

# **CRIMINAL ASSET RECOVERY ACCOUNT (CARA)**

**Annual Report**

**2010/11**



**the doj & cd**

Department:  
Justice and Constitutional Development  
REPUBLIC OF SOUTH AFRICA



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for the period ending 31 March 2011

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# CRIMINAL ASSETS RECOVERY ACCOUNT

## PART 1

### Report of the accounting officer



## INTRODUCTION

The Criminal Assets Recovery Account (CARA) is a separate account within the National Revenue Fund (NRF), into which monies and property are deposited following a judicial forfeiture or confiscation order. The confiscation and forfeiture processes, as well as the establishment of the CARA, are legislated in terms of the Prevention of Organised Crime Act, 1998 (Act No 121 of 1998) of 1998.

The underlying hypothesis of asset forfeiture legislation is that, by confiscating or forfeiting the profits or proceeds of crime, the incentive for committing specific crimes is reduced.

Section 64 of the Act regulates the constitution of the CARA. In particular, section 64(a) is of importance to the criminal asset recovery process, as it determines that all confiscated and forfeited monies and property are to be deposited into the CARA.

The CARA shall consist of the following:

- All monies derived from the fulfilment of confiscation and forfeiture orders contemplated in Chapter 5 and Chapter 6.
- All property derived from the fulfilment of forfeiture orders as contemplated in section 57.
- The balance of all monies derived from the execution of foreign confiscation orders as defined in the International Cooperation in Criminal Matters Act, 1996 (Act No 75 of 1996), after payments have been made to requesting states in terms of that Act.
- Any property or monies appropriated by Parliament, paid into or allocated to the CARA in terms of any other Act.
- Domestic and foreign grants.
- Any property or amount of money received or acquired from any source.
- All property or monies transferred to the CARA in terms of this Act.

## PURPOSE OF THE CARA

In terms of section 69(a) of the Act, Cabinet may utilise the property and money allocated to or standing to the credit of the CARA – after considering the recommendations of the committee – for the following:

- The benefit of specific law enforcement agencies.
- The benefit of any institution, organisation or fund contemplated in section 68(c) of the Act.
- The administration of the CARA.

## THE CRIMINAL ASSETS RECOVERY COMMITTEE

Section 65 of the Act establishes a Criminal Assets Recovery Committee (CARC), which is responsible for providing Cabinet with recommendations on the utilisation of the CARA and providing advice on specific issues related to the criminal assets recovery process.

The Committee consists of the following members:

- The Minister for Justice and Constitutional Development, Mr JT Radebe, MP (Chairperson)
- The Minister of Police, Mr Nathi Mthethwa, MP (Deputy Chairperson)
- The Minister of Finance, Mr Pravin Gordhan, MP
- The Minister of Social Development, Ms Bathabile Olive Dlamini, MP
- The Minister of Public Works, Ms Gwendoline Lindiwe Mahlangu-Nkabinde, MP
- The National Director of Public Prosecutions, Advocate Menzi Simelane

Section 69 of the Prevention of Organised Crime Act provides that monies and property in the CARA may only be distributed to beneficiaries on recommendation by the CARC and after approval by Cabinet.

As at 31 March 2011, R257 million was available in the CARA (in comparison to R206 million in 2010). The CARC recommended that R250 million be allocated in the year under review. However, Cabinet will consider the recommendations in the new financial year.

## FINANCIAL STATEMENTS

The financial statements for the year ended 31 March 2011 have been prepared on a modified cash basis of accounting, except where stated otherwise. The modified cash basis constitutes the cash basis of accounting supplemented with additional disclosure items in accordance with the directive of the Office of the Accountant-General obtained in 2011.

### Standing Committee on Public Accounts

The following issues are outstanding:

- Processes and policies for the CARA were developed and the Grant Management Policy and Asset Management Policy were approved by the Committee on 22 March 2011.
- The Asset Forfeiture Unit uses the Electronic Case Management System. At a meeting held in March 2011, National Treasury recommended that, due to the complex nature of the CARA, a further feasibility and accounting system requirements needs analysis will be done in the new financial year. A financial system will be acquired upon finalisation of the feasibility study to prepare the annual financial statements electronically.
- The committee met on 22 March 2011 and recommended an allocation of R250 million in terms of the Act. The Cabinet memorandum on the recommendations will be considered in the new financial year.

### Payments made directly to victims

In those instances where the court orders that payments be made directly to victims, these payments do not form parts of these accounts.

## CONCLUSION

We are optimistic that all the initiatives that are underway will proactively address the currently identified challenges and will result in more effective management of the CARA.

