section 207 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“National Director of Public Prosecutions” means the National Director of Public Prosecutions referred to in section 179 of the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

“non-compliance” means any act or omission, and 'fails to comply', 'failure to comply' and 'not complying' have the same meaning;

[Definition inserted by s. 1 (e) of Act 11 of 2008.]

“offence relating to the financing of terrorist and related activities” means an offence under section 4 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004;

“prescribed” means prescribed by the Minister by regulation in terms of section 77;

“Prevention Act” means the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998);

“proceeds of unlawful activities” has the meaning attributed to that term in section 1 of the Prevention Act;

“**property**” has the meaning attributed to that term in section 1 of the Prevention Act;

“**reporting institution**” means a person referred to in Schedule 3;

“**single transaction**” means a transaction other than a transaction concluded in the course of a business relationship;

“**South African Revenue Service**” means the South African Revenue Service established by section 2 of the South African Revenue Service Act, 1997 (Act No. 34 of 1997);

“**supervisory body**” means a functionary or institution referred to in Schedule 2;

“**terrorist and related activities**” has the meaning assigned to it in section 1 of the Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 (Act No. 33 of 2004);

[Definition inserted by s. 1 (f) of Act 11 of 2008.]

“**this Act**” includes a regulation made or exemption given under this Act;

[Definition inserted by s. 1 (g) of Act 11 of 2008.]

“**transaction**” means a transaction concluded between a client and an accountable institution in accordance with the type of business carried on by that institution;

“**unlawful activity**” has the meaning attributed to that term in section 1 of the Prevention Act.

- (2) For the 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) he person believes that there is a reasonable possibility of the existence of that fact; and
 - (ii) the person fails to obtain information to confirm or refute 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.

1A. Application of Act when in conflict with other laws

If any conflict, relating to the matters dealt with in this Act, arises between this Act and the provisions of any other law existing at the commencement of this Act, save the Constitution, the provisions of this Act prevail.

[Definition inserted by s. 2 of Act 11 of 2008.]

CHAPTER 1
FINANCIAL INTELLIGENCE CENTRE

2. Establishment

- (1) A Financial Intelligence Centre is hereby established as an institution outside the public service but within the public administration as envisaged in section 195 of the Constitution.
- (2) The Centre is a juristic person.

3. Objectives

- (1) The principal objective of the Centre is to assist in the identification of the proceeds of unlawful activities and the combating of money laundering activities and the financing of terrorist and related activities.
- (2) The other objectives of the Centre are—
 - (a) to make information collected by it available to investigating authorities, supervisory bodies, the intelligence services and the South African Revenue Services to facilitate the administration and enforcement of the laws of the Republic;
[Substituted by s. 3 (a) of Act 11 of 2008.]
 - (b) to exchange information with bodies with similar objectives in other countries regarding money laundering activities, the financing of terrorist and related activities, and other similar activities;
[Substituted by s. 3 (b) of Act 11 of 2008.]
 - (c) to supervise and enforce compliance with this Act or any directive made in terms of this Act and to facilitate effective supervision and enforcement by supervisory bodies.
[Substituted by s. 3 (c) of Act 11 of 2008.]

4. Functions

To achieve its objectives the Centre must

- (a) process, analyse and interpret information disclosed to it, and obtained by it, in terms of this Act;
- (b) inform, advise and cooperate with investigating authorities, supervisory bodies, the South African Revenue Service and the intelligence services;

- (c) monitor and give guidance to accountable institutions, supervisory bodies and other persons regarding the performance and compliance by them of their duties and obligations in terms of this Act or any directive made in terms of this Act.
- [Substituted by s. 4 (a) of Act 11 of 2008.]
- (d) retain the information referred to in paragraph (a) in the manner and for the period required by this Act.
- (e) annually review the implementation of this Act and submit a report thereon to the Minister;
- [Added by s. 4 (b) of Act 11 of 2008.]
- (f) implement a registration system in respect of all accountable institutions and reporting institutions; and
- [Added by s. 4 (b) of Act 11 of 2008.]
- (g) supervise and enforce compliance with this Act or any directive made in terms of this Act by accountable institutions, reporting institutions and other persons to whom the provisions of this Act apply that—
- (i) are not regulated or supervised by a supervisory body in terms of this Act or any other law;
 - (ii) are regulated or supervised by a supervisory body in terms of this Act or any other law, if that supervisory body fails to enforce compliance despite any recommendation of the Centre made in terms of section 44(b).

[Added by s. 4 (b) of Act 11 of 2008.]

5. General Powers

- (1) The Centre may do all that is necessary or expedient to perform its functions effectively, which includes the power to—
- (a) determine its own staff establishment and the terms and conditions of employment for its staff within a policy framework determined by the Minister;
 - (b) appoint employees and seconded personnel to posts on its staff establishment;
 - (c) obtain the services of any person by agreement, including any state department, functionary or institution, to perform any specific act or

- function;
- (d) acquire or dispose of any right in or to property, but rights in respect of immovable property may be acquired or disposed of only with the consent of the Minister;
 - (e) open and operate its own bank accounts, subject to the Public Finance Management Act, 1999 (Act No. 1 of 1999);
 - (f) insure itself against any loss, damage, risk or liability;
 - (g) perform legal acts or institute or defend any legal action in its own name;
 - (h) engage in any lawful activity, whether alone or together with any other organisation in the Republic or elsewhere, aimed at promoting its objectives;
 - (i) do anything that is incidental to the exercise of any of its powers.

6. Appointment of Director

- (1) The Minister must appoint a fit and proper person as the Director of the Centre.
- (2) A person appointed as the Director holds office—
 - (a) for a term not exceeding five years, but which is renewable; and
 - (b) on terms and conditions set out in a written employment contract, which must include terms and conditions setting specific, measurable performance standards.
- (3) The Minister must consult the Council before appointing a person or renewing the appointment of a person as the Director, except in the case of the appointment of the first Director.

7. Removal from office

- (1) The Minister may remove the Director from office only on the grounds referred to in section 13 or on the grounds of misconduct, incapacity or incompetence.
- (2) The Minister may suspend the Director from office, pending—
 - (a) the determination of any enquiry as to whether grounds of misconduct, incapacity or incompetence exist; or
 - (b) the outcome of a security screening investigation referred to in section 13(3).

8. Acting Director

When the Director is absent or otherwise unable to perform the functions of office, or during a vacancy in the office of Director, the Minister may designate another employee of the Centre to act as Director.

9. Proof of appointment

If the Minister has given notice in the Gazette of any appointment of a person as the Director or as acting director, this notice may be presented in a Court as proof of the appointment.

10. Responsibilities of Director

- (1) The Director—
 - (a) is responsible for the performance by the Centre of its functions;
 - (b) takes all decisions of the Centre in the exercise of its powers and the performance of its functions, except those decisions taken in consequence of a delegation or instruction in terms of section 16; and
 - (c) is the chief executive officer and also the accounting authority of the Centre.
- (2) As the chief executive officer, the Director is responsible for—
 - (a) the formation and development of an efficient and performance driven administration;
 - (b) the management of the administration; and
 - (c) the control, and maintenance of discipline, of staff.
- (3) As accounting authority of the Centre the Director must perform the functions assigned to accounting authorities in terms of the Public Finance Management Act, 1999 (Act No. 1 of 1999).
- (4) The Director performs the functions of office subject to any policy framework which may be prescribed by the Minister.

11. Staff

- (1) The staff of the Centre consists of—
 - (a) the Director; and
 - (b) persons appointed as employees of the Centre by the Director.
- (2) An employee of an organ of state may be seconded to the Centre by

agreement between the Centre and such organ of state.

- (3) Staff members referred to in subsection (1)(b) and persons seconded to the Centre in terms of subsection (2) perform their duties subject to the control and directions of the Director.
- (4) If an officer or employee in the public service is seconded to the Centre, the period of his or her service with the Centre must be calculated as part of and continuous with his or her employment in the public service, for purposes of leave, pension and any other condition of service.
- (5) The provisions of any pension law applicable to an officer or employee referred to in subsection (4) or, in the event of his or her death, to his or her dependants, which are not inconsistent with this section, must, with the necessary changes, continue so to apply.
- (6) No person seconded to the Centre or employed by the Centre to perform any of the functions of the Centre may strike or induce or conspire with any other member of the staff of the Centre to strike.
- (7) The services of the Centre, for the purposes of the application of Chapter IV of the Labour Relations Act, 1995 (Act No. 66 of 1995), are deemed to have been designated as an essential service in terms of section 71 of that Act.
- (8) All other conditions of service of staff of the Centre are as determined in terms of this Act.

12. Security screening of staff of Centre other than Director

- (1) No person other than the Director may be appointed or seconded to perform any of the functions of the Centre unless—
 - (a) information with respect to that person has been gathered in a security screening investigation by the National Intelligence Agency established by section 3 of the Intelligence Services Act, 1994 (Act No. 38 of 1994); and
 - (b) the Director, after evaluating the gathered information, is satisfied that such person may be so appointed without the possibility that such person might be a security risk or that he or she might act in any way prejudicial to the objectives or functions of the Centre.
- (2) If the Director is so satisfied, the Director must issue a certificate with respect to such person in which it is certified that such person has successfully

undergone a security clearance.

- (3) Any person referred to in subsection (1) may at any time determined by the Director be subjected to a further security screening investigation as contemplated in subsection (1)(a).
- (4) The Director may withdraw a certificate referred to in subsection (2) if the Director obtains information from an investigation referred to in subsection (3) which, after evaluation by the Director, causes the Director to believe that the person in question could be a security risk or could possibly act in any manner prejudicial to the objectives or functions of the Centre.
- (5) If the certificate referred to in subsection (2) is withdrawn, the person concerned may not perform any functions of the Centre and the Director must discharge him or her from the Centre.

13. Security screening of Director of Centre

- (1) No person may be appointed as the Director of the Centre unless—
 - (a) information with respect to that person has been gathered in a security screening investigation by the National Intelligence Agency established by section 3 of the Intelligence Services Act, 1994 (Act No. 38 of 1994); and
 - (b) the Minister, after evaluating the gathered information, is satisfied that such person may be so appointed without the possibility that such person might be a security risk or that he or she might act in any manner prejudicial to the objectives or functions of the Centre.
- (2) If the Minister is so satisfied, he or she must issue a certificate with respect to such person in which it is certified that such person has successfully undergone a security clearance.
- (3) The Director may at any time determined by the Minister be subjected to a further security screening investigation as contemplated in subsection (1) (a).
- (4) The Minister may withdraw a certificate referred to in subsection (2) if the Minister obtains information from an investigation referred to in subsection (3) which, after evaluation by the Minister, causes the Minister to believe that the Director could be a security risk or could possibly act in any manner prejudicial to the objectives or functions of the Centre.

- (5) If the certificate referred to in subsection (2) is withdrawn, the Director may not perform any functions of the Centre and the Minister must discharge him or her from the Centre.

14. Funds and financial year of Centre

- (1) The funds of the Centre consist of—
- (a) money appropriated annually by Parliament for the purposes of the Centre;
 - (b) any government grants made to it; and
 - (c) any other money legally acquired by it, provided that the Centre may accept donations only with the prior written approval of the Minister.
- (2) The financial year of the Centre ends on 31 March in each year.

15. Audit

The Auditor-General must audit and report on the accounts and financial records of the Centre.

16. Delegation

- (1) The Director may—
- (a) delegate, in writing, any of the powers entrusted to the Centre in terms of this Act to a member of the staff of the Centre; or
 - (b) instruct a member of the staff to perform any of the functions assigned to the Centre in terms of this Act.
- (2) A delegation or instruction in terms of subsection (1)—
- (a) is subject to the limitations or conditions that the Director may impose; and
 - (b) does not divest the Director of the responsibility concerning the exercise of the delegated power or the performance of the assigned function.
- (3) The Director may confirm, vary or revoke any decision taken by a staff member in consequence of a delegation or instruction in terms of subsection (1), as long as no such variation or revocation of a decision detracts from any rights that may have accrued as a result of the decision.

- (4) A person seconded to the Centre in terms of section 11(2) is for the purposes of this section regarded as being a staff member.

CHAPTER 2
COUNTER MONEY LAUNDERING ADVISORY COUNCIL

[Heading substituted by s. 5 of Act 11 of 2008.]

17. Establishment

A Counter Money Laundering Advisory Council is hereby established.

[Substituted by s. 6 of Act 11 of 2008.]

18. Functions

- (1) The Council must—
- (a) on the Minister's request or at its own initiative, advise the Minister on—
 - (i) policies and best practices to identify the proceeds of unlawful activities and to combat money laundering activities; and
 - (ii) the exercise by the Minister of the powers entrusted to the Minister in terms of this Act;
 - (b) advise the Centre concerning the performance by the Centre of its functions; and
 - (c) act as a forum in which the Centre, associations representing categories of accountable institutions, organs of state and supervisory bodies can consult one another.
- (2) The Centre must provide administrative and secretarial support and sufficient financial resources for the Council to function effectively.

19. Composition

- (1) The Council consists of the Director and each of the following, namely—
- (a) the Director-General of the National Treasury;
 - (b) the Commissioner of the South African Police Service;
 - (c) the Director-General of the Department of Justice and Constitutional Development;
 - (d) the National Director of Public Prosecutions;
 - (e) the Director-General of the National Intelligence Agency;
 - (f) the Director-General of the South African Secret Service;
 - (g) the Governor of the South African Reserve Bank;
 - (h) the Commissioner for the South African Revenue Service;

- (i) persons representing categories of accountable institutions requested by the Minister to nominate representatives;
 - (j) persons representing supervisory bodies requested by the Minister to nominate representatives; and
 - (k) any other persons or bodies requested by the Minister to nominate representatives.
- (2) The Minister must appoint a member of the Council as the chairperson of the Council. The chairperson of the Council serves as such until the chairperson resigns or until a new chairperson is appointed by the Minister.
- (3) The Director and each of the persons referred to in paragraphs (a) to (h) of subsection (1) may appoint a member of his or her staff to represent him or her at any meeting of the Council which he or she is unable to attend.
- (4) The accountable institutions and supervisory bodies referred to in paragraphs (i) and (j) of subsection (1) and the persons and bodies referred to in paragraph (k) of subsection (1) may—
- (a) appoint alternates to represent them at any meeting of the Council;
 - (b) change their representatives to the Council when they consider it appropriate to do so.

20. Meetings and procedure

- (1) The chairperson of the Council may call a meeting of the Council, but must call a meeting if the Minister so requests.
- (2) The Council—
- (a) must meet regularly, but not less than once per year;
 - (b) may determine its own procedures at meetings;
 - (c) may request advice and assistance from such persons as it considers necessary to assist it to perform its functions;
 - (d) may appoint committees from its members to assist it in the performance of its functions.
- (3) A committee appointed in terms of subsection (1)(d) may co-opt any person who is not a member of the Council as a member of the committee, whether for a particular period or in relation to a particular matter dealt with by that committee.
- (4) When a provision of this Act requires consultation with the Council on any

specific matter before a decision may be taken on that matter and it is not feasible to call a meeting of the Council, that provision is satisfied if—

- (a) a proposed decision on that matter is circulated in writing to the members of the Council; and
- (b) an opportunity is given to each of them to comment in writing on the proposed decision within a reasonable time.

CHAPTER 3
CONTROL MEASURES FOR MONEY LAUNDERING AND FINANCING OF
TERRORIST AND RELATED ACTIVITIES

PART 1
Duty to identify clients

21. Identification of clients and other persons

- (1) An accountable institution may not establish a business relationship or conclude a single transaction with a client unless the accountable institution has taken the prescribed steps—
 - (a) to establish and verify the identity of the client;
 - (b) if the client is acting on behalf of another person, to establish and verify—
 - (i) the identity of that other person; and
 - (ii) the client's authority to establish the business relationship or to conclude the single transaction on behalf of that other person; and
 - (c) if another person is acting on behalf of the client, to establish and verify—
 - (i) the identity of that other person; and
 - (ii) that other person's authority to act on behalf of the client.
- (2) If an accountable institution had established a business relationship with a client before this Act took effect, the accountable institution may not conclude a transaction in the course of that business relationship, unless the accountable institution has taken the prescribed steps—
 - (a) to establish and verify the identity of the client;
 - (b) if another person acted on behalf of the client in establishing the business relationship, to establish and verify—
 - (i) the identity of that other person; and
 - (ii) that other person's authority to act on behalf of the client;
 - (c) if the client acted on behalf of another person in establishing the business relationship, to establish and verify—
 - (i) the identity of that other person; and

- (ii) the client's authority to act on behalf of that other person; and
- (d) to trace all accounts at that accountable institution that are involved in transactions concluded in the course of that business relationship.

PART 2

Duty to keep record

22. Record to be kept of business relationships and transactions

- (1) Whenever an accountable institution establishes a business relationship or concludes a transaction with a client, whether the transaction is a single transaction or concluded in the course of a business relationship which that accountable institution has with the client, the accountable institution must keep record of—
 - (a) the identity of the client;
 - (b) if the client is acting on behalf of another person—
 - (i) the identity of the person on whose behalf the client is acting; and
 - (ii) the client's authority to act on behalf of that other person;
 - (c) if another person is acting on behalf of the client—
 - (i) the identity of that other person; and
 - (ii) that other person's authority to act on behalf of the client;
 - (d) the manner in which the identity of the persons referred to in paragraphs (a), (b) and (c) was established;
 - (e) the nature of that business relationship or transaction;
 - (f) in the case of a transaction—
 - (i) the amount involved; and
 - (ii) the parties to that transaction;
 - (g) all accounts that are involved in—
 - (i) transactions concluded by that accountable institution in the course of that business relationship; and
 - (ii) that single transaction;
 - (h) the name of the person who obtained the information referred to in paragraphs (a), (b) and (c) on behalf of the accountable institution; and
 - (i) any document or copy of a document obtained by the accountable

institution in order to verify a person's identity in terms of section 21(1) or (2).

- (2) Records kept in terms of subsection (1) may be kept in electronic form.

23. Period for which records must be kept

An accountable institution must keep the records referred to in section 22 which relate to—

- (a) the establishment of a business relationship, for at least five years from the date on which the business relationship is terminated;
- (b) a transaction which is concluded, for at least five years from the date on which that transaction is concluded.

24. Records may be kept by third parties

- (1) The duties imposed by section 22 on an accountable institution to keep record of the matters specified in that section may be performed by a third party on behalf of the accountable institution as long as the accountable institution has free and easy access to the records.
- (2) If a third party referred to in subsection (1) fails to properly comply with the requirements of section 22 on behalf of the accountable institution concerned, the accountable institution is liable for that failure.
- (3) If an accountable institution appoints a third party to perform the duties imposed on it by section 22, the accountable institution must forthwith provide the Centre with the prescribed particulars regarding the third party.

25. Admissibility of records

A record kept in terms of section 22 or section 24, or a certified extract of any such record, or a certified printout of any extract of an electronic record, is on its mere production in a matter before a court admissible as evidence of any fact contained in it of which direct oral evidence would be admissible.

26. Centre's access to records

- (1) An authorised representative of the Centre has access during ordinary working hours to any records kept by or on behalf of an accountable institution in terms of section 22 or section 24, and may examine, make extracts from or

copies of, any such records for the purposes of obtaining further information in respect of a report made in terms of section 28, 28A, 29, 30(1) or 31.

[Substituted by s. 7 of Act 11 of 2008.]

- (2) The authorised representative of the Centre may, except in the case of records which the public is entitled to have access to, exercise the powers mentioned in subsection (1) only by virtue of a warrant issued in chambers by a magistrate or regional magistrate or judge of an area of jurisdiction within which the records or any of them are kept, or within which the accountable institution conducts business.
- (3) A warrant may only be issued if it appears to the judge, magistrate or regional magistrate from information on oath or affirmation that there are reasonable grounds to believe the records referred to in subsection (1) may assist the Centre to identify the proceeds of unlawful activities or to combat money laundering activities.
- (4) A warrant issued in terms of this section may contain such conditions regarding access to the relevant records as the judge, magistrate or regional magistrate may deem appropriate.
- (5) An accountable institution must without delay give an authorized representative of the Centre all reasonable assistance necessary to enable that representative to exercise the powers mentioned in subsection (1).

PART 3

Reporting duties and access to information

27. Accountable institutions to advise Centre of clients

If an authorised representative of the Centre requests an accountable institution to advise whether—

- (a) a specified person is or has been a client of the accountable institution;
- (b) a specified person is acting or has acted on behalf of any client of the accountable institution; or
- (c) a client of the accountable institution is acting or has acted for a specified person,

the accountable institution must inform the Centre accordingly.

28. Cash transactions above prescribed limit

An accountable institution and a reporting institution must, within the prescribed period, report to the Centre the prescribed particulars concerning a transaction concluded with a client if in terms of the transaction an amount of cash in excess of the prescribed amount—

- (a) is paid by the accountable institution or reporting institution to the client, or to a person acting on behalf of the client, or to a person on whose behalf the client is acting; or
- (b) is received by the accountable institution or reporting institution from the client, or from a person acting on behalf of the client, or from a person on whose behalf the client is acting.

28A Property associated with terrorist and related activities

(1) An accountable institution which has in its possession or under its control property owned or controlled by or on behalf of, or at the direction of—

- (a) any entity which has committed, or attempted to commit, or facilitated the commission of a specified offence as defined in the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004; or
- (b) a specific entity identified in a notice issued by the President, under section 25 of the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004,

must within the prescribed period report that fact and the prescribed particulars to the Centre.

(2) The Director may direct an accountable institution which has a made a report under subsection (1) to report—

- (a) at such intervals as may be determined in the direction, that it is still in possession or control of the property in respect of which the report under subsection (1) had been made; and
- (b) any change in the circumstances concerning the accountable institution's possession or control of that property.

29. Suspicious and unusual transactions

- (1) A person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or ought reasonably to have known or suspected that—
- (a) the business has received or is about to receive the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities;
 - (b) a transaction or series of transactions to which the business is a party—
 - (i) facilitated or is likely to facilitate the transfer of the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities;
 - (ii) has no apparent business or lawful purpose;
 - (iii) is conducted for the purpose of avoiding giving rise to a reporting duty under this Act; or
 - (iv) may be relevant to the investigation of an evasion or attempted evasion of a duty to pay any tax, duty or levy imposed by legislation administered by the Commissioner for the South African Revenue Service; or
 - (v) relates to an offence relating to the financing of terrorist and related activities; or
 - (c) the business has been used or is about to be used in any way for money laundering purposes or to facilitate the commission of an offence relating to the financing of terrorist and related activities, must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.
- (2) A person who carries on a business or is in charge of or manages a business or who is employed by a business and who knows or suspects that a transaction or a series of transactions about which enquiries are made, may, if that transaction or those transactions had been concluded, have caused any of the consequences referred to in subsection (1)(a), (b) or (c), must, within the prescribed period after the knowledge was acquired or the suspicion

- arose, report to the Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.
- (3) No person who made or must make a report in terms of this section may disclose that fact or any information regarding the contents of any such report to any other person, including the person in respect of whom the report is or must be made, otherwise than—
- (a) within the scope of the powers and duties of that person in terms of any legislation;
 - (b) for the purpose of carrying out the provisions of this Act;
 - (c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
 - (d) in terms of an order of court.
- (4) No person who knows or suspects that a report has been or is to be made in terms of this section may disclose that knowledge or suspicion or any information regarding the contents or suspected contents of any such report to any other person, including the person in respect of whom the report is or is to be made, otherwise than—
- (a) within the scope of that person's powers and duties in terms of any legislation;
 - (b) for the purpose of carrying out the provisions of this Act;
 - (c) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
 - (d) in terms of an order of court.

30. Conveyance of cash to or from Republic (Date of commencement to be proclaimed)

- (1) A person who intends conveying or who has conveyed or who is conveying an amount of cash or a bearer negotiable instrument in excess of the prescribed amount to or from the Republic must, on demand, report the prescribed particulars concerning that conveyance to a person authorised by the Minister for this purpose.

[Substituted by s. 8 of Act 11 of 2008.]

- (2) A person authorised in terms of subsection (1) must without delay send a copy of the report to the Centre.

31. Electronic transfers of money to or from Republic (Date of commencement to be proclaimed)

If an accountable institution through electronic transfer sends money in excess of a prescribed amount out of the Republic or receives money in excess of a prescribed amount from outside the Republic on behalf, or on the instruction, of another person, it must, within the prescribed period after the money was transferred, report the transfer, together with the prescribed particulars concerning the transfer, to the Centre.

32. Reporting procedures and furnishing of additional information

- (1) A report in terms of section 28, 29 or 31 to the Centre and a report in terms of section 30(1) to a person authorised by the Minister must be made in the prescribed manner.
- (2) The Centre, or an investigating authority acting with the permission of the Centre or under the authority of an authorised officer, may request an accountable institution, a reporting institution or any other person that has made a report in terms of section 28, 29 or 31 to furnish the Centre or that investigating authority with such additional information concerning the report and the grounds for the report as the Centre or the investigating authority may reasonably require for the performance by it of its functions.
- (3) When an institution or a person referred to in subsection (2) receives a request under that subsection, that institution or person must furnish the Centre without delay with such additional information concerning the report and the grounds for the report as that institution or person may have available.

33. Continuation of transactions

An accountable institution, reporting institution or person required to make a report to the Centre in terms of section 28 or 29, may continue with and carry out the transaction in respect of which the report is required to be made unless the Centre directs the accountable institution, reporting institution or person in terms of section 34 not to proceed with the transaction.

34. Intervention by Centre

- (1) If the Centre, after consulting an accountable institution, a reporting institution or a person required to make a report in terms of section 28, 28A or 29, has reasonable grounds to suspect that a transaction or a proposed transaction may involve the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities or may constitute money laundering or a transaction contemplated in section 29(1)(b), it may direct the accountable institution, reporting institution or person in writing not to proceed with the carrying out of that transaction or proposed transaction or any other transaction in respect of the funds affected by that transaction or proposed transaction for a period as may be determined by the Centre, which may not be more than five days, in order to allow the Centre—
- (a) to make the necessary inquiries concerning the transaction; and
 - (b) if the Centre deems it appropriate, to inform and advise an investigating authority or the National Director of Public Prosecutions.
- (2) For the purposes of calculating the period of five days in subsection (1), Saturdays, Sundays and proclaimed public holidays must not be taken into account.
- (3) Subsection (1) does not apply to the carrying out of a transaction to which the rules of an exchange licensed in terms of the Securities Services Act, 2004 (Act No. 36 of 2004), apply.

[Substituted by s. 9 of Act 11 of 2008.]

35. Monitoring orders

- (1) A judge designated by the Minister of Justice for the purposes of the Interception and Monitoring Prohibition Act, 1992 (Act No. 127 of 1992), may, upon written application by the Centre, order an accountable institution to report to the Centre, on such terms and in such confidential manner as may be specified in the order, all transactions concluded by a specified person with the accountable institution or all transactions conducted in respect of a specified account or facility at the accountable institution, if there are reasonable grounds to suspect that—
- (a) that person has transferred or may transfer the proceeds of unlawful activities or property which is connected to an offence relating to the

- financing of terrorist and related activities to the accountable institution or is using or may use the accountable institution for money laundering purposes or for the purpose of any transaction contemplated in section 29(1)(b); or
- (b) that account or other facility has received or may receive the proceeds of unlawful activities or property which is connected to an offence relating to the financing of terrorist and related activities or is being or may be used for money laundering purposes or for the financing of terrorist or related activities or for the purpose of any transaction contemplated in section 29(1)(b).
- (2) An order in terms of subsection (1) lapses after three months unless extended in terms of subsection (3).
 - (3) A judge referred to in subsection (1) may extend an order issued in terms of subsection (1) for further periods not exceeding three months at a time if—
 - (a) the reasonable grounds for the suspicion on which the order is based still exist; and
 - (b) the judge is satisfied that the interest of justice is best served by monitoring the person, account or facility referred to in subsection (1) in the manner provided for in this section.
 - (4) An application referred to in subsection (1) must be heard and an order must be issued without notice to or hearing the person or persons involved in the suspected money laundering activities.

