

SUBORDINATE LEGISLATION IN RESPECT OF THE PREVENTION OF ORGANISED CRIME ACT, 1998 (ACT NO. 121 OF 1998)

REGULATIONS PUBLISHED IN GOVERNMENT NOTICE NO. R. 416 OF 1 APRIL 1999 (GOVERNMENT GAZETTE NO. 19914) AND AMENDED BY GOVERNMENT NOTICE NO. R. 850 OF 1 SEPTEMBER 2000 (GOVERNMENT GAZETTE NO. 21504)

The Minister of Justice has, in terms of section 77 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998, made the regulations in the Schedule.

SCHEDULE

Definitions

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

'designated person' means the person referred to in regulation 3, and includes, for the purposes of regulations 4(2) and 5, any official of the subcomponent of that person;

'Master' means the Master, Deputy Master or Assistant Master of the High Court appointed in terms of section 2 of the Administration of Estates Act, 1965 (Act No. 66 of 1965), who has jurisdiction in respect of the matter, property or estate concerned; and

'the Act' means the Prevention of Organised Crime Act, 1998 (Act No.121 of 1998).

Tariff of fees payable to *curator bonis*

2. (1) A curator bonis appointed under the Act is entitled to a fee which must be assessed according to the following tariff:

(a) On income collected during the existence of the curatorship: six per cent;

- (b) on the value of property, other than money, realised on completion of his or her curatorship: two per cent;
 - (c) on the value of money realised on completion of his or her curatorship: one per cent;
 - (d) on the value of property, other than money, subject to a restraint order where no confiscation order is made: two per cent;
 - (e) on the value of money subject to a restraint order where no confiscation order is made: one per cent.
- (2) Despite subregulation (1), the Master may-
- (a) if in any particular case there are special reasons for doing so, reduce or increase any such fee; or
 - (b) if the *curator bonis* has failed to discharge his or her duties or has discharged them in an unsatisfactory manner, disallow any such fee, either wholly or in part.

Person to whom suspicion regarding proceeds of unlawful activities to be reported

3. The Commander of the Commercial Crime Investigations Subcomponent of the South African Police Service is hereby designated for the purposes of section 7 of the Act.

Nature of information and manner in which it is to be reported

4. (1) A report contemplated in section 7 of the Act must be made in writing and must-
- (a) substantially correspond to Form 1 of the Annexure;

- (b) contain full particulars of-
 - (i) the person making the report;
 - (ii) the person against whom the suspicion has been formed, in so far as such particulars are available;
 - (iii) the transaction or other action whereby the property concerned has come into the possession of the person making the report;
 - (iv) the property concerned;
 - (c) set out the grounds on which the suspicion rests;
 - (d) indicate what documentary or other proof is available in respect of the transaction or other action referred to in paragraph (b)(iii), and of the grounds referred to in paragraph (c); and
 - (e) be accompanied by copies of documentation directly relevant to the suspicion and the grounds on which it rests.
- (2) The report must be handed or faxed to the designated person.

Acknowledgement of receipt of report

5. The designated person must, on receipt of a report referred to in regulation 4, forthwith acknowledge receipt thereof to the person who made it, on a form substantially corresponding to Form 2 of the Annexure, and must affix the stamp of his or her office thereto.

Procedure at meetings of Committee

6. (1) A majority of the members of the Committee forms a quorum at any meeting of the Committee.

(2) The decision of the majority of all the members of the Committee present at a meeting thereof is the decision of the Committee and, in the event of an equality of votes on any matter, the chairperson or person designated by the chairperson to attend the meeting in his or her place has a casting vote in addition to his or her deliberative vote.

(3) Reasonable notice of a meeting of the Committee must be given in writing to the members of the Committee and the Committee must cause minutes to be kept of the proceedings of any such meeting.

(4) Except where otherwise provided for in these regulations, the Committee determines its own procedure.

