

## CHAPTER 9:17

# SERIOUS OFFENCES (CONFISCATION OF PROFITS) ACT

*Acts 12/1990, 22/1992 (s. 20), 12/1997 (s. 6), 9/1999 (s. 82), 22/2001 (s. 4), 6/2005 (s. 9).*

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**AN ACT to provide for the confiscation of the profits of crime; and to provide for matters connected therewith or incidental thereto.**

[Date of commencement: 1st April, 1991.]

## PART I

**1 Short title**

This Act may be cited as the Serious Offences (Confiscation of Profits) Act [*Chapter 9:17*].

**2 Interpretation**

(1) In this Act—

“account” means any facility or arrangement through which a financial institution accepts deposits or allows withdrawals and includes a facility or arrangement for— (a) a fixed term deposit; or

(b) a safety deposit box;

“benefit” includes a service or an advantage;

“confiscation order” means a forfeiture order or a pecuniary penalty order;

“dealing with property” includes removing the property from Zimbabwe and receiving or making a gift of the property;

“financial institution” means—

(a) the Reserve Bank of Zimbabwe established in terms of the Reserve Bank of Zimbabwe Act [*Chapter 22:10*]; or

(b) any commercial bank, accepting house, discount house or finance house registered as such under the Banking Act [*Chapter 24:20*]; or

[Paragraph as amended by section 82 of Act 9 of 1999]

(c) the Post Office Savings Bank of Zimbabwe established in terms of the Post Office Savings Bank Act [*Chapter 24:10*]; or

(d) a building society registered in terms of the Building Societies Act [*Chapter 24:02*];

“financial transaction” means—

(a) the opening, operating or closing of an account held with a financial institution; or

(b) the opening or use of a deposit box held by a financial institution; or

(c) the telegraphic or electronic transfer of funds by a financial institution on behalf of one person to another person; or

(d) the transmission of funds between Zimbabwe and foreign countries or between foreign countries on behalf of any person; or

(e) an application by any person for, or the receiving of, a loan from a financial institution;

“foreign forfeiture order” means a forfeiture order made under the law of a foreign country and registered in Zimbabwe in terms of section 32 of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*] for enforcement against property believed to be located in Zimbabwe in respect of a foreign specified offence;

“foreign interdict” means an order made under the law of a foreign country and registered in Zimbabwe in terms of section 32 of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*] for enforcement against property believed to be located in Zimbabwe in respect of a foreign specified offence;

“foreign pecuniary penalty order” means an order made under the law of a foreign country and registered in Zimbabwe in terms of section 32 of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*] and which imposes a pecuniary penalty in respect of a foreign specified offence, but does not include an order for the payment of money by way of compensation, restitution or damages;

“foreign specified offence” means a specified offence committed against the law of a foreign country;

“forfeiture order” means an order made in terms of section *eight*;

“interdict” means an order made in terms of section *thirty-three* restraining any person from dealing with property;

“magistrate” means a regional magistrate or provincial magistrate;

[Definition amended by section 6 of Act 12 of 1997]

“Minister” means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may from time to time assign the administration of this Act;

“money-laundering offence” means the offence of money-laundering referred to in section *sixty-three*;

“monitoring order” means an order made in terms of section *fifty-seven*;

“narcotic substance” means any prohibited drug referred to in the Drugs and Allied Substances Control Act [*Chapter 15:03*] or any dangerous drug referred to in the Dangerous Drugs Act [*Chapter 15:02*];

“pecuniary penalty order” means an order made in terms of section *fifteen*;

“police officer” means any member of the Police Force of or above the rank of inspector;

“proceeds of crime” means any property that is derived or realized, directly or indirectly, by any person from—

(a) the commission of any serious offence; or

(b) any act or omission which occurred outside Zimbabwe in relation to a narcotic substance and which, had it occurred in Zimbabwe would have constituted a serious narcotic offence;

and “proceeds of an offence” or “profits of crime” shall be construed accordingly; “production” includes growing and manufacture;

“production order” means an order made in terms of section *fifty-one*;

“property-tracking document” means a document relevant for—

- (a) identifying, locating or quantifying the property of a person who has committed a serious offence; or
- (b) identifying or locating any document necessary for the transfer of the property of a person who has committed a serious offence; or
- (c) identifying, locating or quantifying tainted property in relation to a serious offence; or
- (d) identifying or locating any document necessary for the transfer of tainted property in relation to a serious offence;

