

REPUBLIC OF SOUTH AFRICA

**ANTI-TERRORISM BILL, 2002**

(THE MINISTER FOR JUSTICE AND CONSTITUTIONAL  
DEVELOPMENT)

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REPUBLIEK VAN SUID-AFRIKA

**WETSONTWERP OP ANTI-TERRORISME, 2002**

(DIE MINISTER VAN JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

**GENERAL EXPLANATORY NOTE**

[ ] Words in bold type in square brackets indicate omissions from existing enactments

\_\_ Words underlined with a solid line indicate insertions in existing enactments

**BILL**

**To give effect within the Republic of South Africa to the relevant international instruments, principles, and requirements relating to terrorism; to provide for certain offences related to terrorist acts in order to ensure the security of the Republic and the safety of the public against threats and acts of terrorism; to combat terrorist acts; to prohibit support and harbouring of proscribed organisations; and to provide for matters connected therewith.**

PREAMBLE

**WHEREAS** there is a world-wide persistence of acts of terrorism in all its forms and manifestations;

**AND WHEREAS** terrorism is an international problem which can only be eradicated with the full and committed cooperation of all member states of the United Nations and the African Union;

**AND WHEREAS** the States members of the United Nations solemnly reaffirmed their unequivocal condemnation of all acts, methods and practices of terrorism as criminal and unjustifiable, wherever and by whomever committed;

**AND WHEREAS** terrorist acts are under any circumstances unjustifiable, whatever the considerations of a political, philosophical, ideological, racial, ethnic, religious or other nature that may be invoked to justify them;

**AND WHEREAS** terrorism is condemned in a number of international instruments which places an obligation on States to adopt legislation to give effect to those instruments;

**AND WHEREAS** South Africa supports the efforts of the international and regional communities to eliminate terrorism;

**AND WHEREAS** South Africa recognises its obligation to prevent its territory becoming a stage for the planning, organisation or execution of terrorist acts or the initiation or participation in any form of terrorist acts including the prevention of terrorist elements from infiltration or residence on its soil, by either individuals or groups or to receive them, harbour them, train them, or fund them, or offer any kind of help or facilities to them;

**AND WHEREAS** terrorism presents a serious threat to the security of the Republic and the safety of the public;

**AND WHEREAS** the United Nations General Assembly called upon all States to take steps to prevent and counteract, through appropriate domestic measures, the financing of terrorists and terrorist organisations;

**AND WHEREAS** the United Nations urged all States to enact appropriate domestic legislation necessary to implement the provisions of relevant conventions and protocols, to ensure that the jurisdiction of their courts enables them to bring to trial the perpetrators of terrorist acts and to co-operate with and provide support and assistance to other States and relevant international and regional organizations to that end;

**AND WHEREAS** South Africa shares the commitment to prevent and combat terrorism with the African Union and the Non-Aligned Movement expressed in various resolutions, as well as the Organisation for African Unity's Convention on the Prevention and Combating of Terrorism;

**AND MINDFUL** that the Republic of South Africa, has, since 1994, become an integral and accepted member of the community of nations and is committed to bringing to justice persons who commit such acts; and carrying out its obligations in terms of the international Conventions on terrorism;

**AND WHEREAS** legislation is necessary in South Africa to prevent and combat terrorism, to criminalise terrorist acts, the financing of terrorist acts, the giving of support to terrorists, and to ensure that the jurisdiction of South African courts enables it to bring to trial the perpetrators of terrorist acts,

**BE IT ENACTED** by the Parliament of the Republic of South Africa, as follows:-

### **Definitions**

1. (1) In this Act, unless the context otherwise indicates-

**'accountable institution'** means a person referred to in Schedule 1 of the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001);

**"Constitution"**, means the Constitution of the Republic of South Africa, 1996 (Act No. 108 of 1996);

**"Criminal Procedure Act"** means the Criminal Procedure Act, 1977 (Act No. 51 of 1977);

**"continental shelf"** means the continental shelf as referred to in section 8 of the Maritime Zones Act, 1994 (Act No. 15 of 1994);

**"combating terrorism"** means all activities related to the prevention, uncovering or halting of terrorist acts as well as those related to the minimising of losses caused by the same;

**"Director"** means a Director of Public Prosecutions appointed under the National Prosecuting Authority Act, 1998 (Act No. 32 of 1998), as well as any investigating director or special director appointed under the said Act;

**"device"** with reference to section 11, means -

- a. any nuclear explosive device; or
- b. any radio-active material dispersal or radiation emitting device which may, owing to its radiological properties cause death, serious bodily injury or substantial damage to property or the environment;

**"explosive"** means any explosive as defined in section 1 of the Explosives Act, 1956 (Act No. 26 of 1956);

**"Financial Intelligence Centre"** means the Financial Intelligence Centre as referred to in section 2 of the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001);

**'firearm'** means any device as defined in section 1 of the Firearm Control Act, 2000 (Act No 60 of 2000) and includes a machine gun or machine rifle as defined in the Arms and Ammunition Act, 1969 (Act No 75 of 1969);

**"fixed platform"** means any installation as defined in section 1 of the Maritime Zones Act, 1994 (Act No.15 of 1994), and which is fixed to the seabed;

**"internationally protected person"** means any person who enjoys immunities and privileges in terms of sections 2 to 6 of the Diplomatic Immunities and Privileges Act, 2001 (Act No.37 of 2001), or on whom such immunities and privileges have been conferred in terms of section 7 of the said Act;

**"judge"** means a Judge of the High Court, functioning as such;

**"lethal device"** with reference to section 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 substantial material damage; or
- b. a weapon or device which is designed or manufactured, or has the capability, to cause death, serious bodily injury or substantial material damage through the release, dissemination or impact of toxic chemicals, biological agents or toxins or similar substances or radiation or radioactive material;

**"military forces of the State"** means the armed forces of the State which are organized, trained and equipped under its internal law for the primary purpose of national defence or security, and persons acting in support of those armed forces who are under their formal command, control and responsibility;

**"Minister"** means the Minister to whom the administration of this Act has been assigned in terms of section 63;

**"National Director"** means the National Director of Public Prosecutions appointed in terms of section 179(1) of the Constitution;

**"place of public use"** means 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;

**"police officer"** means a member of the South African Police Service as defined in the South African Police Service Act, 1995 (Act No. 68 of 1995), and a member of the South African Defence Force while deployed in the Republic on police functions as contemplated in section 3(2) of the Defence Act, 1957 (Act No. 44 of 1957).

**"property"** —

- means real or personal property of any description, and whether tangible or intangible; and
- includes an interest in any real or personal property; and
- includes funds, cash, assets or any other property, tangible or intangible, however acquired; and
- notably any type of financial resource, including cash or the currency of any State, bank credits, traveller's cheques, bank cheques, money orders, shares, securities, bonds, drafts, letters of credit or any other negotiable instrument in any form, including electronic or digital form;

**"radio-active material"** means any radio-active material as defined in section 1 of the Nuclear Energy Act, 1999 (Act No. 46 of 1999);

**"Republic"** means the Republic of South Africa;

**"State or government facility"** 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 or the Republic or by employees or officials of an intergovernmental organization in connection with their official duties;

**"terrorist act"** means an act, in or outside the Republic,

- a. that is committed —
  - i. in whole or in part for a political, religious or ideological purpose, objective or cause, and
  - ii. in whole or in part with the intention of intimidating the public, or a segment of the public, with regard to its security, including its economic security, or compelling a person, a government or a domestic or an international organization to do or to refrain from doing any act, whether the person, government or organization is inside or outside the Republic, and
- b. that —
  - i. causes death or serious bodily harm to a person by the use of violence,
  - ii. endangers a person's life,
  - iii. causes a serious risk to the health or safety of the public or any segment of the public,
  - iv. causes substantial property damage, whether to public or private property, if causing such damage is likely to result in the conduct or harm referred to in any of subparagraphs (i) to (iii), or
  - v. causes serious interference with or serious disruption of an essential service, facility or system, whether public or private, including, but not limited to: an information system; or a telecommunications system; or a financial system; or a system used for the delivery of essential government services; or a system used for, or by, an essential public utility; or a system used for, or by, a transport system, other than as a result of lawful advocacy, protest, dissent or stoppage of work that does not involve an activity that is intended to result in the conduct or harm referred to in any of subparagraphs (i) to (iii),
  - vi. but, for greater certainty, does not include conventional military action in accordance with customary international law or conventional international law.

