

**REGULATIONS UNDER THE INTERNATIONAL CO-OPERATION IN CRIMINAL
MATTERS ACT, 1996 (ACT No.74 OF 1996) PUBLISHED IN GOVERNMENT NOTICE
NO. R. 1729 OF 19 DECEMBER 1997 (GOVERNMENT GAZETTE 18556)**

The Minister of Justice has, under section 33 of the International Co-operation in Criminal Matters Act, 1996 (Act 75 of 1996), made the regulations in the Schedule.

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ANNEXURE

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- FORM 4: Notice of registration of a foreign restraint order.

CHAPTER 1

GENERAL PROVISIONS

Definitions

1. In these regulations any word or expression to which a meaning has been assigned in the Act shall have such meaning and, unless the context otherwise indicates-

'apply' means apply on motion, and 'application' has a corresponding meaning;

'clerk of the court' means a clerk of the court appointed in terms of section 13 of the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), and includes an assistant clerk of the court;

'court day' means any day other than a Saturday, Sunday or public holiday;

'deliver' means , except in regulations 7, 11 and 15, to file with the clerk of the court and serve a copy on the opposite party;

'registrar' means a registrar or assistant registrar of the High Court appointed in terms of section 34 of the Supreme Court Act, 1959 (Act No. 59 of 1959), and includes an officer

appointed to act in the place of a registrar or assistant registrar in terms of the said section;

'sheriff' means a person appointed in terms of section 2 of the Sheriffs Act, 1986 (Act No. 90 of 1986), a person appointed in terms of sections 5 and 6 of that Act as an acting sheriff or a deputy sheriff, respectively, and also a messenger of the court appointed in terms of a law applicable in an affected territory contemplated in section 1 of the Justice Laws Rationalisation Act, 1996 (Act No.18 of 1996); and

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

Representation of government of a foreign State

2. A letter of request sent to the Director-General by the appropriate government body of a foreign State shall, unless the contrary is proved, be deemed to constitute the authorisation of the government of that State to the government of the Republic to act on that foreign State's behalf in any proceedings under the Act.

**CHAPTER 2
PROOF OF MATTERS**

Authentication, certification and proof of foreign documents

3. (1) Any deposition, affidavit, record or document, or any copy or sworn translation thereof, contemplated in section 30 of the Act, purporting to be authenticated in accordance with the provisions of the said section, shall be deemed to be duly authenticated for the purposes of that section and admissible by mere submission, and, if received in evidence, shall be *prima facie* proof of any fact stated therein.

(2) Any document purporting to be a copy of any deposition, affidavit, record or document contemplated in section 30 of the Act and purporting to be certified as a true copy by any person in his or her capacity as a judge, magistrate, presiding officer or officer of the court in question,

or by or on behalf of the appropriate government body of the foreign State concerned, shall be deemed to be duly certified for the purposes of the Act.

(3) Any document purporting to be a translation of any deposition, affidavit, record or document contemplated in section 30 of the Act and purporting to-

- (a) be certified to be a true translation by the translator concerned; and
- (b) contained a certification by or on behalf of the appropriate government body of the foreign State concerned that the translator is an official translator of that State, that appropriate government body or a court of that State, or that the translator concerned was appointed or designated by that foreign State, that appropriate government body or a court of that State to translate the document concerned,

shall be deemed to be duly translated and certified for the purposes of the Act: Provided that the translation shall be accompanied by the original document or a copy certified to be a true copy thereof in accordance with the provisions of subregulation (2).

General provisions regarding admissibility

4. The provisions of regulation 3 shall not affect the admission of any evidential material which is otherwise admissible.

Proof of exchange rate

5. For the purposes of section 32 of the Act an exchange rate furnished in respect of a particular day in a document purporting to be-

- (a) a facsimile received from the South African Reserve Bank shall be *prima facie* proof of the exchange rate prevailing on that particular day; and
- (b) an affidavit made by a person in his or her capacity as an officer of the South African Reserve Bank shall be conclusive proof of the exchange rate prevailing on that particular day.

CHAPTER 3
FOREIGN SENTENCES AND COMPENSATORY ORDERS

Registration of foreign sentence and compensatory order

6. Whenever a certified copy of the document evidencing the foreign sentence or compensatory order is lodged with the clerk of the court in terms of section 15(2) of the Act, such clerk of the court shall register that sentence or order by-

- (a) numbering the foreign sentence or compensatory order with a consecutive case number for the year during which it is lodged; and
- (b) recording in favour of the Republic, as represented by the Minister, the balance in the currency of the Republic of the amount payable thereunder,

on the case cover in which the certified copy of the document evidencing the foreign sentence or compensatory order is filed.

