

REPUBLIC OF SOUTH AFRICA

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# PREVENTION OF ORGANISED CRIME AMENDMENT BILL

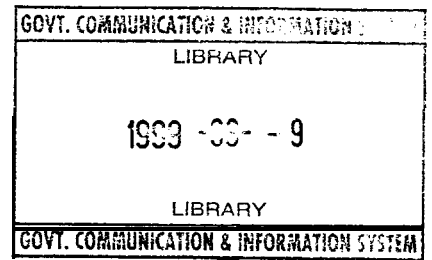
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*(As amended by the Portfolio Committee on Justice (National Assembly))*

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(MINISTER OF JUSTICE)

[B 2B—99]



REPUBLIEK VAN SUID-AFRIKA

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# WYSIGINGSWETSONTWERP OP DIE VOORKOMING VAN GEORGANISEERDE MISDAAD

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*(Soos gewysig deur die Portefeuljekomitee oor Justisie (Nasionale Vergadering))*

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(MINISTER VAN JUSTISIE)

[W 2B—99]

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## 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.
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# BILL

To amend the Prevention of Organised Crime Act, 1998, so as to effect **certain** textual improvements; to further regulate the Criminal Assets Recovery Account; and to provide for matters connected therewith.

**B**E IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

### Amendment of Preamble to Act 121 of 1998

1. The Preamble to the Prevention of Organised Crime Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by the insertion, in the Afrikaans text, of the following heading:

“AANHEF”.

### Amendment of Index to Act 121 of 1998

2. The Index to the principal Act is hereby amended—

- (a) by the substitution in the Afrikaans text in item 21 for the expression “misdaad” of the expression “onregmatige aktiwiteite”;
- (b) by the substitution in the Afrikaans text for the heading “**INSTANDHOUDING VAN EIENDOM**” of the following heading:  
“**EIENDOMSINSTANDHOUDINGSBEVELE**”;
- (c) by the substitution in the Afrikaans text in item 61 for the expression “gedinge” of the expression “aansoeke”; and
- (d) by the substitution for the reference to Schedules 2 and 3 of the following reference:

### “SCHEDULE 2

Amendment of the Drugs and Drug Trafficking Act, 1992                      20  
(Act No. 140 of 1992)  
(Section 79)

### SCHEDULE 3

Amendment of the International Co-operation in Criminal Matters Act, 1996                      25  
(Act No. 75 of 1996)  
(Section 79)”.

## Amendment of section 1 of Act 121 of 1998

## 3. Section 1 of the principal Act is hereby amended—

- (a) by the substitution for the definition of “Committee” in subsection (1) of the following definition:  
 “‘Committee’ means [a committee] the Criminal Assets Recovery Committee established in terms of section 65;”;
- (b) by the substitution for the definition of “Instrumentality of an offence” in subsection (1) of the following definition:  
 “‘**[Ainstrumentality]** instrumentality of an offence’ means any property which is concerned in the commission or suspected commission of an offence, whether within the Republic or elsewhere;”;
- (c) by the substitution in the definition of “proceeds of unlawful activities” in subsection (1) for the words preceding paragraph (a) of the following words:  
 “‘proceeds of unlawful activities’ means any property [or part **thereof**] or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in connection with or as a result of any unlawful activity carried on by any person, whether in the Republic or elsewhere, except for purposes of Chapter 5 where it means—”; and
- (d) by the substitution in subsection (3) for the words preceding paragraph (a) of the following words:  
 “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—”.

## Amendment of section 2 of Act 121 of 1998

## 4. Section 2 of the principal Act is hereby amended—

- (a) by the substitution for subparagraphs (i) and (ii) of paragraph (a) of subsection (1) of the following subparagraphs, respectively:  
 “(i) receives or retains any property derived, directly or indirectly, from a pattern of racketeering activity; and  
 (ii) knows or ought reasonably to have known that such property is so derived [, directly or indirectly]; and  
 [from a pattern of racketeering activity; and]”; and
- (b) by the substitution for subparagraph (ii) of paragraph (b) of subsection (1) of the following subparagraph:  
 “(ii) [who] knows or ought reasonably to have known that such property derived or is derived from or through a pattern of racketeering activity;”;
- (c) by the substitution for subparagraph (ii) of paragraph (c) of subsection (1) of the following subparagraph:  
 “(ii) [who] knows or ought reasonably to have known that such property derived or is derived from or through a pattern of racketeering activity;”; and
- (d) by the insertion after paragraph (f) of subsection (1) of the word “or”.