**"terrorist organisation"** means an organisation that has as one of its purposes or activities facilitating or carrying out any terrorist act, which has carried out, or plans carrying out a terrorist act.

**"weapon of mass destruction"** means any weapon designed to kill, harm or infect people, animals or plants through the effects of a nuclear explosion or the toxic properties of a chemical warfare agent or the infectious or toxic properties of a biological warfare agent, and includes a delivery system exclusively designed, adapted or intended to deliver such weapons as contemplated in the Non-proliferation of Weapons of Mass Destruction Act, 1993 (Act No. 87 of 1993).

(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 —
  - the person believes that there is a reasonable possibility of the existence of that fact; and
  - 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 —

- the general knowledge, skill, training and experience that may reasonably be expected of a person in his or her position; and
- the general knowledge, skill, training and experience that he or she in fact has.

## **Chapter 1**

### **GENERAL PROVISIONS ss 2 - 19**

#### **Terrorist Offences**

Any person who commits a terrorist act shall be guilty of an offence and shall be liable on conviction to imprisonment for life.

#### **Participation in and facilitation of terrorist act and harbouring and concealing**

1. Any person who knowingly participates in, or contributes to, the activities of a terrorist organisation or does anything which will, or is likely to, enhance the ability of any terrorist organisation to facilitate or carry out a terrorist act is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years.
2. An offence may be committed under subsection (1) whether or not —
  - a. a terrorist organisation actually facilitates or carries out a terrorist act;
    - i. the participation or contribution of the accused actually enhances the ability of a terrorist organisation to facilitate or carry out a terrorist act; or

- ii. the accused knows the specific nature of any terrorist act that may be facilitated or carried out by a terrorist organisation.
3. Without limiting the generality of subsection (1), participating in or contributing to the activities of a terrorist organisation includes —
  - a. providing, receiving or recruiting a person to receive training;
  - b. providing or offering to provide a skill or an expertise for the benefit of, at the direction of or in association with a terrorist organisation;
  - c. collecting, providing or making available, directly or indirectly, property or inviting a person to provide, facilitate or make available property or financial or other related services on behalf of such an organisation;
  - d. using property, directly or indirectly on behalf of such an organisation;
  - e. possessing property intending that it be used, directly or indirectly on behalf of such an organisation;
  - f. recruiting a person in order to facilitate or commit —
    - i. a terrorist act, or
    - ii. an act or omission outside the Republic that, if committed in the Republic, would be a terrorist act;
    - iii. entering or remaining in any country for the benefit of, at the direction of or in association with a terrorist organisation; and
    - iv. making oneself, in response to instructions from any of the persons who constitute a terrorist organisation, available to facilitate or commit —
      - i. a terrorist act, or
      - ii. an act or omission outside the Republic that, if committed in the Republic, would be a terrorist act.
4. Nothing in subsection (3) makes it an offence to provide or collect funds intending that they be used, or knowing that they are to be used, for the purpose of advocating democratic government or the protection of human rights.
5. In determining whether an accused participates in or contributes to any act of a terrorist organisation, the court may consider, among other factors, whether the accused—
  - uses a name, word, symbol or other representation that identifies, or is associated with, the terrorist organisation;
  - frequently associates with any of the persons who constitute the terrorist organisation;
  - receives any benefit from the terrorist organisation; or
  - repeatedly engages in acts at the instruction of any of the persons who constitute the terrorist organisation.
6. Any person who knowingly facilitates a terrorist act is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years.
7. A terrorist act is facilitated whether or not —
  - the facilitator knows that a particular terrorist act is facilitated;
  - any particular terrorist act was foreseen or planned at the time it was facilitated; or

- any terrorist act was actually carried out.
- 8. Any person who commits an offence under any Act or the common law for the benefit of, at the direction of or in association with a terrorist organisation is guilty of an offence and liable on conviction to imprisonment for life.
- 9. Any person who knowingly instructs, directly or indirectly, any person to carry out any act for the benefit of, at the direction of or in association with a terrorist organisation, for the purpose of enhancing the ability of any terrorist organisation to facilitate or carry out a terrorist act, is guilty of an offence and liable on conviction to imprisonment for life.
- 10. An offence may be committed under subsection (9) whether or not —
  - the activity that the accused instructs to be carried out is actually carried out;
  - the accused instructs a particular person to carry out the activity referred to in paragraph (a);
  - the accused knows the identity of the person whom the accused instructs to carry out the activity referred to in paragraph (a);
  - the person whom the accused instructs to carry out the activity referred to in paragraph (a) knows that it is to be carried out for the benefit of, at the direction of or in association with a terrorist organisation;
  - a terrorist organisation actually facilitates or carries out a terrorist act;
  - the activity referred to in paragraph (a) actually enhances the ability of a terrorist organisation to facilitate or carry out a terrorist activity; or
  - the accused knows the specific nature of any terrorist activity that may be facilitated or carried out by a terrorist organisation.
- 11. Any person who knowingly instructs, directly or indirectly, any person to carry out a terrorist act is guilty of an offence and liable on conviction to imprisonment for life.
- 12. An offence may be committed under subsection (11) whether or not —
  - the terrorist act is actually carried out;
  - the accused instructs a particular person to carry out the terrorist act;
  - the accused knows the identity of the person whom the accused instructs to carry out the terrorist act; or
  - the person whom the accused instructs to carry out the terrorist act knows that it is a terrorist act.
- 13. Any person who knowingly harbours or conceals any person whom he or she knows to be a person who has carried out or is likely to carry out a terrorist act, for the purpose of enabling the person to facilitate or carry out any terrorist act, is guilty of an offence and liable on conviction to imprisonment for a period not exceeding 15 years.