Notice of registration of foreign sentence or compensatory order

7. (1) The written notice of registration of a foreign sentence or compensatory order contemplated in section 15(3) of the Act shall correspond substantially with Form 1 of the Annexure, and shall contain-

- (a) the consecutive case number referred to in regulation 6(a);
- (b) the date on which the foreign sentence or compensatory order was registered;
- (c) the balance in the currency of the Republic of the amount payable under the foreign sentence or compensatory order; and
- (d) a reference to the provisions of section 15(3) of the Act and regulations 8 and 9.

(2) The notice referred to in subregulation (1), together with a copy thereof, shall be delivered to the sheriff who shall, subject to the provisions of this regulation, forthwith serve it upon the person referred to in the said notice by delivering a copy of the notice in one of the following manners:

- (a) To the said person personally or to his or her duly authorised agent;
 - (b) at the said person's residence or place of business to a person apparently not less than 16 years of age and apparently residing or employed there: Provided that for the purpose of this paragraph, 'residence' means, when a building is occupied by more than one person or family, that portion of the building occupied by the person upon whom service is to be effected;
 - (c) at the said person's place of employment to a person apparently not less than 16 years of age and apparently in authority over the said person or, in the absence of such a person in authority, to a person apparently not less than 16 years of age and apparently in charge at the said person's place of employment;
 - (d) in the case of a juristic person, at its registered office or main place of business within the area of jurisdiction of the court concerned, to a director or a responsible employee or servant thereof; and
 - (e) in the case of a Minister, Deputy Minister or Premier in his or her official capacity, the State or a provincial government, at the Office of the State Attorney in Pretoria, or a branch of that Office which serves the area of jurisdiction of the court from which the notice has been issued.
- (3) A sheriff shall, on request by the person upon whom a notice is served, exhibit to him or her the original of the notice.
- (4) Where the person upon whom a notice is to be or may be served keeps his or her residence or place of business closed and thereby prevents the sheriff from serving the notice, it shall be sufficient to affix a copy thereof to the outer or principal door or security gate of such residence or place of business, or to place such copy in the postbox at such residence or place of business.

(5) Where the sheriff is unable after diligent search to find at the residence or place of business of the person upon whom a notice is to be served, either that person or a person referred to in subregulation (2)(b) or, in the case of a juristic person referred to in subregulation (2)(d), a director or a responsible employee or servant, it shall be sufficient to affix a copy of the notice to the outer or principal door or security gate of such residence, place of business, registered office or main place of business.

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

- (a) in the case of a partnership, in which case service may be effected by delivery at the office or place of business of the partnership, or, if there be none such, then by service on any member of the partnership in any manner prescribed in this regulation;
- (b) in the case of two or more persons upon whom a notice is to be served in their capacity as trustees of an insolvent estate, liquidators of a company, executors, curators or guardians, in which case service may be effected by delivery to any one of such persons in any manner prescribed in this regulation; and
- (c) in the case of a syndicate, unincorporated company, club, society or church, in which case service may be effected by delivery at the local office or place of business of such body or, if there be none such, by service on the chairperson or secretary or other responsible officer thereof in any manner prescribed in this regulation.

(7) The sheriff shall, on a form substantially corresponding to Form 2 of the Annexure, endorse the manner in which the copy of the notice was served, and shall attach the form to the notice and return it to the clerk of the court from whom he or she received such notice: Provided that where such service has been effected in the manner prescribed by subregulation (2)(b), (c), (d) or (e), the sheriff shall indicate in the return of service of the notice concerned the name of

the person on whom he or she served the notice and the capacity in which that person stands in relation to the person, juristic person or institution to whom the notice is addressed.

(8) Where service has been effected in the manner prescribed by subregulation (2)(b) or (c) the court may, if there is reason to doubt whether the notice served has come to the actual knowledge of the person on whom it is to be served, and in the absence of satisfactory evidence, treat such service as invalid.

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

(10) Any member of the South African Police Service as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995), may, if so requested by a sheriff, assist that sheriff to effect the service of a notice.

Period within which a person may apply for setting aside of registration of foreign sentence or compensatory order

8. (1) An application for the setting aside of the registration of a foreign sentence or compensatory order contemplated in section 15(3) of the Act shall be made within 20 court days from the date on which such registration came to the knowledge of the applicant.

(2) Unless the applicant proves the contrary, it shall be presumed that-

(a) where the written notice of registration was served on that applicant personally, he or she had knowledge of such registration on the date of service of the notice; or

(b) where the written notice of registration was not served on that applicant personally, he or she had knowledge of such registration within 10 days after the date of service of the notice.