## Amendment of section 3 of Act 121 of 1998

## 5. Section 3 of the principal Act is hereby amended—

- (a) by the substitution in the Afrikaans text for subsection (1) of the following subsection:  
 “(1) Iemand wat skuldig bevind word aan ‘n misdryf bedoel in artikel 2(1) is strafbaar met ‘n boete van hoogstens R 1 000 miljoen of met gevangenisstraf 50 vir ‘n tydperk van [lebenslang] tot lewenslange gevangenisstraf. ”; and
- (b) by the substitution in the Afrikaans text for the words preceding paragraph (a) of subsection (2) of the following words:

“Ondanks enige ander wet wat handel met die straffurisdiksie van die streekhof, indien ‘n streekhof, nadat hy ‘n beskuldigde skuldig bevind het aan ‘n misdryf bedoel in artikel 2(1) wat volg op [’n]—”.

#### Amendment of section 4 of Act 121 of 1998

6. Section 4 of the principal Act is hereby amended— 5
- (a) by the substitution in the Afrikaans text for the words preceding paragraph (a) of the following words:
- “Iemand wat weet of redelikerwys behoort te **[weet] geweet het** dat eiendom die opbrengs van onregmatige aktiwiteite is of deel van sodanige opbrengs uitmaak, en—”; and 10
- (b) by the substitution for paragraph (i) of the following paragraph:
- “(i) of concealing or disguising the nature, source, location, disposition or movement of the said property or [its] the ownership thereof or any interest which anyone may have in respect thereof: or”. 15

#### Amendment of section 5 of Act 121 of 1998

7. Section 5 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of the following words:
- “Any person who knows or ought reasonably to have known that another person has obtained the proceeds of unlawful activities, and who enters into any agreement with anyone or engages in any arrangement or transaction whereby—”. 20

#### Substitution of section 6 of Act 121 of 1998

8. The following section is hereby substituted for section 6 of the principal Act:
- “Acquisition, possession or use of proceeds of unlawful activities 25
6. Any person who—
- (a) acquires;
- (b) uses; or
- (c) has possession of, 30
- [of]** property and who knows or ought reasonably to have known that it is or forms part of the proceeds of unlawful activities of another person. shall be guilty of an offence.”.

#### Amendment of section 7 of Act 121 of 1998

9. Section 7 of the principal Act is hereby amended—
- (a) by the substitution for the words preceding paragraph (a) of subsection ( 1 ) of the following words: 35
- “Any person who carries on a business or is in charge of, or manages a business undertaking or who is employed by a business undertaking and who suspects or ought reasonably to have suspected that—”;
- (b) by the substitution for the expression “activity” in subparagraph (ii) of paragraph (c) of subsection (1) of the expression ‘activities’; 40
- (c) by the substitution in the Afrikaans text for the words following subparagraph (ii) of paragraph (c) of subsection (1) of the following words:
- “is verplig om sy of haar suspisie en alle beskikbare inligting rakende die gronde waarop dit berus, binne ‘n redelike tyd aan te meld by ‘n persoon deur die Minister aangewys en meet alle redelike stappe doen om sodanige verpligting na te kom.”; 45
- (d) by the insertion in the Afrikaans text after paragraph (a) of subsection (3) of the word “en”;
- (e) by the substitution for paragraph (a) of subsection (5) of the following paragraph: 50
- “(a) No obligation as to secrecy and no other restriction on the disclosure of information as to the affairs or business of another, whether imposed by any law, the common law or any agreement, shall affect any obligation imposed under this section to report or disclose information or to permit access to any 55

registers, records or other documents unless that obligation of secrecy or other restriction is based on the common law right to professional privilege between an attorney and his or her client in respect of information communicated to the attorney so as to enable him or her to provide advice, to defend the client or to render other legal assistance to the client in connection with an offence under any law in respect of which the client is charged, in respect of which he or she has been arrested or summoned to appear in court or in respect of which an investigation with a view to institute criminal proceedings is being conducted against him or her,': and