Our appreciation towards the loyal support and valuable contributions of the various stakeholders is hereby acknowledged.

The financial statements, as set out on pages 18 to 22 have been approved by the accounting officer.



**Ms N Sindane**  
**Accounting Officer**  
**Department of Justice and Constitutional**  
**Development**  
**Date: 31 May 2011**





**CRIMINAL ASSETS RECOVERY ACCOUNT**

**PART 2**

**Report of the Audit Committee**



# REPORT OF THE AUDIT COMMITTEE

We are pleased to present our report for the financial year ended 31 March 2011.

## AUDIT COMMITTEE

The Audit Committee consists of the members listed below. It is required to meet at least four times per annum, in accordance with its approved terms of reference. Eight meetings were held during the year under review. These included special meetings that were held to address audit concerns and qualification matters in the department.

Names of members	Number of meetings attended	Status
Mr Motsamai Karedi (Chairperson)	8	Reappointed 15 December 2009
Mr Cedric Boltman	8	Reappointed 15 December 2009
Ms Bajabulile Luthuli	7	Appointed 15 December 2009
Ms Matshego Ramagaga	4	Appointed 15 December 2009
Ms Zodwa Manase	3	Appointed 15 December 2009
Mr Wilson Ramabulana	7	Appointed 15 December 2009

## AUDIT COMMITTEE RESPONSIBILITY

We report that we have adopted appropriate formal terms of reference in our charter in line with the requirement of section 38(l)(a) of the Public Finance Management Act, 1999 (Act No 1 of 1999) and Treasury Regulation 3.1.

## THE EFFECTIVENESS OF INTERNAL CONTROL

There were no significant control weaknesses and risks reported to the Audit Committee and we are satisfied that key controls remained in place throughout the year. Where deficiencies in internal control were identified, management demonstrated commitment in addressing them.

Management was also able to obtain clarity from National Treasury on the accounting framework for the CARA. The framework will improve financial reporting and oversight provided by the Audit Committee in coming years.

## INTERNAL AUDIT

The Internal Audit Unit of the Department of Justice and Constitutional Development is also responsible for auditing the CARA. The unit has discharged its responsibilities in accordance with the Internal Audit Plan.

## AUDITOR-GENERAL OF SOUTH AFRICA

We have met with the Auditor-General of South Africa to ensure that there are no unresolved issues.

## The quality of in-year management and monthly/quarterly reports submitted in terms of the PFMA

We are satisfied with the content and quality of monthly and quarterly reports prepared and issued by the department's accounting officer during the year under review. However, we have noted the Auditor-General's concerns relating to the department's reporting on performance information in terms of the required auditing standards.

Management has undertaken to effect the recommended improvements and we will continuously monitor the progress in that regard.

## Evaluation of financial statements

We have done the following:

- Reviewed and discussed the audited annual financial statements to be included in the annual report with the Auditor-General of South Africa and the accounting officer.
- Reviewed the Auditor-General of South Africa's management letter and management's response to it.
- Reviewed the department's compliance with legal and regulatory provisions.

- Reviewed significant adjustments resulting from the audit.

We concur and accept the conclusions of the Auditor-General of South Africa's report on the annual financial statements and are of the opinion that the audited annual financial statements should be accepted, read together with the report of the Auditor-General of South Africa.



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**MKaredi**  
**Chairperson of the Audit Committee**  
8 August 2011



**CRIMINAL ASSETS RECOVERY ACCOUNT**

**PART 3**

**Report of the Auditor-General**



## INTRODUCTION

1. I have audited the accompanying financial statements of the Criminal Assets Recovery Account (CARA), which comprise the statement of financial position as at 31 March 2011, the statement of financial performance, the statement of changes in net assets and the cash flow statement for the year then ended, as well as a summary of significant accounting policies and other explanatory information, as set out on pages 18 to 22.

## ACCOUNTING OFFICER'S RESPONSIBILITY FOR THE FINANCIAL STATEMENTS

2. The accounting officer is responsible for the preparation of these financial statements in accordance with the Departmental Financial Reporting Framework prescribed by National Treasury and the requirements of the Public Finance Management Act, 1999 (Act No 1 of 1999) (PFMA), and for such control as management determines necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error.

## AUDITOR-GENERAL'S RESPONSIBILITY

3. As required by section 188 of the Constitution of the Republic of South Africa, 1996 (Act No 108 of 1996), section 4 of the Public Audit Act of South Africa, 2004 (Act No 25 of 2004) (PAA) and section 40(2) of the PFMA, my responsibility is to express an opinion on these financial statements based on my audit.
4. I conducted my audit in accordance with International Standards on Auditing and General Notice 1111 of 2010, issued in *Government Gazette* 33872 of 15 December 2010. Those standards require that I comply with ethical requirements,

and plan and perform the audit to obtain reasonable assurance about whether the financial statements are free from material misstatement.