### **Membership of terrorist organisation and proscription**

1. Any person commits an offence if he belongs or professes to belong to a proscribed organisation.
2. A person guilty of an offence under this section shall be liable on conviction to imprisonment for a period not exceeding 10 years, to a fine or to both.
3. For purposes of this section —
  - a. *member* of an organisation includes:
    - i. a person who is an informal member of the organisation; and

- ii. a person who has taken steps to become a member of the organisation;
    - b. *prescribed organisation* means an organisation in relation to which a declaration by the Minister under subsection (4) is in force.
4. The Minister may by notice in the *Gazette* declare an organisation to be a proscribed organisation, if he or she is satisfied on reasonable grounds that one or more of the following paragraphs apply in relation to the organisation:
  - a. the organisation has committed, or is committing, a terrorist act (whether or not the organisation has been charged with, or convicted of, the terrorist act);
  - b. a member of the organisation has committed, or is committing, a terrorist act on behalf of the organisation (whether or not the member has been charged with, or convicted of, the act);
  - c. the declaration is reasonably appropriate to give effect to a decision of the Security Council of the United Nations that the organisation is an international terrorist organisation;
  - d. the organisation has endangered, or is likely to endanger, the security or integrity of the Republic or another country.
5. A declaration comes into force at the time it is published in the *Gazette* and stays in force until:
  - a. it is revoked; or
  - b. the beginning of a day (if any) specified in the declaration as the day the declaration ceases to be in force.
6. The Minister must by notice in the *Gazette* revoke a declaration made under subsection (4) in relation to an organisation if the Minister is satisfied on reasonable grounds that none of the paragraphs in subsection (4) applies in relation to the organisation.
7. A revocation comes into force at the time it is published in the *Gazette*.
8. If a proscribed organisation makes an application in writing to the Minister alleging that there are reasonable grounds why its declaration should be revoked, the Minister must without delay decide the application and notify the applicant accordingly.
9. The applicant may apply to a High Court for judicial review of the Minister's decision.
10. When an application is made under subsection (9), the judge shall, without delay —
  - a. examine, in private, any security or criminal intelligence reports considered in proscribing the organisation and making the Minister's decision and hear any other evidence or information that may be presented by or on behalf of the National Director and may, at the request of the National Director, hear all or part of that evidence or information in the absence of the applicant and any counsel representing the applicant, if the judge is of the opinion on reasonable grounds that the disclosure of the information would injure national security or endanger the safety of any person;
  - b. provide the applicant with a statement summarizing the information available to the judge so as to enable the applicant to be reasonably informed of the reasons for the Minister's decision, without disclosing any information the disclosure of which would, in the judge's opinion,

- on reasonable grounds, injure national security or endanger the safety of any person;
- c. provide the applicant with a reasonable opportunity to be heard; and
  - d. determine whether the Minister's decision is reasonable on the basis of the information available to the judge and, if found not to be reasonable, order that the applicant no longer be a proscribed organisation.
11. The Minister shall cause to be published, without delay, in the *Gazette* notice of a final order of a court that the applicant no longer be a proscribed organisation.
12. A proscribed organisation may not make another application under subsection (8), except if there has been a material change in its circumstances since the time when the organisation made its last application.

### **Hijacking of an aircraft**

Any person who, unlawfully, by force or threat thereof, or by any other form of intimidation, seizes or exercises control of an aircraft with the intent to -

- a. cause any person on board the aircraft to be detained against his or her will;
- b. cause 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. hold any person on board the aircraft for ransom or to service against his or her will; or
- d. cause that aircraft to deviate from its flight plan, commits an offence, and is liable on conviction to imprisonment for life.

### **Endangering the Safety of Maritime Navigation**

Any person who, in respect of a ship registered in the Republic or within the territorial waters of the Republic or maritime navigational facilities, unlawfully and intentionally -

- a. seizes or exercises control over such a ship by force or threat thereof or any other form of intimidation;
- b. performs any act of violence against a person on board such ship if that act is likely to endanger the safe navigation of that ship;
- c. destroys such a ship or causes damage to such ship or to its cargo which is likely to endanger the safe navigation of that ship;
- d. places or causes to be placed on such ship, by any means whatsoever, a device or substance which is likely to destroy that ship, or cause 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 act is likely to endanger the safe navigation of such ship; or
- 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 such ship;
- g. commits an offence and is liable on conviction -
  - i. to imprisonment for a period not exceeding 20 years; or

- ii. if the death of any person results from any act prohibited by this section, to imprisonment for life.

## **7. Bombing offences**

1. (1) Any person who unlawfully and 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 —
  - a. with the intent to cause death or serious bodily injury; or
  - b. with the intent to cause 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, commits an offence, and is liable upon conviction to imprisonment for life.
  
- (2) This section does not apply to the military forces of a State -
  - c. during an armed conflict; or
  - d. in respect of activities undertaken in the exercise of their official duties.

## **Taking of hostages**

Any person, who, in the Republic -

- a. detains any other person, hereinafter referred to as a hostage; and
- b. in order to compel a State, international governmental organisation or a natural or juristic person to do or abstain from doing any act, threatens to kill, injure or continue to detain the hostage,
- c. commits an offence, and is liable on conviction to imprisonment for life.

## **Protection of internationally protected persons**

1. A person who murders or kidnaps an internationally protected person is guilty of an offence and is liable on conviction to imprisonment for life.
2. A person who commits any other attack upon the person or liberty of an internationally protected person is guilty of an offence and is liable on conviction:
  - a. where the attack causes death—to imprisonment for life;
  - b. where the attack causes grievous bodily harm—to imprisonment for a period not exceeding 20 years; or
  - c. in any other case—to imprisonment for a period not exceeding 10 years.
3. A person who intentionally destroys or damages (otherwise than by means of fire or explosive):
  - a. any official premises, private accommodation or means of transport, of an internationally protected person; or
  - b. any other premises or property in or upon which an internationally protected person is present, or is likely to be present;
  - c. is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding 10 years.

4. A person who intentionally destroys or damages (otherwise than by means of fire or explosive):
  - a. any official premises, private accommodation or means of transport, of an internationally protected person; or
  - b. any other premises or property in or upon which an internationally protected person is present, or is likely to be present;
  - c. with intent to endanger the life of that internationally protected person by that destruction or damage is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding 20 years.
5. A person who intentionally destroys or damages by means of fire or explosive:
  - a. any official premises, private accommodation or means of transport, of an internationally protected person; or
  - b. any other premises or property in or upon which an internationally protected person is present, or is likely to be present;
  - c. is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding 15 years.
6. A person who intentionally destroys or damages by means of fire or explosive:
  - a. any official premises, private accommodation or means of transport, of an internationally protected person; or
  - b. any other premises or property in or upon which an internationally protected person is present, or is likely to be present;
  - c. with intent to endanger the life of that internationally protected person by that destruction or damage is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding 25 years.
7. A person who threatens to do anything that would constitute an offence against subsections (1) to (6) is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding 10 years.
8. For the purposes of this section kidnapping a person consists of leading, taking or enticing the person away, or detaining the person, with intent to hold the person for ransom or as a hostage or otherwise for the purpose of inducing compliance with any demand or obtaining any advantage.
9. Any person who -
  - a. wilfully and unlawfully, with intent to intimidate, coerce, threaten or harass, enters or attempts to enter any building or premises which is used or occupied for official business or for diplomatic, consular, or residential purposes by an internationally protected person within the Republic; or
  - b. refuses to depart from such building or premises after a request by an employee of a foreign government or an international organisation, if such employee is authorised to make such request,
  - c. commits an offence, and is liable on conviction to a fine or to imprisonment for a period not exceeding five years or to both such fine and imprisonment.

### **Offences relating to fixed platforms**

1. Any person who unlawfully and intentionally -
  - a. seizes or exercises control over a fixed platform on the continental shelf, or the exclusive economic zone or any fixed platform on the

High Seas while it is located on the continental shelf of the Republic, by force or threat thereof or by any other form of intimidation;

- b. performs an act of violence against a person on board such a fixed platform if that act is likely to endanger the platform's safety;
  - c. destroys such a fixed platform or causes damage to it which is likely to endanger its safety;
  - d. places or causes to be placed on such 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;
  - e. injures or kills any person in connection with the commission or the attempted commission of any of the offences referred to in paragraphs (a) to (d); or
  - f. damages or destroys any off-shore installation referred to in section 1 of the Maritime Traffic Act, 1981 (Act No. 2 of 1981),
  - g. commits an offence.
2. A person convicted of an offence referred to in subsection (1) is -
- a. liable on conviction to a fine or to imprisonment for a period not exceeding 20 years;
  - b. in the case where death results from the commission of the offence, liable on conviction to imprisonment for life.