(f) by the substitution in the Afrikaans text for subsection (6) of the following subsection:

“(6) Iemand wat ‘n party is tot ‘n transaksie ten opsigte waarvan hy of sy ‘n suspisie vorm wat na sy of haar mening gerapporteer meet word kragtens subartikel (1), mag met daardie transaksie voortgaan en meet verseker dat alle rekords rakende daardie transaksie behou word en dat alle redelike stappe [geneem] gedoen word om die verpligting kragtens hierdie artikel na te kom.”.

Insertion of section 7A in Act 121 of 1998

10. The following section is hereby inserted in the principal Act after section 7:

### “Defence

7A. If a person is charged with negligently committing an offence under section 4.5 or 6, that person may raise as a defence the fact that he or she had reported a suspicion in terms of section 7.”.

Amendment of section 9 of Act 121 of 1998

11. Section 9 of the principal Act is hereby amended by the substitution for the words following paragraph (c) of subsection (2) of the following words:

“shall be guilty of [any] an offence.”.

Amendment of section 10 of Act 121 of 1998

12. Section 10 of the principal Act is hereby amended by the substitution for subsections (2) and (3) of the following subsections, respectively:

“(2) If the offence contemplated in section 9 is committed on the premises or grounds of, or within 500 metres of a public or private school, or any other educational institution, during hours in which the facility is open for classes or school related programmed or when minors are using the facility, such [circumstance] fact shall be regarded as an aggravating [factor] circumstance.

(3) If a court, after having convicted an accused of any offence, other than an offence contemplated in this Chapter, finds that the accused was a member of a criminal gang at the time of the commission of the offence, such [factor] finding shall be regarded as an aggravating [factor] circumstance for sentencing purposes.”.

Amendment of section 11 of Act 121 of 1998

13. Section 11 of the principal Act is hereby amended—

(a) by the substitution in the Afrikaans text for paragraph (c) of the following paragraph:

“(c) in ‘n besondere kriminele bende se gebied bly of dikwels daar verkeer en hulle styl van [klere, die] kleredrag, gebruik van [hulle] handtekens, taal of [hul] tatoeëermerke [aangeneem bet] aanneem, en met bekende lede van ‘n kriminele bende omgaan;”: and

(b) by the substitution in paragraph (d) for the expression ‘activity’ of the expression “activities”.

## Amendment of section 12 of Act 121 of 1998

## 14. Section 12 of the principal Act is hereby amended—

- (a) by the insertion after subparagraph (a) of paragraph (i) of subsection (1) of the word “or”;
- (b) by the insertion after subparagraph (a) of paragraph (iv) of subsection (1) of the word “or”;
- (c) by the substitution in the Afrikaans text for the expression “kurator” in subparagraph (i) of paragraph (a) of subsection (2) of the expression “eksekuteur”; and
- (d) by the substitution for subsection (3) of the following subsection: 10
 

“(3) For the purposes of this Chapter, a person has benefited from unlawful [activity] activities if he or she has at any time, whether before or after the commencement of this Act, received [any advantage, payment, service or reward including **any** property or part thereof in connection with **any criminal** activity carried on **by** him or her or by any other person] or 15 retained any proceeds of unlawful activities.”.

## Amendment of section 15 of Act 121 of 1998

## 15. Section 15 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

- “(3) If at the particular time referred to in subsection (2) the recipient holds— 20
  - (a) the property, other than cash, which he or she received, the value concerned shall be the value of the property at the particular time; or
  - (b) property [, or any part thereof,] which directly or indirectly represents in his or her hands the property which he or she received, the value concerned shall be the value of the property, in so far as it represents the property which he or 25 she received, at the relevant time.”.