5. An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the entity's preparation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the entity's internal control. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

6. I believe that the audit evidence I have obtained is sufficient and appropriate to provide a basis for my audit opinion.

## OPINION

7. In my opinion, the financial statements present fairly, in all material respects, the financial position of the CARA as at 31 March 2011, and its financial performance and cash flows for the year then ended, in accordance with the Departmental Financial Reporting Framework prescribed by National Treasury and the requirements of the PFMA.

## ADDITIONAL MATTER

8. I draw attention to the matter below. My opinion is not modified in respect of this matter.

## FINANCIAL REPORTING FRAMEWORK

9. The financial reporting framework prescribed by National Treasury and applied by the entity is a compliance framework. Thus, my opinion would have reflected that the financial statements had been properly prepared instead of fairly presented as required by section 20(2)(a) of the PAA, which requires me to express an opinion on the fair presentation of the financial statements of the entity.

## REPORT ON OTHER LEGAL AND REGULATORY REQUIREMENTS

10. In accordance with the PAA and in terms of General Notice 1111 of 2010, issued in *Government Gazette 33872* of 15 December 2010, I include below my findings of non-compliance with laws and regulations applicable to the CARA.

### Compliance with laws and regulations

11. The financial statements submitted for auditing did not comply with section 40(1) (b) of the PFMA. A material misstatement identified by the Auditor-General of South Africa with regard to contingent liabilities was subsequently corrected.

## INTERNAL CONTROL

12. In accordance with the PAA and in terms of General Notice 1111 of 2010, issued in *Government Gazette 33872* of 15 December 2010, I considered internal control relevant to my audit, but not for the purpose of expressing an opinion on the effectiveness of

internal control. The matters reported below are limited to the significant deficiencies that resulted in the findings on compliance with laws and regulations included in this report.

### Financial and performance management

13. Management did not implement proper recordkeeping in a timely manner to ensure that the financial statements were accurate and complete.

*Auditor-General*

Pretoria  
31 July 2011



AUDITOR-GENERAL  
SOUTH AFRICA





**PART 4**

**Financial statements**



# FINANCIAL STATEMENTS

## STATEMENT OF FINANCIAL PERFORMANCE

for the year ending 31 March 2011

	Notes	2010/11 R'000	2009/10 R'000
<b>REVENUE</b>			
Net proceeds from forfeiture and confiscation orders	13	50 105	51 223
		<b>50 105</b>	<b>51 223</b>
<b>Less: Expenditure</b>			
CARC allocations		-	-
		<b>50 105</b>	<b>51 223</b>
Other operating expenses/ (income)		-	-
<b>SURPLUS/(DEFICIT) FOR THE YEAR</b>	<b>13</b>	<b>50 105</b>	<b>51 223</b>

## STATEMENT OF FINANCIAL POSITION

for the year ending 31 March 2011

	Notes	2010/11 R'000	2009/10 R'000
<b>ASSETS</b>			
<b>Current assets</b>			
		<b>256 950</b>	<b>206 671</b>
Cash and cash equivalents	15	256 950	206 671
<b>TOTAL ASSETS</b>		<b>256 950</b>	<b>206 671</b>
<b>LIABILITIES</b>			
<b>Current liabilities</b>			
Payables	14	620	446
<b>CAPITAL AND RESERVES</b>			
<b>Total net assets</b>			
Accumulated surplus	16	256 330	206 225
<b>Total net assets and liabilities</b>		<b>256 950</b>	<b>206 671</b>

**STATEMENT OF CHANGES IN NET ASSETS**

for the year ending 31 March 2011

	Notes	2010/11 R'000	2009/10 R'000
<b>Accumulated surplus</b>			
Balance at 1 April 2010		206 225	155 002
Plus: Surplus/(deficit) for the year		50 105	51 223
<b>Balance as at 31 March 2011</b>	<b>16</b>	<b>256 330</b>	<b>206 225</b>