### **Offences with regard to nuclear matter or facilities**

1. Any person who unlawfully and intentionally -
  - a. possesses radioactive material or designs or manufactures or possesses a device, with the intent -
    - i. to cause death or serious bodily injury; or
    - ii. to cause substantial damage to property or the environment;
  - b. uses in any way radioactive material or a device, or uses or damages a nuclear facility in a manner which releases or risks the release of radioactive material with the intent -
    - i. to cause death or serious bodily injury;
    - ii. to cause substantial damage to property or the environment; or
    - iii. to compel a natural or juristic person, an international organization or a State to do or refrain from doing an act,
  - c. commits an offence.
2. Any person who -
  - a. threatens, under circumstances which indicate the credibility of the threat, to commit an offence referred to in subsection (1)(b); or
  - b. unlawfully and intentionally demands radioactive material, a device or a nuclear facility by threat, under circumstances which indicate the credibility of the threat, or by use of force,
  - c. commits an offence.
3. A person convicted of an offence in terms of this section is liable on conviction to imprisonment for life.

## **12. Hoaxes involving noxious substances or things or explosives or other lethal devices or weapons of mass destruction**

1. places any substance or other thing in any place; or
  - a. sends any substance or other thing from one place to another (by post, rail or any other means whatever);
  - b. with the intention of inducing in a person anywhere in the world a belief that it is likely to be (or contain) a noxious substance or other noxious thing or a lethal device or a weapon of mass destruction.
2. A person is guilty of an offence if he or she communicates any information which he or she knows or believes to be false with the intention of inducing in a person anywhere in the world a belief that a noxious substance or other noxious thing or a lethal device or a weapon of mass destruction is likely to be present (whether at the time the information is communicated or later) in any place.
3. A person guilty of an offence under this section is liable on conviction to imprisonment for a period not exceeding 10 years or a fine or both.
4. 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).
5. For a person to be guilty of an offence under this section it is not necessary for him or her to have any particular person in mind as the person in whom he or she intends to induce the belief in question.
6. The court, in imposing a sentence on a person who has been convicted of an offence under subsection (1), may order that person to reimburse any party incurring expenses incident to any emergency or investigative response to that conduct, for those expenses. A person ordered to make reimbursement under this subsection shall be jointly and severally liable for such expenses with each other person, if any, who is ordered to make reimbursement under this subsection for the same expenses. An order of reimbursement under this subsection shall, for the purposes of enforcement, be treated as a civil judgment.

## **13. Use of weapons of mass destruction**

1. Any person who, unlawfully and intentionally uses, threatens, or attempts or conspires to use, a weapon of mass destruction-
  - a. against a citizen of the Republic or a person ordinarily resident in the Republic while either such person is outside the Republic;
  - b. against any person within the Republic; or
  - c. against any property that is owned, leased or used by the Republic or by any department or agency of the Republic, whether the property is within or outside of the Republic,
  - d. commits an offence and shall be liable on conviction to imprisonment for life.
2. Any citizen of the Republic or person ordinarily resident within the Republic who, unlawfully and intentionally, uses, or threatens, attempts, or conspires to use, a weapon of mass destruction outside of the Republic commits an offence and shall be liable on conviction to imprisonment for life.

## **Jurisdiction of the Courts of the Republic in respect of any offence referred to in this Act**

1. The Courts of the Republic shall have jurisdiction in respect of any offence referred to in this Act, if -
  - a. the alleged perpetrator of the offence is arrested in the territory of the Republic, in its territorial waters or on board a ship registered in the Republic or an aircraft registered in the Republic; and
  - b. the offence has been or is committed -
    - i. in the territory of the Republic, or committed elsewhere, if the act is punishable in terms of the domestic laws of the Republic, including this Act or in terms of the obligations of the Republic under international law;
    - ii. on board a vessel or a ship or fixed platform registered in the Republic or an aircraft which is registered under the laws of the Republic at the time the offence is committed;
    - iii. by a citizen of the Republic or a person ordinarily resident in the Republic;
    - iv. against a citizen of the Republic or a person ordinarily resident in the Republic;
    - v. outside of the Republic, and the person who has committed the act is, after the commission of the act, present in the territory of the Republic; or
    - vi. on board an aircraft in respect of which the operator is licenced in terms of the Air Services Act 1990 (Act No 115 of 1990) or the International Air Services Act 1993 (Act No 60 of 1993); or
  - c. the evidence reveals any other basis recognised by law.
2. Whenever the National Director receives information that there may be present in the Republic a person who is alleged to have committed an offence under the Act, the National Director must—
  - a. order an investigation to be carried out in respect of that allegation;
  - b. inform any other foreign State which might also have jurisdiction over the alleged offence promptly of the findings of the investigation; and
  - c. indicate promptly to other foreign States which might also have jurisdiction over the alleged offence whether he or she intends to prosecute.
3. In deciding whether prosecute, the National Director shall take into account —
  - a. considerations of international law, practice and comity;
  - b. international relations,
  - c. prosecution action that is being or might be taken by a foreign State; and
  - d. other public interest considerations.
4. If a person has been taken into custody to ensure the person's presence for the purpose of prosecution or surrender to a foreign State in terms of section 15, the National Director must, immediately after the person is taken into custody, notify any foreign State which might have jurisdiction over the offence concerned, and any other State the National Director considers it advisable to inform or notify either directly or through the Secretary-General of the United Nations, of —
  - a. the fact that the person is in custody; and

- b. the circumstances that justify the person's detention.
5. When the National Director declines to prosecute, and another foreign State has jurisdiction over the offence concerned, he or she must inform such foreign State, accordingly with the view to the surrender of such person to such foreign State for prosecution by that State.

## **15. Extradition from the Republic**

1. The provisions of the Extradition Act, 1962 (Act No 16 of 1962) shall apply (with the necessary changes) in respect of any surrender referred to in section 14.
2. Promptly after being detained as contemplated in section 7 or 9 of the Extradition Act, 1962, a person who is not —
  - South African citizen;
  - person ordinarily resident in the Republic; or
  - citizen of any State
    - a. must be informed that he or she is entitled, and must be permitted -
      - i. to communicate without delay with the nearest appropriate representative of -
        - (aa) the State of which the person is a citizen;
        - (bb) if the person is not a citizen of any State, the State in whose territory the person ordinarily resides; or
        - (cc) the State, if any that is otherwise entitled to protect the person's rights; and
      - ii. to be visited by such representative.

## **16. Bail in respect of offences under this Act**

Notwithstanding any provision to the contrary, where an accused stands trial on a charge under this Act, the provisions relating to bail in the Criminal Procedure Act apply as if the accused is charged with an offence referred to in Schedule 6 of that Act.

## **17. Duty to report information on terrorist acts**

Any person who knowingly possesses any information which may be essential in order to investigate any terrorist act which is being committed, has been committed, or is being planned, and who intentionally withholds such information from a police officer, public prosecutor or a Director, commits an offence, and is liable on conviction to imprisonment for a period not exceeding five years without the option of a fine.

## **18. Powers to stop and search vehicles and persons**

1. A judge may on application ex parte by a police officer of the South African Police Service of or above the rank of Director if it appears to the judge that there are reasonable grounds to do so in order to prevent acts of terrorism, grant authority to stop and search vehicles and persons with a view to prevent such acts, and such authorization shall apply for a period not exceeding 10 days.