## Amendment of section 19 of Act 121 of 1998

## 16. Section 19 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection:
 

“(1 ) Subject to the provisions of subsection (2), the value of a defendant’s 30 proceeds of unlawful activities shall be the sum of the values of the [payments or other] property, services, advantages, benefits or rewards received by him or her at any time, whether before or after the commencement of this Act, in connection with the [criminal] unlawful activity carried on by him or her or any other person.’.; 35
- (b) by the substitution in the Afrikaans text for subparagraph (ii) of paragraph (a) of subsection (2) of the following subparagraph:
 

“(ii) eiendom [, of ‘n **deel daarvan,**] te gewees het wat regstreeks of onregstreeks in die verweerder se hande die eiendom verteenwoordig het wat hy of sy in daardie verband ontvang 40 bet.’.; and
- (c) by the substitution in the Afrikaans text for the expression “moes” in paragraph (b) of subsection (2) of the expression “moet”

## Amendment of section 20 of Act 121 of 1998

## 17. Section 20 of the principal Act is hereby amended— 45

- (a) by the substitution for the words preceding paragraph (a) of subsection (1) of the following words:
 

“For the purposes of section [18(1)(b)] 18(2)(b) or 21(3)(a), the amount which might be realised at the time of the making of a confiscation order against a defendant shall be the amount equal to the sum of—”; and 50
- (b) by the insertion in the Afrikaans text after subparagraph (ii) of paragraph (a) of subsection (4) of the word “of”.

## Amendment of section 22 of Act 121 of 1998

18. Section 22 of the principal Act is hereby amended—

- (a) by the substitution in the Afrikaans text in subsection (1) for the expression “belange” of the expression “belang”;
- (b) by the substitution in the Afrikaans text in subsection (2) for the words preceding paragraph (a) of the following words:
 

“Vir die doeleindes van ‘n ondersoek kragtens artikel 18(1), indien bevind word dat ‘n hof die verweerder beveel het om enige feite kragtens artikel 26(7) te openbaar en dat die verweerder sander voldoende rede versuim het om sodanige feite te openbaar of, nadat hy of sy daartoe beveel is, valse inligting verstrekket bet. wetende dat die inligting vals is of nie glo dat dit waar is nie, meet die hof hierdie feite as *prima facie*-getuigenis aanvaar dat enige eiendom [of **deel daarvan, waartoe**] waarmee die inligting verband hou—”;
- (c) by the substitution for subsection (3) of the following subsection:
 

“(3) For the purposes of determining the value of a defendant’s proceeds of unlawful activities in an enquiry under section [20(1)18(1)—

  - (a) if the court finds that he or she has benefited from an offence and that—
    - (i) he or she held property at any time at. or since, his or her conviction: or
    - (ii) property was transferred to him or her at any time since the beginning of a period of seven years before the fixed date, the court shall accept these facts as *prima facie* evidence that the property was received by him or her at the earliest time at which he or she held it, as an advantage, payment, service or reward in connection with the offences or related criminal activities referred to in section 18(1);
  - (b) if the court finds that he or she has benefited from an offence and that expenditure had been incurred by him or her since the beginning of the period contemplated in paragraph (a), the court shall accept these facts as *prima facie* evidence that any such expenditure was met out of the advantages, payments, services or rewards, including any property received by him or her in connection with the offences or related criminal activities referred to in section 18(1) committed by him or her.”; and
- (d) by the deletion in the Afrikaans text in subsection (4) of the words “of deel daarvan”.

## Amendment of section 24 of Act 121 of 1998

19. Section 24 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of subsection (3) of the following paragraph:
 

“(a) if the court finds that the person referred to in [that] subsection (1) has so benefited, make a confiscation order and the provisions of this Part shall, with the necessary changes, apply to the making of such order;”;
- (b) by the substitution for subsection (5) of the following subsection:
 

“(5) A court conducting an enquiry under [subsection (2)] this section shall not apply sections 21 and 22.”; and
- (c) by the substitution for paragraph (a) of subsection (6) of the following paragraph:

“(a) convicted of one or other of the offences in respect of which the order had been made, the court convicting him or her may conduct an enquiry under section [20] 18 and make an appropriate order;”.