36. Information held by supervisory bodies and South African Revenue Service

- (1) If a supervisory body or the South African Revenue Service knows or suspects that an accountable institution wittingly or unwittingly has received or is about to receive the proceeds of unlawful activities or has been used or may be used in future for money laundering purposes or for the purpose of any transaction contemplated in section 29(1)(b), it must advise the Centre and any authority, service or body contemplated in section 3 or any other supervisory body that, in the opinion of the supervisory body or the South African Revenue Service, may have an interest therein, of that fact and furnish the Centre with all information and any records regarding that

knowledge or suspicion which they may reasonably require to identify the proceeds of unlawful activities or to combat money laundering activities or financing of terrorist and related activities.

[Substituted by s. 10 of Act 11 of 2008.]

- (2) If the Centre believes that a supervisory body or the South African Revenue Service may have information indicating that an accountable institution wittingly or unwittingly has received or is about to receive the proceeds of unlawful activities or has been used or may be used in future for money laundering purposes or for the purpose of any transaction contemplated in section 29(1)(b), the Centre may request that supervisory body or the South African Revenue Service to confirm or rebut that belief and the supervisory body or South African Revenue Service, as the case may be, must do so and, if that belief is confirmed, must furnish the Centre and any authority, service or body referred to in section 3 or any other supervisory body identified by the Centre that may have an interest in that matter with all information and any records regarding that knowledge or suspicion which the Centre may reasonably require for the achievement of its objectives.

[Substituted by s. 10 of Act 11 of 2008.]

- (3) The Commissioner for the South African Revenue Service and the chief executive officer of a supervisory body may make such reasonable procedural arrangements and impose such reasonable safeguards regarding the furnishing of information referred to in subsections (1) and (2) as the Commissioner or such officer considers appropriate to maintain the confidentiality, if any, of that information.

37. Reporting duty and obligations to provide information not affected by confidentiality rules

- (1) Subject to subsection (2), no duty of secrecy or confidentiality or any other restriction on the disclosure of information, whether imposed by legislation or arising from the common law or agreement, affects compliance by an accountable institution, supervisory body, reporting institution, the South African Revenue Service or any other person with a provision of this Part, Part 4 and Chapter 4.

[Substituted by s. 11 of Act 11 of 2008.]

- (2) Subsection (1) does not apply to the common law right to legal professional privilege as between an attorney and the attorney's client in respect of communications made in confidence between—
- (a) the attorney and the attorney's client for the purposes of legal advice or litigation which is pending or contemplated or which has commenced; or
 - (b) a third party and an attorney for the purposes of litigation which is pending or contemplated or has commenced.

38. Protection of persons making reports

- (1) No action, whether criminal or civil, lies against an accountable institution, reporting institution, supervisory body, the South African Revenue Service or any other person complying in good faith with a provision of this Part, Part 4 and Chapter 4 including any director, employee or other person acting on behalf of such accountable institution, reporting institution, supervisory body, the South African Revenue Service or such other person.

[Substituted by s. 12 of Act 11 of 2008.]

- (2) A person who has made, initiated or contributed to a report in terms of section 28, 29 or 31 or who has furnished additional information concerning such a report or the grounds for such a report in terms of a provision of this Part is competent, but not compellable, to give evidence in criminal proceedings arising from the report.
- (3) No evidence concerning the identity of a person who has made, initiated or contributed to a report in terms of section 28, 29 or 31 or who has furnished additional information concerning such a report or the grounds for such a report in terms of a provision of this Part, or the contents or nature of such additional information or grounds, is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.

39. Admissibility as evidence of reports made to Centre

A certificate issued by an official of the Centre that information specified in the certificate was reported or sent to the Centre in terms of section 28, 29, 30(2) or 31 is, subject to section 38(3), on its mere production in a matter before a court admissible as evidence of any fact contained in it of which direct oral evidence would be admissible.

40. Access to information held by Centre.

- (1) No person is entitled to information held by the Centre, except—
- (a) an investigating authority inside the Republic, the South African Revenue Service and the intelligence services, which may be provided with such information—
 - (i) on the written authority of an authorised officer if the authorised officer reasonably believes such information is required to investigate suspected unlawful activity; or
 - (ii) at the initiative of the Centre, if the Centre reasonably believes such information is required to investigate suspected unlawful activity;
 - (b) an entity outside the Republic performing similar functions to those of the Centre, or an investigating authority outside the Republic which may, at the initiative of the Centre or on written request, obtain information which the Centre reasonably believes is relevant to the identification of the proceeds of unlawful activities or the combating of money laundering or financing of terrorist and related activities or similar offences in the country in which that entity is established;
 - (c) an accountable institution or reporting institution which or any other person who may, at the initiative of the Centre or on written request, be provided with information regarding the steps taken by the Centre in connection with transactions reported by such accountable institution, reporting institution or person, unless the Centre reasonably believes that disclosure to such accountable institution, reporting institution or person of the information requested could—
 - (i) inhibit the achievement of the Centre's objectives or the performance of its functions, or the achievement of the objectives or the performance of the functions of another organ of state; or
 - (ii) prejudice the rights of any person;
 - (d) a supervisory body, which may at the initiative of the Centre or on written request be provided with information which the Centre reasonably believes is relevant to the exercise by that supervisory body of its powers or performance by it of its functions in relation to an

- accountable institution;
- (e) in terms of an order of a court; or
 - (f) in terms of other national legislation.
- (2) A request for information contemplated in subsection (1)(b), (c) or (d) must be in writing and must specify the desired information and the purpose for which the information is required.
 - (3) The Director may make such reasonable procedural arrangements and impose such reasonable safeguards regarding the furnishing of information referred to in subsection (1)(a), (b), (c) or (d) as the Director considers appropriate to maintain the confidentiality of that information.
 - (4) Information held by the Centre may only be provided to an entity referred to in subsection (1)(b) pursuant to a written agreement between the Centre and such entity, or the authority which is responsible for that entity, regulating the exchange of information between the Centre and such entity.
 - (5) An agreement referred to in subsection (4) does not—
 - (a) take effect until it has been approved in writing by the Minister;
 - (b) permit the Centre to provide any category of information to the entity in respect of which the agreement is concluded which that entity is not permitted to provide to the Centre.
 - (6) A person who obtains information from the Centre may use that information only within the scope of that person's powers and duties and for the purpose specified in terms of subsection (2).
 - (7) The Centre may make available any information obtained by it during an inspection to an organ of state, a supervisory body, other regulatory authority, self-regulating association or organisation that is affected by or has an interest in that information.

[Substituted by s. 13 of Act 11 of 2008.]

41. Protection of confidential information

No person may disclose confidential information held by or obtained from the Centre except—

- (a) within the scope of that person's powers and duties in terms of any legislation;
- (b) for the purpose of carrying out the provisions of this Act;
- (c) with the permission of the Centre;

- (d) for the purpose of legal proceedings, including any proceedings before a judge in chambers; or
- (e) in terms of an order of court.

PART 4

Measures to promote compliance by accountable institutions

42. Formulation and implementation of internal rules

- (1) An accountable institution must formulate and implement internal rules concerning—
 - (a) the establishment and verification of the identity of persons whom the institution must identify in terms of Part 1 of this Chapter;
 - (b) the information of which record must be kept in terms of Part 2 of this Chapter;
 - (c) the manner in which and place at which such records must be kept;
 - (d) the steps to be taken to determine when a transaction is reportable to ensure the institution complies with its duties under this Act; and
 - (e) such other matters as may be prescribed.
- (2) Internal rules must comply with the prescribed requirements.
- (3) An accountable institution must make its internal rules available to each of its employees involved in transactions to which this Act applies.
- (4) An accountable institution must, on request, make a copy of its internal rules available to—
 - (a) the Centre;
 - (b) a supervisory body which performs regulatory or supervisory functions in respect of that accountable institution.

43. Training and monitoring of compliance

An accountable institution must—

- (a) provide training to its employees to enable them to comply with the provisions of this Act and the internal rules applicable to them;
- (b) appoint a person with the responsibility to ensure compliance by—
 - (i) the employees of the accountable institution with the provisions of this Act and the internal rules applicable to them; and

- (ii) the accountable institution with its obligations under this Act.

43A. Directives

- (1) The Centre may, by notice in the Gazette, issue a directive to all institutions to whom the provisions of this Act apply, regarding the application of this Act.
- (2) The Centre or a supervisory body may, in writing, issue a directive to any category of accountable institutions or category of reporting institutions or other category of person to whom the provisions of this Act apply, regarding the application of this Act.
- (3) The Centre or a supervisory body may in writing, over and above any directive contemplated in subsection (1) or (2), issue a directive to any accountable institution, category of accountable institutions, reporting institution, category of reporting institutions or other person to whom the provisions of this Act apply, to—
- (a) provide the Centre or that supervisory body, as the case may be—
 - (i) with the information, reports or statistical returns specified in the notice, at the time or at the intervals specified in the notice; and
 - (ii) within the period specified in the notice, with any document in its possession or custody or under its control;
 - (b) cease or refrain from engaging in any act, omission or conduct in contravention of this Act;
 - (c) perform acts necessary to remedy an alleged non-compliance with this Act; or
 - (d) perform acts necessary to meet any obligation imposed by this Act.
- (4) The Centre or supervisory body may examine a document submitted to it in terms of subsection (3)(a) or make a copy thereof or part thereof.
- (5) The costs incurred in complying with a directive must be borne by the accountable institution, reporting institution or person concerned.
- (6)(a) The Centre, in respect of any accountable institution or category of accountable institutions regulated or supervised by a supervisory body in terms of this Act or any other law, may issue a directive in accordance with subsections (2) and (3) only if a supervisory body—

- (i) failed to issue a directive despite any recommendation of the Centre made in terms of section 44(b); or
 - (ii) failed to issue a directive within the period specified by the Centre.
- (b) A supervisory body may issue a directive in terms of this section only after consulting the Centre on that directive.

[Inserted by s. 14 of Act 11 of 2008.]

43B. Registration by accountable institution and reporting institution

- (1) Every accountable institution referred to in Schedule 1 and every reporting institution referred to in Schedule 3 must, within the prescribed period and in the prescribed manner, register with the Centre.
- (2) The registration of an accountable institution and a reporting institution contemplated in subsection (1) must be accompanied by such particulars as the Centre may require.
- (3) The Centre must keep and maintain a register of every accountable institution and reporting institution registered in terms of subsection (1).
- (4) A registered accountable institution or reporting institution must notify the Centre, in writing, of any changes to the particulars furnished in terms of this section within 90 days after such a change.

[Inserted by s. 14 of Act 11 of 2008.]

PART 5 Referral and supervision

44. Referral of suspected offences to investigating authorities and other public bodies

If the Centre in the performance of its functions has reasonable grounds to suspect that an accountable institution, or any other person other than a supervisory body who is subject to the provisions of this Act, has contravened or failed to comply with any provision of this Act or any rule or guideline applicable to that accountable institution or person which facilitates compliance with this Act, it may, if it considers it appropriate to do so, refer the matter to—

- (a) a relevant investigating authority; or
- (b) an appropriate supervisory body or other public body or authority affected by

it, together with any recommendation the Centre considers appropriate.

45. Responsibility for supervision of accountable institutions

- (1) Every supervisory body is responsible for supervising and enforcing compliance with this Act or any order, determination or directive made in terms of this Act by all accountable institutions regulated or supervised by it.

[Substituted by s. 15 of Act 11 of 2008.]

- (1A) (a) The obligation referred to in subsection (1) forms part of the legislative mandate of any supervisory body and constitutes a core function of that supervisory body.

[Inserted by s. 15 (b) of Act 11 of 2008.]

- (b) Any Act that regulates a supervisory body or authorises that supervisory body to supervise or regulate any accountable institution must be read as including subsection (1), and a supervisory body may utilise any fees or charges it is authorised to impose or collect to defray expenditure incurred in performing its obligations under this Act or any order, determination or directive made in terms of this Act.

[Inserted by s. 15 (b) of Act 11 of 2008.]

- (1B) A supervisory body, in meeting its obligation referred to in subsection (1), may—
- (a) in addition to any powers it has in terms of another Act, exercise any power afforded to it in this Act;
 - (b) delegate the exercise of any power contemplated in paragraph (a) to any of its members, employees or any other suitable person;
 - (c) take any measures it considers necessary or expedient to meet its obligations imposed by this Act or any order, determination or directive made in terms of this Act, or to achieve the objectives of the Centre or this Act;
 - (d) require an accountable institution supervised or regulated by it to report on that institution's compliance with this Act or any order, determination or directive made in terms of this Act in the form, manner and timeframes determined by the supervisory body;
 - (e) issue or amend any licence, registration, approval or authorisation that the supervisory body may issue or grant in accordance with any Act, to

include the following conditions:

- (i) compliance with this Act; and
 - (ii) the continued availability of human, financial, technological and other resources to ensure compliance with this Act or any order, determination or directive made in terms of this Act; and
- (f) in making a determination in accordance with any Act applicable to it as to whether a person is fit and proper to hold office in an accountable institution, take into account any involvement, whether directly or indirectly, by that person in any non-compliance with this Act or any order, determination or directive made in terms of this act, or, prior to the commencement of this Act or at any time thereafter, any involvement in—
- (i) any money laundering activity; or
 - (ii) any terrorist or related activity.

[Inserted by s. 15 (b) of Act 11 of 2008.]

- (1C) A supervisory body must submit to the Centre, within the prescribed period and in the prescribed manner, a written report on any action taken against any accountable institution in terms of this Act or any order, determination or directive made in terms of this Act.

[Inserted by s. 15 (b) of Act 11 of 2008.]

- (1D) The Centre and a supervisory body must co-ordinate their approach to exercising their powers and performing their functions in terms of this Act to ensure the consistent application of the Act, and must enter into a written memorandum of understanding in respect thereof.

[Inserted by s. 15 (b) of Act 11 of 2008.]

- (2) When the Centre refers a matter to a supervisory body or other public body or authority in terms of section 44, that supervisory body or other public body or authority must investigate the matter and may, after consultation with the Centre, take such steps within the scope of its powers as it considers appropriate to remedy the matter.
- (3) Should a supervisory body or other public body or authority to which a suspected contravention or failure is referred in terms of section 44 fail to take adequate steps to ensure that the suspected contravention ceases or the suspected failure is rectified, the Centre may, after consultation with the

supervisory body or other public body or authority concerned, take such steps within the scope of its powers as the Centre considers appropriate to remedy the matter.

CHAPTER 4
COMPLIANCE AND ENFORCEMENT

[Heading substituted by s. 16 (a) of Act 11 of 2008.]

45A. Appointment of inspectors

- (1) The Director or the head of a supervisory body, as the case may be, may appoint any person in the service of the Centre or supervisory body or any other suitable person as an inspector.
- (2) The Director or the head of a supervisory body may determine the remuneration to be paid to a person who is appointed in terms of subsection (1) that is not in the full-time service of the Centre or supervisory body.
- (3)(a) The Director or the head of a supervisory body must issue an inspector contemplated in subsection (1) with a certificate of appointment signed by the Director or the head of that supervisory body.
 - (b) A certificate of appointment must specify—
 - (i) the full name of the person so appointed;
 - (ii) his or her identity number;
 - (iii) his or her signature;
 - (iv) his or her photograph;
 - (v) a description of the capacity in which he or she is appointed; and
 - (vi) the extent of his or her powers to inspect.
- (4)(a) Where the head of a supervisory body is authorised by any other Act to appoint inspectors, the head may extend the appointment and functions of inspectors under that Act to include the undertaking of inspections under this Act.
 - (b) An inspector whose appointment or functions have been extended under paragraph (a) may, in undertaking inspections under this Act, in addition to the functions afforded to such inspector under the Act contemplated in paragraph (a), perform the functions afforded in this Act.
 - (c) Any extension contemplated in paragraph (a) must be reflected in any certificate or appointment document issued by the head of the supervisory body to an inspector under the Act contemplated in that paragraph.
- (5) When an inspector undertakes an inspection in terms of this Act, the

inspector must—

- (a) be in possession of a certificate of appointment issued in terms of subsection (3) or contemplated in subsection 4(c); and
- (b) on request, show that certificate to any person who is—
 - (i) affected by the performance of the functions of the inspector:
or
 - (ii) is in charge of any premises to be inspected.

[Inserted by s. 16 (b) of Act 11 of 2008.]

45B. Inspections

- (1) For the purposes of determining compliance with this Act or any order, determination or directive made in terms of this Act, an inspector may at any reasonable time and on reasonable notice, where appropriate, enter and inspect any premises at which the Centre or, when acting in terms of section 45(1), the supervisory body reasonably believes that the business of an accountable institution, reporting institution or other person to whom the provisions of this Act apply, is conducted.
- (2) An inspector, in conducting an inspection, may—
 - (a) in writing direct a person to appear for questioning before the inspector at a time and place determined by the inspector;
 - (b) order any person who has or had any document in his, her or its possession or under his, her or its control relating to the affairs of the accountable institution, reporting institution or person—
 - (i) to produce that document; or
 - (ii) to furnish the inspector at the place and in the manner determined by the inspector with information in respect of that document;
 - (c) open any strongroom, safe or other container, or order any person to open any strongroom, safe or other container, in which the inspector suspects any document relevant to the inspection is kept;
 - (d) use any computer system or equipment on the premises or require reasonable assistance from any person on the premises to use that computer system to—
 - (i) access any data contained in or available to that computer

- system; and
- (ii) reproduce any document from that data;
- (e) examine or make extracts from or copy any document in the possession of an accountable institution, reporting institution or person or, against the issue of a receipt, remove that document temporarily for that purpose; and
 - (f) against the issue of a receipt, seize any document obtained in terms of paragraphs (c) to (e). which in the opinion of the inspector may constitute evidence of non-compliance with a provision of this Act or any order, determination or directive made in terms of this Act.
- (3) An accountable institution, reporting institution or other person to whom this Act applies, must without delay provide reasonable assistance to an inspector acting in terms of subsection (2).
 - (4) The Centre or a supervisory body may recover all expenses necessarily incurred in conducting an inspection from an accountable institution, reporting institution or person inspected.
 - (5)(a) Subject to section 36 and paragraph (b), an inspector may not disclose to any person not in the service of the Centre or supervisory body any information obtained in the performance of functions under this Act.
 - (b) An inspector may disclose information—
 - (i) for the purpose of enforcing compliance with this Act or any order, determination or directive made in terms of this Act;
 - (ii) for the purpose of legal proceedings;
 - (iii) when required to do so by a court; or
 - (iv) if the Director or supervisory body is satisfied that it is in the public interest.
 - (6)(a) An inspector appointed by the Director may, in respect of any accountable institution regulated or supervised by a supervisory body in terms of this Act or any other law, conduct an inspection only if a supervisory body failed to conduct an inspection despite any recommendation of the Centre made in terms of section 44(b) or failed to conduct an inspection within the period recommended by the Centre.
 - (b) An inspector of a supervisory body may conduct an inspection, other than

a routine inspection in terms of this section, only after consultation with the Centre on that inspection.

- (c) An inspector appointed by the Director may on the request of a supervisory body accompany and assist an inspector appointed by the head of a supervisory body in conducting an inspection in terms of this section.
- (7) No warrant is required for the purposes of an inspection in terms of this section.

[Inserted by s. 16 (b) of Act 11 of 2008.]

45C. Administrative sanctions

- (1) The Centre or a supervisory body may impose an administrative sanction on any accountable institution, reporting institution or other person to whom this Act applies when satisfied on available facts and information that the institution or person—
 - (a) has failed to comply with a provision of this Act or any order, determination or directive made in terms of this Act;
 - (b) has failed to comply with a condition of a licence, registration, approval or authorisation issued or amended in accordance with section 45(1B)(V);
 - (c) has failed to comply with a directive issued in terms section 34(1) or 43A(3); or
 - (d) has failed to comply with a non-financial administrative sanction imposed in terms of this section.
- (2) When determining an appropriate administrative sanction, the Centre or the supervisory body must consider the following factors:
 - (a) The nature, duration, seriousness and extent of the relevant non-compliance;
 - (b) whether the institution or person has previously failed to comply with any law;
 - (c) any remedial steps taken by the institution or person to prevent a recurrence of the non-compliance;
 - (d) any steps taken or to be taken against the institution or person by—

- (i) another supervisory body; or
 - (ii) a voluntary association of which the institution or person is a member; and
 - (e) any other relevant factor, including mitigating factors.
- (3) The Centre or supervisory body may impose any one or more of the following administrative sanctions:
- (a) A caution not to repeat the conduct which led to the non-compliance referred to in subsection (1);
 - (b) a reprimand;
 - (c) a directive to take remedial action or to make specific arrangements;
 - (d) the restriction or suspension of certain specified business activities; or
 - (e) a financial penalty not exceeding R10 million in respect of natural persons and R50 million in respect of any legal person.
- (4) The Centre or supervisory body may—
- (a) in addition to the imposition of an administrative sanction, make recommendations to the relevant institution or person in respect of compliance with this Act or any order, determination or directive made in terms of this Act;
 - (b) direct that a financial penalty must be paid by a natural person or persons for whose actions the relevant institution is accountable in law, if that person or persons was or were personally responsible for the non-compliance;
 - (c) suspend any part of an administrative sanction on any condition the Centre or the supervisory body deems appropriate for a period not exceeding five years.
- (5) Before imposing an administrative sanction, the Centre or supervisory body must give the institution or person reasonable notice in writing—
- (a) of the nature of the alleged non-compliance;
 - (b) of the intention to impose an administrative sanction;
 - (c) of the amount or particulars of the intended administrative sanction; and
 - (d) that the institution or person may, in writing, within a period

- specified in the notice, make representations as to why the administrative sanction should not be imposed.
- (6)(a) After considering any representations and the factors referred to in subsection (2), the Centre, subject to paragraph (c). or supervisory body may impose an administrative sanction the Centre or supervisory body considers appropriate.
- (b) Upon imposing the administrative sanction the Centre or supervisory body must, in writing, notify the institution or person—
- (i) of the decision and the reasons therefore; and
 - (ii) of the right to appeal against the decision in accordance with section 45D.
- (c) The Centre must, prior to taking a decision contemplated in paragraph (a), consult the relevant supervisory body, if applicable.
- (7)(a) Any financial penalty imposed must be paid into the Criminal Assets Recovery Account established by section 63 of the Prevention Act within the period and in the manner as may be specified in the relevant notice.
- (b) If the institution or person fails to pay the financial penalty within the specified period and an appeal has not been lodged within the required period, the Centre or supervisory body may forthwith file with the clerk or registrar of a competent court a certified copy of the notice contemplated in subsection (6)(b), and the notice thereupon has the effect of a civil judgment lawfully given in that court in favour of the Centre or supervisory body.
- (8) An administrative sanction contemplated in this section may not be imposed if the respondent has been charged with a criminal offence in respect of the same set of facts.
- (9) If a court assesses the penalty to be imposed on a person convicted of an offence in terms of this Act, the court must take into account any administrative sanction imposed under this section in respect of the same set of facts.
- (10) An administrative sanction imposed in terms of this Act does not constitute a previous conviction as contemplated in Chapter 27 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977).
- (11) Unless the Director or supervisory body is of the opinion that there are

exceptional circumstances present that justify the preservation of the confidentiality of a decision the Director or supervisory body must make public the decision and the nature of any sanction imposed if—

- (a) an institution or person does not appeal against a decision of the Centre or supervisory body within the required period; or
- (b) the appeal board confirms the decision of the Centre or supervisory body.

45D. Appeal

- (1)(a) Any institution or person may appeal against a decision of the Centre or supervisory body made in terms of section 45C(6) to the appeal board.
 - (b) An appeal must be lodged within 30 days in the manner, and on payment of the fees, prescribed by the Minister.
- (2) An appeal under subsection (1) shall take place on the date and at the place and time determined by the appeal board.
- (3) An appeal is decided on the affidavits and supporting documents presented to the appeal board by the parties to the appeal.
- (4) Despite the provisions of subsection (3) the appeal board may—
 - (a) summon any person who, in its opinion, may be able to give information for the purposes of the appeal or who it believes has in his, her or its possession, custody or control any document which has any bearing upon the decision under appeal, to appear before it at a time and place specified in the summons, to be questioned or to produce that document, and retain for examination any document so produced;
 - (b) administer an oath to or accept an affirmation from any person called as a witness at an appeal; and
 - (c) call any person present at the appeal proceedings as a witness and interrogate such person and require such person to produce any document in his, her or its possession, custody or control, and such a person shall be entitled to legal representation at his or her own expense.
- (5) The chairperson of the appeal board determines any other procedural matters relating to an appeal.

- (6) Any party to an appeal is entitled to be represented at an appeal by a legal representative.
- (7) The appeal board may—
- (a) confirm, set aside or vary the relevant decision of the Centre or supervisory body; or
 - (b) refer a matter back for consideration or reconsideration by the Centre or the supervisory body concerned in accordance with the directions of the appeal board.
- (8) The decision of a majority of the members of the appeal board shall be the decision of that board.
- (9) The decision of the appeal board must be in writing, and a copy thereof must be made available to the appellant and the Centre or supervisory body.
- (10)(a) If the appeal board sets aside any decision of the Centre or supervisory body, the fees contemplated in subsection (1)(b) paid by the appellant in respect of the appeal in question must be refunded to the appellant.
- (b) If the appeal board varies any such decision, it may in its discretion direct that the whole or any part of such fees be refunded to the appellant.
- (11)(a) Subject to paragraph (b), a decision of the appeal board may be taken on appeal to the High Court as if it were a decision of a magistrate in a civil matter.
- (b) The launching of appeal proceedings in terms of paragraph (a) does not suspend the operation or execution of a decision, unless the chairperson of the appeal board directs otherwise.

[Inserted by s. 16 (b) of Act 11 of 2008.]

45E. Establishment of appeal board

- (1) An appeal board is hereby established.
- (2) The Minister must appoint as members of the appeal board so many persons as the Minister may consider necessary, with an alternate for each of them, of whom—
- (a) one must be an advocate or attorney with at least ten years experience, who will be the chairperson; and
 - (b) at least two must be persons with experience and expert

- knowledge of financial institutions and financial services.
- (3) A member of the appeal board holds office for a period of three years and is eligible for reappointment on the expiration of his or her term of office.
- (4) An alternate acts as a member when—
- (a) a member is absent, has recused himself or herself or is suspended; or
- (b) the filling of a vacancy on the appeal board is pending.
- (5) Any vacancy that occurs on the appeal board must be filled in accordance with subsection (2) and any person so appointed holds office for the unexpired portion of the period of office of his or her predecessor.
- (6) The appeal board may co-opt any person having expert knowledge of a particular matter to assist the board in considering an appeal.
- (7) A person co-opted under subsection (6) may not participate in any decision of the appeal board.
- (8) If before or during the consideration of any appeal it transpires that any member of the appeal board has any direct or indirect personal interest in the outcome of that appeal, that member must recuse himself or herself and must be replaced by the alternate member.
- (9) The Minister may terminate the period of office of a member of the appeal board—
- (a) if the performance of the member is unsatisfactory; or
- (b) if the member, either through illness or for any other reason, is unable to perform the functions of office effectively.
- (10)(a) The Minister may, if the performance of the appeal board is unsatisfactory, terminate the period of office of all the members of the appeal board.
- (b) In the event of the dismissal of all the members of the appeal board, the Minister may appoint persons to act as caretakers until competent persons are appointed in terms of subsection (2).
- (11) A member of the appeal board may be paid such remuneration and allowances as the Minister may from time to time determine.
- (12) The Centre must provide administrative support for the appeal board.
- (13) The Centre is responsible for the expenditure of the appeal board.