Manner in which a person may apply for setting aside of registration of foreign sentence or compensatory order

9. (1) An application for the setting aside of the registration of a foreign sentence or compensatory order shall be made to the court where that sentence or order was registered.

(2) Such an application shall be on notice which shall state-

- (a) that an order for the setting aside of the registration of a foreign sentence or compensatory order, as the case may be, is applied for;
- (b) the grounds contemplated in section 18(1) of the Act on which the application is based; and
- (c) the date and time when the application will be made to the court,

and shall be accompanied by an affidavit, made by the applicant or a person who can swear positively to the facts, in support of the grounds referred to in paragraph (b).

(3) Delivery of such notice shall be effected to the Office of the State Attorney in Pretoria, or a branch of that Office nearest to the court to which such an application is made, not later than 20 court days before the day appointed for the hearing of the application.

CHAPTER 4

FOREIGN CONFISCATION ORDERS

Registration of foreign confiscation order

10. Whenever a certified copy of a foreign confiscation order is lodged with the clerk of the court in terms of section 20(2) of the Act, such clerk of the court shall register that order by-

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

(b) recording-

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

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

in favour of the Republic as represented by the Minister, on the case cover in which the certified copy of the foreign confiscation order is filed.

Notice of registration of foreign confiscation order

11. (1) The written notice of registration of a foreign confiscation order contemplated in section 20(4) of the Act shall correspond substantially with Form 3 of the Annexure, and shall contain-

(a) the consecutive case number referred to in regulation 10(a);

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

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

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

(e) a reference to the provisions of section 20(4)(b) of the Act and regulations 12 and 13.

(2) (a) Where the person against whom the foreign confiscation order has been made is present in the Republic, the written notice of registration, together with a copy thereof, shall be delivered to a sheriff who shall serve such notice on that person in accordance with the manner

provided for in regulation 7(2) to (6), and the provisions of regulation 7(7) to (10) shall, read with the changes required by the context, apply to such service.

(b) Where the person against whom the foreign confiscation order has been made is not present in the Republic that person shall-

- (i) be informed of the registration of the order in the manner provided for in an agreement contemplated in section 27 of the Act or any other agreement concluded with the foreign State where that person is present; or
- (ii) in the absence of an agreement referred to in subparagraph (i), be informed of such registration by sending a copy of the written notice of registration to that person by registered mail.

(c) The clerk of the court sending a copy of the notice in terms of paragraph (b)(ii) to the person against whom the foreign confiscation order has been made, shall require that proof of receipt thereof be returned to him or her by the relevant postal authority.

Period within which a person may apply for setting aside of registration of foreign confiscation order

12. (1) An application for the setting aside of the registration of a foreign confiscation order in terms of section 20(4)(b) of the Act shall be made within 20 court days from the date on which such registration came to the knowledge of the applicant.

(2) Unless the applicant proves the contrary, it shall be presumed that where-

- (a) the written notice of registration was served on that applicant personally, he or she had knowledge of such registration on the date of service of the notice;
- (b) the written notice of registration was not served on that applicant personally, he or she had knowledge of such registration within 10 days after the date of service of the notice;

- (c) the written notice of registration was sent to that applicant by registered mail, he or she had knowledge of such registration on the date of receipt thereof indicated in the proof of receipt contemplated in regulation 11(2)(c); or
- (d) that applicant was informed of such registration in any other manner, he or she had knowledge of such registration on the date on which he or she was so informed.

Manner in which a person may apply for setting aside of registration of foreign confiscation order

13. (1) An application for the setting aside the registration of a foreign confiscation order shall be made to the court where that order was registered.

- (2) Such an application shall be on notice which shall state-
 - (a) that an order for the setting aside of the registration of a foreign confiscation order is applied for;
 - (b) the grounds contemplated in section 22(1) of the Act on which the application is based; and
 - (c) the date and time when the application will be made to the court,

and shall be accompanied by an affidavit, made by the applicant or a person who can swear positively to the facts, in support of the grounds referred to in paragraph (b).

(3) Delivery of such notice shall be effected to the Office of the State Attorney in Pretoria, or a branch of that Office nearest to the court to which such an application is made, not later than 20 court days before the day appointed for the hearing of the application.

CHAPTER 5
FOREIGN RESTRAINT ORDERS

Registration of foreign restraint order

14. Whenever a certified copy of a foreign restraint order is lodged with a registrar of a division of the High Court in terms of section 24(1) of the Act, such registrar shall register that order by-

- (a) numbering the foreign restraint order with a consecutive case number for the year during which it is lodged; and
- (b) recording the restraint in respect of the property specified in the order and full particulars of that property, in so far as such particulars are available,

on the case cover in which the certified copy of the foreign restraint order is filed.