Amendment of section 26 of Act 121 of 1998

20. Section 26 of the principal Act is hereby amended— 5

(a) by the substitution in the Afrikaans text for paragraph (b) of subsection (6) of the following paragraph:

“(b) vir die redelike regskoste van so ‘n persoon in verband met enige **[geregtelike stappe]** verrigtinge wat ingevolge hierdie Hoofstuk teen horn of haar ingestel is of enige strafregtelike **[prosedure waartoe]** 10 **verrigtinge waarmee** sodanige **[prosedure]** verrigtinge mag verband hou,”; and

(b) by the substitution for subsection (9) of the following subsection:

“(9) Property seized under subsection (8) shall be dealt with in accordance with the directions of the High Court which made the 15 relevant [preservation of property] restraint order.”.

Amendment of section 30 of Act 121 of 1998

21. Section 30 of the principal Act is hereby amended by the substitution for paragraphs (a) and (b) of subsection (6) of the following paragraphs, respectively:

“(a) (i) the proceedings referred to in subsection [(4)(a)] (5)(a) have been 20 disposed of; or

(ii) the judgment referred to in subsection [(4)(b)] (5)(b) has been satisfied. as the case may be; or

(b) the period determined under subsection [(4)] (5) has expired.”.

Amendment of section 35 of Act 121 of 1998

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22. Section 35 of the principal Act is hereby amended by the substitution in subsection (2) for the words preceding subparagraph (i) of paragraph (a) of the following words:

“no court shall set aside the disposition of such gift under section [27, 28 or 29, 30 or 31 of the Insolvency Act, 1936 (Act No. 24 of 1936)—”.

Amendment of section 36 of Act 121 of 1998

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23. Section 36 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection:

“(2) Where an order mentioned in subsection (1) has been made in respect of a company or other juristic person or a resolution mentioned in that subsection has been registered in respect of such company or juristic person, the powers conferred 35 upon a High Court by sections 26 to [32] 31 and 33(2) or upon a *curator bonis* appointed under this Chapter. shall not be exercised in respect of any property which forms part of the assets of such company or juristic person.”.

Amendment of section 44 of Act 121 of 1998

24. Section 44 of the principal Act is hereby amended by the substitution in the 40 Afrikaans text for subsection (1) of the following subsection:

“(1) [‘n Hoe **Hof** wat ‘n **eiendomsinstandhoudingsbevel verleen,**] ‘n Eiendomsinstandhoudingsbevel kan die voorsiening maak wat [by] die Hoe Hof goeddink vir—

(a) **[vir die]** redelike lewenskoste van ‘n persoon wat ‘n belang besit in eiendom wat aan ‘n eiendomsinstandhoudingsbevel onderhewig is en sy of haar familie 45 of gesin; en

(b) **[vir die]** redelike regskoste van so . n persoon in verband met enige **[geregtelike stappe]** verrigtinge wat ingevolge hierdie **[hoofstuk]** Wet teen horn of haar **[gedoen]** ingestel word of enige ander verbandhoudende 50 strafregtelike verrigtinge.”.



## Amendment of section 47 of Act 121 of 1998

25. Section 47 of the principal Act is hereby amended by the substitution in the Afrikaans text in subsection ( 1 ) for subparagraph (ii) of paragraph (a) of the following subparagraph:

“(ii) meet die [bevel] eiendomsinstandhoudingsbevel intrek indien die [betrokke 5 eiendomsinstandhoudingsbevel ingetrek word] verrigtinge teen die betrokke verweerder afgehandel is.”.

## Amendment of section 48 of Act 121 of 1998

26. Section 48 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsection: 10

“(2) The National Director shall give 14 days notice of an application under subsection ( 1 ) to every person who entered an appearance in terms of section [42(3)] 39(3).”.