**CASH FLOW STATEMENT**

for the year ending 31 March 2011

	Notes	2010/11 R'000	2009/10 R'000
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>			
Cash receipts		50 279	51 657
Cash paid to beneficiaries and creditors			3 746
<b>Cash generated from/(utilised in) operations</b>	<b>17</b>	<b>50 279</b>	<b>47 911</b>
Investment income received		-	-
<b>Net cash inflows/(outflows) from operating activities</b>		<b>-</b>	<b>-</b>
<b>CASH FLOWS FROM INVESTMENT ACTIVITIES</b>			
Net cash flows from investment activities		-	-
<b>CASH FLOWS FROM FINANCING ACTIVITIES</b>			
Net cash flow from financing activities		-	-
<b>Net increase/(decrease) in cash and cash equivalents</b>		<b>50 279</b>	<b>47 911</b>
Cash and cash equivalents at the beginning of the period		206 671	158 760
<b>Cash and cash equivalents at the end of the period</b>	<b>15</b>	<b>256 950</b>	<b>206 671</b>

## NOTES TO THE FINANCIAL STATEMENTS

for the year ended 31 March 2011

	2010/11 R'000	2009/10 R'000
<b>13. Revenue</b>		
Confiscation orders	28 515	25 111
Forfeiture orders	21 590	26 112
	<b>50 105</b>	<b>51 223</b>
<b>14. Payables</b>		
Victims' payments incorrectly deposited into the CARA	72	25
Unidentified deposits	548	421
	<b>620</b>	<b>446</b>
<b>15. Cash and cash equivalents</b>		
South African Reserve Bank		
Opening balance as at 1 April	206 671	158 760
<b>Plus:</b> Funds received during the financial year	50 279	51 657
	256 950	210 417
<b>Less:</b> Funds repaid during the financial year	-	3 746
	<b>256 950</b>	<b>206 671</b>
<b>16. Accumulated surplus/(deficit)</b>		
Opening balance as at 1 April	206 225	155 002
<b>Plus:</b> Surplus/(deficit) for the year	50 105	51 223
<b>Balance at the end of the year</b>	<b>256 330</b>	<b>206 225</b>
<b>17. Cash generated from/(utilised in) operations</b>		
Surplus/(deficit) for the year	<b>50 105</b>	<b>51 223</b>
Reconciliation of unidentified deposits		
Unidentified deposits brought forward	421	58
Less: Identified in the current year	272	15
Balance carried forward	149	43
Plus: Unidentified deposits in the current year	399	378
Total: Unidentified deposits carried forward	548	421
Plus: Unidentified deposits in the current year	399	378
Plus: Other receipts	47	56
Less: Funds repaid during the financial year		3 746
Less: Unidentified deposits from previous year cleared in this year	272	-
<b>Net cash flows from operating activities</b>	<b>50 279</b>	<b>47 911</b>

## DISCLOSURE NOTES TO THE FINANCIAL STATEMENTS

### 18. Related parties

#### Name of related-parties relationship

Department of Justice and Constitutional Development	Department under common ministry
National Prosecuting Authority	Department under common ministry
Legal Aid Board	Entity under common ministry
Special Investigating Unit	Entity under common ministry

#### 18.1 Related-parties transactions

Compensation and administration costs for the CARA were paid by the National Prosecuting Authority until 30 September 2010 and the Department of Justice and Constitutional Development from 1 October 2010 to 31 March 2011. The details of the expenditure are shown below.

	National Prosecuting Authority	Department of Justice and Constitutional Development	Total
	R'000	R'000	R'000
Compensation of employees	566	779	1345
Goods and services		28	28
Audit fees		765	765
<b>Total</b>	<b>566</b>	<b>1 572</b>	<b>2 138</b>

### 19. Contingent assets

Total assets (including cash) forfeited to the state in pursuance of court orders, pending realisation and deposit into the CARA account, were valued at R670 as at 31 March 2011.

### 20. Contingent liabilities

At the meeting of the CARC on 22 March 2011, the committee recommended an amount of R250 million for distribution in terms of the Prevention of Organised Crime Act.

Cabinet will consider the recommendations in the new financial year.

### 21. Receivables

The gross value of cash held by curators pending finalisation of their fees and expenses amounted to R21 million at 31 March 2011.

The gross value of unrealised confiscation orders granted by the courts amounted to R57 million at 31 March 2011.

### 22. Contingent assets in the 2009/10 financial year

All the assets, receivables and inventory in the prior year were classified as contingent assets and the estimated value was R114 million at 31 March 2010.

## ANNEXURE

### Unaudited schedule of inventory at 31 March 2011

#### 23. Inventory

The forfeited assets to the CARA is valued at R12 million. The forfeited assets are classified as inventory as they will be realised and the net proceeds after deduction of curator fees and expenses will be deposited into the CARA.

Inventory consists of motor vehicles, equipment, furniture, household effects and cellphones.



# **CRIMINAL ASSET RECOVERY ACCOUNT**

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