Notice of registration of foreign restraint order

15. (1) The written notice of registration of a foreign restraint order contemplated in section 24(3) of the Act shall correspond substantially with Form 4 of the Annexure, and shall contain-

- (a) the consecutive case number referred to in regulation 14(a);
- (b) the date on which the foreign restraint order was registered;
- (c) the restraint in respect of the property specified in the order and full particulars of that property in so far as such particulars are available; and
- (d) a reference to the provisions of section 24(3)(b) of the Act and regulation 16.

(2) (a) Where the person against whom the foreign restraint order has been made is present in the Republic, the written notice of registration, together with a copy thereof, shall be

delivered to a sheriff who shall serve such notice on that person in accordance with the manner provided for in regulation 7(2) to (6), and the provisions of regulation 7(7) to (10) shall, read with the changes required by the context, apply to such service: Provided that the endorsement of the manner in which a copy of the notice was served, shall be returned to the registrar of the High Court from whom the notice was received.

(b) Where the person against whom the foreign restraint order has been made is not present in the Republic that person shall-

- (i) be informed of the registration of the order in the manner provided for in an agreement contemplated in section 27 of the Act or any other agreement concluded with the foreign State where that person is present; or
- (ii) in the absence of an agreement referred to in subparagraph (i), be informed of such registration by sending a copy of the written notice of registration to that person by registered mail.

(c) The registrar of the High Court sending a copy of the notice in terms of paragraph (b)(ii) to the person against whom the foreign restraint order has been made, shall require that proof of receipt thereof be returned to him or her by the relevant postal authority.

Period within which a person may apply for setting aside of registration of foreign restraint order

16. (1) An application for the setting aside of the registration of a foreign restraint order contemplated in section 24(3)(b) of the Act shall be made within 20 court days from the date on which such registration came to the knowledge of the applicant.

(2) Unless the applicant proves the contrary, it shall be presumed that where-

- (a) the written notice of registration was served on that applicant personally, he or she had knowledge of such registration on the date of service of the notice;

- (b) the written notice of registration was not served on that applicant personally, he or she had knowledge of such registration within 10 days after the date of service of the notice;
- (c) the written notice of registration was sent to that applicant by registered mail, he or she had knowledge of such registration on the date of receipt thereof indicated in the proof of receipt contemplated in regulation 15(2)(c); or
- (d) that applicant was informed of such registration in any other manner, he or she had knowledge of such registration on the date which he or she was so informed.

CHAPTER 6

MISCELLANEOUS PROVISIONS

Short title

17. These regulations shall be called the **Regulations for International Co-operation in Criminal Matters, 1997**, and shall come into operation on 1 January 1998.

ANNEXURE

Form 1

**IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF.....
NOTICE OF REGISTRATION OF A FOREIGN SENTENCE OR COMPENSATORY
ORDER**

Case No.

To.....

.....

(Name)

.....

.....

.....

(Residential address)

.....

.....

.....

(Business/Employment address)

You are hereby notified that a foreign * sentence/compensatory order for the payment of the amount ofhas been registered at the Magistrate's Court for the District of on the day of.....19.....

Notification is given to you since you are the person * on whom the said sentence was imposed/against whom the said order was made/who has effective control over relevant property in the Republic of South Africa.

* Delete whichever is not applicable.

Note:

(1) The registered foreign * sentence/compensatory order has the effect of a civil judgment of the above-mentioned Magistrate's Court, for the amount reflected in favour of the Republic of South Africa as represented by the Minister of Justice.

(2) In terms of regulation 8 of the Regulations for International Co-operation in Criminal Matters, 1997, you may within 20 court days from the date on which such registration came to your knowledge lodge an application for the setting aside of the registration of the said * sentence/order. If the notice was not served on you personally it is presumed that registration came to your knowledge within 10 days after the date of service of the notice.

(3) In terms of regulation 9 such an application shall be made to the above-mentioned court and shall be on notice which shall state-

- (a) that an order for the setting aside of the registration of the said * sentence/order is applied for;
- (b) the grounds contemplated in section 18(1) of the International Co-operation in Criminal Matters Act, 1996 (Act 75 of 1996), on which the application is based; and
- (c) the date and time when the application will be made to the above-mentioned court,

and shall be accompanied by an affidavit, made by yourself or a person who can swear positively to the facts, in support of the grounds referred to in paragraph (b).