[Inserted by s. 16 (b) of Act 11 of 2008.]

45F. Application to court

- (1)(a) The Centre, in respect of any accountable institution regulated or supervised by a supervisory body in terms of this Act or any other law, may institute proceedings in accordance with this section only if a supervisory body failed to institute proceedings despite any recommendation of the Centre made in terms of section 44(b) or failed to institute proceedings within the period recommended by the Centre.
- (b) A supervisory body may institute proceedings in accordance with this section only after consultation with the Centre on that application to court.
- (2) Subject to subsection (1), the Centre or any supervisory body may institute proceedings in the High Court having jurisdiction against any accountable institution, reporting institution or person to whom this Act applies, to—
- (a) discharge any obligation imposed on the Centre or supervisory body in terms of this Act;
 - (b) compel that institution or person to comply with any provision of this Act or to cease contravening a provision of this Act;
 - (c) compel that institution or person to comply with a directive issued by the Centre or supervisory body under this Act; or
 - (d) obtain a declaratory order against that institution or person on any point of law relating to any provision of this Act or any order, determination or directive made in terms of this Act.
- (3) Subject to subsection (1), if the Centre or a supervisory body has reason to believe that an institution or person is not complying with this Act or any order, determination or directive made in terms of this Act, it may, if it appears that prejudice has occurred or might occur as a result of such non-compliance, apply to a court having jurisdiction for—
- (a) an order restraining that institution or person from continuing business pending an application to court by the Centre or supervisory body as contemplated in subsection (2); or
 - (b) any other legal remedy available to the Centre or supervisory body.

[Inserted by s. 16 (b) of Act 11 of 2008.]

46. Failure to identify persons

- (1) An accountable institution that performs any act to give effect to a business relationship or single transaction in contravention of section 21(1) is guilty of an offence.
- (2) An accountable institution that concludes any transaction in contravention of section 21(2) is guilty of an offence.

47. Failure to keep records

An accountable institution that fails to—

- (a) keep record of information in terms of section 22(1); or
- (b) keep such records in accordance with section 23 or section 24(1); or
- (c) comply with the provisions of section 24(3),

is guilty of an offence.

48. Destroying or tampering with records

Any person who willfully tampers with a record kept in terms of section 22 or section 24(1), or willfully destroys such a record, otherwise than in accordance with section 23, is guilty of an offence.

49. Failure to give assistance

An accountable institution that fails to give assistance to a representative of the Centre in accordance with section 26(5), is guilty of an offence.

50. Failure to advise Centre of client

An accountable institution that fails to inform the Centre in accordance with section 27 is guilty of an offence.

51. Failure to report cash transactions

An accountable institution or reporting institution that fails, within the prescribed period, to report to the Centre the prescribed information in respect of a cash transaction in accordance with section 28, is guilty of an offence.

51A. Failure to report property associated with terrorist and related activities

- (1) An accountable institution that has in its possession or under its control

property owned or controlled by or on behalf of, or at the direction of an entity contemplated in section 28A(1), and that fails, within the prescribed period, to report that fact and the prescribed information in respect of such property to the Centre in accordance with that section, is guilty of an offence.

- (2) An accountable institution that fails to comply with a direction by the Director in accordance with section 28A(2), is guilty of an offence.

[Inserted by s. 17 of Act 11 of 2008.]

52. Failure to report suspicious or unusual transactions

- (1) Any person who fails, within the prescribed period, to report to the Centre the prescribed information in respect of a suspicious or unusual transaction or series of transactions or enquiry in accordance with section 29(1) or (2), is guilty of an offence.
- (2) Any person referred to in section 29(1) or (2) who reasonably ought to have known or suspected that any of the facts referred to in section 29(1)(a), (b) or (c) or section 29(2) exists, and who negligently fails to report the prescribed information in respect of a suspicious or unusual transaction or series of transactions or enquiry, is guilty of an offence.

53. Unauthorised disclosure

- (1) Any person referred to in section 29(3) who discloses a fact or information contemplated in that section, otherwise than in the circumstances or for the purposes authorised in that section, is guilty of an offence.
- (2) Any person referred to in section 29(4) who discloses a knowledge or suspicion or any information contemplated in that section, otherwise than in the circumstances and for the purposes authorised in that section, is guilty of an offence.

54. Failure to report conveyance of cash or bearer negotiable instrument into or out of Republic (Date of commencement to be proclaimed)

Any person who willfully fails to report the conveyance of cash or bearer negotiable instrument into or out of the Republic in accordance with section 30(1), is guilty of an offence.

[Substituted by s. 18 of Act 11 of 2008.]

55. Failure to send report to Centre (Date of commencement to be proclaimed)

A person referred to in section 30(2) who fails to send a report regarding the conveyance of cash or bearer negotiable instrument to the Centre in accordance with that section, is guilty of an offence.

[Substituted by s. 19 of Act 11 of 2008.]

56. Failure to report electronic transfers (Date of commencement to be proclaimed)

An accountable institution that fails to report to the Centre the prescribed information in respect of an electronic transfer of money in accordance with section 31, is guilty of an offence.

57. Failure to comply with request

An accountable institution, reporting institution or any other person that fails to comply with a request made by—

- (a) the Centre or an investigating authority acting under the authority of an authorised officer in terms of section 32(2); or
- (b) a supervisory body in terms of section 45(1B)(d),

is guilty of an offence.

[Substituted by s. 20 of Act 11 of 2008.]

58. Failure to comply with directives

An accountable institution that fails to comply with a directive of the Centre or a supervisory body in terms of section 34(1), 43A(3) or 45C(c)(3), is guilty of an offence.

[Substituted by s. 20 of Act 11 of 2008.]

59. Failure to comply with monitoring order

An accountable institution that fails to comply with an order by a judge in accordance with section 35 is guilty of an offence.

60. Misuse of information

- (1) Any person who—
 - (a) discloses confidential information held by or obtained from the Centre

otherwise than in accordance with section 40 or 41; or

[Substituted by s. 22 of Act 11 of 2008.]

- (b) willfully destroys or in any other way tampers with information kept by the Centre for the purposes of this Act; or
- (c) uses information obtained from the Centre otherwise than in accordance with—
 - (i) any arrangements or safeguards made or imposed by the Director in terms of section 40(3); or
 - (ii) section 40(6),

is guilty of an offence.

- (2) Any person who knows, suspects or ought reasonably to have known or suspected—
 - (a) that information has been disclosed to the Centre; or
 - (b) that an investigation is being, or may be, conducted as a result of information that has been or is to be disclosed to the Centre, and who directly or indirectly alerts, or brings information to the attention of, another person which will or is likely to prejudice such an investigation, is guilty of an offence.

61. Failure to formulate and implement internal rules

An accountable institution that fails to—

- (a) formulate and implement internal rules in accordance with section 42(1) and (2);
- (b) make the internal rules available to its employees in accordance with section 42(3); or
- (c) make a copy of its internal rules available to the Centre or a supervisory body in terms of section 42(4),

is guilty of an offence.

61A. Failure to register with Centre

Any accountable institution or reporting institution that—

- (a) fails to register with the Centre in terms of section 43B; or
- (b) fails to provide information in terms of section 43B,

is guilty of an offence.

[Inserted by s. 23 of Act 11 of 2008.]

62. Failure to provide training or appoint compliance officer

An accountable institution that fails to—

- (a) provide training to its employees in accordance with section 43(a); or
- (b) appoint the person referred to in section 43(b),

is guilty of an offence.

62A. Offences relating to inspection

A person who—

- (a) fails to appear for questioning in terms of section 45B(2)(a);
- (b) fails to comply with an order contemplated in section 45B(2)(b);
- (c) willfully gives false information to an inspector;
- (d) fails to comply with any reasonable request by an inspector in the performance of his or her functions; or
- (e) willfully hinders an inspector in the performance of his or her functions,

is guilty of an offence.

[Inserted by s. 24 of Act 11 of 2008.]

62B. Hindering or obstructing appeal board

Any person who willfully interrupts the proceedings of the appeal board or who willfully hinders or obstructs the appeal board in the performance of its functions, is guilty of an offence.

[Inserted by s. 24 of Act 11 of 2008.]

62C. Failure to attend when summoned

Any person who, having been summoned to attend and give evidence or to produce any book, document or object before the Centre or a supervisory body or the appeal board—

- (a) fails without sufficient cause to appear at the time and place specified or to remain in attendance until excused; or
- (b) attends as required, but—
 - (i) refuses to take an oath or to make affirmation; or
 - (ii) fails to produce a book, document or other item as ordered, if it is in the possession of, or under the control of, that person,

is guilty of an offence.

[Inserted by s. 24 of Act 11 of 2008.]

62D. Failure to answer fully or truthfully

Any person who, having been sworn in or having made an affirmation before the Centre or a supervisory body or the appeal board—

- (a) fails to answer any question fully and to the best of that person's ability; or
- (b) gives false evidence, knowing or believing it to be false,

is guilty of an offence.

[Inserted by s. 24 of Act 11 of 2008.]

63. Obstructing of official in performance of functions

Any person who obstructs, hinders or threatens an official or representative of the Centre in the performance of their duties or the exercise of their powers in terms of this Act, is guilty of an offence.

64. Conducting transactions to avoid reporting duties

Any person who conducts, or causes to be conducted, two or more transactions with the purpose, in whole or in part, of avoiding giving rise to a reporting duty under this Act, is guilty of an offence.

65. Unauthorised access to computer system or application or data

- (1) Any person who, without authority to do so, willfully accesses or causes any other person to access any computer system that belongs to, or is under the control of, the Centre, or any application or data held in such a computer system, is guilty of an offence.
- (2) Any person who, without authority to do so, willfully causes any computer system that belongs to, or is under the control of, the Centre, to perform or fail to perform a function, is guilty of an offence.

66. Unauthorised modification of contents of computer system

Any person who, without authority to do so, willfully causes a computer system that belongs to, or is under the control of, the Centre, or any application or data held in such a computer system, to be modified, destroyed, erased or the operation or reliability of such a computer system, application or data to be otherwise impaired, is guilty of an offence.

67. Definitions

For the purposes of sections 65 and 66—

- (a) **“access”** in relation to an application or data means rendering that application or data, by whatever means, in a form that would enable a person, at the time when it is so rendered or subsequently, to take account of that application or data, and includes using the application or data or having it output from the computer system in which it is held in a displayed or printed form or to a storage medium or by means of any output device, whether attached to the computer system in which the application or data are held or not;
- (b) **“application”** means a set of instructions that, when executed in a computer system, causes a computer system to perform a function;
- (c) **“computer system”** means an electronic, magnetic, optical, electrochemical or other data processing device, including the physical components thereof, and any removable storage medium that is for the time being therein or connected thereto, or a group of such interconnected or related devices, one or more of which is capable of—
 - (i) containing data; or
 - (ii) performing a logical, arithmetic or any other function in relation to data;
- (d) **“data”** means any representation of information, knowledge, facts or concepts, capable of being processed in a computer system.

68. Penalties

- (1) A person convicted of an offence mentioned in this Chapter, other than an offence mentioned in subsection (2), is liable to imprisonment for a period not exceeding 15 years or to a fine not exceeding R100 million.
- (2) A person convicted of an offence mentioned in section 55, 61, 61A, 62, 62A, 62B, 62C or 62D, is liable to imprisonment for a period not exceeding five years or to a fine not exceeding R10 million.

69. Defences

If a person who is an employee, director or trustee of, or a partner in, an accountable institution is charged with committing an offence under section 52, that person may raise as a defence the 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 this Act; or
- (c) reported the matter to his or her superior, if any, if—
 - (i) the accountable institution had not appointed such a person or established such rules; or
 - (ii) the accountable institution had not complied with its obligations in section 42(3) in respect of that person; or
 - (iii) the internal rules were not applicable to that person.

70. Search, seizure and forfeiture (Date of commencement to be proclaimed)

- (1) A police official or person authorised by the Minister to receive a report under section 30(1), who has reasonable grounds to suspect that an offence under section 54 has been or is about to be committed, may at any time search any person, container or other thing in which any cash or bearer negotiable instrument contemplated in section 30(1) is suspected to be found.
- (2) A police official or person authorised by the Minister referred to in subsection (1) may seize any cash or bearer negotiable instrument contemplated in section 30(1).
- (3) Any cash or bearer negotiable instrument seized under subsection (2) must be returned to the person from whom it was seized as soon as possible—
 - (a) after the expiry of a period of 90 days from the date of the seizure, unless, before the expiry of that period—
 - (i) that person has been arrested without a warrant of arrest being issued;
 - (ii) a warrant for the arrest of that person has been issued; or
 - (iii) a summons has been issued for that person to appear in court, in connection with the suspected commission of an offence under section 54 in respect of that cash or bearer negotiable instrument or any portion of it;
 - (b) after the expiry of a period of 90 days from the date of the seizure, unless, before the expiry of that period, an application for a preservation order in terms of section 38 of the Prevention Act in respect of that cash or bearer negotiable instrument is pending before

- the High Court;
- (c) if that person is acquitted on a charge of committing an offence under section 54; or
 - (d) if a forfeiture order in terms of section 50 of the Prevention Act is not made in respect of that cash or bearer negotiable instrument.
- (4) Whenever any person is convicted of an offence under section 54 the court convicting that person must, in addition to any punishment which that court may impose in respect of the offence, declare any cash or bearer negotiable instrument contemplated in section 30(1) that was seized under subsection (2), or is in the possession or custody or under the control of the convicted person, to be forfeited to the State.
- (5) Whenever a person is convicted of an offence under section 64 the court convicting that person must, in addition to any punishment which that court may impose in respect of the offence, declare any property in respect of which those transactions were conducted to be forfeited to the State.
- (6) A declaration of forfeiture shall not affect any interest which any person other than the convicted person may have in the cash or bearer negotiable instrument or property concerned if that person proves—
- (a) that he or she acquired the interest in that cash or bearer negotiable instrument or property in good faith; and
 - (b) that he or she did not know that the cash or bearer negotiable instrument or property in question was—
 - (i) conveyed as contemplated in section 30(1) or that he or she could not prevent the cash or bearer negotiable instrument from being so conveyed; or
 - (ii) used in the transactions contemplated in section 64 or that he or she could not prevent the property from being so used,as the case may be.
- (7) Subject to subsection (6), the court concerned or, if the judge or judicial officer concerned is not available, any judge or judicial officer of that court, may at any time within a period of three years from the date of the declaration of forfeiture, on the application of any person other than the convicted person who claims that he or she has any interest in the cash or bearer negotiable instrument in question, inquire into and determine any such interest.
- (8) Subject to subsection (6), if a court referred to in subsection (7) finds that—

- (a) the cash or bearer negotiable instrument or property in question belonged to the applicant at the time of the forfeiture, the court must set aside the declaration of forfeiture in question and direct that the cash or bearer negotiable instrument or property be returned to the applicant or, if the State has disposed of it, direct that the applicant be compensated by the State in an amount equal to the amount of cash or bearer negotiable instrument or the value of the property forfeited; or
 - (b) the applicant had an interest in the cash or bearer negotiable instrument or property in question at the time of the forfeiture, the court must direct that the applicant be compensated by the State in an amount equal to the value of his or her interest in the cash or bearer negotiable instrument or property.
- (9) Any person aggrieved by a determination made by a court under subsection (8), may appeal against the determination as if it were a conviction by the court making the determination, and such appeal may be heard either separately or jointly with an appeal against the conviction as a result of which the declaration of forfeiture was made, or against a sentence imposed as a result of such conviction.
- (10) In order to make a declaration of forfeiture or to determine any interest under subsection (8), the court may refer to the evidence and proceedings at the trial or hear such further evidence, either orally or by affidavit, as it may deem fit.

[Amended by s. 26 of Act 11 of 2008.]

71. Jurisdiction of courts

- (1) A regional court has penal jurisdiction to impose any penalty mentioned in section 68(1), even though that penalty may exceed the penal jurisdiction of that court.
- (2) A magistrate's court has penal jurisdiction to impose any penalty mentioned in section 68(2), even though that penalty may exceed the penal jurisdiction of that court.
- (3) A magistrate's court or regional court has jurisdiction to make any order of forfeiture referred to in section 70, even though the amount forfeitable under that order may exceed the civil jurisdiction of a magistrate's court or regional court.

CHAPTER 5
MISCELLANEOUS**72. Act not to limit powers of investigating authorities or supervisory bodies**

This Act does not detract from—

- (a) an investigating authority's powers in terms of other legislation to obtain information for the purpose of criminal investigations; or
- (b) a supervisory body's duties or powers in relation to the entities supervised or regulated by it.

73. Amendment of list of accountable institutions

- (1) The Minister may, by notice in the Gazette, amend the list of accountable institutions in Schedule 1 to—
 - (a) add to the list any person or category of persons if the Minister reasonably believes that that person or category of persons is used, or is likely to be used in future, for money laundering purposes;
 - (b) delete any institution or category of institutions from the list if the Minister reasonably believes that that institution or category of institutions is not being used, and is not likely to be used in the future, for money laundering purposes; or
 - (c) make technical changes to the list.
- (2) Before the Minister amends Schedule 1 in terms of subsection (1)(a) or (b), the Minister must consult the Council and the Centre, and—
 - (a) if only one person or institution will be affected by the proposed amendment, give that person or institution at least 30 days' written notice to submit written representations to the Minister; or
 - (b) if a category of persons or institutions will be affected by the proposed amendment, by notice in the Gazette give persons or institutions belonging to that category at least 60 days' written notice to submit written representations to the Minister.
- (3) Any addition to or deletion from the list of accountable institutions in Schedule 1 in terms of subsection (1)(a) or (b) must, before publication in the Gazette, be approved by Parliament.

74. Exemptions for accountable institutions

- (1) The Minister may, after consulting the Council and the Centre, and on conditions and for a period determined by the Minister, exempt from compliance with—
 - (a) any of the provisions of this Act—
 - (i) a person;
 - (ii) an accountable institution; or
 - (iii) a category of persons or accountable institutions;
 - (b) any or all of the provisions of this Act, a person or category of persons or an accountable institution or category of accountable institutions in respect of any one or more categories of transactions.
- (2) Any exemption referred to in subsection (1)—
 - (a) must be by notice in the Gazette and may be withdrawn or amended by the Minister, after consulting with the Council and the Centre;
 - (b) must be tabled in Parliament before being published in the Gazette.

75. Amendment of list of supervisory bodies

- (1) The Minister may, by notice in the Gazette, amend the list of supervisory bodies in Schedule 2 to—
 - (a) add to the list any entity or functionary which performs supervisory or regulatory functions in relation to any category of accountable institutions;
 - (b) delete any supervisory body from the list if that supervisory body no longer performs supervisory or regulatory functions in relation to any category of accountable institutions; or
 - (c) make technical changes to the list.
- (2) Before the Minister amends Schedule 2 in terms of subsection (1)(a) or (b), the Minister must consult the Council and the Centre, and give the entity or functionary concerned, or the supervisory body concerned, as the case may be, at least 60 days' written notice to submit written representations to the Minister.
- (3) Any addition to or deletion from the list of supervisory bodies in Schedule 2 in terms of subsection (1)(a) or (b) must, before publication in the Gazette, be approved by Parliament.

76. Amendment of list of reporting institutions

- (1) The Minister may, by notice in the Gazette, amend the list of reporting institutions in Schedule 3 to—
 - (a) add to the list any person or category of persons if the Minister reasonably believes that the person or category of persons is used, or is likely to be used in future, for money laundering purposes but it is not appropriate to impose on such person or category of persons the duties which apply to an accountable institution under this Act;
 - (b) delete any person or category of persons from the list if—
 - (i) the Minister reasonably believes that the person or category of persons is not being used, and is not likely to be used in the future, for money laundering purposes; or
 - (ii) the person or category of persons is to be added to the list of accountable institutions; or
 - (c) make technical changes to the list.
- (2) Before the Minister amends Schedule 3 in terms of subsection (1)(a) or (b), the Minister must consult the Centre and the Council, and—
 - (a) if only one person will be affected by the proposed amendment, give the person at least 30 days' written notice to submit written representations to the Minister; or
 - (b) if a category of persons will be affected by the proposed amendment, by notice in the Gazette give persons belonging to that category at least 60 days' written notice to submit written representations to the Minister.
- (3) Any addition to or deletion from the list of reporting institutions in Schedule 3 in terms of subsection (1)(a) or (b) must, before publication in the Gazette, be approved by Parliament.

77. Regulations

- (1) The Minister, after consulting the Council and the Centre, may make, repeal and amend regulations concerning—
 - (a) any matter that may be prescribed in terms of this Act; and
 - (b) any other matter which is necessary or expedient to prescribe to promote the objectives of this Act.

- (2) Regulations in terms of subsection (1) may—
 - (a) differ for different accountable institutions, reporting institutions, persons, categories of accountable institutions, reporting institutions and persons and different categories of transactions;
 - (b) be limited to a particular accountable institution or reporting institution or person or category of accountable institutions or reporting institutions or persons or a particular category of transactions; and
 - (c) for a contravention of or failure to comply with any specific regulation, prescribe imprisonment for a period not exceeding six months or a fine not exceeding R100 000.
- (3) Regulations in terms of subsection (1) must be reviewed by the Council within two years after being published in the Gazette and thereafter at such intervals as the Council deems appropriate.
- (4) The Minister must table regulations, repeals and amendments made under subsection (1) in Parliament before publication in the Gazette.

78. Indemnity

The Minister, the Centre or an employee or representative of the Centre, or any other person performing a function or exercising a power in terms of this Act, is not liable for anything done in good faith in terms of or in furthering the objectives of this Act.

79. Amendment of laws

The Acts mentioned in Schedule 4 are hereby amended to the extent set out in Schedule 4.

80. Status of footnotes

The footnotes in this Act have been inserted only for ease of reference to relevant provisions of the Prevention Act. They are not part of this Act. They do not have the force of law.

81. Transitional arrangements

- (1) Until the date referred to in section 82(2), the person designated for the purposes of section 7 of the Prevention Act will be deemed to have been duly

designated and will continue to hold office as if this Act had not been passed.

- (2) All proceedings in relation to an offence in terms of section 7(7) of the Prevention Act that were instituted before the date on which section 79 of this Act takes effect and that are pending before any court of law or reviewing authority on that date, must be dealt with as if this Act had not been passed.
- (3) An investigation or prosecution or other legal proceeding in respect of conduct which would have constituted an offence under section 7(7) of the Prevention Act and which occurred after the commencement of that Act but before section 79 of this Act takes effect, may be instituted and continued as if this Act had not been passed.

82. Short title and commencement

- (1) This Act is called the Financial Intelligence Centre Act, 2001, and takes effect on a date fixed by the President by proclamation in the Gazette.
- (2) Despite subsection (1)—
 - (a) section 79 does not take effect before the date on which section 29 takes effect; and
 - (b) section 21(2) takes effect one year after section 21(1) takes effect.

**SCHEDULE 1
LIST OF ACCOUNTABLE INSTITUTIONS**

[Schedule 1 amended by notice in Government Gazette published under GN 1104 with effect from 01 December 2010.]

1. A practitioner who practices as defined in section 1 of the Attorneys Act, 1979 (Act 53 of 1979).
2. A board of executors or a trust company or any other person that invests, keeps in safe custody, controls or administers trust property within the meaning of the Trust Property Control Act, 1988 (Act 57 of 1988).
3. An estate agent as defined in the Estate Agency Affairs Act, 1976 (Act 112 of 1976).
4. An authorised user of an exchange as defined in the Securities Service Act, 2004 (Act 36 of 2004).
5. A manager registered in terms of the Collective Investment Schemes Control Act, 2002 (Act 45 of 2002), but excludes managers who only conduct business in Part VI of the Collective Investment Schemes Control Act (Act 45 of 2002).
6. A person who carries on the 'business of a bank' as defined in the Banks Act, 1990 (Act 94 of 1990)
7. A mutual bank as defined in the Mutual Banks Act, 1993 (Act 124 of 1993)
8. A person who carries on a 'long-term insurance business' as defined in the Long-Term Insurance Act, 1998 (Act 52 of 1998).
9. A person who carries on the business of making available a gambling activity as contemplated in section 3 of the National Gambling Act, 2004 (Act 7 of 2004) in respect of which a license is required to be issued by the National Gambling Board or a provincial licensing authority.
10. A person who carries on the business of dealing in foreign exchange.

11. A person who carries on the business of lending money against the security of securities
12. A person who carries on the business of a financial services provider requiring authorisation in terms of the Financial Advisory and Intermediary Services Act, 2002 (Act 37 of 2002), to provide advice and intermediary services in respect of the investment of any financial product (but excluding a short term insurance contract or policy referred to in the Short-term Insurance Act, 1998 (Act 53 of 1998) and a health service benefit provided by a medical scheme as defined in section 1(1) of the Medical Schemes Act, 1998 (Act 131 of 1998).
13. A person who issues, sells or redeems travellers' cheques, money orders or similar instruments.
14. The Postbank referred to in section 51 of the Postal Services Act, 1998 (Act 124 of 1998).
15.
16. The Ithala Development Finance Corporation Limited.
17.
18.
19. A person who carries on the business of a money remitter.

SCHEDULE 2
LIST OF SUPERVISORY BODIES

[Schedule 2 amended by notice in Government Gazette published under GN 1105 with effect from 01
December 2010.]

1. The Financial Services Board established by the Financial Services Board Act, 1990 (Act 97 of 1990).
2. The South African Reserve Bank in respect of the powers and duties contemplated in section 10(1)(c) in the South African Reserve Bank Act, 1989, (Act 90 of 1989) and the Registrar as defined in sections 3 and 4 of the Banks Act, 1990 (Act 94 of 1990) and the Financial Surveillance Department in terms of Regulation 22.E of the Exchange Control Regulations, 1961.
3.
4. The Estate Agency Affairs Board established in terms of the Estate Agency Affairs Act, 1976 (Act 112 of 1976).
5. The Independent Regulatory Board for Auditors established in terms of the Auditing Professions Act, 2005 (Act 26 of 2005).
6. The National Gambling Board established in terms of the National Gambling Act, and retained in terms of the National Gambling Act, 2004 (Act 7 of 2004).
7.
8. A law society as contemplated in section 56 of the Attorneys Act, 1979 (Act 53 of 1979).
9. A provincial licensing authority as defined in section 1 the National Gambling Act, 2004 (Act 7 of 2004).

SCHEDULE 3**LIST OF REPORTING INSTITUTIONS**

1. A person who carries on the business of dealing in motor vehicles.
2. A person who carries on the business of dealing in Krugerrands.

SCHEDULE 4**AMENDMENT OF SECTIONS OF PREVENTION OF ORGANISED CRIME ACT,
1998 (ACT 121 OF 1998)**

1. The repeal of section 7.
2. The substitution for section 7A of the following section:

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.

3. The amendment of section 8 by the deletion of subsection (2).
4. The amendment of section 77—
 - 4.1 by the deletion from subsection (1) of paragraph (b); and
 - 4.2 by the deletion from subsection (1) of paragraph (c).

AMENDMENT OF PROMOTION OF ACCESS TO INFORMATION ACT, 2000 (ACT 2 OF 2000)

The amendment of Part 1 of the Schedule by the addition of the following item:
Section 36 of Financial Intelligence Centre Act 38 of 2001.