Notice in terms of section 51(3) of the Act

6A. The notice contemplated in section 51(3) of the Act must substantially correspond to Form 3 of the Annexure.

[Regulation 6A inserted by Government Notice No. R. 850 of 1 September 2000]

Title and repeal

7. (1) These regulations are called the Prevention of Organised Crime Regulations, 1999, and come into operation on 1 April 1999.

(2) The Prevention of Organised Crime Regulations, 1999, published by Government Notice R. 86 of 21 January 1999, are hereby repealed.

ANNEXURE

FORM 1

**REPORT IN TERMS OF SECTION 7 OF THE PREVENTION OF ORGANISED
CRIME ACT, 1998 (ACT NO. 121 OF 1998)**

**TO: THE COMMANDER OF COMMERCIAL CRIME INVESTIGATIONS OF
THE SOUTH AFRICAN POLICE SERVICE**

I,
(Name)

.....
.....
.....
(Contact address, telephone number and fax number)

.....
.....
.....
(Business/employment address, telephone number and fax number)

in my capacity as
of, hereby report
as follows:

- (a) **Particulars of the person against whom the suspicion has been formed**
 Full names:
 Identity/passport number:
 Nationality:
 Occupation:
 Residential address in the Republic:

.....

(f) **Copies of the following documentation, directly relevant to the suspicion and the grounds on which it rests, are attached:**

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

Signed at this day of

.....

(Signature of person making the report)

FORM 2

**ACKNOWLEDGEMENT OF RECEIPT IN TERMS OF REGULATION 5 OF THE
PREVENTION OF ORGANISED CRIME REGULATIONS, 1999**

I,,
being the/acting as,
designated by regulation 3 of the Prevention of Organised Crime Regulations, 1999, hereby
acknowledge receipt of the following report(s):

.....,
.....
.....,

made in terms of section 7 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of
1998), by in his/her
capacity as of on
.....

I also acknowledge receipt of copies of the following documentation which accompanied
the report(s):

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

Signed at this day of

.....

(Signature of designated person)

FORM 3

*** IN THE HIGH COURT DIVISION/IN THE MAGISTRATE'S COURT
FOR THE DISTRICT OF
HELD AT CASE No.
.....**

**NOTICE IN TERMS OF SECTION 51(3) OF THE PREVENTION OF
ORGANISED CRIME ACT, 1998 (ACT No. 121 OF 1998)**

TO

.....

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.....

.....

(Name)

.....

.....

.....

.....

(Residential address)

.....

.....

.....

.....

(Business/work address)

You are hereby notified that on the day of 20, the above-mentioned Court made an order to the effect that there are reasonable grounds to believe that the following property in which you have an interest or over which you have control, namely,

.....

... is an instrumentality of an offence referred to in Schedule 1 to the Prevention of Organised Crime Act, 1998.

A copy of-

- (i) the order of the Court; and**
- (ii) the application for the order,**

is attached hereto.

You are further notified of the following:

1. The National Director of Public Prosecutions may, in terms of section 48 of the Act, apply for the forfeiture of the above-mentioned property to the State. In terms of section 52 of the Act you may bring an application to the High Court to have any interests you may have in the property excluded from the operation of the forfeiture order.

2. The return of service of this notice will, in terms of section 52(3)(a) of the Act, be admissible as evidence to show that since the date of service of this notice you knew or had reasonable grounds to suspect that the property is an instrumentality of an offence referred to in Schedule 1 to the Act.

3. To protect your interest in the property you will, in terms of section 52(3)(b) of the Act, have to prove on a balance of probabilities that since the date of service of this notice, you have taken all reasonable steps to prevent the further use of the property as an instrumentality of an offence referred to in Schedule 1 to the Act.

Signed at this day of 20

.....

.....

*** CLERK OF THE COURT/REGISTRAR**

DATE

*** Delete whichever is not applicable.**

[Form 3 inserted by GN R850 of 1 September 2000]