2. Under such authorisation any police officer who identifies himself or herself as such may stop and search any vehicle or person for articles which could be used or have been used for or in connection with the commission, preparation or instigation of any terrorist act.
3. The provisions of section 29 of the Criminal Procedure Act apply, with the necessary changes, in respect of the powers conferred upon police officers in terms of this section.
4. Any person who -
  - a. fails to stop when required to do so by a police officer in the exercise of the powers under this section; or
  - b. wilfully obstructs a police officer in the exercise of those powers,
  - c. commits an offence and is liable on conviction to a fine or to imprisonment for a period not exceeding six months.

## **19. Consent of the National Director to Institute Proceedings**

1. No prosecution under this Act may be instituted in any court except with the consent of the National Director. Provided that a person alleged to have committed any offence under the Act may be arrested, or a warrant for the person's arrest may be issued and executed, and the person may be remanded in custody or on bail, even though the consent of the National Director has not been obtained.
2. If a person is prosecuted for an offence under this Act, the National Director must communicate the final outcome of the proceedings promptly to the Secretary-General of the United Nations, so that he or she may transmit the information to other States Parties to the United Nations.

## **CHAPTER 2**

### **Part 1**

### **INVESTIGATIVE HEARINGS ss 20 - 26**

#### **20. Order for gathering evidence**

1. Subject to subsection (3), a police officer may, for the purposes of an investigation of an offence under this Act, apply *ex parte* to a judge for an order for the gathering of information.
2. A police officer may make an application under subsection (1) only if the prior written consent of the National Director was obtained.
3. A judge to whom an application is made under subsection (1) may make an order for the gathering of information if the judge is satisfied that the consent of the National Director was obtained as required by subsection (2) and
  - a. that there are reasonable grounds to believe that —
    - i. an offence under the Act has been committed, and
    - ii. information concerning the offence, or information that may reveal the whereabouts of a person suspected by the police officer of having committed the offence, is likely to be obtained as a result of the order; or
  - b. that —
    - i. there are reasonable grounds to believe that such offence will be committed,

- ii. there are reasonable grounds to believe that a person has direct and material information that relates to such an offence, or that may reveal the whereabouts of an individual who the police officer suspects may commit such an offence, and
  - iii. reasonable attempts have been made to obtain the information referred to in subparagraph (ii) from the person referred to in that subparagraph.
- 4. An order made under subsection (3) may —
  - 1. (a) order the examination, on oath or not, of a person named in the order;
  - 2. (b) order the person to attend at the place fixed by the judge, or by the judge designated under paragraph (d), as the case may be, for the examination and to remain in attendance until excused by the presiding judge;
  - 3. order the person to bring to the examination any thing in his or her possession or control, and produce it to the presiding judge;
  - 4. designate another judge as the judge before whom the examination is to take place; and
  - 5. include any other terms or conditions that the judge considers desirable, including terms or conditions for the protection of the interests of the person named in the order and of third parties or for the protection of any ongoing investigation.

(5) The judge who made the order under subsection (3), or another judge of the same court, may vary its terms and conditions.

## **21. Arrest warrant**

- 1. (1) The judge who made the order under section 20(3), or another judge of the same court, may issue a warrant for the arrest of the person named in the order if the judge is satisfied, on information in writing and under oath, that the person —
  - a. is evading service of the order;
  - b. is about to abscond; or
  - c. did not attend the examination, or did not remain in attendance, as required by the order.
- 2. A warrant issued under subsection (1) may be executed at any place in the Republic by any police officer having jurisdiction in that place.
- 3. A police officer who arrests a person in the execution of a warrant issued under subsection (1) shall, without delay, bring the person, or cause the person to be brought, before the judge who issued the warrant or another judge of the same court, and must promptly inform the person of the reason for being detained in custody.

## **22. Orders by judge for detention or release on bail or on warning**

- 1. The judge in question may, to ensure compliance with the order contemplated in sections 20(3) and (4), order that the person referred to in section 20(1) be detained in custody or released on bail, upon payment of, or the furnishing of a guarantee to pay, the sum of money determined for his or her bail, or released on warning.

2. An order under this subsection may include any other terms or conditions that the judge considers desirable, including terms or conditions for the protection of the interests of the person named in the order, including the conditions of detention, if detention is ordered.

### **23. Right to legal practitioner and other visitation rights**

1. A person referred to in section 20 has the right -
  - a. to retain and instruct a legal practitioner at any stage of the proceedings;
  - b. to communicate and be visited by that person's -
    - i. spouse or partner,
    - ii. next of kin;
    - iii. chosen religious counsellor; and
    - iv. chosen medical practitioner,

unless the National Director or a Director shows on good cause to a judge why such communication or visit in accordance with paragraph (b) should be refused.

### **24. Obligation to answer questions and produce things**

1. A person named in an order made under section 20 shall answer questions put to the person by the National Director or a person designated by the National Director, and shall produce to the presiding judge things that the person was ordered to bring, but may refuse if answering a question or producing a thing would disclose information that is protected by any law relating to non-disclosure of information or to privilege.
2. The presiding judge shall rule on any objection or other issue relating to a refusal to answer a question or to produce a thing.
3. No person shall be excused from answering a question or producing a thing under subsection (1) on the ground that the answer or thing may tend to incriminate the person or subject the person to any proceeding or penalty, but
  - a. no answer given or thing produced under section 20(4) shall be used or received against the person in any criminal proceedings against that person, other than a prosecution under section 319 of the Criminal Procedure Act, 1955 (Act No 56 of 1955) or on a charge of perjury; and
  - b. no evidence derived from the evidence obtained from the person shall be used or received against the person in any criminal proceedings against that person, other than a prosecution under section 319 of the Criminal Procedure Act, 1955 (Act No 56 of 1955) or on a charge of perjury.

### **25. Order for custody of thing**

The presiding judge, if satisfied that any thing produced during the course of the examination will likely be relevant to the investigation of any offence under the Act, shall order that the thing be given into the custody of the police officer or someone acting on the police officer's behalf.

### **26. Powers of court with regard to recalcitrant witness**

1. The provisions of section 189 of the Criminal Procedure Act shall with the necessary changes apply in respect of the person who refuses to be sworn or to make an affirmation as a witness, or, having been sworn or having made an affirmation as a witness, refuses to answer any question put to him or her or refuses or fails to produce any book, paper or document required to be produced by him or her;
2. A person referred to in subsection (1) who refuses or fails to give the information contemplated in section 20(3) and (4), shall not be sentenced to imprisonment as contemplated in section 189 of the Criminal Procedure Act unless the judge is also of the opinion that the furnishing of such information is necessary for the administration of justice or the maintenance of law and order.

## **Part 2**

### **IMPOSING CONDITIONS TO PREVENT TERRORIST ACTS ss 27 - 31**

#### **27. Application for imposition of conditions to prevent terrorist acts**

1. Subject to subsection (2), a police officer may bring an application ex parte before a judge if the police officer —
  - a. believes on reasonable grounds that a terrorist act will be carried out; and
  - b. suspects on reasonable grounds that the imposition of a release on warning with conditions on a person, or the arrest of a person, is necessary to prevent the carrying out of the terrorist act.
2. The consent of the National Director is required before a police officer may bring an application under subsection (1).
3. A judge who receives an application under subsection (1) may cause the person to appear before him or her or another judge.
4. Notwithstanding subsections (1) and (2), if —
  - a. either —
    - i. the grounds for bringing an application referred to in subsection (1)(a) and (b) exist but, by reason of exigent circumstances, it would be impracticable to bring an application under subsection (1), or
    - ii. an application has been brought under subsection (1) and a summons has been issued, and
  - b. the police officer suspects on reasonable grounds that the detention of the person in custody is necessary in order to prevent a terrorist act,
  - c. the police officer may arrest the person without warrant and cause the person to be detained in custody, to be taken before a judge in accordance with section 28.
5. If a police officer arrests a person without warrant in the circumstance described in subsection (4)(a)(i), the police officer shall, take that person without delay before a judge, and —
  - a. bring an application in accordance with subsection (1); or
  - b. release the person; and
  - c. promptly inform the person of the reason for being arrested and detained.