“serious narcotics offence” means any offence relating to a narcotic substance—

- (a) which is punishable in Zimbabwe or in a foreign country by imprisonment for a period of twelve months or by a more severe punishment; or
- (b) the value of the property derived or obtained from the commission of which is or is likely to be not less than twenty thousand dollars or such greater or lesser amount as may be prescribed;

“serious offence” means any offence—

- (a) which is punishable by imprisonment for a period of twelve months or by a more severe punishment; or
- (b) the value of the property derived or obtained from the commission of which is or is likely to be not less than twenty thousand dollars or such greater or lesser amount as may be prescribed;

and includes a specified offence;

“specified offence” means—

- (a) a serious narcotics offence; or
- (b) a money-laundering offence in relation to the proceeds of a serious narcotics offence; or (c) a prescribed offence; or
- (d) a conspiracy to commit or aiding, abetting, counselling or procuring the commission of an offence referred to in paragraph (a), (b) or (c); or
- (e) assisting another person to escape punishment for, or to dispose of the proceeds of, an offence referred to in paragraph (a); or
- (f) attempting to commit an offence referred to in paragraph (a), (b) or (c);

“tainted property” means—

- (a) any property used in, or in connection with, the commission of a serious offence; or (b) any proceeds of a serious offence; or
- (c) any property in Zimbabwe which is the proceeds of a foreign specified offence in respect of which an order may be registered in terms of Part VI of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*];

“the court” means the high court;

[Definition inserted by section 6 of act 12 of 1997]

“trustee” means a trustee appointed by the High Court in terms of paragraph (b) of subsection (2) of section *thirty-three* or subsection (1) of section *forty-eight*;

[Definition amended by section 6 of Act 12 of 1997]

(2) Any reference in this Act to a person being charged with an offence is a reference to an allegation being laid against the person for the offence, whether or not— (a) a summons has been issued against the person; or (b) a warrant for the arrest of the person has been issued.

(3) Any reference in this Act to a benefit derived by a person includes a reference to a benefit derived by another person at the request or direction of the first-mentioned person.

(4) Any reference in this Act to the property of a person includes a reference to property in respect of which the person has a beneficial interest.

### **3 Application**

(1) Parts II to VII, other than section *forty-six*, shall not apply to the conviction of a person of an offence if the conviction took place before the 1st April, 1991.

(2) Subject to subsection (1), this Act shall apply in respect of— (a) any offence, whether committed before or after the 1st April, 1991;

(b) a person’s conviction of an offence whether before or after the 1st April, 1991.

## **PART II**

### **CONFISCATION**

### **4 Application for confiscation order**

(1) Where a person is convicted of a serious offence, the Attorney-General may, subject to subsection (2), apply to the court convicting the person or any appropriate court, not later than six months after the conviction of the person, for—

- (a) a forfeiture order against any property that is tainted property in respect of the offence; or
- (b) a pecuniary penalty order against the person in respect of any benefit derived by the person from the commission of the offence.

(2) The Attorney-General shall not, except with the leave of the court, make an application in terms of subsection (1) for a forfeiture order or a pecuniary penalty order—

- (a) if an application has previously been made under that subsection or in terms of any other enactment; and
- (b) the application has been finally determined on the merits.

(3) The court shall not grant leave in terms of subsection (2) unless it is satisfied that—

- (a) the property, which is tainted property, or the benefit to which the new application relates was identified only after the first application was determined; or
- (b) necessary evidence became available only after the first application was determined; or (c) it is in the interests of justice to grant the leave.

(4) An application may be made in terms of this section for a pecuniary penalty order in respect of an offence notwithstanding that section *nineteen* applies to the offence.

## **5 Notice of application**

(1) Where the Attorney-General makes an application in terms of subsection (1) of section *four* for a forfeiture order against property in respect of a person's conviction of an offence—

- (a) the Attorney-General shall give written notice of the application to the person or to any other person he has reason to believe may have an interest in the property; and
- (b) the person, and any other person who claims an interest in the property, may appear and adduce evidence at the hearing of the application; and
- (c) the court may, at any time before the final determination of the application, direct the Attorney-General to give notice of the application to a specified person or class of persons in a manner and within such time as the court considers appropriate.

(2) Where the Attorney General makes an application for a pecuniary penalty order against a person—

- (a) the Attorney-General shall give the person written notice of the application; and (b) the person may appear and adduce evidence at the hearing of the application.