## Amendment of section 49 of Act 121 of 1998

27. Section 49 of the principal Act is hereby amended by the substitution in the 15 Afrikaans text for paragraph ~~(a)~~ of subsection (4) of the following paragraph:

“(a) meet die Hof enige bevel rakende koste teen die applikant verleen; [of] en”.

## Amendment of section 50 of Act 121 of 1998

28. Section 50 of the principal Act is hereby amended by the substitution in the Afrikaans text in subsection (2) for the expression “tegeldemaking” of the expression 20 “fasilitering”.

## Amendment of section 52 of Act 121 of 1998

29. Section 52 of the principal Act is hereby amended—

(a) by the substitution for paragraph (b) of subsection (1) of the following 25 paragraph:

“(b) by a person referred to in section [49(4)] 49(1).”; and

(b) by the substitution in the Afrikaans text for subsection (4) of the following subsection:

“(4) ‘n Hof wat ‘n bevel verleen vir die uitsluiting van ‘n belang in eiendom kragtens subartikel (1), kan, in die belang van die regspleging of die 30 openbare belang, [‘n] daardie bevel verleen op die voorwaardes wat die Hof geskik ag, met inbegrip van ‘n voorwaarde wat van die persoon wat om die uitsluiting aansoek gedoen het, vereis [word] om alle redelike stappe te doen, binne ‘n tydperk wat die Hof mag bepaal, om die toekomstige gebruik van die eiendom [in] as ‘n misdaadinstrument van ‘n misdryf bedoel in Bylae 1 te 35 voorkom.”.

## Amendment of section 53 of Act 121 of 1998

30. Section 53 of the principal Act is hereby amended—

(a) by the substitution in the Afrikaans text for paragraph (b) of subsection ( 1 ) of the following paragraph: 40

“(b) die bevel maak wat die hof in die omstandighede geskik ag; of”; and

(b) by the substitution in the Afrikaans text for subsection (4) of the following subsection:

“(4) Die hof kan, by die aanvoer van oortuigende gronde, die bevel by verstek wysig of intrek of [die een of ander bevel verleen] ‘n ander 45 aanwysing maak op die voorwaardes wat hy goedgevind.”.

## Amendment of section 54 of Act 121 of 1998

31. Section 54 of the principal Act is hereby amended—

(a) by the substitution in the Afrikaans text for subsection (3) of the following subsection: 50

“(3) Die aanhoor van die aansoek meet, in die mate wat dit [praktiese en bestaanbaar is met die regsbelange] prakties en met die belang van die regspleging bestaanbaar is, binne 30 dae vanaf die indiening van die aansoek [gehou word] plaasvind.”;

(b) by the substitution in the Afrikaans text for subsection (6) of the following subsection: 55

“(6) Die Nasionale Direkteur of die betrokke curator bonis, of ‘n persoon wat skriftelik deur hulle daartoe gemagtig is, kan getuienis en getuiens aanbied

- ter [voorlegging] weerlegging, en ter verdediging van hul[eis tot] aanspraak op die eiendom [aanvoer] en kan . n getuie wat by die verhoor verskyn. [ondervra] kruisondervra.”; and
- (c) by the substitution in the Afrikaans text for paragraph (c) of subsection (9) of the following paragraph: 5
- “(c) Iemand wat skuldig bevind word aan ‘n misdryf kragtens hierdie subartikel, is strafbaar met [’n] die straf wat by wet vir meeneed voorgeskryf word.”. 15

#### Amendment of section 56 of Act 121 of 1998

32. Section 56 of the principal Act is hereby amended by the substitution for 10 subsection (1) of the following subsection:

- “(1) Where a High Court has made a forfeiture order and a *curator bonis* has not been appointed in respect of any of the property concerned, the High Court may appoint a *curator bonis* to perform any of the functions referred to in section [59] 57 in respect of such property.”. 15

#### Amendment of section 57 of Act 121 of 1998

33. Section 57 of the principal Act is hereby amended—

- (a) by the substitution for subsection (1) of the following subsection: 20
- “(1) The *curator bonis* must, subject to any order for the exclusion of interests in forfeited property under section 52(2)(a) or 54(8) and in accordance with the directions of the Committee—
- (a) deposit any moneys forfeited under section 56(2) into the Account;
- (b) deliver property forfeited under section 56(2) to the Account; or
- (c) dispose of property forfeited under section 56(2) by sale or any other means [subject to the directions of the High Court] and deposit the 25
- proceeds of the sale or disposition into the Account.”; and
- (b) by the deletion of subsection (4).