#### **28. How person is dealt with**

1. A person detained in custody in accordance with section 27(4) shall be taken before a judge without delay, unless, at any time before taking the person before a judge, the police officer, is satisfied that the person should be released from custody unconditionally, and so releases the person.
2. When a person is taken before a judge under subsection (1) —
  - a. if an application has not been brought under section 27(1), the judge shall order that the person be released; or
  - b. if an application has been brought under section 27(1) —
    - i. the judge shall order that the person be released unless the police officer who brought the application shows cause why the detention of the person in custody is justified on one or more of the following grounds:  
  
(aa) the detention is necessary to ensure the person's appearance before a judge in order to be dealt with in accordance with section 29,  
(bb) the detention is necessary for the protection or safety of the public, including any witness, having regard to all the circumstances including —  
  
(bbA) the likelihood that, if the person is released from custody, a terrorist act will be carried out, and  
(bbB) any substantial likelihood that the person will, if released from custody, interfere with the administration of justice, and  
  
(cc) any other just cause and, without limiting the generality of the foregoing, that the detention is necessary in order to maintain confidence in the administration of justice, having regard to all the circumstances, including the apparent strength of the police officer's grounds under section 27(1), and the gravity of any terrorist act that may be carried out, and
    - ii. the judge may adjourn the matter for a hearing under section 29 but, if the person is not released under subparagraph (i), the adjournment may not exceed forty-eight hours.

## **29. Hearing before judge**

1. The judge before whom the person appears pursuant to section 27(1) —
  - a. may, if satisfied by the evidence adduced that the police officer has reasonable grounds for the suspicion, order that the person enter into an undertaking to keep the peace and be of good behaviour for any period that does not exceed twelve months and to comply with any other reasonable conditions prescribed in the undertaking, including the conditions set out in section 22(2), that the judge considers desirable for preventing the carrying out of a terrorist act; and

- b. if the person was not released under section 28(2)(b)(i), shall order that the person be released, subject to the undertaking given, if any, ordered under paragraph (a).
2. The judge may commit the person to prison for a period not exceeding twelve months if the person fails or refuses to enter into the undertaking in accordance with subsection (1).

### **30. Right to legal practitioner and other visitation rights**

In this Part the provisions as to legal representation and visits referred to in section 23 shall apply.

### **31. Conditions - firearms**

1. Before making an order under section 29(1)(a), the judge shall consider whether it is desirable, in the interests of the safety of the person or of any other person, to include as a condition of the undertaking that the person be prohibited from possessing any weapon or explosive for any period specified in the undertaking, and where the judge decides that it is so desirable, the judge shall add such a condition to the undertaking.
2. If the judge adds a condition described in subsection (1) to an undertaking, the judge shall specify in the undertaking the manner and method by which —
  - a. the things referred to in that subsection that are in the possession of the person shall be surrendered, disposed of, detained, stored or dealt with; and
  - b. the authorizations, licences and registration certificates held by the person shall be surrendered.
3. If the judge does not add a condition described in subsection (1) to an undertaking, the judge shall include in the record a statement of the reasons for not adding the condition.
4. The judge may, on application of the police officer, the National Director or the person, vary the conditions fixed in the undertaking.

## **Chapter 3**

### **COMBATING FINANCING OF TERRORISM ss 32 - 37**

#### **Part 1**

### **32. Dealing in property for terrorist purposes and facilitating**

Any person whether within or outside the Republic who knowingly —

- a. deals directly or indirectly in any property that is owned or controlled by or on behalf of a terrorist organisation;
- b. enters into or facilitates, directly or indirectly, any transaction in respect of property referred to in paragraph (a); or
- c. provides any financial or other related services in respect of property referred to in paragraph (a) to, for the benefit of or at the direction of a terrorist organisation,
- d. is guilty of an offence and is liable on conviction to imprisonment for a period not exceeding 15 years.

### **33. Reporting**

1. Any person shall report forthwith to the Financial Intelligence Centre —

- a. the existence of property in their possession or control that they know is owned or controlled by or on behalf of a terrorist organisation; and
  - b. information about a transaction or proposed transaction in respect of property referred to in paragraph (a).
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 series of transactions to which the business is a party is related to an offence referred to in section 3(3)(c) to (e) or 32 must, within the prescribed period after the knowledge was acquired or the suspicion arose, report to the Financial Intelligence Centre the grounds for the knowledge or suspicion and the prescribed particulars concerning the transaction or series of transactions.

#### **34. Audit**

An accountable institution must determine on a continuing basis whether they are in possession or control of property owned or controlled by or on behalf of a proscribed organisation.

#### **35. Monthly report**

Subject to the regulations, every accountable institution must report, within the period specified by regulation or, if no period is specified, monthly, to the Financial Intelligence Centre either —

- a. that it is not in possession or control of any property referred to in section 34, or
- b. that it is in possession or control of such property, and the prescribed particulars concerning the property.

#### **36. 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 or any other person with a provision of section 33 or 35.
2. Subsection (1) does not apply to the common law right to legal professional privilege as between an attorney and client in respect of communications made in confidence between-
  - a. the attorney and 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.

#### **37. Protection of persons making reports**

No action, whether criminal or civil, lies against an accountable institution or any other person complying in good faith with the provisions of section 33 and 35, including any director, employee or other person acting on behalf of such accountable institution or such other person.

A person who has made, initiated or contributed to a report in terms of section 33 or 35 or the grounds for such a report, is competent, but not compellable, to give evidence in criminal proceedings arising from the report.

No evidence concerning the identity of a person who has made, initiated or contributed to a report in terms of section 33 or 35 or who has furnished additional information concerning such a report or the grounds for such a report in terms of a provision of this Act, 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.

### **38. Failure to report possession or control of property or suspicion**

Any accountable institution or person who fails, within the prescribed period, to report to the Financial Intelligence Centre the prescribed information in respect of property in accordance with section 33 or 35 is guilty of an offence and liable on conviction to imprisonment for a period not exceeding ten years or to a fine not exceeding R10000000.

## **PART 2**

### **SEARCH, SEIZURE AND FORFEITURE OF TERRORIST PROPERTY ss 39**

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#### **39. Search warrant**

1. Where a police officer believes on reasonable grounds that there is in any building, receptacle or place any property as referred to in section 3(3)(c) to (e) or 32 he or she may apply to a judge for a search warrant to be issued for the seizure of such property.
2. If it appears to the judge from information on oath contained in the application referred to in subsection (1) that there are reasonable grounds for believing that there is in any building, receptacle or place any property referred to in subsection (1) in the possession or under the control of or upon any person or upon or at any premises the judge may issue a search warrant if the following conditions are met —
  - a. that there are reasonable grounds for suspecting that the property is intended to be used for the purposes referred to in section 3(3)(c) to (e) or 32 and that either —
    - i. its continued seizure is justified while its derivation or its intended use is further investigated or consideration is given to bringing (in the Republic or elsewhere) proceedings against any person for an offence with which the property is connected, or
    - ii. proceedings against any person for an offence with which the property is connected have been started and have not been concluded; or
  - b. that there are reasonable grounds for suspecting that the property consists of resources of an organisation which is a proscribed organisation and that either —
    - i. its continued seizure is justified while investigation is made into whether or not it consists of such resources or consideration is given to bringing (in the Republic or elsewhere) proceedings against any person for an offence with which the property is connected, or
    - ii. proceedings against any person for an offence with which the property is connected have been started and have not been concluded.
3. A search warrant issued under subsection (2) shall require a police officer to seize the property in question and shall to that end authorize such police

officer to search any person identified in the warrant, or to enter and search any premises identified in the warrant and to search any person or thing found on or at such premises.