**MONEY LAUNDERING AND TERRORIST FINANCING CONTROL
REGULATIONS**

Published under

GN R1595 in GG 24176 of 20 December 2002

[with effect from 30 June 2003, unless otherwise indicated]

as amended by

GN R456 in GG 27580 of 20 May 2005

GN R867 in GG 33596 of 01 October 2010

GN 1107 in GG 33781 of 26 November 2010

[with effect from 1 December 2010]

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1. Definitions

In these Regulations **“the Act”** means the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), and, unless the context otherwise indicates, any word or expression to which a meaning has been assigned in the Act has that meaning, and—

“close corporation” means a corporation as defined in section 1 of the Close Corporations Act, 1984 (Act 69 of 1984);

“days” for the purpose of regulation 24, means all days of the week excluding Saturdays, Sundays and public holidays;

[Definition of “days” inserted by GN R456 of 20 May 2005.]

“foreign company” means an association of natural or legal persons incorporated outside the Republic which has legal personality or enjoys a similar status in terms of which it may enter into contractual relations and legal proceedings in its own name;

“guidance notes” means guidance notes issued by the Centre in terms of regulation 28;

“identification document”, in respect of a natural person who—

- (a) is a citizen of, or resident in the Republic, means an official identity document; or
- (b) is not a citizen of the Republic and not resident in the Republic, means a passport issued by the country of which that person is a citizen;

“manager”, in respect of a South African or foreign company, means the natural person who is the principal executive officer of the company, by whatever name he or she may be designated and whether or not he or she is a director of that company;

“property associated with terrorist and related activities” means property referred to in section 28A (1)(a) and (b) of the Act;

[Definition inserted by GN R456 of 20 May 2005.]

“South African company” means a company as defined in section 1 of the Companies Act, 1973, (Act 61 of 1973); and

“suspicious or unusual transaction or series of transactions” means any transaction or series of transactions referred to in section 29(1) or (2) of the Act;

[Definition inserted by GN R456 of 20 May 2005.]

“the Amendment Act” means the Financial Intelligence Centre Amendment Act, 2008 (Act 11 of 2008);

[Definition of “the Amendment Act” inserted by GN 1107 of 26 November 2010.]

“trust” means a trust as defined in section 1 of the Trust Property Control Act, 1988 (Act 57 of 1988), other than a trust established—

- (a) by virtue of a testamentary writing;
 - (b) by virtue of a court order;
 - (c) in respect of persons under curatorship; or
 - (d) by the trustees of a retirement fund in respect of benefits payable to the beneficiaries of that retirement fund,
- and includes a similar arrangement established outside the Republic.

CHAPTER 1
ESTABLISHMENT AND VERIFICATION OF IDENTITY

PART 1
INTRODUCTION

2. Introductory

- (1) No accountable institution may knowingly establish or maintain a business relationship or conduct a single transaction with a client who is entering into that business relationship or single transaction under a false name.
- (2) When an accountable institution in terms of the Act must establish and verify the identity of a natural or legal person or a trust, the institution must establish and verify identity in accordance with regulations 2 to 18.

PART 2
NATURAL PERSONS

3. Information concerning South African citizens and residents

- (1) An accountable institution must obtain from, or in respect of, a natural person who is a citizen of, or resident in, the Republic, that person's—
 - (a) full names;
 - (b) date of birth;
 - (c) identity number;
 - (d) income tax registration number, if such a number has been issued to that person; and
 - (e) residential address.
- (2) In the case where the accountable institution is aware or ought reasonably to be aware that the person referred to in subregulation (1) does not have the legal capacity to establish a business relationship or conclude a single transaction without the assistance of another person the accountable institution must, in addition to obtaining the particulars referred to in subregulation (1), obtain from, or in respect of, of that other person—
 - (a) his or her full names;
 - (b) his or her date of birth;
 - (c) his or her identity number;

- (d) his or her residential address; and
- (e) his or her contact particulars.

4. Verification of information concerning South-African citizens and residents

- (1) An accountable institution must verify the full names, date of birth and identity number of a natural person referred to in regulation 3(1)(a), (b) or (c), or 3(2)(a), (b) or (c) by comparing these particulars with—
 - (a) (i) an identification document of that person; or
 - (ii) in the case where that person is, for a reason that is acceptable to the institution, unable to produce an identification document, another document issued to that person, which, taking into account any guidance notes concerning the verification of identities which may apply to that institution, is acceptable to the institution and bears-
 - (aa) a photograph of that person;
 - (bb) that person's full names or initials and surname;
 - (cc) that person's date of birth; and
 - (dd) that person's identity number; and
 - (b) any of these particulars with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidance notes concerning the verification of identities which may apply to that institution.
- (2) An accountable institution must verify the income tax registration number referred to in regulation 3(1)(d) by comparing this number with a document issued by the South African Revenue Service bearing such a number and the name of the natural person.
- (3) An accountable institution must verify the residential address referred to in regulation 3(1)(e) or 3(2)(f) by comparing these particulars with information which can reasonably be expected to achieve such verification and is obtained by reasonably practical means, taking into account any guidance notes concerning the verification of identities which may apply to that institution.

5. Information concerning foreign nationals

- (1) An accountable institution must obtain from, or in respect of, a natural person who is a citizen of another country and is not resident in the Republic, that person's—
 - (a) full names;
 - (b) date of birth;
 - (c) nationality;
 - (d) passport number;
 - (e) South African income tax registration number, if such a number has been issued to that person; and
 - (f) residential address.
- (2) In the case where the accountable institution is aware or ought reasonably to be aware that the person referred to in subregulation (1) does not have the legal capacity to establish a business relationship or conclude a single transaction without the assistance of another person the accountable institution must, in addition to obtaining the particulars referred to in subregulation (1), obtain from, or in respect of, of that other person—
 - (a) his or her full names;
 - (b) his or her date of birth;
 - (c) his or her nationality;
 - (d) his or her passport number;
 - (e) his or her residential address; and
 - (f) his or her contact particulars.

6. Verification of information concerning foreign nationals

- (1) An accountable institution must verify the particulars obtained in terms of regulation 5(1)(a), (b), (c) and (d) or 5(2)(a), (b), (c) and (d) from or in respect of a natural person who is not a citizen of the Republic and not resident in the Republic, by comparing those particulars with an identification document of that person.
- (2) An accountable institution must verify the income tax registration number obtained in terms of regulation 5(1)(e) from or in respect of a natural person who is not a citizen of the Republic and not resident in the Republic, by

comparing those particulars with a document issued by the South African Revenue Service bearing such a number.

- (3) An accountable institution must verify any of the particulars referred to in subregulation (1) or (2) with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidance notes concerning the verification of identities which may apply to that institution.

PART 3 LEGAL PERSONS

7. Information concerning close corporations and South African companies

An accountable institution must obtain from the natural person acting or purporting to act on behalf of a close corporation or South African company with which it is establishing a business relationship or concluding a single transaction—

- (a) the registered name of the close corporation or company;
- (b) the registration number under which the close corporation or company is incorporated;
- (c) the registered address of the close corporation or company;
- (d) the name under which the close corporation or company conducts business;
- (e) the address from which the close corporation or company operates, or if it operates from multiple addresses—
 - (i) the address of the office seeking to establish a business relationship or to enter into a single transaction with the accountable institution; and
 - (ii) the address of its head office;
- (f) in the case of a company—
 - (i) the full names, date of birth and identity number, referred to in regulation 3(1)(a), (b) and (c) or full names, date of birth and name of the country referred to in regulation 5(1)(a), (b)(c), as may be applicable, concerning—
 - (aa) the manager of the company; and
 - (bb) each natural person who purports to be authorised to establish a

- business relationship or to enter into a transaction with the accountable institution on behalf of the company; and
- (ii) the full names, date of birth, identity number, referred to in regulation 3(1)(a), (b) and (c), full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), registered name, registration number, registered address, trade name and business address referred to in regulation 7(a), (b), (c), (d) and (e), names, numbers and addresses referred to in regulation 9(a), (b), and (c), name, address and legal form referred to in regulation 11(a), (b) and (c), name referred to in regulation 13(a) or name and number referred to in regulation 15(a), as may be applicable, concerning the natural or legal person, partnership or trust holding 25% or more of the voting rights at a general meeting of the company concerned;
- (g) in the case of a close corporation the full names, date of birth and identity number, referred to in regulation 3(1)(a), (b) and (c) or the full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), as may be applicable, concerning—
 - (i) each member; and
 - (ii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the close corporation; and
 - (h) the income tax and value added tax registration numbers of the close corporation or company, if such numbers were issued to that close corporation or company;
 - (i) in the case of a company, the residential address and contact particulars of—
 - (i) the manager;
 - (ii) each natural or legal person, partnership or trust holding 25% or more of the voting rights at a general meeting of the company concerned; and
 - (iii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the company;
 - (j) in the case of a close corporation, the residential address and contact particulars of—

- (i) each member; and
- (ii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the close corporation.

8. Verification of information concerning close corporations and South African companies

An accountable institution must verify the particulars obtained in respect of a close corporation or company in terms of regulation 7(a) to 7(h) by comparing—

- (a) the registered name, registration number and registered address referred to in regulation 7(a), (b) and (c) with—
 - (i) in the case of a company, the most recent versions of the Certificate of Incorporation (form CM1) and Notice of Registered Office and Postal Address (form CM22), bearing the stamp of the Registrar of Companies and signed by the company secretary; or
 - (ii) in the case of a close corporation, the most recent versions of the Founding Statement and Certificate of Incorporation (form CK1), and Amended Founding Statement (form CK2) if applicable, bearing the stamp of the Registrar of Close Corporations and signed by an authorised member or employee of the close corporation;
- (b) the trade name and business address referred to in regulation 7(d) and (e) with information which can reasonably be expected to achieve such verification and is obtained by reasonably practical means, taking into account any guidance notes concerning the verification of identities which may apply to that institution;
- (c) the particulars referred to in regulation 7(f) and (g) with information obtained in accordance with regulation 4(1), 6(1), 6(3), 8(a), 8(b), 8(e), 10(a), 10(b), 10(f), 12(a), 12(d), 14(a), 14(c), 16(a) or 16(d), as may be applicable;
- (d) the tax numbers referred to in subregulation 7(h) with documents issued by the South African Revenue Service bearing such numbers; and
- (e) any of these particulars with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidance notes concerning the verification of identities which

may apply to that institution.

9. Information concerning foreign companies

An accountable institution must obtain from the natural person acting or purporting to act on behalf of that foreign company with which it is establishing a business relationship or concluding a single transaction—

- (a) the name under which it is incorporated;
- (b) the number under which it is incorporated;
- (c) the address where it is situated for purposes of its incorporation;
- (d) the name under which it conducts business in the country where it is incorporated;
- (e) the name under which it conducts business in the Republic;
- (f) the address from which it operates in the country where it is incorporated, or if it operates from multiple addresses the address of its head office;
- (g) the address from which it operates in the Republic, or if it operates from multiple addresses the address of the office seeking to establish a business relationship or to enter into a single transaction with the accountable institution;
- (h) the income tax and value added tax registration numbers of the company, if such numbers were issued to that company;
- (i) the full names, date of birth and identity number, referred to in regulation 3(1)(a), (b) and (c) or full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), as may be applicable, concerning—
 - (i) the manager in respect of its affairs in the Republic; and
 - (ii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the foreign company;
- (j) the full names, date of birth, identity number, referred to in regulation 3(1)(a), (b) and (c), full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), registered name, registration number, registered address, trade name and business address referred to in regulation 7(a), (b), (c), (d) and (e), names, numbers and addresses referred to in

regulation 9(a), (b) and (c), name, address and legal form referred to in regulation 11(a), (b) and (c), name referred to in regulation 13(a) or name and number referred to in regulation 15(a), as may be applicable, concerning each natural or legal person, partnership or trust holding 25% or more of the voting rights in the foreign company;

- (k) the residential address and contact particulars of—
 - (i) the manager in respect of its affairs in the Republic;
 - (ii) each natural or legal person or trust holding 25% or more of the voting rights in the company; and
 - (iii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the company.

10. Verification of information concerning foreign companies

An accountable institution must verify the particulars obtained in respect of a foreign company in terms of regulation 9(a) to 9(j) by comparing—

- (a) the name, number and address referred to in regulation 9(a), (b) and (c) with an official document issued by an authority for recording the incorporation of companies of the country of incorporation of the foreign company, witnessing its incorporation and bearing its name and number of incorporation and the address where it is situated for purposes of its incorporation;
- (b) the names and addresses referred to in regulation 9(d) to 9(g) with information which can reasonably be expected to such verification and is obtained by reasonably practical means, taking into account any guidance notes concerning the verification of identities which may apply to that institution;
- (c) the tax numbers referred to in subregulation 9(h) with documents issued by the South African Revenue Service bearing such numbers;
- (d) the particulars referred to in regulation 9(i) with information obtained in accordance with regulation 4(1), 6(1) or 6(3), as may be applicable;
- (e) the particulars referred to in regulation 9(j) with information obtained in accordance with regulation 4(1), 6(1), 6(3), 8(a), 8(b), 8(e), 10(a), 10(b), 10(f), 12(a), 12(d), 14(a), 14(c), 16(a) or 16(d), as may be applicable; and

- (f) any of these particulars with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidance notes concerning the verification of identities which may apply to that institution.

11. Information concerning other legal persons

An accountable institution must obtain from the natural person acting or purporting to act on behalf of a legal person other than a company, close corporation or foreign company with which it is establishing a business relationship or concluding a single transaction—

- (a) the name of the legal person;
- (b) the address from which it operates;
- (c) its legal form;
- (d) the income tax registration number of the legal person, if such a number was issued to that legal person;
- (e) the full names, date of birth and identity number, referred to in regulation 3(1)(a), (b) and (c) or full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), as may be applicable, concerning the identity of each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the legal person; and
- (f) the residential address and contact particulars of each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the legal person.

12. Verification of information concerning other legal persons

An accountable institution must verify the particulars obtained in respect of a legal person in terms of regulation 11(a) to 11(e) by comparing—

- (a) the name, address and legal form referred to in regulation 11(a), (b) and (c) with the constitution or other founding document in terms of which the legal person is created and information which can reasonably be expected to such verification and is obtained by reasonably practical means, taking into account any guidance notes concerning the verification of identities which may apply

- to that institution;
- (b) the income tax registration number referred to in subregulation 11(d) with a document issued by the South African Revenue Service bearing such a number;
 - (c) the particulars referred to in regulation 11(e) with information obtained in accordance with regulation 4(1), 6(1) or 6(3), as may be applicable; and
 - (d) any of these particulars with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidance notes concerning the verification of identities which may apply to that institution.

PART 4 PARTNERSHIPS

13. Information concerning partnerships

An accountable institution must obtain from a natural person acting or purporting to act on behalf of a partnership, other than a partnership formed by qualified persons to carry on a profession and designated by notice in the Gazette by virtue of section 30(2) of the Companies Act, 1973 (Act 61 of 1973), with which it is establishing a business relationship or concluding a single transaction—

- (a) the name of the partnership;
- (b) the full names, date of birth, identity number, referred to in regulation 3(1)(a), (b) and (c), full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), registered name, registration number, registered address, trade name and business address referred to in regulation 7(a), (b), (c), (d) and (e), names, numbers and addresses referred to in regulation 9(a), (b) and (c) name, address and legal form referred to in regulation 11(a), (b) and (c) or name and number referred to in regulation 15(a), as may be applicable, concerning—
 - (i) every partner, including every member of a partnership en commandite, an anonymous partnership or any similar partnership;
 - (ii) the person who exercises executive control over the partnership; and
 - (iii) each natural person who purports to be authorised to establish a

business relationship or to enter into a transaction with the accountable institution on behalf of the partnership.

14. Verification of information concerning partnerships

An accountable institution must verify the particulars obtained in respect of a partnership in terms of regulation 13 by comparing-

- (a) the name of the partnership referred to in regulation 13(a) with the partnership agreement in terms of which the partnership was formed;
- (b) the particulars referred to in regulation 13(b) with information obtained in accordance with this regulation or regulation 4(1), 6(1), 6(3), 8(a), 8(b), 8(e), 10(a), 10(b), 10(f), 12(a), 12(d), 16(a) or 16(d), as may be applicable; and
- (c) any of these particulars with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidance notes concerning the verification of identities which may apply to that institution.

PART 5 TRUSTS

15. Information concerning trusts

An accountable institution must obtain from the natural person acting or purporting to act on behalf of a trust with which it is establishing a business relationship or concluding a single transaction—

- (a) the identifying name and number of the trust;
- (b) the address of the Master of the High Court where the trust is registered, if applicable;
- (c) the income tax registration number of the trust, if such a number was issued to that trust;
- (d) the full names, date of birth, identity number, referred to in regulation 3(1)(a), (b) and (c), full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), registered name, registration number, registered address, trade name and business address referred to in regulation 7(a), (b), (c), (d) and (e), names, numbers and addresses referred to in

- regulation 9(a), (b) and (c), name, address and legal form referred to in regulation 11(a), (b) and (c), name referred to in regulation 13(a) or name and number referred to in regulation 15(a), as may be applicable, concerning—
- (i) each trustee of the trust; and
 - (ii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the trust;
- (e) the—
- (i) full names, date of birth, identity number, referred to in regulation 3(1)(a), (b) and (c), full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), registered name, registration number, registered address, trade name and business address referred to in regulation 7(a), (b), (c), (d) and (e), names, numbers and addresses referred to in regulation 9(a), (b) and (c), name, address and legal form referred to in regulation 11(a), (b) and (c), name referred to in regulation 13(a) or name and number referred to in regulation 15(a), as may be applicable, concerning each beneficiary of the trust referred to by name in the trust deed or other founding instrument in terms of which the trust is created; or
 - (ii) particulars of how the beneficiaries of the trust are determined;
- (f) the full names, date of birth, identity number, referred to in regulation 3(1)(a), (b) and (c), full names, date of birth and name of the country, referred to in regulation 5(1)(a), (b) and (c), registered name, registration number, registered address, trade name and business address referred to in regulation 7(a), (b), (c), (d) and (e), names, numbers and addresses referred to in regulation 9(a), (b) and (c), name, address and legal form referred to in regulation 11(a), (b) and (c), name referred to in regulation 13(a) or name and number referred to in regulation 15(a), as may be applicable, concerning the founder of the trust; and
- (g) residential address and contact particulars of—
- (i) each trustee of the trust;
 - (ii) each natural person who purports to be authorised to establish a business relationship or to enter into a transaction with the accountable institution on behalf of the trust;

- (iii) each beneficiary of the trust referred to by name in the trust deed or other founding instrument in terms of which the trust is created; and
- (iv) the founder of the trust.

16. Verification of information concerning trusts

- (1) An accountable institution must verify the particulars obtained in respect of a trust in terms of regulation 15 by comparing—
 - (a) the name, number and other particulars referred to in regulation 15(a) and 15(e)(ii) with the trust deed or other founding document in terms of which the trust is created and—
 - (i) in the case of a trust created in the Republic, the authorisation given by the Master of the High Court in terms of section 7 of the Trust Property Control Act, 1988, (Act 57 of 1988) to each trustee of the trust to act in that capacity; or
 - (ii) in the case of a trust created outside the Republic, an official document which reflects these particulars, issued by an authority in the country where the trust is created which administers or oversees laws relating to trusts in that country;
 - (b) the address referred to in regulation 15(b) with the authorisation given by the Master of the High Court in terms of section 7 of the Trust Property Control Act, 1988, (Act 57 of 1988) to each trustee of the trust to act in that capacity;
 - (c) the income tax registration number of the trust referred to in regulation 15(c) with a document issued by the South African Revenue Service bearing such a number;
 - (d) the particulars referred to in regulation 15(d), (e)(i) or (f) with information obtained in accordance with this regulation or regulation 4(1), 6(1), 6(3), 8(a), 8(b), 8(e), 10(a), 10(b), 10(f), 12(a), 12(d), 14(a), 14(c), 16(a) or 16(e), as may be applicable and—
 - (i) in the case of a trust created in the Republic, the authorisation given by the Master of the High Court in terms of section 7 of the Trust Property Control Act, 1988, (Act 57 of 1988) to each trustee of the trust to act in that capacity; or
 - (ii) in the case of a trust created outside the Republic, an official

- document which reflects these particulars, issued by an authority in the country where the trust is created which administers or oversees laws relating to trusts in that country; and
- (e) any of these particulars with information which is obtained from any other independent source, if it is believed to be reasonably necessary taking into account any guidance notes concerning the verification of identities which may apply to that institution.
- (2) In the case where the natural or legal person, partnership or trust referred to in regulation 15(f) has died or no longer exists an accountable institution must verify the particulars referred to in that regulation by comparing those particulars with information which can reasonably be expected to achieve such verification and is obtained by reasonably practical means, taking into account any guidance notes concerning the verification of identities which may apply to that institution.

PART 6

GENERAL

17. Additional requirements when person acts on authority of another

- (1) When a natural person seeking to establish a business relationship or to conclude a single transaction with an accountable institution on behalf of another natural person, a legal person or a trust, the institution must, in addition to the other steps as may be applicable in terms of regulations 3 to 16, obtain from that person information which provides proof of that person's authority to act on behalf of that other natural person, legal person or trust, taking into account any guidance notes concerning the verification of identities which may apply to that institution.
- (2) An accountable institution must verify the information obtained in terms of subregulation (1) by—
- (a) comparing the particulars of the natural or legal person, partnership or trust referred to in subregulation (1) with information obtained by the institution in accordance with regulation 4, 6, 8, 10, 12, 14 or 16, as

- may be applicable, from or in respect of those persons or that trust;
and
- (b) establishing whether that information, on the face of it, provides proof of the necessary authorisation.

18. Verification in absence of contact person

If an accountable institution obtained information in terms of these Regulations about a natural or legal person, partnership or trust without contact in person with that natural person, or with a representative of that legal person or trust, the institution must take reasonable steps to establish the existence or to establish or verify the identity of that natural or legal person, partnership or trust, taking into account any guidance notes concerning the verification of identities which may apply to that institution.

19. Accountable institution maintain correctness of particulars

An accountable institution must take reasonable steps, taking into account any guidance notes concerning the verification of identities which may apply to that institution, in respect of an existing business relationship, to maintain the correctness of particulars which are susceptible to change and are provided to it under this Chapter.

CHAPTER 2
RECORD-KEEPING**20. Particulars of third parties keeping records**

If an accountable institution appoints a third party to keep on its behalf any records which that institution must retain in terms of the Act, that institution must without delay provide the Centre with—

- (a) the third party's—
 - (i) full name, if the third party is a natural person; or
 - (ii) registered name, if the third party is a close corporation or company;
- (b) the name under which the third party conducts business;
- (c) the full name and contact particulars of the individual who exercises control over access to those records;
- (d) the address where the records are kept;
- (e) the address from where the third party exercises control over the records; and
- (f) the full name and contact particulars of the individual who liaises with the third party on behalf of the accountable institution concerning the retention of the records.

CHAPTER 3
CLIENT PROFILE

- 21. Information to identify proceeds of unlawful activities or money laundering activities**
- (1) An accountable institution must, in the circumstances referred to in subregulation (2), obtain the information referred to in subregulation (3) from or in respect of—
- (a) a client who has established a business relationship or concludes a single transaction; or
 - (b) a prospective client seeking to establish a business relationship or conclude a single transaction.
- (2) An accountable institution must obtain the information referred to in subregulation (3) whenever it is reasonably necessary, taking into account any guidance notes concerning the verification of identities or the reporting of suspicious and unusual transactions which may apply to that institution, with a view to obtaining additional information—
- (a) concerning a business relationship or single transaction which poses a particularly high risk of facilitating money laundering activities; or
 - (b) to enable the accountable institution to identify the proceeds of unlawful activity or money laundering activities.
- (3) The information which an accountable institution must obtain in the circumstances referred to in subregulation (2) must be adequate to reasonably enable the institution to determine whether transactions involving a client referred in subregulation (1) are consistent with the institution's knowledge of that client and that client's business activities and must include particulars concerning—
- (a) the source of that client's income; and
 - (b) the source of the funds which that client expects to use in concluding the single transaction or transactions in the course of the business relationship.

CHAPTER 4

REPORTING OF SUSPICIOUS AND UNUSUAL TRANSACTIONS

22. Manner of reporting

- (1) Subject to subregulation (2), a report made under Part 3 of Chapter 3 of the Act must be made in accordance with the format specified by the Centre, and sent to the Centre electronically by means of—
- (a) the internet-based reporting portal provided by the Centre for this purpose at the following internet address: <http://www.fic.gov.za>; or
 - (b) a method developed by the Centre for this purpose and made available to a person wishing to make such reports.
- (2) If a person wishing to make a report under Part 3 of Chapter 3 of the Act—
- (a) does not have the technical capability to make a report in accordance with subregulation (1); or
 - (b) is for another reason indefinitely unable to make a report in accordance with subregulation (1),

that person shall make the report on a form specified by the Centre from time to time for this purpose and provide it to the Centre at the contact particulars specified by the Centre from time to time for this purpose.

22A. Information to be reported concerning property associated with terrorist and related activities

- (1) When an accountable institution makes a report concerning property associated with terrorist and related activities under section 28A of the Act, the report must contain full particulars in respect of the accountable institution making the report, of—
- (a) the name of the accountable institution;
 - (b) the identifying particulars of the accountable institution for example an identity number, registration number or practise number;
 - (c) the address of the accountable institution;
 - (d) the type of business or economic sector of the accountable institution;
 - (e) the surname and initials of a contact person; and
 - (f) the contact particulars of a contact person.

- (2) In respect of the property concerning which a report under section 28A is made, the report must contain as much information as is readily available of—
- (a) a description of the type of property;
 - (b) any identifying particulars concerning the property for example registration particulars, unique numbers or other particulars;
 - (d) the estimated value of the property; and
 - (e) the physical address where the property is located.
- (3) In respect of a person or entity exercising control over the property on behalf of the accountable institution making the report, the report must contain full particulars of—
- (a) the name of the person or entity;
 - (b) the identifying particulars of the person or entity for example an identity number or registration number;
 - (c) the physical address of the person or entity;
 - (d) in the case of a natural person, the person's contact particulars; and
 - (e) in the case of a legal person or an entity, the surname, initials and contact particulars of a contact person.
- (4) In respect of every person who, according to the knowledge of the accountable institution making the report, may have an interest in the property, the report must contain as much information as is readily available of—
- (a) in the case of a natural person, full particulars of—
 - (i) the person's names and surname, or initials and surname, if the person's full names are not available;
 - (ii) the person's identifying number;
 - (iii) the type of identifying document from which the particulars referred to in subparagraphs (i) and (ii) were obtained;
 - (iv) the person's address in the Republic;
 - (v) the person's country of residence;
 - (vi) if the person's country of residence is other than the Republic, the person's address in the country of residence;
 - (vii) the person's contact telephone number;
 - (viii) the person's occupation; and

- (ix) the source of the funds with which the person acquired the interest in the property; and
- (b) in the case of an legal person or other entity, full particulars of—
 - (i) the person's or entity's name;
 - (ii) the person's or entity's identifying number, if it has such a number;
 - (iii) the person's or entity's address in the Republic;
 - (iv) the type of business conducted by the person or entity;
 - (v) the person's or entity's country of origin;
 - (vi) if the country of origin is other than the Republic, the person or entity's address in the country of origin; and
 - (vii) the source of the funds with which the person acquired the interest in the property.
- (5) A report under section 28A of the Act must contain a description of the grounds on which the accountable institution making the report has reached the conclusion that the entity which owns or controls the property in question, or on whose behalf, or at whose direction, the property in question is owned or controlled, is an entity referred to in subsection (1)(a) or (b) of section 28A of the Act.