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

.....
CLERK OF THE COURT

*** Delete whichever is not applicable.**

FORM 2

*** IN THE HIGH COURT.....DIVISION/
IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF.....**

RETURN OF SERVICE NOTICE

Case No.

I,.....certify that I have -

* (a) delivered a copy of the notice to
.....personally [regulation
7(2)(a)];

(or)

* (b) delivered a copy of the notice to
.....the duly authorised agent
of.....[regulation 7(2)(a)];

(or)

* (c) delivered a copy of the notice to
....., a person
apparently not less than 16 years of age and apparently residing or employed at
the * residence/ or place of business of
.....in his
or her capacity as.....of.....
[regulation 7(2)(b)];

* Delete whichever is not applicable.

(or)

* (d) delivered a copy of the notice to, a person apparently not less than 16 years of age and who is apparently in authority over or in charge at the place of employment of, in his or her capacity asof[regulation 7(2)(c)];

(or)

* (e) delivered a copy of the notice to, a *director/responsible employee/servant of at the latter's * registered office/main place of business [regulation 7(2)(d)];

(or)

* (f) delivered a copy of the notice to the State Attorney in..... in his or her capacity asof.....[regulation 7(2)(e)];

(or)

* (g) * affixed/placed a copy of the notice * to/in the * outer/principal door/security gate /postbox of the * residence/place of business of, because he or she prevented the service of the notice by keeping the * residence / place of business closed [regulation 7(4)];

(or)

* Delete whichever is not applicable.

* (h) affixed a copy of the notice to the * outer/principal door of the * residence/place of business/ registered office/main place of business of as he or she or a person apparently not less than 16 years of age or a director, responsible employee or servant could not be found after a diligent search of the * residence/place of business of the person upon whom notice is to be served [regulation 7(5)];

(or)

* (i) served a copy of the notice in the manner ordered by court [regulation 7(9)].

Time Day Month 19

Place

SIGNATURE OF SHERIFF

FORM 3

IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF

NOTICE OF REGISTRATION OF A FOREIGN CONFISCATION ORDER

Case No.

To.....

.....

(Name)

.....

.....

.....

(Residential address)

.....

.....

.....

(Business / Employment address)

You are hereby notified that a foreign confiscation order * in respect of the property described hereunder/for the payment of the amount of.....has been registered at the Magistrate's Court for the District of on the day of 19

Description of property:

.....

.....

.....

.....

.....

* Delete whichever is not applicable.

Note:

(1) The registered foreign confiscation order has the effect of a civil judgment of the above-mentioned Magistrate's Court in favour of the Republic of South Africa as represented by the Minister of Justice.

(2) In terms of regulation 12 of the Regulations for International Co-operation in Criminal Matters, 1997, you may within 20 court days from the date on which such registration came to your knowledge, lodge an application for the setting aside of the registration of the said order. If the notice was not served on you personally it is presumed that registration came to your knowledge within 10 days after the date of service of the notice.

(3) In terms of regulation 13 such an application shall be made to the above-mentioned court and shall be on notice which shall state-

- (a) that an order for the setting aside of the registration of the said order is applied for;
- (b) the grounds contemplated in section 22(1) of the International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996), on which the application is based; and
- (c) the date and time when the application will be made to the above-mentioned court,

and shall be accompanied by an affidavit, made by yourself or a person who can swear positively to the facts, in support of the grounds referred to in paragraph (b).

Signed aton this day of19

.....
CLERK OF THE COURT

* Delete whichever is not applicable.

FORM 4

IN THE HIGH COURTDIVISION

NOTICE OF REGISTRATION OF A FOREIGN RESTRAINT ORDER

Case No.

To.....

.....
(Name)

.....
(Residential address)

.....
(Business/Employment address)

You are hereby notified that a foreign restraint order with the effect and in respect of the property described hereunder has been registered at the High Court (.....Division), on the day of 19.....

Particulars of the restraint and property concerned:

.....
.....
.....
.....

* Delete whichever is not applicable.

Note:

- (1) The registered foreign restraint order has the effect of a restraint order made by the above-mentioned High Court.

- (2) In terms of section 24(3)(b) of the International Co-operation in Criminal Matters Act, 1996 (Act No. 75 of 1996), read with regulation 16 of the Regulations for International Co-operation in Criminal Matters, 1997, you may within 20 court days from the date on which such registration came to your knowledge, and in terms of the rules of court, apply for the setting aside of the registration of the order to the above-mentioned High Court. If the notice was not served on you personally it is presumed that registration came to your knowledge within 10 days after the date of service of the notice.

Signed aton this day of 19.....

.....
REGISTRAR OF THE HIGH COURT