4. If the property seized consists of cash or funds standing to the credit of a bank account, the police officer shall pay such cash or funds 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 police officer shall forthwith report to the Financial Intelligence Centre the fact of the seizure of the cash or funds and the opening of the account.
5. A judge may direct the release of the whole or any part of the property if satisfied, on an application by the person from whom it was seized, that the conditions in subsection (2) for the detention of property are no longer met in relation to the property.
6. Property is not to be released as referred to in subclause (5) —
  - a. if a declaration for its forfeiture under section 39, or an application to determine interests of third parties under section 41, is made, until any proceedings in pursuance of the application (including any proceedings on appeal) are concluded,
  - b. if (in the Republic or elsewhere) proceedings are started against any person for an offence with which the property is connected, until the proceedings are concluded.

#### **40. Declarations of forfeiture on conviction**

1. Whenever any person is convicted of an offence under sections 3(3)(c) to (e) or section 32, the court in passing sentence shall, in addition to any punishment which that court may impose in respect of the offence, declare—
  - a. any property—
    - i. by means of which the offence was committed;
    - ii. which was used in the commission of the offence; or
    - iii. which was found in the possession of the convicted person;
  - b. and which was seized under section 39 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), shall 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) shall, if it was seized under section 39, 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 90 days after the date of the notice published in the Gazette; or
  - b. if any person referred to in section 36(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.

#### **41. Interests of third parties**

1. A declaration of forfeiture shall 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 the circumstances under which he or she acquired the interest in that property were not of such a nature that he or she could reasonably have been expected to have suspected that it was property as referred to in sections 3(3)(c) to (e) or 32; or
  - c. that he or she could not prevent such use.
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.

If a court referred to in paragraph (a) finds —

- a. that the property is wholly owned by the applicant, the court shall 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;
  - b. that the applicant has an interest in the property —
    - (aa) the court shall 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 interest therein, but not exceeding the proceeds of the sale; or
    - (bb) if the State has disposed of the property the court shall direct that the applicant be compensated by the State in an amount equal to the value of his 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.

#### **42. Evidence in respect of declarations of forfeiture and certain interests**

In order to make a declaration of forfeiture or to determine any interest under section 41(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.

#### **Part 2**

### **PRESERVATION AND FORFEITURE OF PROPERTY ORDERS ss 43 - 52**

#### **43. 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 contemplated in sections 3(3)(c) to (e) or 32.
2. The High Court after examining the application in private, and being satisfied that there are reasonable grounds to believe that there is in any building, receptacle or place any property contemplated in sections 3(3)(c) to (e) or 32, may make a provisional preservation order which has immediate effect and may simultaneously grant a rule nisi calling upon all interested parties upon a day mentioned in the rule to appear and to show cause why the preservation order should not be made final.
3. A High Court making a provisional preservation of property order may include in the order an order authorising the seizure of the property concerned by a police official, and any other ancillary orders that the court considers on reasonable grounds 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.

#### **44. Notice of preservation of property orders**

1. If a High Court makes a preservation of property order referred to in section 43, 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; and
  - c. the court may require publication in the media of the fact of the application.
2. A notice under subsection (1)(a) shall be served in the manner in which a summons, commencing civil proceedings in the High Court is served.
3. Any person who has an interest in the property which is subject to the preservation of property order may give 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. A notice of intention to oppose under subsection (1) 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), two weeks after such service; or
  - b. any other person, two weeks after the date upon which a notice under subsection (1) (b) was published in the Gazette or the publication in the media of the fact of the application.
5. A notice of intention to oppose under subsection (3) shall contain full particulars of the chosen address for the delivery of documents concerning further proceedings under this Part and shall be accompanied by an affidavit stating —
  - a. full particulars of the identity of the person opposing;
  - 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.

#### **45. Duration of preservation of property orders**

1. 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.

#### **46. 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 officer 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.

#### **47. 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 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 the 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 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.

#### **48. 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 sequestrated; 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 sequestrated; 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,
  - c. 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.

#### **49. 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.

#### **50. 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 49 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.

#### **51. 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.

## **52. Variation and rescission of orders**

1. A High Court which made a preservation of property order 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 such order was —
  - a. erroneously sought or erroneously granted in the absence of any party affected thereby;
  - b. in which there is an ambiguity, or a patent error or omission, but only to the extent of such ambiguity, error or omission;
  - c. granted as a result of a mistake common to the parties;
  - d. and 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. The party desiring any relief under subsection(1) shall make application therefor upon notice to all parties whose interests may be affected by any variance sought.
3. The court shall not make any order rescinding or varying any preservation order or an order authorising the seizure of the property concerned or other ancillary order unless satisfied —
  - a. that all parties whose interests may be affected have notice of the order proposed;
  - b. 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
  - c. 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;
4. The court which made the preservation order shall rescind the preservation of property order when the proceedings against the defendant concerned are concluded.
5. 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.
6. Any person affected by an order for the appointment of a curator bonis may at any time apply-
  - a. for the variation or rescission of the order;
  - b. for the variation of the terms of the appointment of the curator bonis concerned; or
  - c. for the discharge of the curator bonis.

7. A High Court which made an order for the appointment of a curator bonis —
  - a. may, if it deems it necessary in the interests of justice, at any time-
    - i. vary or rescind the order;
    - ii. vary the terms of the appointment of the curator bonis concerned; or
    - iii. discharge that curator bonis;
  - b. shall rescind the order and discharge the curator bonis concerned if the relevant preservation of property order is rescinded.
8. (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.

### **Part 3**

#### **Forfeiture of property (ss 53 - 62)**

##### **53. Application by National Director 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 contemplated in sections 3(3)(c) to (e) or 32 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 opposed the application for a preservation order.
3. A notice under subsection (1) shall be served in the manner in which a summons commencing civil proceedings in the High Court, is served.
4. Any person who is referred to in subsection (2) 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,
    - iii. and may adduce evidence at the hearing of the application.

##### **54. Late notice of opposition**

1. Any person who, for any reason, did not give notice of intention to oppose may, within two weeks of becoming aware of the existence of a preservation of property order, apply to the High Court for leave to give such notice.
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 53, 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 give notice of intention to oppose 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 give notice of intention to oppose; 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 oppose, 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. Notice to oppose after leave has been obtained under subsection (1) shall contain full particulars of the chosen address of the person who enters such appearance for the delivery of documents concerning further proceedings and shall be accompanied by an affidavit referred to in section 44(5).

#### **55. Making of forfeiture order**

1. The High Court shall, subject to section 59, make an order applied for under section 54 if the Court finds on a balance of probabilities that the property concerned is property as contemplated in sections 3(3)(c) to (e) or 32.
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 paragraph (a) 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 issuing 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 59 or an appeal against a forfeiture order has expired; or
  - b. before such an application or appeal has been disposed of.