[Regulation 22A inserted by GN R456 of 20 May 2005.]

22B. Prescribed amount for cash transaction reporting

The prescribed amount of cash above which a transaction must be reported to the Centre under section 28 of the Act is R24 999.99 or an aggregate of smaller amounts which combine to come to this amount if it appears to the accountable institution or reporting institution concerned that the transactions involving those smaller amounts are linked to be considered fractions of one transaction.

[Regulation 22B inserted by GN R867 of 01 October 2010.]

22C. Information to be reported when a cash transaction is above the prescribed limit

- (1) When a report concerning a cash transaction that is above the prescribed limit is made under section 28 of the Act, the report must contain full particulars in respect of the natural or legal person making the report or other entity on

whose behalf the report is made, of—

- (a) the name of the person or entity;
 - (b) the identifying particulars of the person or entity such as identity number, registration number or practice number for example;
 - (c) the address of the person or entity;
 - (d) the type of business or economic sector of the accountable institution and reporting institution;
 - (e) in the case of a natural person, the person's contact particulars; and
 - (f) in the case of a legal person or entity, the surname, initials and contact particulars of a contact person.
- (2) In respect of the transaction or aggregated transactions for which a report under section 28 is made, the report must contain as much of the following information as is readily available—
- (a) the date and time of the transaction, or in the case of a series of transactions, the time of the transactions in the 24 hour period;
 - (b) the description of the transaction or series of transactions;
 - (c) the amount of the funds per transaction or series of transactions;
 - (d) the currency in which the funds were disposed of; and
 - (e) the purpose of the transaction or series of transactions.
- (3) In respect of each natural person conducting the transaction or series of transactions or legal persons or other entity on whose behalf the transaction or series of transactions is conducted, for which a report under section 28 is made, the report must contain as much of the following information as is readily available—
- (a) in the case of a natural person, full particulars of—
 - (i) the person's name and surname, or initials and surname if the name is not available;
 - (ii) the date of birth of the person or identification number; and
 - (iii) the type of identifying document from which the particulars referred to in subparagraphs (i) and (ii) were obtained;
 - (b) in the case of a legal person, full particulars of—
 - (i) the person's or entity's name;
 - (ii) the person's or entity's identifying number; and
 - (iii) the names of the natural person with authority to conduct the

- transaction on behalf of the person or entity; and
- (c) in the case of other entity any information which is readily available.
- (4) A report under section 28 must—
- (a) contain a full description of the amount of cash in excess of the prescribed limit which is paid out by the accountable institution and reporting institution; and
 - (b) contain a full description of the amount of cash in excess of the prescribed limit which is received by the accountable institution and reporting institution.

[Regulation 22C inserted by GN R867 of 01 October 2010.]

23. Information to be reported concerning a suspicious or unusual transaction report

- (1) When a report concerning a suspicious or unusual transaction or series of transactions is made under section 29 of the Act, the report must contain full particulars in respect of the natural or legal person making the report or other entity on whose behalf the report is made, of—
- (a) the name of the person or entity;
 - (b) the identifying particulars of the person or entity such as an identity number, registration number or practise number for example;
 - (c) the address of the person or entity;
 - (d) the type of business or economic sector of the accountable institution;
 - (e) in the case of a natural person, the person's contact particulars; and
 - (f) in the case of a legal person or an entity, the surname, initials and contact particulars of a contact person.
- (2) In respect of the transaction or series of transactions concerning which a report under section 29 is made, the report must contain as much of the following information as is readily available—
- (a) the date and time of the transaction, or, in the case of a series of transactions, the period over which the transactions were conducted;
 - (b) a description of the type of transaction or series of transactions;
 - (c) the manner in which the transaction or series of transactions was conducted;

- (d) if the transaction or series of transactions involved funds, a description of the type of funds involved;
 - (e) if the transaction or series of transactions involved property, a description of the type of property and all identifying characteristics of the property;
 - (f) the amount of the funds, or the estimated value of the property, involved in the transaction or series of transactions;
 - (g) the currency in which the transaction or series of transactions was conducted;
 - (h) if the funds or property involved in the transaction or series of transactions were disposed of—
 - (i) the manner in which the funds or property were disposed of;
 - (ii) the amount of the disposition of the funds, or, in the case of property the value for which the property was disposed of; and
 - (iii) the currency in which the funds were disposed of, or, in the case of property the currency used in the disposition of the property;
 - (i) if another institution or person was involved in the transaction or series of transactions—
 - (i) the name of the other institution or person; and
 - (ii) the number of any account at the other institution involved in the transaction or series of transactions;
 - (j) the name and identifying particulars such as the address and a unique number or code, for example, of the branch or office where the transaction or series of transactions was conducted; and
 - (k) the purpose of the transaction or series of transactions;
 - (l) any remarks, comments or explanations which the person conducting the transaction or series of transactions may have made or given.
- (3) If any account was involved in the transaction or series of transactions concerning which a report under section 29 is made, the report must contain as much of the particulars as are readily available in respect of each such account, of—
- (a) the account number;
 - (b) the name and identifying particulars such as the address and a unique number or code, for example, of the branch or office where the account

- is held;
- (c) the type of account;
 - (d) the name of each account holder;
 - (e) the date on which the account was opened;
 - (f) if the account was closed—
 - (i) the date on which the account was closed; and
 - (ii) the name of the person who gave the instruction to close it;
 - (g) the highest amount paid into the account in each of the three complete calendar months immediately preceding the date on which the report is made;
 - (h) the highest amount paid out of the account in each of the three complete calendar months immediately preceding the date on which the report is made;
 - (i) the number of payments made into the account in each of the three complete calendar months immediately preceding the date on which the report is made;
 - (j) the number of payments made out of the account in each of the three complete calendar months immediately preceding the date on which the report is made;
 - (k) the balance in the account immediately before the transaction or series of transactions was carried out;
 - (l) the balance in the account on the date on which the report is made;
 - (m) the status of the account immediately before the reported transaction or series of transactions was carried out;
 - (n) any previous activity in the preceding 180 days which had been considered for reporting in connection with the account, whether the activity was reported or not; and
 - (o) the reference numbers allocated by the Centre and the person or entity making the report to any previous reports made in connection with the account.
- (4) In respect of each natural person conducting the transaction or series of transactions, or legal person or other entity on whose behalf the transaction or series of transactions is conducted, concerning which a report under section 29 is made, the report must contain as much of the following information as is

readily available—

- (a) in the case of a natural person, full particulars of—
 - (i) the person's names and surname, or initials and surname, if the person's names are not available;
 - (ii) the person's identifying number;
 - (iii) the type of identifying document from which the particulars referred to in subparagraphs (i) and (ii) were obtained;
 - (iv) the person's address in the Republic;
 - (v) the person's country of residence;
 - (vi) if the person's country of residence is other than the Republic, the person's address in the country of residence;
 - (vii) the person's contact telephone number; and
 - (viii) the person's occupation; and
 - (b) in the case of an legal person or other entity, full particulars of—
 - (i) the person's or entity's name;
 - (ii) the person's or entity's identifying number, if it has such a number;
 - (iii) the person's or entity's physical address in the Republic;
 - (iv) the type of business conducted by the person or entity;
 - (v) the names of the natural person's with authority to conduct the transaction on behalf of the person or entity;
 - (vi) the person's or entity's country of origin; and
 - (vii) if the country of origin is other than the Republic, the person or entity's address in the country of origin.
- (5) In respect of a natural person conducting the transaction or series of transactions concerning which a report under section 29 is made, on behalf of another natural person or a legal person or other entity, the report must contain as much of the particulars as is readily available, of—
- (a) the person's names and surname, or initials and surname, if the person's names are not available;
 - (b) the person's identifying number;
 - (c) the type of identifying document from which the particulars referred to in subparagraphs (i) and (ii) were obtained;
 - (d) the person's physical address;

- (e) the person's contact telephone number; and
 - (f) the person's occupation.
- (6) A report under section 29 must—
- (a) contain a full description of the suspicious or unusual transaction or series of transactions, including the reason why it is deemed to be suspicious or unusual as contemplated in that section;
 - (b) indicate what action the natural or legal person making the report, or other entity on whose behalf the report is made, has taken in connection with the transaction or series of transactions concerning which the report is made; and
 - (c) indicate what documentary proof is available in respect of the transaction or series of transactions concerning which the report is made and the reasons referred to in paragraph (a).

[Regulation 23 substituted by GN R456 of 20 May 2005.]

24. Period for reporting

- (1) A report under section 28A of the Act must be sent to the Centre as soon as possible but not later than 5 days after a natural person who is an accountable institution or is in charge of, manages or is employed by an accountable institution, had established that the accountable institution has property associated with terrorist and related activities in its possession or under its control, unless the Centre has approved of the report being sent after the expiry of this period.
- (2) A request for a report referred to in subregulation (1) to be sent to the Centre after the period referred to in that subregulation must reach the Centre before the expiry of that period.
- (3) A report under section 29 of the Act must be sent to the Centre as soon as possible but not later than fifteen days after a natural person or any of his or her employees, or any of the employees or officers of a legal person or other entity, has become aware of a fact concerning a transaction on the basis of which knowledge or a suspicion concerning the transaction must be reported, unless the Centre has approved of the report being sent after the expiry of this period.
- (4) A report under section 28 of the Act must be sent to the Centre as soon as

possible but not later than 2 days after a natural person or any of his or her employees, or any of the employees of officers of a legal person or other entity, has become aware of a fact of a cash transaction or series of cash transactions that has exceeded the prescribed limit.

[Subreg. (4) added by GN R867 of 01 October 2010.]

[Regulation 24 substituted by GN R456 of 20 May 2005.]

CHAPTER 5
INTERNAL RULES**25. Internal rules concerning establishment and verification of identities**

The internal rules of an accountable institution concerning the establishment and verification of identities must—

- (a) provide for the necessary processes and working methods which will cause the required particulars concerning the identities of the parties to a business relationship or single transaction to be obtained on each occasion when a business relationship is established or a single transaction is concluded with the institution;
- (b) provide for steps to be taken by the relevant staff members aimed at the verification of the required particulars concerning the identities of the parties to a business relationship or single transaction;
- (c) provide for the responsibility of the management of the institution in respect of compliance with the Act, these Regulations and the internal rules;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning the establishment and verification of identities are complied with;
- (e) provide for disciplinary steps against the relevant staff members for non-compliance with the Act, these Regulations and the internal rules; and
- (f) take into account any guidance notes concerning the verification of identities which may apply to that institution.

26. Internal rules concerning the keeping of records

The internal rules of an accountable institution concerning the keeping of records in terms of section 22 of the Act must—

- (a) provide for the necessary processes and working methods to ensure that the relevant staff members of the institution obtain the information of which record must be kept on each occasion when a business relationship is established or a transaction is concluded with the institution;
- (b) provide for the responsibility of the management of the institution in respect of compliance with the Act, these Regulations and the internal rules;
- (c) allocate responsibilities and accountability to ensure that staff duties

- concerning the establishment and verification of identities are complied with;
- (d) provide for disciplinary steps against the relevant staff members for non-compliance with the Act, these Regulations and the internal rules;
 - (e) provide for the necessary processes and working methods to ensure that the accuracy and that the integrity of those records are maintained for the entire period for which they must be kept;
 - (f) provide for the necessary processes and working methods to ensure that access as may be required or authorised under the Act by the relevant staff members to those records can be obtained without undue hindrance; and
 - (g) take into account any guidance notes concerning the verification of identities which may apply to that institution.

27. Internal rules concerning reporting of information

The internal rules of an accountable institution concerning reporting of suspicious and unusual transactions must—

- (a) provide for the necessary processes and working methods which will cause suspicious and unusual transactions to be reported without undue delay;
- (b) provide for the necessary processes and working methods to enable staff to recognise potentially suspicious and unusual transactions or series of transactions;
- (c) provide for the responsibility of the management of the institution in respect of compliance with the Act, these Regulations and the internal rules;
- (d) allocate responsibilities and accountability to ensure that staff duties concerning the reporting of suspicious and unusual transactions are complied with;
- (e) provide for disciplinary steps against the relevant staff members for non-compliance with the Act, these Regulations and the internal rules; and
- (f) take into account any guidance notes concerning the reporting of suspicious or unusual transactions which may apply to that institution.

27A. Period for and manner of registration by accountable institutions and reporting institutions

- (1) Every accountable institution referred to in Schedule 1 of the Act and every

reporting institution referred to in Schedule 3 of the Act must within the period commencing 1 December 2010 until 1 March 2011, register with the Centre in terms of section 43B of the Act.

- (2) Any person or category of persons added to the list in Schedule 1 or Schedule 3 of the Act after the commencement of this regulation must register with the Centre within 90 days after the amended Schedule 1 or Schedule 3 is published by notice in the Gazette.
- (3) Any person or category of persons who, on commencing a new business, fall within the list of accountable institutions or reporting institutions in Schedule 1 and Schedule 3 respectively must, within 90 days of the day the business opened, register with the Centre.
- (4) The registration of an accountable institution and a reporting institution contemplated in subregulation (1), (2) and (3) must be in accordance with the format specified by the Centre and must be submitted to the Centre electronically by means of the internet-based reporting portal provided by the Centre for this purpose at the following internet address: <http://www.fic.gov.za>.
- (5) If a person does not have the technical capability to register in accordance with subregulation (4) that person must submit the registration on a form specified by the Centre at the contact particulars specified by the Centre from time to time for this purpose.
- (6) The registration of an accountable institution or a reporting institution is not a licensing process and no licence will be issued on the completion of a registration contemplated in subregulation (1), (2) and (3).
- (7) No fee is payable for a registration contemplated in subregulation (1), (2) or (3).

[Regulation 27A inserted by GN 1107 of 26 November 2010]

27B. Period within and manner in which supervisory body must submit written report to Centre

- (1) A supervisory body must, as contemplated in section 45(1C) of the Act, within 30 days after taking a decision to institute an action against an accountable institution in terms of the Act or any order, determination or directive made in terms of the Act submit a written report to the Centre on any action taken or intended to be taken against that accountable institution.

- (2) A supervisory body must submit the written report contemplated in subregulation (1) in accordance with the format specified by the Centre at the contact particulars specified by the Centre for this purpose.

[Regulation 27B inserted by GN 1107 of 26 November 2010]

27C. Manner in which appeal is to be lodged and payment of fee

With regard to an appeal contemplated in section 45D(1) of the Act,

- (a) the appellant must lodge an appeal against a decision of the Centre or supervisory body with the chairperson of the appeal board within 30 days from the date when notice of such decision was received in writing by the appellant;
- (b) the notice of appeal, contemplated in paragraph (a), must be accompanied by an affidavit containing in full the particulars of the appellant, the decision appealed against, the grounds for the appeal and must also state the physical address where the appellant will accept delivery of all documents relevant to the appeal;
- (c) the appellant must deliver the notice of appeal to the address specified on the notice to impose the administrative sanction;
- (d) the appellant must, with the appeal, pay a fee of R10 000.00 to the Centre.

[Regulation 27C inserted by GN 1107 of 26 November 2010]

CHAPTER 6
MISCELLANEOUS**28. Guidance notes**

- (1) The Centre may issue guidance notes concerning—
 - (a) the verification of identities;
 - (b) reporting of suspicious and unusual transactions; and
 - (c) any other obligations imposed on accountable institutions under the Act.
- (2) Guidance notes referred to in subregulation (1) may differ for different accountable institutions or persons, or categories of accountable institutions or persons and different categories of transactions.

29. Offences and penalties

- (1) Any accountable institution which contravenes regulation 2(1) is guilty of an offence.
- (2) Any accountable institution which fails to obtain the particulars referred to in regulation 3, 5, 7, 9, 11, 13, 15 or 17(1) is guilty of an offence.
- (3) Any accountable institution which fails to verify any particulars referred to in regulation 3, 5, 7, 9, 11, 13, 15 or 17(1) in accordance with regulation 4, 6, 8, 10, 12, 14, 16 or 17(2) is guilty of an offence.
- (4) Any accountable institution which fails to take reasonable steps to verify information obtained without contact with a natural person or a representative of a legal person, partnership or trust in accordance with regulation 18 is guilty of an offence.
- (5) Any accountable institution which fails to take reasonable steps to maintain the correctness of particulars in accordance with regulation 19 is guilty of an offence.
- (6) Any accountable institution which fails to inform the Centre of particulars concerning third parties keeping records in accordance with regulation 20 is guilty of an offence.
- (7) Any person or institution which fails to send a report under section 29 of the Act to the Centre within the period referred to in regulation 24 is guilty of an offence.

- (8) Any accountable institution which fails to develop internal rules in accordance with regulation 25, 26 or 27 is guilty of an offence.
- (9) Any person or institution convicted of an offence under this section is liable to imprisonment for a period not exceeding six months or a fine not exceeding R100000.

30. Title and commencement

- (1) These Regulations are called the Money Laundering and Terrorist Financing Control Regulations.
- (2) Chapter 4 and regulations 29(7) and (9) shall come into operation on 3 February 2003.
- (3) Regulation 1, Chapters 1, 2, 3, and 5 and regulations 28 and 29(1), (2), (3), (4), (5), (6) and (8) shall come into operation on 30 June 2003.

GNR.1596 of 20 December 2002

Exemptions in terms of the Financial Intelligence Centre Act, 2001

Published under

GN R1353 in GG27011 of 19 November 2004

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INTERPRETATION

1. Definitions

In this Schedule “**the Act**” means the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001), and any expression to which a meaning has been assigned in the Act shall have that meaning, and—

“**the Regulations**” means the Money Laundering and Terrorist Financing Control Regulations, 2002, promulgated by Government Notice No. R.1595 of 20 December 2002 as amended by GN R.456 in Government Gazette 27580 of 20 May 2005.

**PART 1
GENERAL EXEMPTIONS**

2. Timing of verification

Every accountable institution may by, way of exemption from section 21 of the Act, accept a mandate from a prospective client to establish a business relationship or to conclude a single transaction, or take any similar preparatory steps with a view to establishing a business relationship or concluding a single transaction, before the accountable institution verified the identity of that prospective client in accordance with section 21 of the Act, subject to the condition that the accountable institution will have completed all steps which are necessary in order to verify the identity of that client in accordance with section 21 of the Act before the institution—

- (a) concludes a transaction in the course of the resultant business relationship, or

- (b) performs any act to give effect to the resultant single transaction.

3. Exemption from Parts 1, 2 and 4 of Chapter 3 of Act 38 of 2001

Every natural person who performs the functions of an accountable institution referred to in Schedule 1 to the Act in a partnership with another natural person, or in a company or close corporation is exempted from the provisions of Parts 1, 2 and 4 of Chapter 3 of the Act subject to the condition that those provisions are complied with by another person employed by the partnership, company or close corporation in which he or she practises.

4. Exemption from section 21 and 22 of the Act 38 of 2001

Every accountable institution is exempted from compliance with the provisions of section 21 and 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act, in respect of a business relationship or single transaction which is established or concluded with that institution (the second accountable institution) by another accountable institution (the primary accountable institution) acting on behalf of a client of that primary accountable institution, subject to the condition that the primary accountable institution confirms in writing to the satisfaction of the second accountable institution that—

- (a) it has established and verified the identity of the client in accordance with section 21 of the Act, or
- (b) in terms of its internal rules and the procedures ordinarily applied in the course of establishing business relationships or concluding single transactions the primary accountable institution will have established and verified, in accordance with section 21 of the Act, the identity of every client on whose behalf it will be establishing business relationships or conducting concluding single transactions with the second accountable institution.

5. Exemption from verification obligations under section 21 of the Act

Every accountable institution is exempted from compliance with the provisions of section 21 of the Act which require the verification of the identity of a client of that institution if—

- (a) that client is situated in a country where, to the satisfaction of the relevant supervisory body, anti-money laundering regulation and supervision of

compliance with such anti-money laundering regulation, which is equivalent to that which applies to the accountable institution is in force;

- (b) a person or institution in that country, which is subject to the anti-money laundering regulation referred to in paragraph (a) confirms in writing to the satisfaction of the accountable institution that the person or institution has verified the particulars concerning that client which the accountable institution had obtained in accordance with section 21 of the Act; and
- (c) the person or institution referred to in paragraph (b) undertakes to forward all documents obtained in the course of verifying such particulars to the accountable institution.

6. Exemption from regulations made under Act 38 of 2001

- (1) Every accountable institution is exempted from compliance with regulation 7 (c), 7 (d), 7 (f), 7 (g), 7 (h), 7 (i), 7(j), 8, 9 (c), 9 (d), 9 (e), 9 (f), 9 (g), 9 (h), 9 (i), 9 (j), 9 (k) and 10 of the Regulations, and of section 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act concerning the particulars referred to in those regulations, in respect of a business relationship established or single transaction concluded with a public company the securities of which are listed on a stock exchange recognised for this purpose and listed in the Schedule to these exemptions.
- (2) Every accountable institution is exempted from compliance with regulation 3 (1) (d), 4 (2), 5 (1) (e), 6 (2), 7 (h), 8 (d), 9 (h), 10 (c), 11 (d), 12 (b), 15 (c) and 16 (b) of the Regulations, and of section 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act concerning the particulars referred to in those regulations.

PART 2

EXEMPTIONS FOR INSURANCE AND INVESTMENT PROVIDERS

7. Exemption from Parts 1 and 2 of Chapter 3 of Act 38 of 2001

- (1) Every accountable institution which performs the functions of an accountable institution referred to in items 5, 8, 12, 17 and 18 of Schedule 1 to the Act is exempted, in respect of those functions, from compliance with the provisions of Parts 1 and 2 of Chapter 3 of the Act in respect of every business relationship or single transaction concerning—
- (a) any long term insurance policy which is a fund policy or a fund member policy as defined in the Long-term Insurance Act, 1998 and the regulations thereto and in respect of which the policyholder is a pension fund, provident fund or retirement annuity fund approved in terms of the Income Tax Act, 1962;
 - (b) any unit trust or linked product investment effected by a pension fund, provident fund or retirement annuity fund approved in terms of the Income Tax Act, 1962, including an investment made to fund in whole or in part the liability of the fund to provide benefits to members or surviving spouses, children, dependants or nominees of members of the fund in terms of its rules;
 - (c) any annuity purchased as a compulsory annuity in terms of the rules of a pension fund, provident fund or retirement annuity fund approved in terms of the Income Tax Act, 1962;
 - (d) any reinsurance policy issued to another accountable institution;
 - (e) any long-term insurance policy classified in terms of the Long-term Insurance Act, 1998 as an assistance policy;
 - (f) any long term insurance policy which provides benefits only upon the death, disability, sickness or injury of the life insured under the policy;
 - (g) any long-term insurance policy in respect of which recurring premiums are paid which will amount to an annual total not exceeding R25 000,00, subject to the condition that the provisions of Parts 1 and 2 of Chapter 3 of the Act have to be complied with in respect of every client—
 - (i) who increases the recurring premiums so that the amount of R25 000,00 is exceeded;

- (ii) who surrenders such a policy within three years after its commencement; or
 - (iii) to whom that accountable institution grants a loan or extends credit against the security of such a policy within three years after its commencement;
 - (h) any long term insurance policy in respect of which a single premium not exceeding R 50 000,00 is payable, subject to the condition that the provisions of Parts 1 and 2 of Chapter 3 of the Act have to be complied with in respect of every client—
 - (i) who surrenders such a policy within three years after its commencement; or
 - (ii) to whom that accountable institution grants a loan or extends credit against the security of such a policy within three years after its commencement;
 - (i) any contractual agreement to invest in unit trust or linked product investments in respect of which recurring payments are payable amounting to an annual total not exceeding R 25 000,00, subject to the condition that the provisions of Parts 1 and 2 of Chapter 3 of the Act have to be complied with in respect of every client who liquidates the whole or part of such an investment within one year after the making of the first payment;
 - (j) any unit trust or linked product investment in respect of which a once off consideration not exceeding R 50 000,00 is payable, subject to the condition that the provisions of Parts 1 and 2 of Chapter 3 of the Act have to be complied with in respect of every client who liquidates the whole or part of such an investment within one year after the making of the first payment;
 - (k) any other long term insurance policy on condition that within the first three years after the commencement of the policy the surrender value of the policy does not exceed twenty per cent of the value of the premiums paid in respect of that policy.
- (2) Every accountable institution which performs the functions of an accountable institution referred to in items 4, 15, 17 and 18 is exempted, in respect of those functions, from compliance with the provisions of Parts 1 and 2 of

Chapter 3 of the Act in respect of transactions in securities listed on a stock exchange (as defined in the Stock Exchanges Control Act, 1985) or a financial market (as defined in the Financial Markets Control Act, 1989) for a pension fund, provident fund or retirement annuity fund approved in terms of the Income Tax Act, 1962, including investments in such securities made to fund in whole or in part the ability of the fund to provide benefits for members, surviving spouses, children, dependants or nominees of members of the fund in terms of its rules.

PART 3 EXEMPTIONS FOR MEMBERS OF EXCHANGES

8. Exemption from sections 21 and 22 of Act 38 of 2001

Every accountable institution which performs the functions of an accountable institution referred to in items 4 and 15 of Schedule 1 to the Act is exempted, in respect of those functions, from compliance with the provisions of Sections 21 and 22 of the Act in respect of the clients on whose behalf a person or an institution is acting when entering into a business relationship with the accountable institution, if—

- (a) that person or institution is situated in a country where, to the satisfaction of the relevant supervisory body, it is subject to anti-money laundering regulation and supervision of compliance with such anti money laundering regulation, which is equivalent to that which applies to the accountable institution; and
- (b) that person or institution confirms in writing to the satisfaction of the accountable institution that the person or institution will have obtained and recorded the identities of all such clients in the manner required by that country's anti-money laundering legislation.

9. Exemption from regulations made under Act 38 of 2001

- (1) Every accountable institution which performs the functions of an accountable institution referred to in items 4 and 15 of Schedule 1 to the Act is exempted, in respect of those functions, from compliance with the provisions of regulation 7 (f), 7 (g), 7 (h), 7 (i), 7 (j), 8 (c), 9 (h), 9 (i), 9 (j), 10 (c) and 10 (e) of the Regulations, and of section 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act concerning the particulars

referred to in those regulations, in respect of a business relationship established, or single transaction concluded, with a client which is—

- (a) a legal person, and
 - (b) a non-controlled client as defined in the Rules of the JSE Securities Exchange South Africa, as amended.
- (2) Every accountable institution which performs the functions of an accountable institution referred to in items 4 and 15 of Schedule 1 to the Act is exempted, in respect of those functions, from compliance with the provisions of regulation 9 (h), 9 (i), 9 (j), 9 (k), 10 (c) 10 (d) and 10 (e) of the Regulations, and of section 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act concerning the particulars referred to in those regulations, in respect of a person or an institution with whom the accountable institution enters into a business relationship, if that person or institution is situated in a country where, to the satisfaction of the relevant supervisory body, it is subject to anti-money laundering regulation and supervision of compliance with such anti money laundering regulation, which is equivalent to that which applies to the accountable institution.

