

REPUBLIC OF SOUTH AFRICA

PREVENTION OF ORGANISED CRIME SECOND AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill; Bill certified as an urgent matter in accordance with Rule 241(5) of the National Assembly) (The English text is the official text of the Bill)

(MINISTER FOR JUSTICE AND CONSTITUTIONAL DEVELOPMENT)

[B 41—99]

REPUBLIEK VAN SUID-AFRIKA

TWEEDE WYSIGINGSWETSONTWERP OP DIE VOORKOMING VAN GEORGANISEERDE MISDAAD

*(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp; Wetsontwerp as 'n dringende saak gesertifiseer ooreenkomstig Reël 241(5) van die Nasionale Vergadering)
(Die Afrikaans teks is die amptelike vertaling van die Wetsontwerp)*

(MINISTER VIR JUSTISIE EN STAATKUNDIGE ONTWIKKELING)

GENERAL Explanatory NOTE:

Words underlined with a solid line indicate insertions in existing enticements.

BILL

To amend the Prevention of Organised Crime Act, 1998, so as to amend certain definitions; and to further regulate the exclusion of interests in property; and to provide for matters connected therewith.

BE IT ENACTED by the Parliament of the Republic of South Africa as follows:—

Amendment of section 1 of Act 121 of 1998, as amended by section 3 of Act 24 of 1999

1. Section 1 of the Prevention of Organised Crime Act, 1998 (hereinafter referred to as the principal Act), is hereby amended—

(a) by the substitution for the definition of “instrumentality of an offence” in subsection (1) of the following definition:

“ ‘instrumentality of an offence’ means any property which is concerned in the commission or suspected commission of an offence at any time before or after the commencement of this Act, whether within the Republic or elsewhere;”;

(b) by the substitution for the definition of “proceeds of unlawful activities” in subsection (1) of the following definition:

“ ‘proceeds of unlawful activities’ means any property 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 at any time before or after the commencement of this Act, whether in the Republic or elsewhere, except for purposes of Chapter 5 where it means—

(a) any unlawful activity carried on by any person at any time before or after the commencement of this Act; or

(b) any act or omission outside the Republic, whether before or after the commencement of this Act, which, if it had occurred in the Republic, would have constituted an unlawful activity, ‘
and includes any property representing property so derived;”.

Amendment of section 52 of Act 121 of 1998, as amended by section 29 of Act 24 of 1999

2. Section 52 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (2) of the following paragraph:

“(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”.

Amendment of section 54 of Act 121 of 1998, as amended by section 31 of Act 24 of 1999

3. Section 54 of the principal Act is hereby amended by the substitution for paragraph (a) of subsection (8) of the following paragraph:

“(a) had acquired the interest concerned legally and for a consideration, the value 5 of which is not significantly less than the value of that interest; and”.

Short title

4. This Act is called the Prevention of Organised Crime Second Amendment Act, 1999.

MEMORANDUM on THE OBJECTS OF THE PREVENTION OF ORGANISED CRIME SECOND AMENDMENT BILL, 1999

1. In his opening address to Parliament on 25 June 1999, the President of the Republic announced *inter alia* that “(t)aking into account developments since its passage and to ensure that nobody benefits from the proceeds of crime, amendments to the Prevention of Organised Crime Act will be introduced”. (Act 121 of 1998) This Act represents one of the Governments major initiatives in its fight against crime and a high premium is placed on the effective and meaningful application thereof.

2. Chapter 6 (“Civil Recovery of Property.”) of the Act makes provision for the issuing of “preservation of property orders”. on application by the National Director of Public Prosecutions (section 38). This action is essentially a new civil remedy aimed at preventing a suspected criminal from disposing of property which he or she has used in the commission of an offence or has acquired through unlawful means.

3. However, in two such applications by the National Director of Public Prosecutions, the High Courts concerned held that the provisions of section 38 of the Act do not have retrospective application, meaning that a preservation of property order could not be issued in respect of property connected with an offence or unlawful activity which took place before the commencement of the Act.

4. From the outset the intention of the Legislature has always been that property which represents the proceeds of crime or unlawful activities should be susceptible to a preservation of property order, irrespective of whether such offence or activities took place before or after the commencement of the Act. Although the possibility cannot be excluded that other High Courts or the Supreme Court of Appeal may interpret the provisions concerned differently, the matter is of such importance for the purpose of achieving the objectives of the Act that the most appropriate course of action will be to amend the Act so as to ensure that the intention of the Legislature is given effect to.

5.1 The Bill therefore aims to amend the definitions of “instrumentality of an offence” and “proceeds of unlawful activities” in section 1 of the Act, so as to make it clear that an offence or unlawful activity that took place before the commencement of the Act will be included for the purposes of these definitions. (Clause 1)

5.2 The Bill further aims to ensure that forfeiture orders are not frustrated by the disposition of property, that is an instrumentality of an offence or the proceeds of unlawful activities, by means of gifts or fraudulent transactions. (Clauses 2 and 3)

6. 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 of the Republic of South Africa, 1996 (Act No. 108 of 1996), since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

7. This Bill does not have any financial implications for the State.