#### **56. Notice of reasonable grounds that property is concerned in terrorist offences**

1. The National Director may apply to a judge 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 property referred to in sections 3(3)(c) to (e) or 32.
2. The judge shall make an order referred to in subsection (1) if the judge is satisfied that there are reasonable grounds to believe that the property concerned is property referred to in sections 3(3)(c) to (e) or 32.

3. When a judge makes an order under subsection (1), the registrar of the High Court 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 property referred to in sections 3(3)(c) to (e) or 32.
4. A notice issued under subsection (3) shall be served on the person concerned in the manner in which a summons commencing civil proceedings in the High Court is served.

## **57. Exclusion of interests in property**

1. The High Court may, on application-
  - i. under section 53(4); or
  - ii. by a person referred to in section 54(1),
  - iii. 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 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.
3. 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 on commission and that any book, paper, document, record, recording, or other material not privileged be produced at the hearing of such testimony on commission.
4. The High Court may make an order under subsection (1), in relation to the forfeiture of the property referred to in sections 3(3)(c) to (e) or 32, 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 property referred to in sections 3(3)(c) to (e) or 32; or
  - c. where the applicant had acquired the interest before the commencement of this Act, that the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned as property referred to in sections 3(3)(c) to (e) or 32.
5. (a) A person who testifies under this section and —
  - 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,
  - iii. shall be guilty of an offence.

(b) A person who furnishes an affidavit under subsection (2) and makes a false statement in the affidavit knowing that statement to be false or not believing it to be true, 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.

6. (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 property referred to in sections 3(3)(c) to (e) or 32, the State may submit a return of the service on the applicant of a notice issued under section 56(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 56(3) as contemplated in paragraph (a), the applicant for an order under subsection (1) must, in addition to the facts referred to in subsection (3)(a) to (3)(c), 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 property referred to in sections 3(3)(c) to (e) or 32.

(c) A High Court making an order for the exclusion of an interest in property under paragraph (a) 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 property contemplated in sections 3(3)(c) to (e) or 32.

## **58. 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 53(1) is to be heard and, on the grounds of sufficient proof or otherwise, that all persons who gave notice of intention to oppose in terms of section 43(3) have knowledge of notices given under section 53(2), the Court may-
  - a. make any order by default which the Court could have made under sections 55(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 60 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.

## **59. Subsequent application for exclusion of interests in forfeited property**

1. Any person affected by a forfeiture order who was entitled to receive notice of the application, but did not receive such notice, may, within 60 days after the notice of the forfeiture order 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 60 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 on commission and that any book, paper, document, record, recording, or other material not privileged be produced at the hearing of such testimony on commission.
8. The High Court may make an order under subsection (1), in relation to the forfeiture of the property referred to in sections 3(3)(c) to (e) or 32, 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 property referred to in sections 3(3)(c) to (e) or 32; or
  - c. where the applicant had acquired the interest before the commencement of this Act, that the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned as property referred to in sections 3(3)(c) to (e) or 32.
9. (a) A person who testifies under this section and —

- 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, shall be guilty of an offence.

(b) A person who furnishes an affidavit under subsection (2) and makes a false statement in the affidavit knowing that statement to be false or not believing it to be true, 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.

## **60. Effect of forfeiture order**

1. (a) 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 61 in respect of such property.  
(b) 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.  
(c) 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.

## **61. Fulfilment of forfeiture order**

1. The curator bonis must, subject to any order for the exclusion of interests in forfeited property under sections 57(2)(a) or 59(8) and in accordance with the directions of the Criminal Assets Recovery Committee as contemplated in the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998)-
  - a. deposit any moneys declared forfeited under section 57 into the Criminal Assets Recovery Account as contemplated in section 63 and 64 of the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998);
  - b. deliver property declared forfeited under section 57 to the Account; or
  - c. dispose of property declared forfeited under section 57 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. 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.

## 62. Regulations

1. The Minister 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 include -
  - a. specifying the reporting by accountable institutions in terms of section 35; and
  - b. specifying how the proceeds referred to in section 61 are to be distributed.

## Part 4

### MISCELLANEOUS ss 63 - 66

#### 63. Administration of Act

The President may by proclamation in the Gazette assign the administration of this Act to any Minister, and may determine that any power or duty conferred or imposed by this Act on such Minister, shall be exercised or carried out by that Minister after consultation with one or more other Ministers.

#### Amendment and repeal of laws

The laws in the Schedule are hereby amended or repealed to the extent indicated.

#### 65. Interpretation

The provisions of this Act shall be interpreted in accordance with the principles of international law, and in particular international humanitarian law, in order not to derogate from those principles.

#### 66. Short title and commencement

This Act is called the Anti-Terrorism Act, 2002, and comes into operation on a date determined by the President in the *Gazette*.

### SCHEDULE

#### SCHEDULE OF LEGISLATION REPEALED: SECTION 62

Act No	Year	Title	Extent of amendment or repeal
10	1972	Civil Aviation Offences Act	Section 2 of the Civil Aviation Offences Act, 1972 (Act No. 10 of 1972), is hereby amended by inserting in subsection (1) the following paragraph after paragraph (g):  "(h) <u>unlawfully and intentionally uses any device, substance or weapon and performs an act of violence against a person at a designated airport, airport, heliport or navigational facility.</u> "
74	1982	Internal Security Act	The whole Act is repealed
72	1982	Intimidation Act	Section 1A is repealed
126	1992	Criminal Law Second Amendment	Chapter 5 is repealed

		Act	
38	2001	Financial Intelligence Centre Act	<p>1. The long Title of the Financial Intelligence Centre Act, 2001 (Act No 38 of 2001), (the Act) is substituted for the following:</p> <p>To establish a Financial Intelligence Centre and a Money Laundering Advisory Council in order to combat money laundering activities and the financing of terrorist acts; to impose certain duties on institutions and other persons who might be used for money laundering purposes <u>and terrorist act financing offences</u>; 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.</p> <p>2. The following definition is inserted in the Act after the definition of "supervisory body":</p> <p><u>"Terrorist act financing offence " means an offence under section 3(3)(c) to (e) or 32 of the Anti-Terrorism Act.</u></p> <p>3. The following subsection is substituted for subsection (1) of section 3 of the Act:</p> <p>(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 <u>and terrorist act financing offences.</u></p> <p>4. Subparagraph (i) of section 18(1)(a) is substituted for the following subparagraph:</p> <p>(i) policies and best practices to identify the proceeds of unlawful activities and to combat money laundering activities <u>and terrorist act financing offences</u>; and</p> <p>5. The heading to Chapter 3 of the Act is substituted for the following:</p> <p><b><u>MONEY LAUNDERING AND FINANCING OF TERRORIST ACTS CONTROL MEASURES</u></b></p>
			<p>6. The following subsection is substituted for section 35 of the Act:</p> <p>(1) A judge designated by the Minister of Justice for the purposes of the Interception and Monitoring Prohibition Act, 1992 (Act 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</p>

			<p>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-</p> <p>that person has transferred or may transfer the proceeds of unlawful activities to the accountable institution or is using or may use the accountable institution for money laundering purposes <u>or for terrorist act financing offences</u> or for the purpose of any transaction contemplated in section 29(1)(b); or</p> <p>that account or other facility has received or may receive the proceeds of unlawful activities or is being or may be used for money laundering purposes <u>or for terrorist act financing offences</u> or for the purpose of any transaction contemplated in section 29(1)(b).</p>
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