PART 4

EXEMPTIONS FOR ATTORNEYS AND ADMINISTRATORS OF PROPERTY

- 10. Exemption from Parts 1 and 2 of Chapter 3 of Act 38 of 2001**
- (1) Every accountable institution which performs the functions of an accountable institution referred to in item 1 of Schedule 1 to the Act is exempted, in respect of those functions, from compliance with the provisions of Parts 1 and 2 of Chapter 3 of the Act in respect of every business relationship or single transaction except for a business relationship or single transaction in terms of which—
- (a) a client is assisted in the planning or execution of—
 - (i) the buying or selling of immovable property;
 - (ii) the buying or selling of any business undertaking;
 - (iii) the opening or management of a bank, investment or securities account;

- (iv) the organisation of contributions necessary for the creation, operation or management of a company or close corporation or of a similar structure outside the Republic;
 - (v) the creation, operation or management of a company or close corporation or of a similar structure outside the Republic;
 - (vi) the creation, operation or management of a trust or of a similar structure outside the Republic, except for a trust established by virtue of a testamentary writing or court order;
- (b) a client is assisted in disposing of, transferring, receiving, retaining, maintaining control of or in any way managing any property;
 - (c) a client is assisted in the management of any investment;
 - (d) a client is represented in any financial or real estate transaction; or
 - (e) a client deposits, over a period of twelve months, an amount of R100 000 or more with the institution in respect of attorney's fees which may be incurred in the course of litigation.
- (2) Every accountable institution which performs the functions of an accountable institution referred to in item 2 of Schedule 1 to the Act is exempted, in respect of those functions, from compliance with the provisions of Parts 1 and 2 of Chapter 3 of the Act in respect of every business relationship or single transaction concerning—
- (a) the preparation of a testamentary writing;
 - (b) the administration of a deceased estate, as executor of that estate;
 - (c) the administration of trust property as trustee of a trust established by virtue of a testamentary writing or court order; or
 - (d) the administration of trust property as trustee of a trust established to administer funds payable from an employees' benefit fund for the benefit of a nominated beneficiary or dependant of a deceased member of such an employees' benefit fund.

PART 5
EXEMPTIONS FOR ESTATE AGENTS

11. Exemption from Parts 1, 2 and 4 of Chapter 3 of Act 38 of 2001

Every accountable institution which performs the functions of an accountable

institution referred to in item 3 of the Schedule to the Act and which renders the services referred to in paragraphs 2 (a) and (b) of the regulations made under section 33 of the Estate Agency Affairs Act, 1976 (Act No. 112 of 1976) in Government Notice R 1485 of 17 July 1981, is exempted from compliance with the provisions of Parts 1, 2 and 4 of Chapter 3 of the Act in respect of that part of its business to which those services relates.

PART 6

EXEMPTIONS FOR GAMBLING INSTITUTIONS

12. Exemption from Act 38 of 2001

Every accountable institution which performs the functions of an accountable institution referred to in item 9 of Schedule 1 to the Act and which is required to hold a license to operate a casino is exempted from compliance with the Provisions of the Act in respect of all activities of such an institution which may be performed without the institution being required to hold such a license.

13. Exemption from Parts 1 and 2 of Chapter 3 of Act 38 of 2001

Every accountable institution which performs the functions of an accountable institution referred to in item 9 of Schedule 1 to the Act is exempted, in respect of those functions, from compliance with the provisions of Parts 1 and 2 of the Act in respect of every single transaction concluded with a client, in terms of which—

- (a) credit or any representation of value which is issued or sold by the institution to be used for gambling, is provided directly or indirectly to the client for a consideration not exceeding R25 000,00 or more, or
- (b) an amount not exceeding R25 000,00 is provided directly or indirectly to the client in exchange for any representation of value which is issued or sold by the institution to be used for gambling; or
- (c) an amount not exceeding R25 000,00 is received from the client—
 - (i) as a deposit for gaming;
 - (ii) as a repayment of credit previously extended;
 - (iii) as a wager at any gaming activity at which a representation of value which is issued or sold by the institution to be used for gambling is not customarily used for wagering; or
 - (iv) for safekeeping;

- (d) an amount not exceeding R5 000,00 is received from the client as a wager at any gaming activity at which a representation of value which is issued or sold by the institution to be used for gambling is customarily used for wagering;
- (e) cash, a cheque or other negotiable instrument or funds are exchanged by, or on behalf of the client, for cash, a cheque or other negotiable instrument or funds which are to be transferred, to the amount not exceeding R25 000,00.

14. Exemption from regulations made under Act 38 of 2001

Every accountable institution which performs the functions of an accountable institution referred to in item 9 of Schedule 1 to the Act is exempted, in respect of those functions, from compliance with the provisions of regulation 3 (1) (d), 3 (1) (e), 4 (2), 4 (3), 5 (1) (e) and 5 (1) (f) of the Regulations, and of section 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act concerning the particulars referred to in those regulations, in respect of every single transaction which is not subject to the exemption referred to in paragraph 11 of this Schedule.

PART 7

EXEMPTIONS FOR BANKS

15. Exemption from Parts 1 and 2 of Chapter 3 of Act 38 of 2001

Every accountable institution which performs the functions of an accountable institution referred to in items 6, 7, 14 and 16 of Schedule 1 to the Act is exempted, in respect of those functions, from compliance with the provisions of Parts 1 and 2 of Chapter 3 of the Act in respect of every business relationship with a natural person in terms of which an unsecured loan of an amount not exceeding R15 000,00 is made to that person.

16. Exemption from sections 21 and 22 of Act 38 of 2001

Every accountable institution which performs the functions of an accountable institution referred to in items 6, 7, 14 and 16 of Schedule 1 to the Act is exempted, in respect of those functions, from compliance with the provisions of section 21 and 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act in respect of an institution providing similar services with which the accountable institution has entered into a business relationship and which situated in a country

where, to the satisfaction of the relevant supervisory body, it is subject to anti-money laundering regulation and supervision of compliance with such anti money laundering regulation, which is equivalent to that which applies to the accountable institution.

17. Exemption from regulations made under Act 38 of 2001

- (1) This exemption applies to every accountable institution referred to in—
 - (a) items 6, 7, 14 and 16 of Schedule 1 to the Act, and
 - (b) item 19 of Schedule 1 to the Act, but only in respect of transactions in terms of which both the sending and receipt of the funds in question take place in the Republic.
- (2) Every accountable institution referred to in paragraph (1), above, is exempted, subject to the conditions set out in paragraph (4), below, from compliance with the provisions of—
 - (a) regulations 3 (1) (d), 3 (1) (e), 3 (2) (d), 3 (2) (e), 4 (2) and 4 (3) of the Regulations, concerning the particulars to be obtained and verified in establishing and verifying persons' identities; and
 - (b) section 22 (1) (a), 22 (1) (b), 22 (1) (c), 22 (1) (d), 22 (1) (e), 22 (1) (h) and 22 (1) (i) of the Act concerning the records to be kept of the particulars referred to in subparagraph (a),in respect of every business relationship with a client who is a citizen of, or resident in, the Republic.
- (3) The business relationships and single transactions referred to in paragraph (2), above, are every business relationship or single transaction which—
 - (a) enables the client to withdraw or transfer or make payments of an amount not exceeding R5000,00 per day and not exceeding R25 000,00 in a monthly cycle; and
 - (b) does not enable the client to effect a transfer of funds to any destination outside the Republic, except for a transfer as a result of a point-of-sale payment or cash withdrawal in a country in the Rand Common Monetary Area.
- (4) This exemption is subject to the conditions that, should a business relationship referred to in paragraph (2), above, entail the holding of an account—

- (a) the balance maintained in that account does not exceed R25 000,00 at any time; or
 - (b) the same person does not simultaneously hold two or more accounts which meet the criteria referred to in paragraph (3) and are similar in nature with the same institution.
- (5) No debit from an account, referred to in paragraph (4), may be effected before—
- (a) the prescribed steps referred to in section 21 of the Act, read with the Regulations, concerning the establishing and verification of the identity of the client concerned are completed, and
 - (b) the records pertaining to the establishing and verification of the identity of a client referred to in paragraph (a), which an institution is required to keep in accordance with section 22(1)(a), 22(1)(b), 22(1)(c) 22(1)(d), 22(1)(e), 22(1)(h) and 22(1)(i) of the Act, are obtained, in the case where—
 - (i) the balance in an account referred to in paragraph (4)(a) exceeds R25 000,00; or
 - (ii) a person acquires more than one account referred to in subparagraph 4(b) with the same institution.

PART 8

MISCELLANEOUS

18. Exemptions do not apply in case of suspicious and unusual transactions

No exemption referred to in paragraph 4 (1), 5 (1), 6 (1), 9 and 13 of this Schedule shall apply in any circumstances where consideration is given to the making of a report under section 29 of the Act unless the accountable institution concerned may, by carrying out the required steps to which the exemptions referred to in those paragraphs apply, directly or indirectly alert, or bring information to the attention of another person which will, or is likely to, prejudice an investigation.

19. Commencement

These exemptions shall come into operation on 30 June 2003.

SCHEDULE

EXCHANGES RECOGNISED FOR PURPOSES OF THE EXEMPTION IN RESPECT OF PUBLIC COMPANIES THE SECURITIES OF WHICH ARE LISTED ON A STOCK EXCHANGE (Exemption 6)

American Stock Exchange
Amsterdam Exchanges N.V.
Athens Stock Exchange
Australian Stock Exchange Ltd
Barcelona Stock Exchange
Bolsa de Comercio de Buenos Aires
Bolsa de Madrid
Bolsa de Comercio de Santiago
Bolsa de Valores de Bilbao
Bolsa de Valores de Lima
Bolsa de Valores de Lisboa
Bolsa de Valores do Rio de Janeiro
Bolsa de Valores do Sao Paulo
Bolsa Mexicana de Valores
Bourse de Montréal
Brussels Exchanges Ltd
Canadian Venture Exchange
Chicago Board Options Exchange, Inc.
Colombo Stock Exchange
Copenhagen Stock Exchange
Deutsche Börse AG
Helsinki Exchanges Group Ltd Oy
Irish Stock Exchange
Istanbul Stock Exchange
Italian Exchange
Jakarta Stock Exchange
Johannesburg Stock Exchange
Korea Stock Exchange
Kuala Lumpur Stock Exchange

Ljubljana Stock Exchange, Inc.
London Stock Exchange
Malta Stock Exchange
National Association of Securities Dealers, Inc.
New York Stock Exchange, Inc
New Zealand Stock Exchange
OM Stock Exchange
Osaka Securities Exchange
Oslo Bors
Paris Bourse SBF SA
Philippine Stock Exchange Inc.
Singapore Exchange
Société de la Bourse de Luxembourg SA
Swiss Exchange
Taiwan Stock Exchange
Tehran Stock Exchange
The Bermuda Stock Exchange Ltd
The Chicago Stock Exchange, Inc.
The Stock Exchange of Hong Kong Ltd
The Stock Exchange of Thailand
The Tel Aviv Stock Exchange Ltd
The Toronto Stock Exchange
Tokyo Stock Exchange
Warsaw Stock Exchange
Wiener Börse AG

Exemptions in terms of section 74

Published under

GN 560 in GG33309 of 25 June 2010

SCHEDULE

1. Definitions

In this Schedule “**the Act**” means the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), and any expression to which a meaning has been assigned in the Act shall have that meaning, and—

“**prepaid instrument**” means an instrument that functions as an electronic surrogate for coins and banknotes, representing a claim on the issuer, which is stored on an electronic device such as a chip card or computer memory and which is accepted as a means of payment by persons other than the issuer, and

“**the Regulations**” means the Money Laundering and Terrorist Financing Control Regulations, 2002, promulgated by Government Notice No. R.1595 of 20 December 2002 as amended by GN R.456 in Government Gazette 27580 of 20 May 2005.

2. Exemption from Regulations made under Act 38 of 2001

(1) This exemption applies to every accountable institution referred to in items 6, 7, 14 and 16 of Schedule 1 to the Act.

(2) Every accountable institution referred to in paragraph (1), above, is exempted, subject to the conditions set out in paragraph (4) below, from compliance with the provisions of—

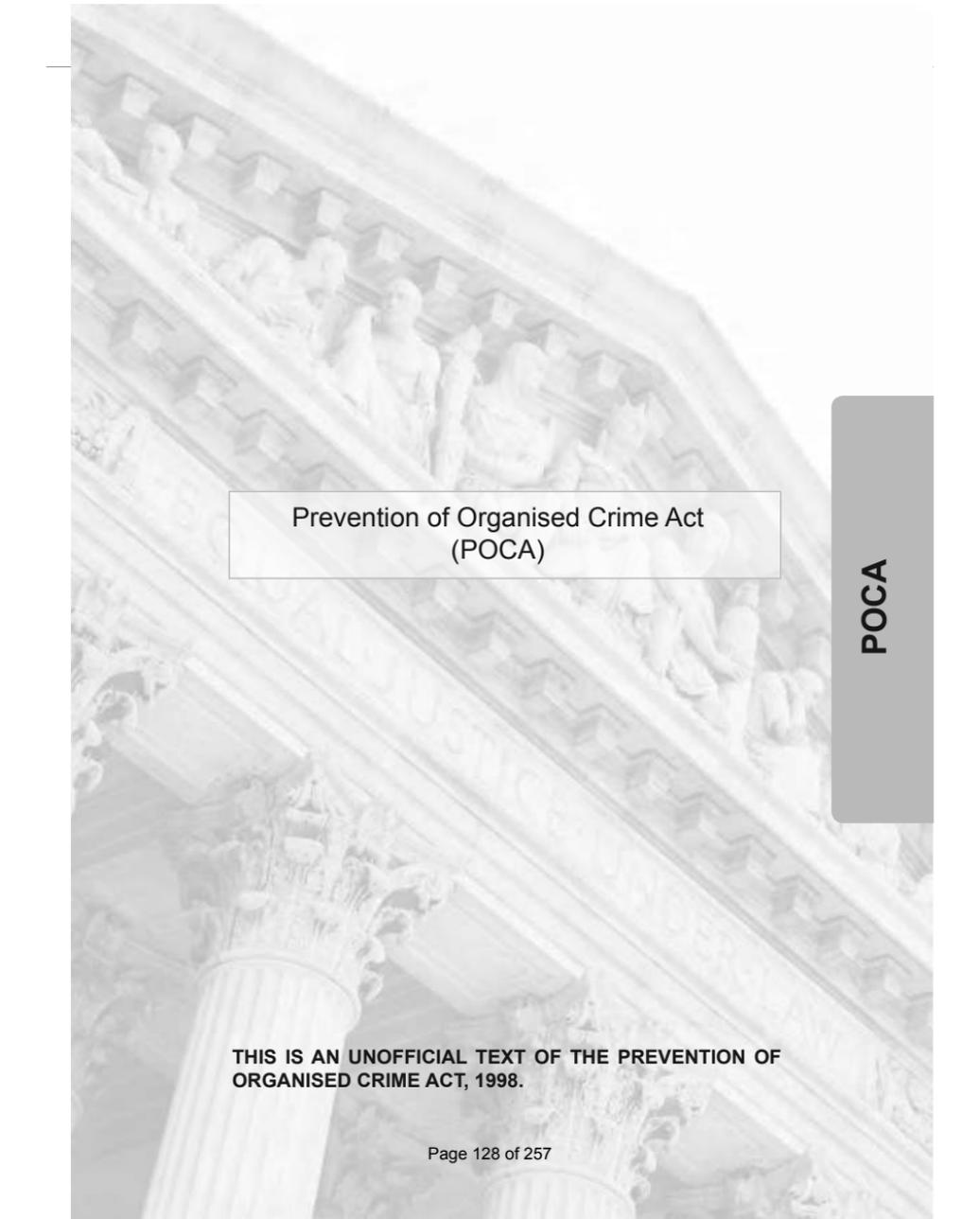
(a) regulations 3 and 4 of the Regulations, concerning the particulars to be obtained and verified in establishing and verifying persons' identities, and

(b) section 22(1)(a), 22(1)(b), 22(1)(c), 22(1)(d), 22(1)(h) and 22(1)(i) of the Act in so far as the records referred to in these sections would apply to information relating to the particulars referred to in paragraph (a),

in respect of the issuing of a prepaid instrument which meets the characteristics referred to in paragraph (3) by, or on behalf of, the accountable institution to a client.

(3) A prepaid instrument referred to in paragraph (2) in respect of which this exemption applies, is a prepaid instrument in respect of which—

- (a) the value of every individual transaction initiated through the use of the prepaid payment instrument cannot exceed R200,00;
 - (b) the available balance cannot exceed R1500,00 at any time;
 - (c) the monthly turn-over of value loaded onto the prepaid instrument cannot exceed R3000,00;
 - (d) can only be used to purchase goods or services in the Republic;
 - (e) the reloading of value to the prepaid instrument to enable use or further use of the prepaid instrument can only be done by means of an online system requiring the client to enter a personal identification number;
 - (f) the use of the prepaid instrument cannot enable the remittance of funds, the withdrawal of cash or the receipt of cash as part of a transaction for the payment of goods or services or in any other form whatsoever.
- (4) This exemption is subject to the condition that—
- (a) an accountable institution which issues a prepaid instrument directly to a client, or on whose behalf a prepaid instrument is issued to a client, applies enhanced measures, over and above its normal procedures, to scrutinise the transaction activity in relation the use of the prepaid instrument on an ongoing basis with a view to identify and report suspicious and unusual transactions,
 - (b) where prepaid instruments are issued to clients on behalf of the accountable institution, the accountable institution—
 - (i) establishes and verifies the identities of the persons issuing the prepaid instruments on its behalf as it would for a client in terms of section 22 of the Act, and
 - (ii) applies enhanced measures, over and above its normal procedures, to scrutinise the transaction activity of the person issuing the prepaid instrument in relation the issuing of the prepaid instruments on an ongoing basis with a view to identify and report suspicious and unusual transactions.
- (5) This exemption shall come into operation on 28 May 2010.



Prevention of Organised Crime Act
(POCA)

POCA

**THIS IS AN UNOFFICIAL TEXT OF THE PREVENTION OF
ORGANISED CRIME ACT, 1998.**

PREVENTION OF ORGANISED CRIME ACT, 1998
(ACT 121 OF 1998)

ASSENTED TO 24 NOVEMBER, 1998

DATE OF COMMENCEMENT: 21 JANUARY, 1999

(English text signed by the President)

as amended by

Prevention of Organised Crime Amendment Act, 1999 (Act 24 of 1999)

Prevention of Organised Crime Second Amendment Act, 1999 (Act 38 of 1999)

Financial Intelligence Centre Act, 2001 (Act 38 of 2001)

Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004)

**Protection of Constitutional Democracy against Terrorist and Related
Activities Act, 2002 (Act 33 of 2004)**

**Criminal Law (Sexual Offences and Related Matters) Amendment Act, 2007
(Act 32 of 2007)**

Criminal Law (Sentencing) Amendment Act, 2007 (Act 38 of 2007)

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.

Preamble

WHEREAS the Bill of Rights in the Constitution of the Republic of South Africa, 1996 (Act 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:

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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;

“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;

“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;

“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 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;

“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);

“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.

- (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.
- (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.

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

- (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 any 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 R1 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 R100 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)
- (3)

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
- (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.

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.

7.

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.

8. Penalties

(1) Any person convicted of an offence contemplated in section 4, 5 or 6 shall be liable to a fine not exceeding R100 million, or to imprisonment for a period not exceeding 30 years.

(2)

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.

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 programmes or when minors are using the facility, such fact shall be regarded as an aggravating circumstance.
- (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.

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;
- (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—

“affected gift” means any gift—

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

“confiscation order” means an order referred to in section 18(1);

“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);

“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
 - (b) if a restraint order has been made against the defendant, means the date of such restraint order,
- whichever is the earlier date;

“realisable property” means property referred to in section 14;

“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 sequestered, also to the trustee of his or her 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 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.

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. Realisable property

- (1) Subject to the provisions of subsection (2), the following property shall be realisable 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 realisable 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.

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 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.

- (2) In determining the value of a defendant's 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 realisable 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 court may recognise for this purpose.
- (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 sequestered; 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 defendant's 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.

- (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 magistrate's court of the district in which the relevant trial took place.
- (2) Where a High Court makes a confiscation order—
- (a) the confiscation order shall have the effect of a civil judgment of that court; or
- (b) the presiding judge may direct the registrar of that court to forward a certified copy of the confiscation order to the clerk of the magistrate's court designated by the presiding judge or, if no such court is designated, to the clerk of the magistrate's court within the area of jurisdiction of which the offence concerned was committed, and, on receipt of the said copy of the confiscation order the clerk of the magistrate's court concerned shall register the confiscation order whereupon it shall have the effect of a civil judgment of that magistrate's court.

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;
 - (b) if a curator bonis has not been appointed in respect of any of the property concerned, appoint a curator bonis in respect of realisable property; and
 - (c) authorise the realisation of the property concerned in terms of Part 4.

- (4) A court shall not exercise its powers under subsection (3)(a) and (c) unless it has afforded all persons having any interest in the property concerned an opportunity to make representations to it in connection with the making of such orders.
- (5) A court conducting an enquiry under this section shall not apply sections 21 and 22.
- (6) If a person, excluding a person contemplated in subsection (1)(a)(ii), against whom a confiscation order had been made under subsection (3) is subsequently tried and—
 - (a) convicted of one or other of the offences in respect of which the order had been made, the court convicting him or her may conduct an enquiry under section 18 and make an appropriate order;
 - (b) acquitted of the offence in respect of which the order had been made, the court acquitting him or her may make an appropriate order.

PART 3

Restraint Orders

24A. Order to remain in force pending appeal

A restraint order and an order authorising 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.

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 realisable property as may be specified in the restraint order and which is held by the person against whom the restraint order is being made;
 - (b) in respect of all realisable property held by such person, whether it is specified in the restraint order or not;
 - (c) in respect of all property which, if it is transferred to such person after the making of the restraint order, would be realisable property.
- (3) (a) A court to which an application is made in terms of subsection (1) may make a provisional restraint order having immediate effect and may simultaneously grant a rule nisi calling upon the defendant upon a day mentioned in the rule to appear and to show cause why the restraint order should not be made final.

- (b) If the defendant has been absent during a period of 21 days from his or her usual place of residence and from his or her business, if any, within the Republic, the court may direct that it shall be sufficient service of that rule if a copy thereof is affixed to or near the outer door of the buildings where the court sits and published in the Gazette, or may direct some other mode of service.
- (c) Upon application by the defendant, the court may anticipate the return day for the purpose of discharging the provisional restraint order if 24 hours' notice of such application has been given to the applicant contemplated in subsection (1).
- (4) (a) A restraint order shall provide for notice to be given to persons affected by the order.
 - (b)
 - (5)
- (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 authorising 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.
- (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.
- (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 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 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.
- (11) When a court orders the rescission of an order authorising 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.

27. Seizure of property subject to restraint order

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

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

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 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 or her registers and the necessary endorsement on the office copy of the title deed, and thereupon any such restriction shall be effective against all persons except, in the case of a restriction contemplated in subsection (2)(b), against any person in whose favour a mortgage bond or other charge was registered against the title deed of immovable property prior to the endorsement of the restriction on the title deed of the immovable property, but shall lapse on the transfer of ownership of the immovable property concerned;
 - (b) when the original of the title deed is produced to him or her, make the necessary endorsement thereon.
- (4) Unless the High Court directs otherwise, the custody of immovable property on the title deed of which a restriction contemplated in subsection (2)(c) was endorsed shall vest as from the date on which—
 - (a) the estate of the owner of the immovable property is sequestered; or
 - (b) where the owner of the immovable property is a company or other 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 sequestered, 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.

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 realisable property;
 - (b) subject to subsection (3), authorise a curator bonis appointed under section 28(1)(a) or under paragraph (a) of this subsection, as the case may be, to realise any realisable property in such manner as that court may determine;
 - (c) order any person who holds realisable property to surrender the said property forthwith into the custody of a curator bonis appointed under section 28(1)(a) or under paragraph (a) of this subsection, as the case may be.
- (3) A High Court shall not exercise its powers under subsection (2)(b) unless it has afforded all persons known to have any interest in the property concerned an opportunity to make representations to it in connection with the realisation of that property.
- (4) If the court referred to in subsection (2) is satisfied that a person—
- (a) is likely to be directly affected by the confiscation order; or
 - (b) has suffered damage to or loss of property or injury as a result of an offence or related criminal activity referred to in section 18(1) which was committed by the defendant,
the court may allow that person to make representations in connection with the realisation of that property.
- (5) If the court is satisfied that a person who has suffered damage to or loss of property or injury as a result of an offence or related criminal activity referred to in section 18(1) which was committed by the defendant—
- (a) has instituted civil proceedings, or intends to institute such proceedings within a reasonable time; or
 - (b) has obtained a judgment against the defendant,
in respect of that damage, loss or injury, the court may order that the curator bonis suspend the realisation of the whole or part of the realisable property concerned for the period that the court deems fit in order to satisfy such a

claim or judgment and related legal expenses and may make such ancillary orders as it deems expedient.

- (6) The curator bonis shall as soon as possible after—
 - (a) (i) the proceedings referred to in subsection (5)(a) have been disposed of; or
 - (ii) the judgment referred to in subsection (5)(b) has been satisfied, as the case may be; or
 - (b) the period determined under subsection (5) has expired,
- whichever occurs first, realise the realisable property concerned as contemplated in subsection (2).

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 realisable property realised by virtue of section 30; and
 - (b) any other sums of money, being property of the defendant concerned, shall, after such payment as the High Court may direct have been made out of such sums of money, be applied on that defendant's behalf in satisfaction of the confiscation order made against him or her: Provided that where the High Court may direct payment out of such sums of money, the State shall not have a preferential claim: Provided further that, if sums of money remain in the hands of the curator bonis after the amount payable under such confiscation order has been fully paid, the curator bonis shall distribute those sums of money—
 - (i) among such persons who held realisable property which has been realised by virtue of section 30; and
 - (ii) in such proportions, as that court may, after affording such persons an opportunity to make representations to it in connection with the distribution of those sums of money, direct.

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

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 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 realisable property for satisfying any confiscation order made or which might be made against the defendant;
- (b) in the case of realisable property held by a person to whom that defendant has directly or indirectly made an affected gift, be exercised with a view to realising not more than the current value of such gift;
- (c) be exercised with a view to allowing any person other than that defendant or the recipient of such gift to retain or recover the current value of any property held by him or her,
and, except as provided in sections 20(1) and 26(6), any obligation of that defendant or the recipient of such gift which conflicts with the obligation to satisfy a confiscation order shall be left out of account.
- (2) The provisions of subsection (1) shall not be construed as prohibiting any

High Court from making any additional order in respect of a debt owed to the State.

34. Variation of confiscation orders

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

35. Effect of sequestration of estates on realisable 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 realisable 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 24 of 1936)—
 - (i) if a prosecution for an offence has been instituted against the defendant and the proceedings against him or her have not been concluded; or
 - (ii) if the property of such other person is subject to a restraint order;
 - (b) any court which sets aside any disposition contemplated in paragraph (a) after the conclusion of the proceedings against the defendant, shall take into account any realisation of the property of such other person in terms of this Chapter.
- (3) Where the estate of an insolvent has been sequestrated, the powers conferred upon a High Court by sections 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 realisable property

- (1) When any competent court has made an order for the winding-up of any company or other juristic person which holds realisable property or a resolution for the voluntary winding-up of any such company or juristic person has been registered in terms of any applicable law—
 - (a) no property for the time being subject to a restraint order made before the relevant time; and
 - (b) no proceeds of any realisable property realised by virtue of section 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.
- (3) Nothing in the Companies Act, 1973 (Act 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.
- (3) A High Court making a preservation of property order shall at the same time make an order authorising 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.