#### Amendment of section 62 of Act 121 of 1998

34. Section 62 of the principal Act is hereby amended by the substitution for 30 paragraph (b) of subsection (1) of the following paragraph:

- “(b) the magistrate’s court regulating the proceedings referred to in section [53] 51.”. 30

#### Amendment of section 64 of Act 121 of 1998

35. Section 64 of the principal Act is hereby amended—

- (a) by the substitution for paragraph (a) of the following paragraph: 35
- “(a) all moneys derived from the [execution] fulfillment of confiscation and forfeiture orders contemplated in Chapters 5 and 6;”;
- (b) by the insertion after paragraph (a) of the following paragraph:
- “(aA) all property derived from the fulfillment of forfeiture orders as contemplated in section 57;”;
- (c) by the substitution for paragraph (c) of the following paragraph: 40
- “(c) any property or moneys appropriated by Parliament, or paid into, or allocated to, the Account in terms of any other [act] Act;”;
- (d) by the substitution for paragraph (e) of the following paragraph:
- “(e) any property or amount of money received or acquired from any source; 45
- and”; and
- (e) by the substitution for paragraph (f) of the following paragraph:
- “(f) all property or moneys transferred to the Account in terms of this Act.”. 45

**Amendment of section 69 of Act 121 of 1998**

36. Section 69 of the principal Act is hereby amended—

(a) by the substitution for paragraph (b) of the following paragraph:

“(b) make recommendations to Cabinet with regard to the allocation of property and moneys from the Account to specific law enforcement agencies;”; and

(b) by the substitution for paragraph (c) of the following paragraph:

“(c) make recommendations to Cabinet with regard to the allocation of property and moneys from the Account to any institution, organisation or fund contemplated in section 68(c);”.

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**Insertion of section 69A in Act 121 of 1998**

37. The following section is hereby inserted after section 69 of the principal Act:

“Utilisation of Account and accountability

**69A. (1)** The property and money allocated to, or standing to the credit of, the Account may be utilised by Cabinet, after considering the recommendations of the Committee, for—

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(a) the allocation of property and amounts of money from the Account to specific law enforcement agencies;

(b) the allocation of property and amounts of money from the Account to any institution, organisation or fund contemplated in section 68(c): and

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(c) the administration of the Account.

(2) All amounts of money withdrawn, or property allocated, from the Account under subsection (1) shall be so withdrawn or allocated as a direct charge against the National Revenue Fund.

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(3)(a) Whenever Cabinet allocates property or money under subsection (1) to a specific law enforcement agency or to an institution, organisation or fund contemplated in section 68(c)—

(i) Cabinet shall indicate the specific purpose for which that property or money is to be utilised; and

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(ii) the Minister shall forthwith cause all particulars of such allocation to be tabled in Parliament.

(b) Property or money allocated under subsection(1) may not be utilised for any other purpose than that specified in terms of paragraph (a)(i).

(4) No allocation of property or money shall be made under subsection (1) to an institution, organisation or fund contemplated in section 68(c) unless an accounting officer for that institution, organisation or fund is appointed or designated for such institution, organisation or fund.

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(5) An accounting officer appointed or designated under subsection (4) shall be charged with the responsibility of accounting for all money allocated under subsection (1), the acquisition, receipt, custody and disposal of all property so allocated and all payments made by him or her in respect of the purpose for which the allocation had been made.

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(6) The Committee may, after consultation with the Treasury and the Auditor-General, in such manner as it deems necessary, issue guidelines to accounting officers appointed or designated under subsection (4) in connection with the systems of book-keeping and accounting to be followed by them.

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(7) Accounting by a law enforcement agency or institution, organisation or fund for property and money allocated to it from the Account under subsection ( 1 ) shall be done separately from accounting for money and property received from any other source.