- (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.
- (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 sequestered; or
 - (ii) where the owner of that immovable property is a company or other corporate body which is being wound up, form part of the assets of such company or corporate body.
- (3) In order to give effect to subsection (1), the registrar of deeds concerned shall—
 - (a) make the necessary entries in his or her registers and the necessary endorsement on the office copy of the title deed, and thereupon any such restriction shall be effective against all persons except, in the case of a restriction contemplated in subsection (2)(b), against any person in whose favour a mortgage bond or other charge was registered against the title deed of immovable property prior to the endorsement of the restriction on the title deed of the immovable property, but shall lapse on the transfer of ownership of the immovable property concerned;
 - (b) when the original of the title deed is produced to him or her, make the necessary endorsement thereon.
 - (4) Unless the High Court directs otherwise, the custody of immovable property on the title deed of which a restriction contemplated in subsection (2)(c) was endorsed shall vest as from the date on which—
 - (a) the estate of the owner of the immovable property is sequestered; or
 - (b) where the owner of the immovable property is a company or other corporate body, such company or corporate body is being wound up, in the person in whom the said custody would have vested if such a restriction were not so endorsed.

- (5) Where the High Court granted its consent in respect of a restriction contemplated in subsection (2)(c) and endorsed on the title deed of immovable property, the immovable property shall be deemed—
- (a) if the estate of the owner of the immovable property was sequestrated, to have vested in the Master of the High Court or trustee concerned, as the case may be, as if such a restriction were not so endorsed; or
- (b) if the owner of the immovable property is a company or other juristic person which is being wound up, to have formed part of the assets of such company or juristic person as if such a restriction were not so endorsed.
- (6) Any person affected by an order contemplated in subsection (1) may at any time apply for the rescission of the order.

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 proceedings instituted against him or her in terms of this Act or any other related criminal proceedings.
- (2) A High Court shall not make provision for any expenses under subsection (1) unless it is satisfied that—
- (a) the person cannot meet the expenses concerned out of his or her 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 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.
- (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.
- (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.

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).
- (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 preservation 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.
- (2) The High Court may, when it makes a forfeiture order or at any time thereafter, make any ancillary orders that it considers appropriate, including orders for and with respect to facilitating the transfer to the State of property forfeited to the State under such an order.
- (3) The absence of a person whose interest in property may be affected by a forfeiture order does not prevent the High Court from making the order.
- (4) The 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 the 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.

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.

- (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 this 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.
- (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.
- (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.
- (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.

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 applicant's right, title or interest in the property concerned;
 - (b) the time and circumstances of the applicant's acquisition of the right, title, or interest in the property;
 - (c) any additional facts supporting the application; and
 - (d) the relief sought.
 - (3) The hearing of the application shall, to the extent practicable and consistent with the interests of justice be held within 30 days of the filing of the application.
 - (4) The High Court may consolidate the hearing of the application with a hearing of any other application filed by a person under this section.
 - (5) At the hearing, the applicant may testify and present evidence and witnesses

on his or her own behalf, and may cross-examine any witness who appears at the hearing.

- (6) The National Director or the curator bonis concerned, or a person authorised in writing thereto by them, may present evidence and witnesses in rebuttal and in defence of their claim to the property and may cross-examine a witness who appears at the hearing.
- (7) In addition to the testimony and evidence presented at the hearing, the High Court may, upon application by the National Director or the curator bonis concerned, or a person authorised in writing thereto by them, order that the testimony of any witness relating to the property forfeited, be taken by commission and that any book, paper, document, record, recording, or other material not privileged be produced at the taking down of such testimony by commission.
- (8) The High Court may 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 this 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.
- (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.
- (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.

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.
- (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. Fulfilment 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.
- (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)
- (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 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.
- (2) In the absence of such rules the provisions of the Supreme Court Act, 1959 (Act 59 of 1959), and the rules made under section 43 of that Act and the provisions of the Magistrate's Court Act, 1944 (Act 32 of 1944), and the rules made under section 6 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), as the case may be, shall, with the necessary changes, apply in relation to proceedings in terms of such hearing except in so far as those rules are inconsistent with procedures prescribed in this Chapter.

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 fulfilment of confiscation and forfeiture orders contemplated in Chapters 5 and 6;
- (aA) all property derived from the fulfilment of forfeiture orders as contemplated in section 57;
- (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 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;
- (d) domestic and foreign grants;
- (e) any property or amount of money received or acquired from any source; and
- (f) all property or moneys transferred to the Account in terms of this Act.

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) (e) 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

- (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;
- (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);
- (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 bookkeeping 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.

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 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.

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.
- (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.
- (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 magistrates' 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)
 - (c)
 - (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 75 of 1996), is hereby amended to the extent set out in Schedule 2.
- (b) The Drugs and Drug Trafficking Act, 1992 (Act 140 of 1992), is hereby amended to the extent set out in Schedule 3.
- (c) The Proceeds of Crime Act, 1996 (Act 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 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.

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)**

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 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;

13. extortion;
14. child-stealing;
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 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 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 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 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 wherefore may be a period of imprisonment exceeding one year without the option of a fine;
34. any conspiracy, incitement or attempt to commit any offence referred to in this Schedule.

SCHEDULE 2 (FORMERLY SCHEDULE 3)

AMENDMENT TO SECTIONS OF THE DRUGS AND DRUG TRAFFICKING ACT, 1992 (ACT 140 OF 1992)

(Section 79)

DRUGS AND DRUG TRAFFICKING ACT, 1992 (ACT 140 OF 1992):—

1. Amends section 1 of the Drugs and Drug Trafficking Act, 1992, as follows:— paragraph (a) deletes the definition of “**convert**”; paragraph (b) deletes definition of “**defined crime**”; paragraph (c) deletes the definition of “**economic offence**”; paragraph (d) deletes the definition of “**financial institution**”; and paragraph (e) deletes the definition of “proceeds”.
- 2 and 3. Repeals respectively sections 6 and 7 of the Drugs and Drug Trafficking Act, 1992.
4. Amends section 9 of the Drugs and Drug Trafficking Act, 1992 by substituting subsection (1).
5. Amends section 10 of the Drugs and Drug Trafficking Act, 1992, by deleting subsection (2).

SCHEDULE 3**(Section 79)****INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS ACT, 1996 (ACT 75 OF 1996):—**

1. Amends section 1 of the International Co-operation in Criminal Matters Act, 1996 (Act 75 of 1996), as follows:—paragraph (a) substitutes the definition of “confiscation order”; and paragraph (b) substitutes the definition of “restraint order”.



Protection of Constitutional Democracy
Against Terrorist and Related Activities Act
(POCDATARA)

POCDATARA

**THIS IS AN UNOFFICIAL TEXT OF THE PROTECTION OF
CONSTITUTIONAL DEMOCRACY AGAINST TERRORIST
AND RELATED ACTIVITIES ACT, 2004.**

PROTECTION OF CONSTITUTIONAL DEMOCRACY AGAINST TERRORIST AND
RELATED ACTIVITIES ACT, 2004
(ACT 33 OF 2004)

ASSENTED TO 4 FEBRUARY, 2005
DATE OF COMMENCEMENT: 20 MAY, 2005

(English text signed by the President)

ACT

To provide for measures to prevent and combat terrorist and related activities; to provide for an offence of terrorism and other offences associated or connected with terrorist activities; to provide for Convention offences; to give effect to international instruments dealing with terrorist and related activities; to provide for a mechanism to comply with United Nations Security Council Resolutions, which are binding on member States, in respect of terrorist and related activities; to provide for measures to prevent and combat the financing of terrorist and related activities; to provide for investigative measures in respect of terrorist and related activities; and to provide for matters connected therewith.

Preamble

WHEREAS the Republic of South Africa is a constitutional democracy where fundamental human rights, such as the right to life and free political activity, are constitutionally enshrined;

AND WHEREAS terrorist and related activities, in whichever form, are intended to achieve political and other aims in a violent or otherwise unconstitutional manner, and thereby undermine democratic rights and values and the Constitution;

AND WHEREAS terrorist and related activities are an international problem, which can only be effectively addressed by means of international co-operation;

AND WHEREAS the Government of the Republic of South Africa has committed itself in international fora such as the United Nations, the African Union and the Non-Aligned Movement, to the prevention and combating of terrorist and related activities;

AND WHEREAS the United Nations Security Council Resolution 1373/2001, which is binding on all Member States of the United Nations, as well as the Convention for the Prevention and Combating of Terrorism, adopted by the Organisation of African Unity, requires Member States to become Party to instruments, dealing with terrorist and related activities, as soon as possible;

AND WHEREAS the Republic of South Africa has already become Party to the following instruments of the United Nations:

- (a) The Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963. The Republic became a Party thereto, by accession on 26 May 1972;
- (b) the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970. The Republic became a Party thereto by ratification on 30 May 1972;
- (c) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971. The Republic became a Party thereto by ratification on 30 May 1972;
- (d) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973. The Republic became a Party thereto by accession on 23 September 2003;
- (e) the International Convention Against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979. The Republic became a Party thereto by accession on 23 September 2003;
- (f) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, adopted at Montreal on 24 February 1988. The Republic became a Party thereto by accession on 21 September 1998;
- (g) the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991. The Republic became a Party thereto by accession on 1 December 1999;

- (h) the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997. The Republic became a Party thereto by ratification on 1 May 2003; and
- (i) the International Convention on the Suppression of the Financing of Terrorism, adopted by the United Nations General Assembly on 9 December 1999. The Republic became a Party thereto by ratification on 1 May 2003;

AND WHEREAS the Republic of South Africa desires to become a Party to the following remaining instruments of the United Nations, not yet ratified or acceded to by the Republic:

- (a) The Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, adopted at Rome on 10 March 1988;
- (b) the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms on the Continental Shelf, adopted at Rome on 10 March 1988;
- (c) the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 26 October 1979, and signed on behalf of the Republic on 18 May 1981;

AND WHEREAS the Republic of South Africa has become a Party by ratification, on 7 November 2002, to the Convention on the Prevention and Combating of Terrorism, adopted by the Organisation of African Unity at Algiers on 14 July 1999;

AND WHEREAS the United Nations Security Council from time to time passes resolutions under Chapter VII of the United Nations Charter, requiring Member States to combat terrorist and related activities, including taking effective measures to prevent and combat the financing of terrorist and related activities, and the freezing of funds, assets or economic resources of persons who commit terrorist and related activities;

AND WHEREAS our national laws do not meet all the international requirements relating to the prevention and combating of terrorist and related activities;

AND WHEREAS international law, and in particular international humanitarian law,

including the purposes and principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the said Charter recognizes acts committed in accordance with such international law during a struggle waged by peoples, including any action during an armed struggle, in the exercise or furtherance of their legitimate right to national liberation, self-determination and independence against colonialism, or occupation or aggression or domination by alien or foreign forces, as being excluded from terrorist activities;

AND REALISING the importance to enact appropriate domestic legislation necessary to implement the provisions of relevant international instruments dealing with terrorist and related activities, to ensure that the jurisdiction of the courts of the Republic of South Africa enables them to bring to trial the perpetrators of terrorist and related activities; and to co-operate with and provide support and assistance to other States and relevant international and regional organisations to that end;

AND MINDFUL that the Republic has, since 1994, become a legitimate member of the community of nations and is committed to bringing to justice persons who commit such terrorist and related activities; and to carrying out its obligations in terms of the international instruments dealing with terrorist and related activities.

ARRANGEMENT OF SECTIONS**CHAPTER 1****DEFINITIONS AND INTERPRETATION**

1. Definitions

CHAPTER 2**OFFENCES AND PENALTIES****PART 1****Offence of terrorism and offences associated or connected with terrorist activities**

2. Offence of terrorism
3. Offences associated or connected with terrorist activities

PART 2**Convention offences**

4. Offences associated or connected with financing of specified offences
5. Offences relating to explosive or other lethal devices
6. Offences relating to hijacking, destroying or endangering safety of a fixed platform
7. Offences relating to taking a hostage
8. Offences relating to causing harm to internationally protected persons
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BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER 1
DEFINITIONS AND INTERPRETATION

1. **Definitions**

- (1) In this Act, unless the context indicates otherwise—
- (i) **“appropriate government body”**, with reference to section 15, means an appropriate government body as defined in section 1 of the International Co-operation in Criminal Matters Act, 1996 (Act 75 of 1996);
 - (ii) **“Convention offence”** means—
 - (a) an offence, created in fulfillment of the Republic's international obligations in terms of instruments dealing with terrorist and related activities, referred to in Part 2 of Chapter 2;
 - (b) an offence referred to in section 56(1)(h) of the Nuclear Energy Act, 1999 (Act 46 of 1999); or
 - (c) an offence referred to in section 2(1) or (2) of the Civil Aviation Offences Act, 1972 (Act 10 of 1972);
 - (iii) **“Director of Public Prosecutions”** means a Director of Public Prosecutions appointed under section 13(1) of the National Prosecuting Authority Act, 1998 (Act 32 of 1998);
 - (iv) **“engages in a terrorist activity”**, with reference to sections 2 and 3, includes—
 - (a) the commission, performance or carrying out of;
 - (b) the facilitation of, participation or assistance in, or contribution to the commission, performance or carrying out of;
 - (c) the performance of an act in preparation for or planning of; or
 - (d) instructing, directly or indirectly, the—
 - (i) commission, performance, carrying out of;

- (ii) facilitation of, participation or assistance in, or contribution to the commission, performance or carrying out of; or
 - (iii) performance of an act in preparation for or planning of, a terrorist activity, and the expressions “to engage in a terrorist activity”, “engaging in a terrorist activity” and “engagement in a terrorist activity” shall be construed accordingly;
- (v) **“entity”**, with reference to sections 3, 4, and 14 (in so far as it relates to the aforementioned sections), 22, 23 and 25, means a natural person, or a group of two or more natural persons (whether acting in the furtherance of a common purpose or conspiracy or not), or a syndicate, gang, agency, trust, partnership, fund or other unincorporated association or organisation, or any incorporated association or organisation or other legal person, and includes, where appropriate, a cell, unit, section, sub-group or branch thereof or any combination thereof;
- (vi) **“explosive”**, with reference to the definition of “explosive or other lethal device” in this section, and sections 5 and 13, means an explosive referred to in section 1 of the Explosives Act, 2003 (Act 15 of 2003);
- (vii) **“explosive or other lethal device”**, with reference to sections 5 and 13, means—
- (a) an explosive or incendiary weapon or device which is designed or manufactured, or has the capability, to cause death, serious bodily injury or material damage;
 - (b) a weapon or device which is designed or manufactured, or has the capability, to cause death, serious bodily injury or material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material; or

- (c) any weapon of mass destruction, as defined in section 1 of the Non-Proliferation of Weapons of Mass Destruction Act, 1993 (Act 87 of 1993);
- (viii) **“fixed platform”**, with reference to sections 6 and 15, means an artificial island, installation, or structure permanently attached to the sea-bed for the purpose of exploration or exploitation of resources or for economic purposes, but does not include a ship;
- (ix) **“infrastructure facility”**, with reference to the definition of **“terrorist activity”** in this section and section 5, means any publicly or privately owned facility providing or distributing services for the benefit of the public, such as water, sewage, energy, fuel or communications;
- (x) **“instruments dealing with terrorist and related activities”**, means any of the following instruments:
 - (a) The Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963;
 - (b) the Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970;
 - (c) the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971;
 - (d) the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973;
 - (e) the International Convention Against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979;
 - (f) the Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 26 October 1979;

- (g) the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, adopted at Montreal on 24 February 1988;
 - (h) the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, 1988, adopted at Rome on 10 March 1988;
 - (i) the Protocol for the Suppression of Unlawful Acts against the Safety of fixed Platforms on the Continental Shelf, 1988, adopted at Rome on 10 March 1988;
 - (j) the Convention on the Marking of Plastic Explosives for the Purpose of Detection, signed at Montreal on 1 March 1991;
 - (k) the International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly of the United Nations on 15 December 1997;
 - (l) the Convention on the Prevention and Combating of Terrorism, adopted by the Organisation of African Unity at Algiers on 14 July 1999; or
 - (m) the International Convention on the Suppression of the Financing of Terrorism, adopted by the General Assembly of the United Nations on 9 December 1999;
- (xi) **“international organisation”**, with reference to the definitions of **“intergovernmental organisation”**, **“internationally protected person”** and **“terrorist activity”** in this section, means an international organisation of states, and includes an intergovernmental organisation;
- (xii) **“intergovernmental organisation”**, with reference to the definitions of “international organisation”, “internationally protected person”, “State or government facility” and “terrorist activity” in this section, and section 7, means an international organisation established by the governments of states;

- (xiii) **“internationally protected person”**, with reference to section 8, means—
- (a) a Head of State, including any member of a collegial body performing the functions of a Head of State under the constitution of the State concerned, a Head of Government or a Minister for Foreign Affairs, whenever any such person is in the Republic, as well as members of his or her family accompanying him or her; or
 - (b) any representative or official of a State or any official or other agent of an international organisation or intergovernmental organisation or of an intergovernmental character who, at the time when and in the place where a crime against him or her or his or her official premises, his or her private accommodation or his or her means of transport is committed, is entitled, pursuant to international law to special protection from any attack on his or her person, freedom or dignity, as well as members of his or her family forming part of his or her household;
- (xiv) **“judge”** means a Judge of the High Court;
- (xv) **“Minister”** means the Minister for Safety and Security;
- (xvi) **“National Commissioner”** means the National Commissioner of the South African Police Service appointed in terms of section 207(1) of the Constitution;
- (xvii) **“National Director”** means the National Director of Public Prosecutions appointed in terms of section 179(1) of the Constitution;
- (xviii) **“place of public use”**, with reference to section 5, includes those parts of any building, land, street, waterway or other location that are at any time accessible or open to members of the public, whether continuously, periodically or occasionally;
- (xix) **“police official”** means a **“member”** as defined in section 1 of the South African Police Service Act, 1995 (Act 68 of 1995), and with

reference to section 24, includes a member of the South African National Defence Force employed in co-operation with the South African Police Service in terms of section 201(2)(a) of the Constitution in the prevention and combating of crime and maintenance and preservation of law and order within the Republic, as contemplated in section 19(1) of the Defence Act, 2002 (Act 42 of 2002);

- (xx) “**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;
- (xxi) “**public transportation system**”, with reference to section 5, means all facilities, conveyances and instrumentalities, whether publicly or privately owned, that are used in or for publicly available services for the transportation of persons or cargo;
- (xxii) “**ship**”, with reference to the definition of “**fixed platform**” in this section and section 10, means a vessel of any type whatsoever not permanently attached to the sea-bed, including dynamically supported craft, submersibles or other floating craft, but does not include—
 - (a) a warship;
 - (b) a ship owned or operated by a State; or
 - (c) a ship which has been withdrawn from navigation or laid up;
- (xxiii) “**specified offence**”, with reference to section 4, 14 (in so far as it relates to section 4), and 23, means—
 - (a) the offence of terrorism referred to in section 2, an offence associated or connected with terrorist activities referred to in section 3, a Convention offence, or an offence referred to in section 13 or 14 (in so far as it relates to the aforementioned sections); or
 - (b) any activity outside the Republic which constitutes an offence under the law of another state and which would have

constituted an offence referred to in paragraph (a), had that activity taken place in the Republic;

(xxiv) **“State or government facility”**, with reference to section 5, includes any permanent or temporary facility or conveyance that is used or occupied by representatives of a State, members of Government, the legislature or the judiciary or by officials or employees of a State or any other public authority or entity of the Republic or by employees or officials of an intergovernmental organisation in connection with their official duties;

(xxv) **“terrorist activity”**, with reference to this section and sections 2, 3 and 17(2), means—

- (a) any act committed in or outside the Republic, which—
 - (i) involves the systematic, repeated or arbitrary use of violence by any means or method;
 - (ii) involves the systematic, repeated or arbitrary release into the environment or any part of it or distributing or exposing the public or any part of it to—
 - (aa) any dangerous, hazardous, radioactive or harmful substance or organism;
 - (bb) any toxic chemical; or
 - (cc) any microbial or other biological agent or toxin;
 - (iii) endangers the life, or violates the physical integrity or physical freedom of, or causes serious bodily injury to or the death of, any person, or any number of persons;
 - (iv) causes serious risk to the health or safety of the public or any segment of the public;
 - (v) causes the destruction of or substantial damage to any property, natural resource, or the environmental or cultura

heritage, whether public or private;

- (vi) is designed or calculated to cause serious interference with or serious disruption of an essential service, facility or system, or the delivery of any such service, facility or system, whether public or private, including, but not limited to—
 - (aa) a system used for, or by, an electronic system, including an information system;
 - (bb) a telecommunication service or system;
 - (cc) a banking or financial service or financial system;
 - (dd) a system used for the delivery of essential government services;
 - (ee) a system used for, or by, an essential public utility or transport provider;
 - (ff) an essential infrastructure facility; or
 - (gg) any essential emergency services, such as police, medical or civil defence services;
- (vii) causes any major economic loss or extensive destabilisation of an economic system or substantial devastation of the national economy of a country; or
- (viii) creates a serious public emergency situation or a general insurrection in the Republic,

whether the harm contemplated in paragraphs (a)(i) to (vii) is or may be suffered in or outside the Republic, and whether the activity referred to in subparagraphs (ii) to (viii) was committed by way of any means or method; and

- (b) which is intended, or by its nature and context, can reasonably be regarded as being intended, in whole or in part, directly or

indirectly, to—

- (i) threaten the unity and territorial integrity of the Republic;
- (ii) intimidate, or to induce or cause feelings of insecurity within, the public, or a segment of the public, with regard to its security, including its economic security, or to induce, cause or spread feelings of terror, fear or panic in a civilian population; or
- (iii) unduly compel, intimidate, force, coerce, induce or cause a person, a government, the general public or a segment of the public, or a domestic or an international organisation or body or intergovernmental organisation or body, to do or to abstain or refrain from doing any act, or to adopt or abandon a particular standpoint, or to act in accordance with certain principles,

whether the public or the person, government, body, or organisation or institution referred to in subparagraphs (ii) or (iii), as the case may be, is inside or outside the Republic; and

- (c) which is committed, directly or indirectly, in whole or in part, for the purpose of the advancement of an individual or collective political, religious, ideological or philosophical motive, objective, cause or undertaking;

(xxvi) **“terrorist and related activities”** means any act or activity related to or associated or connected with the commission of the offence of terrorism, or an offence associated or connected with a terrorist activity, or a Convention offence, or an offence referred to in sections 11 to 14.

- (2) For purposes of this Act, “act” includes “omission”.
- (3) For the purposes of paragraph (a)(vi) and (vii) of the definition of “terrorist activity”, any act which is committed in pursuance of any advocacy, protest, dissent or industrial action and which does not intend the harm contemplated

in paragraph (a)(i) to (v) of that definition, shall not be regarded as a terrorist activity within the meaning of that definition.

- (4) Notwithstanding any provision of this Act or any other law, any act committed during a struggle waged by peoples, including any action during an armed struggle, in the exercise or furtherance of their legitimate right to national liberation, self-determination and independence against colonialism, or occupation or aggression or domination by alien or foreign forces, in accordance with the principles of international law, especially international humanitarian law, including the purposes and principles of the Charter of the United Nations and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the said Charter, shall not, for any reason, including for purposes of prosecution or extradition, be considered as a terrorist activity, as defined in subsection (1).
- (5) Notwithstanding any provision in any other law, and subject to subsection (4), a political, philosophical, ideological, racial, ethnic, religious or any similar motive, shall not be considered for any reason, including for purposes of prosecution or extradition, to be a justifiable defense in respect of an offence of which the definition of terrorist activity forms an integral part.
- (6) For the 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.
- (7) 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.

CHAPTER 2
OFFENCES AND PENALTIES

PART 1

Offence of terrorism and offences associated or connected with terrorist activities

2. Offence of terrorism

Any person who engages in a terrorist activity is guilty of the offence of terrorism.

3. Offences associated or connected with terrorist activities

- (1) Any person who—
- (a) does anything which will, or is likely to, enhance the ability of any entity to engage in a terrorist activity, including to provide or offering to provide a skill or an expertise;
 - (b) enters or remains in any country; or
 - (c) makes himself or herself available, for the benefit of, at the direction of, or in association with any entity engaging in a terrorist activity, and who knows or ought reasonably to have known or suspected, that such act was done for the purpose of enhancing the ability of such entity to engage in a terrorist activity, is guilty of the offence associated with a terrorist activity.
- (2) Any person who—
- (a) provides or offers to provide any weapon to any other person for use by or for the benefit of an entity;
 - (b) solicits support for or gives support to an entity;
 - (c) provides, receives or participates in training or instruction, or recruits an entity to receive training or instruction;
 - (d) recruits any entity;
 - (e) collects or makes a document; or

- (f) possesses a thing, connected with the engagement in a terrorist activity, and who knows or ought reasonably to have known or suspected that such weapons, soliciting, training, recruitment, document or thing is so connected, is guilty of an offence connected with terrorist activities.

PART 2

Convention Offences

4. Offences associated or connected with financing of specified offences

- (1) Any person who, directly or indirectly, in whole or in part, and by any means or method—
- (a) acquires property;
 - (b) collects property;
 - (c) uses property;
 - (d) possesses property;
 - (e) owns property;
 - (f) provides or makes available, or invites a person to provide or make available property;
 - (g) provides or makes available, or invites a person to provide or make available any financial or other service;
 - (h) provides or makes available, or invites a person to provide or make available economic support; or
 - (i) facilitates the acquisition, collection, use or provision of property, or the provision of any financial or other service, or the provision of economic support, intending that the property, financial or other service or economic support, as the case may be, be used, or while such person knows or ought reasonably to have known or suspected that the property, service or support concerned will be used, directly or indirectly, in whole or in part—

- (i) to commit or facilitate the commission of a specified offence;
 - (ii) 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; or
 - (iii) for the benefit of a specific entity identified in a notice issued by the President under section 25,
is guilty of an offence.
- (2) Any person who, directly or indirectly, in whole or in part, and by any means or method—
 - (a) deals with, enters into or facilitates any transaction or performs any other act in connection with property which such person knows or ought reasonably to have known or suspected to have been acquired, collected, used, possessed, owned or provided—
 - (i) to commit or facilitate the commission of a specified offence;
 - (ii) 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; or
 - (iii) for the benefit of a specific entity identified in a notice issued by the President under section 25; or
 - (b) provides financial or other services in respect of property referred to in paragraph (a),
is guilty of an offence.
- (3) Any person who knows or ought reasonably to have known or suspected that property is property referred to in subsection (2) (a) and enters into, or becomes concerned in, an arrangement which in any way has or is likely to have the effect of—
 - (a) facilitating the retention or control of such property by or on behalf of—
 - (i) an entity which commits or attempts to commit or facilitates the

commission of a specified offence; or

- (ii) a specific entity identified in a notice issued by the President under section 25;
- (b) converting such property;
- (c) concealing or disguising the nature, source, location, disposition or movement of such property, the ownership thereof or any interest anyone may have therein;
- (d) removing such property from a jurisdiction; or
- (e) transferring such property to a nominee, is guilty of an offence.

5. Offences relating to explosive or other lethal devices

Any person who intentionally delivers, places, discharges or detonates an explosive or other lethal device in, into or against a place of public use, a state or government facility, a public transport facility, a public transportation system, or an infrastructure facility, with the purpose, amongst others, of causing—

- (a) death or serious bodily injury; or
 - (b) extensive damage to, or destruction of such a place, facility or system, where such destruction results in or is likely to result in major economic loss,
- is guilty of an offence relating to explosive or other lethal devices.

6. Offences relating to hijacking, destroying or endangering safety of a fixed platform

Any person who intentionally—

- (a) seizes or exercises control over a fixed platform by force or any other form of intimidation;
- (b) performs an act of violence against a person on board a fixed platform, which act is likely to endanger the safety of that fixed platform;
- (c) (i) destroys such a fixed platform; or

- (ii) causes damage to it, which damage is likely to endanger the safety of that fixed platform;
- (d) places or causes to be placed on a fixed platform, by any means whatsoever, a device or substance, which is likely to destroy that fixed platform or likely to endanger its safety; or
- (e) injures or kills any person in connection with the commission of any of the acts referred to in paragraphs (a) to (d),
is guilty of an offence relating to the hijacking, destroying or endangering of a fixed platform.

7. Offences relating to taking a hostage

Any person who intentionally—

- (a) seizes or detains; and
- (b) threatens to kill, to injure or to continue to detain,
any other person (hereinafter referred to as a hostage), in order to compel a third party, namely a State, an intergovernmental organisation, a natural or juridical person, or a group of persons to do or abstain from doing any act as an explicit or implicit condition for the release of the hostage, is guilty of an offence of taking a hostage.

8. Offences relating to causing harm to internationally protected persons

Any person who, knowing that a person is an internationally protected person, intentionally—

- (a) murders or kidnaps or otherwise violently attacks the person or liberty of that person; or
- (b) executes a violent attack upon the official premises, the private accommodation or the means of transport of that person, which attack is likely to endanger his or her person or liberty,
is guilty of an offence relating to causing harm to an internationally protected person.

9. Offences relating to hijacking an aircraft

Any person who intentionally, by force or threat thereof, or by any other form of intimidation, seizes or exercises control of an aircraft and with the purpose of—

- (a) causing any person on board the aircraft to be detained against his or her will;
 - (b) causing any person on board the aircraft to be transported against his or her will to any place other than the next scheduled place of landing of the aircraft;
 - (c) holding any person on board the aircraft for ransom or to service against his or her will; or
 - (d) causing that aircraft to deviate from its flight plan,
- is guilty of an offence of hijacking an aircraft.

10. Offences relating to hijacking a ship or endangering safety of maritime navigation

Any person who intentionally—

- (a) seizes or exercises control over a ship by force or threat thereof or any other form of intimidation;
- (b) performs any act of violence against a person on board a ship if that act is likely to endanger the safe navigation of that ship;
- (c) destroys a ship or causes damage to a ship or to its cargo which is likely to endanger the safe navigation of that ship;
- (d) places or causes to be placed on a ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or causes damage to that ship or its cargo which endangers or is likely to endanger the safe navigation of that ship;
- (e) destroys or seriously damages maritime navigational facilities or seriously interferes with their operation, if such acts are likely to endanger the safe navigation of a ship;
- (f) communicates information, knowing the information to be false and under

circumstances in which such information may reasonably be believed, thereby endangering the safe navigation of a ship; or

- (g) injures or kills a person, in connection with the commission of any of the acts set forth in paragraphs (a) to (f),

is guilty of an offence relating to hijacking a ship or endangering the safety of maritime navigation.

PART 3

Other offences

11. Offences relating to harbouring or concealment of persons committing specified offences

Any person who harbours or conceals any person, whom he or she knows, or ought reasonably to have known or suspected, to be a person who has committed a specified offence, as referred to in paragraph (a) of the definition of "specified offence", or who is likely to commit such an offence, is guilty of an offence.

12. Duty to report presence of person suspected of intending to commit or having committed an offence and failure to so report

- (1) Any person who—
- (a) has reason to suspect that any other person intends to commit or has committed an offence referred to in this Chapter; or
- (b) is aware of the presence at any place of any other person who is so suspected of intending to commit or having committed such an offence, must report as soon as reasonably possible such suspicion or presence, as the case may be, or cause such suspicion or presence to be reported to any police official.
- (2) Any person who fails to comply with the provisions of subsection (1) (a) or (b), is guilty of an offence.
- (3) Upon receipt of a report referred to in subsection (1), the police official involved, must take down the report in the manner directed by the National Commissioner, and forthwith provide the person who made the report with an acknowledgement of receipt of such report.

- (4) (a) The National Commissioner must, at the commencement of this Act, publish the direction contemplated in subsection (3) in the Gazette.
- (b) Any direction issued under subsection (3) must be tabled in Parliament.
- (5) A person required to make a report in terms of subsection (1) concerning a suspicion that any other person intends to commit or has committed an offence referred to in section 4, may continue with and carry out any transaction to which such a suspicion relates, unless directed in terms of subsection (6) not to proceed with such a transaction.
- (6) If a police official authorised thereto by the National Commissioner, after consulting with a person required to make a report contemplated in subsection (5), has reasonable grounds to suspect that a transaction referred to in that subsection may constitute an offence contemplated in section 4, that police official may direct that person, in writing, not to proceed with the carrying out of that transaction or any other transaction in respect of the property affected by that transaction for a period as may be determined by that police official, which may not be more than five days.
- (7) For the purposes of calculating the period of five days in subsection (6), Saturdays, Sundays and proclaimed public holidays must not be taken into account.
- (8) Subsection (6) does not apply to the carrying out of a transaction to which the rules of an exchange licensed in terms of the Stock Exchanges Control Act, 1985 (Act 1 of 1985), or the Financial Markets Control Act, 1989 (Act 55 of 1989), apply.

13. Offences relating to hoaxes

- (1) (a) Any person who, with the intention of inducing in a person anywhere in the world a false belief that a substance, thing or device is, or contains, or is likely to be, or contains a noxious substance or thing or an explosive or other lethal device—
 - (i) places that substance, thing or device in any place; or

- (ii) sends that substance, thing or device from one place to another, by post, rail or any other means whatsoever,
is guilty of an offence.
- (b) Any person who, directly or indirectly, communicates any information, which he or she knows, or ought reasonably to have known or suspected, or believes to be false, with the intention of inducing in a person anywhere in the world a belief that a noxious substance or thing or an explosive or other lethal device is likely to be present (whether at the time the information is communicated or later) in or at any place, is guilty of an offence.
- (2) For the purposes of this section "substance" includes any biological agent and any other natural or artificial substance (whatever its form, origin or method of production).

14. Threat, attempt, conspiracy and inducing another person to commit offence

Any person who—

- (a) threatens;
- (b) attempts;
- (c) conspires with any other person; or
- (d) aids, abets, induces, incites, instigates, instructs or commands, counsels or procures another person,
to commit an offence in terms of this Chapter, is guilty of an offence.

CHAPTER 3
PROVISIONS RELATING TO OFFENCES AND PENALTIES

PART 1

Provisions relating to offences

15. Jurisdiction in respect of offences

- (1) A court of the Republic has jurisdiction in respect of any specified offence as defined in paragraph (a) of the definition of "specified offence", if—
- (a) the accused was arrested in the territory of the Republic, or in its territorial waters or on board a ship or aircraft registered or required to be registered in the Republic; or
- (b) the offence was committed—
- (i) in the territory of the Republic;
 - (ii) on board a vessel, a ship, an off-shore installation, or a fixed platform, or an aircraft registered or required to be registered in the Republic at the time the offence was committed;
 - (iii) by a citizen of the Republic or a person ordinarily resident in the Republic;
 - (iv) against the Republic, a citizen of the Republic or a person ordinarily resident in the Republic;
 - (v) on board an aircraft in respect of which the operator is licensed in terms of the Air Services Licensing Act, 1990 (Act 115 of 1990), or the International Air Services Act, 1993 (Act 60 of 1993);
 - (vi) against a government facility of the Republic abroad, including an embassy or other diplomatic or consular premises, or any other property of the Republic;
 - (vii) when during its commission, a national of the Republic is seized, threatened, injured or killed;

- (viii) in an attempt to compel the Republic to do or to abstain or to refrain from doing any act; or
- (c) the evidence reveals any other basis recognised by law.
- (2) Any act alleged to constitute an offence under this Act and which is committed outside the Republic by a person other than a person contemplated in subsection (1), shall, regardless of whether or not the act constitutes an offence or not at the place of its commission, be deemed to have been committed also in the Republic if that—
 - (a) act affects or is intended to affect a public body, any person or business in the Republic;
 - (b) person is found to be in the Republic; and
 - (c) person is for one or other reason not extradited by the Republic or if there is no application to extradite that person.
- (3) Any offence committed in a country outside the Republic as contemplated in subsection (1) or (2), is, for the purpose of determining the jurisdiction of a court to try the offence, deemed to have been committed—
 - (a) at the place where the accused is ordinarily resident; or
 - (b) at the accused person's principal place of business.
- (4) Where a person is charged with conspiracy or incitement to commit an offence or as an accessory after that offence, the offence is deemed to have been committed not only at the place where the act was committed, but also at every place where the conspirator, inciter or accessory acted or, in case of an omission, should have acted.
- (5) Whenever the National Commissioner receives information from an appropriate government body of a foreign State that a person who is alleged to have committed or is convicted of or is sentenced in respect of any Convention offence in respect of which—
 - (a) a court in the Republic has jurisdiction as referred to in subsection (1); or

- (b) any court in a foreign State may have jurisdiction, may be present in the Republic, the National Commissioner must cause such measures to be taken as he or she may deem necessary to investigate the matter.
- (6) Where it appears on reasonable grounds from the investigation referred to in subsection (5) that extradition or criminal proceedings may be instituted against such person, that person may be arrested as contemplated in section 40(1) of the Criminal Procedure Act, 1977 (Act 51 of 1977), in order to ensure his or her presence at such proceedings.
- (7) The National Director must, upon an arrest contemplated in subsection (6), promptly be notified thereof by the police official effecting such arrest.
- (8) Upon being notified in terms of subsection (7), the National Director must promptly notify any foreign State that might have jurisdiction over the offence in question, either directly or through the Secretary General of the United Nations—
 - (a) of the fact that the person is in custody;
 - (b) of the circumstances that justify the person's detention; and
 - (c) whether he or she intends to prosecute the person, with a view to the surrender of such person to a foreign State for prosecution by that State, should the National Director decline to prosecute.
- (9) The provisions of this section must be exercised subject to the provisions of the Extradition Act, 1962 (Act 67 of 1962).

16. Consent of National Director to institute proceedings and reporting obligations

- (1) No prosecution under Chapter 2 may be instituted without the written authority of the National Director.
- (2) The National Director must communicate the final outcome of the proceedings promptly to—

- (a) the Secretary General of the United Nations, so that he or she may transmit the information to other members of the United Nations, if a person is prosecuted for an offence referred to in section 4, 5, 7 or 8;
- (b) the Council of the International Civil Aviation Organization, if a person is prosecuted for an offence referred to in section 9; or
- (c) the Secretary General of the International Maritime Organization, if a person is prosecuted for an offence referred to in section 6 or 10.

17. Evidential matters and exclusions

- (1) If in any proceedings in a court of law any question arises as to whether or not any person is an internationally protected person, or is pursuant to international law entitled to special protection from any attack on his or her person, freedom or dignity, a certificate under the hand or issued under the authority of the Director General of the Department of Foreign Affairs, stating any fact relating to that question, is prima facie evidence of that fact.
- (2) A person commits an offence under section 2, 3, 4, 11, 12 (2) or 14 (in so far as it relates to the aforementioned sections), notwithstanding whether the terrorist activity occurs or not.
- (3) A person commits an offence under section 3, 4, 11 or 14 (in so far as it relates to the aforementioned sections), whether or not—
 - (a) the actions of the accused actually enhance the ability of any person to commit a specified offence; or
 - (b) the accused knows or ought reasonably to have known or suspected the specific offence that may be committed.
- (4) Nothing in section 4 makes it an offence to provide or collect funds intending that they be used, or knowing or while a person ought reasonably to have known or suspected that they are to be used, for the purpose of advocating democratic government or the protection of human rights.
- (5) If a person reports the presence of a person referred to in section 11, as soon as possible in accordance with section 12, he or she shall not be liable for prosecution, under section 11.

- (6) A person charged with committing an offence under section 4 may raise as a defence—
- (a) the fact that he or she had performed any act in connection with the property in question, or allowed or facilitated the performance of any act in connection with that property, solely for the purpose of preserving the value of that property; or
 - (b) that he or she acted in good faith and reported his or her suspicion in accordance with section 12 of this Act, or section 29 of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), as the case may be.
- (7) No action, whether criminal or civil, lies against a person complying in good faith with section 12(1).
- (8) A person who has made, initiated or contributed to a report in terms of section 12(1) concerning a suspicion that any other person intends to commit or has committed an offence referred to in section 4 is competent, but not compellable, to give evidence in criminal proceedings arising from the report.
- (9) No evidence concerning the identity of a person who has made, initiated or contributed to a report in terms of section 12(1) concerning a suspicion that any other person intends to commit or has committed an offence referred to in section 4, is admissible as evidence in criminal proceedings unless that person testifies at those proceedings.
- (10) A person who acts reasonably in taking or omitting to take measures to comply with section 4 (2) shall not be liable in any civil action arising from having taken or omitted to have taken those measures, if the person proves that he or she took all reasonable steps to satisfy himself or herself that the relevant property was not owned, controlled or possessed by, or on behalf of or for the benefit of or at the direction of, an entity referred to in the said section 4 (2).
- (11) A person is guilty of an offence under section 13(1)(a) or (b), whether or not he or she has any particular person in mind as the person in whom he or she intends to induce the belief in question.

PART 2**Penalties and matters relating to penalties****18. Penalties**

- (1) A person who is convicted of an offence referred to in—
- (a) section 2, 5, 6, 7, 8, 9 or 10 is liable—
 - (i) in the case of a sentence to be imposed by a High Court, to a fine or to imprisonment for a period up to imprisonment for life;
 - (ii) in the case of a sentence to be imposed by a regional court, to a fine or to imprisonment for a period not exceeding 18 years;
 - (iii) in the case of a sentence to be imposed by any magistrate's court, to a fine or to imprisonment for a period not exceeding five years;
 - (b) section 3 or 11 is liable—
 - (i) in the case of a sentence to be imposed by a High Court or a regional court, to a fine or to imprisonment for a period not exceeding 15 years;
 - (ii) in the case of a sentence to be imposed by any magistrate's court, to any penalty which may lawfully be imposed by that court;
 - (c) section 4, is liable—
 - (i) in the case of a sentence to be imposed by a High Court or a regional court, to a fine not exceeding R100 million or to imprisonment for a period not exceeding 15 years;
 - (ii) in the case of a sentence to be imposed by any magistrate's court, to a fine not exceeding R250 000,00, or to imprisonment for a period not exceeding five years;
 - (d) section 13(1)(a) or (b), is liable—
 - (i) in the case of a sentence to be imposed by a High Court or a regional court, to a fine or to imprisonment for a period not exceeding 10 years;

- (ii) in the case of a sentence to be imposed by any magistrate's court, to any penalty which may lawfully be imposed by that court;
- (e) section 12(2), is liable—
 - (i) in the case of a sentence to be imposed by a High Court or a regional court, to a fine or to imprisonment for a period not exceeding five years;
 - (ii) in the case of a sentence to be imposed by any magistrate's court, to any penalty which may lawfully be imposed by that court;
- (f) section 14, is liable to the punishment laid down in paragraph (a), (b), (c), (d) or (e) for the offence which that person threatened, attempted or conspired to commit or aided, abetted, induced, instigated, instructed, commanded, counselled or procured another person to commit.
- (2) (a) The court, in imposing a sentence on a person who has been convicted of an offence under section 13(1)(a) or (b), may order that person to reimburse any party incurring expenses incidental to any emergency or investigative response to that conduct, for those expenses.
- (b) A person ordered to make reimbursement under paragraph (a), shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under that paragraph for the same expenses.
- (c) An order of reimbursement under paragraph (a), shall, for the purposes of enforcement, be treated as a civil judgment.

19. Declarations of forfeiture on conviction

- (1) Whenever any person is convicted of an offence under this Act, the court in passing sentence must, in addition to any punishment which that court may impose in respect of the offence, declare any property which is reasonably believed to have been used—
 - (a) in the commission of the offence; or
 - (b) for the purpose of or in connection with the commission of the offence, and which was seized under any power exercised under section 22, or is in

the possession or custody or under the control of the convicted person, to be forfeited to the State.

- (2) The court which makes a declaration of forfeiture of property referred to in subsection (1), must order the registrar of the High Court concerned or clerk of the Magistrate's Court for the district concerned to forthwith publish such declaration calling upon interested parties through the media and by notice in the Gazette.
- (3) Anything forfeited under subsection (1) must, if it was seized under any power exercised under section 22, be kept or, if it is in the possession or custody or under the control of the convicted person, be seized and kept—
 - (a) for a period of 45 days after the date of the notice published in the Gazette; or
 - (b) if any person referred to in section 20(1) has, within the period contemplated in paragraph (a), made an application to the court concerned regarding his or her interest in such thing, until a final decision has been rendered in respect of any such application.

20. Interests of third parties

- (1) A declaration of forfeiture in terms of section 19(1) does not affect any interest, which any person other than the convicted person may have in the property in question, if the former person proves—
 - (a) that he or she acquired the interest in that property in good faith and for consideration, whether in cash or otherwise; and
 - (b) that—
 - (i) the circumstances under which he or she acquired the interest in that property were not of such a nature that he or she knew or ought reasonably to have known or suspected that it was property used as contemplated in section 19(1); or
 - (ii) he or she could not prevent the use of that property as contemplated in that section.

- (2) (a) Subject to the provisions of subsection (1), the court concerned or, if the judge or judicial officer concerned is not available, any judge or judicial officer of that court, may at any time within a period of three years from the date of the declaration of forfeiture, on the application of any person, other than the convicted person, who claims that he or she has any interest in the property in question, inquire into and determine any such interest.
- (b) If a court referred to in paragraph (a) finds—
- (i) that the property is wholly owned by the applicant, the court must set aside the declaration of forfeiture in question and direct that the property be returned to the applicant or, if the State has disposed of it, direct that the applicant be compensated by the State in an amount equal to the value of the property disposed of; or
 - (ii) that the applicant has an interest in the property—
 - (aa) the court must direct that the property be sold by public auction and that the applicant be paid out of the proceeds of the sale an amount equal to the value of his or her interest therein, but not exceeding the proceeds of the sale; or
 - (bb) if the State has disposed of the property, the court must direct that the applicant be compensated by the State in an amount equal to the value of his or her interest therein.
- (3) Any person aggrieved by a determination made by the court under subsection (2), may appeal against the determination as if it were a conviction by the court making the determination, and such appeal may be heard either separately or jointly with an appeal against the conviction as a result of which the declaration of forfeiture was made, or against a sentence imposed as a result of such conviction.

21. Evidence in respect of declarations of forfeiture and certain interests

In order to make a declaration of forfeiture under section 19(1) or to determine any interest under section 20(2), the court may refer to the evidence and proceedings at the trial or hear such further evidence, either orally or by affidavit, as it may deem fit.

CHAPTER 4
INVESTIGATING POWERS AND FREEZING ORDERS

22. Investigating powers

- (1) Whenever the National Director has reason to believe that—
- (a) any person may be in possession of information relevant to—
- (i) the commission or intended commission of an alleged offence under Chapter 2; or
 - (ii) any property which—
 - (aa) may have been used in the commission, or for the purpose of or in connection with the commission, of an offence under this Act;
 - (bb) may have facilitated the commission of an offence under this Act, or enabled any entity to commit such an offence, or provided financial or economic support to an entity in the commission of such an offence; or
 - (cc) may afford evidence of the commission or intended commission of an offence referred to in subparagraph (i);
- (b) there may be in any building, receptacle or place, or in the possession, custody or control of any entity any property referred to in paragraph (a)(ii); or
- (c) any entity may be in possession, custody or control of any documentary material relevant—
- (i) to an alleged offence referred to in paragraph (a)(i); or
 - (ii) in respect of any property referred to in paragraph (a) (ii) or (b),

he or she may, prior to the institution of any civil or criminal proceeding, under written authority direct that a 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 (Act 32 of 1998), relating to the commission or intended commission of

an alleged offence referred to in paragraph (a)(i) or any property contemplated in paragraph (a)(ii), or to any property referred to in paragraph (b), or to the possession, custody or control of any documentary material referred to in paragraph (c).

- (2) For purposes of subsection (1), a reference in the said Chapter 5 to—
 - (a) the “head of the Directorate of Special Operations” or an “Investigating Director” shall be construed as a reference to a Director of Public Prosecutions authorized under subsection (1): Provided that for purposes of section 28 (2)(a) of the said Act, a Director of Public Prosecutions, may only designate a Deputy Director of Public Prosecutions;
 - (b) a “special investigator” shall be construed as to include a “police official”.
- (3) If any property, contemplated in subsection (1)(a)(ii), seized under any power exercised under subsection (1), consists of cash or funds standing to the credit of a bank account, the Director of Public Prosecutions who has instituted the investigation under that subsection, shall cause the cash or funds to be paid into a banking account which shall be opened with any bank as defined in section 1 of the Banks Act, 1990 (Act 94 of 1990), and the Director of Public Prosecutions shall forthwith report to the Financial Intelligence Centre established in terms of section 2(1) of the Financial Intelligence Centre Act, 2001 (Act 38 of 2001), the fact of the seizure of the cash or funds and the opening of the account.

23. Freezing order

- (1) A High Court may, on ex parte application by the National Director to a judge in chambers, make an order prohibiting any person from engaging in any conduct, or obliging any person to cease any conduct, concerning property in respect of which there are reasonable grounds to believe that the property is owned or controlled by or on behalf of, or at the direction of—
 - (a) any entity which has committed, attempted to commit, participated in or facilitated the commission of a specified offence; or
 - (b) a specific entity identified in a notice issued by the President under section 25.

- (2) An order made under subsection (1) may include an order to freeze any such property.
- (3) A High Court may make an interim order under subsection (1) pending its final determination of an application for such an order.

24. Cordoning off, stop and search of vehicle and person

- (1) If, on written request under oath to a judge in chambers by a police official of or above the rank of director, it appears to the judge that it is necessary in order to prevent any terrorist or related activity, the judge may issue a warrant for the cordoning off, and stopping and searching of vehicles and persons with a view to preventing such terrorist or related activity, in a specified area, and such warrant applies for the period specified therein, which period may not exceed 10 days.
- (2) Under such warrant any police official who identifies himself or herself as such, may cordon off the specified area for the period specified and stop and search any vehicle or person in that area, for articles or things which could be used or have been used for or in connection with the preparation for or the commission or instigation of any terrorist or related activity.
- (3) The police official may seize any article or thing contemplated in subsection (2), and Chapter 2 of the Criminal Procedure Act, 1977 (Act 51 of 1977), applies with the necessary changes required by the context in respect of any such article or thing.
- (4) Section 29 of the Criminal Procedure Act, 1977 (Act 51 of 1977), applies in respect of the powers conferred upon police officials in terms of this section.
- (5) The provisions of this section shall not be construed as affecting the rights of any police official or law enforcement officer to use any other power in any other law in respect of cordoning off, search or seizure.

CHAPTER 5

RESOLUTION OF UNITED NATIONS SECURITY COUNCIL

25. Notification by President in respect of entities identified by United Nations Security Council

The President must, by Proclamation in the Gazette, and other appropriate means of publication, give notice that the Security Council of the United Nations, under Chapter VII of the Charter of the United Nations, has identified a specific entity as being—

- (a) an entity who commits, or attempts to commit, any terrorist and related activity or participates in or facilitates the commission of any terrorist and related activity; or
- (b) an entity against whom Member States of the United Nations must take the actions specified in Resolutions of the said Security Council, in order to combat or prevent terrorist and related activities.

26. Parliamentary supervision

Every Proclamation issued under section 25 shall be tabled in Parliament for its consideration and decision and Parliament may thereupon take such steps as it may consider necessary.

CHAPTER 6
GENERAL PROVISIONS

27. Amendment and repeal of laws and transitional provisions

- (1) The laws set out in the Schedule are hereby amended or repealed to the extent indicated in the fourth column of that Schedule.
- (2) All criminal proceedings which immediately prior to the commencement of this Act were instituted in terms of the provisions of the Internal Security Act, 1982 (Act 74 of 1982), and which proceedings have not been concluded before the commencement of this Act, shall be continued and concluded, in all respects 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 Internal Security Act, 1982, and which occurred after the commencement of that Act but before the commencement of this Act, may be conducted, instituted and continued as if this Act had not been passed.
- (4) Notwithstanding the repeal or amendment of any provision of any law by this Act, such provision shall, for the purpose of the disposal of any criminal proceedings, investigation, prosecution or legal proceedings contemplated in subsection (2) or (3), remain in force as if such provision had not been repealed or amended.

28. Short title and commencement.

This Act is called the Protection of Constitutional Democracy against Terrorist and Related Activities Act, 2004, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

COMMENCEMENT OF THIS ACT

| Date of commencement | The whole Act/ Sections | Proclamation No | Government Gazette | Date of Government Gazette |
|----------------------|----------------------------|--------------------|-----------------------|----------------------------------|
| 20 May, 2005 | The whole | R.18 | 27502 | 15 April, 2005 |

Schedule

SCHEDULE OF LAWS AMENDED OR REPEALED: SECTION 27

| Act No. | Year | Title | Extent of amendment or repeal |
|---------|------|--|--|
| 67 | 1962 | Extradition Act | 1. Inserts section 22. |
| 51 | 1977 | Criminal Procedure Act | 1. Inserts offences in Schedule 5. 2. Inserts offences in Schedule 6. |
| 74 | 1982 | Internal Security Act | 1. Repeals the whole. |
| 87 | 1993 | Non-Proliferation of Weapons of Mass Destruction Act | 1. Amends section 26(1) as follows:—sub-item (a) substitutes paragraph (h); sub-item (b) inserts paragraphs (j) and (k); sub-item (c) inserts sub-paragraph (v); and sub-item (d) inserts section 26A. |
| 105 | 1997 | Criminal Law Amendment Act | 1. Adds an item to Part I of Schedule 2. 2. Adds an item to Part II of Schedule 2. |
| 121 | 1998 | Prevention of Organised Crime Act | 1. Substitutes the long title. 2. Amends the preamble as follows:—sub-item (a) inserts a paragraph after the tenth |

| | | | |
|----|------|-----------------------------------|--|
| | | | <p>paragraph; and sub-item (b) substitutes the eleventh paragraph.</p> <p>3. Amends section 1 as follows:—sub-item (a) inserts the definition of “entity”; and sub-item (b) inserts the definition of “property associated with terrorist and related activities”.</p> <p>4. Substitutes section 38(2).</p> <p>5. Substitutes section 50(1).</p> <p>6. Substitutes section 51.</p> <p>7. Amends section 52 as follows:—sub-item (a) substitutes subsection (2A); sub-item (b) substitutes subsection (3); and sub-item (c) substitutes subsection (4).</p> <p>8. Substitutes section 54(8A).</p> <p>9. Substitutes section 68(b).</p> <p>10. Inserts item 32A in Schedule 1.</p> |
| 46 | 1999 | Nuclear Energy Act | <p>1. Inserts section 34A.</p> <p>2. Amends section 56(1) by inserting paragraph (h).</p> <p>3. Amends section 56(2) by inserting paragraph (d).</p> <p>4. Inserts section 56A.</p> |
| 38 | 2001 | Financial Intelligence Centre Act | <p>1. Substitutes the long title.</p> <p>2. Amends section 1 as follows:—sub-item (a) inserts the definition of “entity”; and sub-</p> |

| | | | |
|----|------|---|---|
| | | | <p>item (b) inserts the definition of "offence relating to the financing of terrorist and related activities".</p> <ol style="list-style-type: none">3. Substitutes section 3(1).4. Substitutes the heading to Chapter 3.5. Inserts section 28A.6. Substitutes section 29(1).7. Substitutes section 34(1).8. Amends section 35(1) by substituting paragraphs (a) and (b).9. Amends section 40(1) by substituting paragraph (b). |
| 70 | 2002 | Regulation of Interception of Communications and Provision of Communication-related Information Act | <ol style="list-style-type: none">1. Amends the Schedule as follows:—sub-item (a) substitutes item 2; and sub-item (b) deletes item 3. |