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(8) The Auditor-General shall audit the books of accounts, accounting statements, financial statements and financial management of each law enforcement agency or institution, organisation or fund to which property or money had been allocated under subsection (1) in respect of that

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allocation, and the provisions of section 6 of the Auditor-General Act, 1989 (Act 52 of 1989), shall apply in respect of any such audit.

(9) The Auditor-General shall submit a copy of the report on an audit under subsection (8) to the Committee.”.

Substitution of section 73 of Act 121 of 1998

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38. The following section is hereby substituted for section 73 of the principal Act:

“Sharing of information

73. Notwithstanding the provisions of section 4 of the Income Tax Act, 1962 (Act No. 58 of 1962), and with regard to any other secrecy provision in similar legislation, whenever any investigation is instituted in terms of this Act, including an investigation into any offence referred to in Schedule 1, and an investigation into the property, financial activities, affairs or business of any person, the Commissioner of the South African Revenue Services or any official designated by him or her for this purpose, shall be notified of such investigation with a view to mutual co-operation and the sharing of information.”.

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#### **Amendment of section 74 of Act 121 of 1998**

39. Section 74 of the principal Act is hereby amended by the substitution for paragraph (c) of subsection (1) of the following paragraph:

“(c) An application for proceedings to be held behind closed doors may be brought by the National Director, the *curator bonis* referred to in section [32 or 48] or 42 and any other person referred to in paragraph (b)(ii), and such application shall be heard behind closed doors.”.

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#### **Amendment of section 76 of Act 121 of 1998**

40. Section 76 of the principal Act is hereby amended by the substitution for subsection (1) of the following subsection:

“(1) A regional court shall have penal jurisdiction to impose any penalty mentioned in [sections 8] section 8 or 71(3)(b), even though that penalty may exceed the penal jurisdiction of that court.”.

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#### **Amendment of section 80 of Act 121 of 1998**

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41. Section 80 of the principal Act is hereby amended by the substitution in the Afrikaans text for subsection (1) of the following subsection:

“(1) Die persoon wat vir doeleindes van artikel 31 van die Wet op die Opbrengs van Misdaad, 1996 (Wet No. 76 van 1996), aangewys is, en enige *curator bonis*, kurator of ander funksionaris wat ingevolge die bepalings van daardie Wet aangestel is, word, by die inwerkingtreding van hierdie Wet, geag behoorlik tot die ooreenstemmende pos kragtens hierdie Wet aangewys of aangestel te [wees] gewees het en gaan voort om daardie pos te beklee ooreenkomstig die toepaslike wette [wat van toepassing is].”.

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#### **Repeal of Schedule 2 to Act 121 of 1998**

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42. Schedule 2 to the principal Act is hereby repealed, the existing Schedule 3 becoming Schedule 2.

#### **Addition of Schedule 3 to Act 121 of 1998**

43. The following Schedule is hereby added to the principal Act:

**“SCHEDULE 3**

**Amendment of the International Co-operation in Criminal Matters Act, 1996  
(Act No. 75 of 1996)  
(Section 79)**

1. The amendment of section 1 by— 5
- (a) the substitution for the definition of “confiscation order” of the following definition: 10
- “ ‘confiscation order’ means a confiscation or forfeiture order made under the [Proceeds of Crime Act, 1996] Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998)”; and
- (b) the substitution for the definition of “restraint order” of the following definition: 15
- “ ‘restraint order’ means a restraint order or preservation of property order made under the [Proceeds of Crime Act, 1996] Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998)”.

**Short title**

44. This Act shall be called the Prevention of Organised Crime Amendment Act, 1999.

**MEMORANDUM ON THE OBJECTS OF THE PREVENTION OF  
ORGANISED CRIME AMENDMENT BILL, 1999**

The object of this Bill is to effect certain textual improvements to the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998), and to further regulate the Criminal Assets Recovery Account.

**Parliamentary procedure:**

The State Law Advisers and the Department of Justice are of the opinion that this Bill must be dealt with in accordance with section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.