## **6 Amendment of application**

(1) Subject to subsection (2), where the Attorney-General makes an application for a confiscation order, the court hearing the application may amend the application at the request, or with the consent, of the AttorneyGeneral.

(2) The court may not amend an application so as to include additional property in an application for a forfeiture order or an additional benefit in an application for a pecuniary penalty order unless it is satisfied that—

- (a) the property or benefit was not reasonably capable of identification when the application was originally made; or
- (b) necessary evidence became available only after the application was originally made.

(3) Where the Attorney-General requests an amendment of an application for a forfeiture order and the amendment has the effect of including additional property in the application for the forfeiture order—

- (a) the Attorney-General shall give written notice of the request to amend to any person whom he has reason to believe may have an interest in property to be included in the application for the forfeiture order; and
- (b) any person who claims an interest in the property to be included in the application for the forfeiture order may appear and adduce evidence at the hearing of the request to amend.

(4) Where the Attorney-General requests an amendment of an application for a pecuniary penalty order against a person and the amendment has the effect of including an additional benefit in the application for the pecuniary penalty order, the Attorney-General shall give the person written notice of the request to amend.

## **7 Procedure on application**

(1) Where an application is made to a court for a confiscation order in respect of a person's conviction of a serious offence, the court may, in determining the application, have regard to the transcript of any proceedings against the person in relation to the offence.

(2) Where an application is made for a confiscation order to the court before which the person was convicted and the court has not, at the time the application is made, passed sentence on the person for the offence, the court may defer passing sentence until it has determined the application for the confiscation order.

## **PART III**

### **FORFEITURE ORDERS**

## **8 Forfeiture orders**

(1) On an application for a forfeiture order in terms of section *four*, the court may, if it is satisfied that the property to which the application relates is tainted property, order that the property or such of the property as it may specify in the order, is forfeited to the State.

(2) Where the court orders that property, other than money is forfeited to the State, it shall specify in the order the amount that it considers to be the value of the property at the time the order is made.

(3) In granting an application for a forfeiture order in respect of any property, the court shall take into consideration—

- (a) any hardship that may reasonably be expected to be caused to any person by the granting of the order; and
- (b) the use that is ordinarily made, or was intended to be made, of the property; and (c) the gravity of the offence concerned.

(4) Any evidence given at the hearing of the application for a forfeiture order in respect of any property that the property concerned was in the possession of the convicted person at the time of, or immediately after, the commission of the offence and no evidence is given to show that the property was not used in, or in connection with, the commission of the offence, the court shall assume that the property was used in, or in connection with, the commission of the offence.

(5) In granting an application for a forfeiture order, the court may give any directions necessary or convenient for giving effect to the order, including, without limiting the generality of the foregoing, directions to an officer of the court to do anything necessary and reasonable to obtain possession of any document necessary for the transfer of any property subject to registration in the Deeds Registry.

(6) In granting a forfeiture order the court may, if it is satisfied that it would be in the public interest for a person's interest in the property to be transferred to him, determine the nature, extent and value of the interest and declare that the forfeiture order may, to the extent to which it relates to the interest, be discharged in accordance with section *twenty-two*.

## **9 Effects of forfeiture order**

(1) Subject to subsection (2), where a court makes a forfeiture order against property the property shall vest in the State.

(2) Where a forfeiture order is made against property subject to registration in the Deeds Registry, any rights in the property shall lie with the State until the registration is effected.

(3) The State shall be registered as owner of any property subject to a forfeiture order and the Minister shall do or authorize to be done anything necessary or convenient to obtain the registration of the State as owner, including the execution of any instrument required to be executed by a person transferring an interest in property of that nature.

## **10 Effect of forfeiture order on third parties**

(1) Where an application for a forfeiture order is made against property, any person who has an interest in the property may, before the forfeiture order is made, apply to the court for an order under subsection (6).

(2) Subject to subsections (3) and (7), where a forfeiture order against property has been made, any person who has an interest in the property may apply to the court for an order under subsection (6).

(3) A person who was given notice of an application for a forfeiture order or who appeared at the hearing of the application shall not make an application to court in terms of subsection (2) except with the leave of the court.

(4) The leave of the court referred to in subsection (3) may be granted if the court is satisfied that there are special grounds for granting the leave.

(5) Without limiting the generality of subsection (4), the court may grant a person leave to apply if it is satisfied that the evidence which the person intended to adduce in connection with the application under subsection (2) was not available to him at the time of the hearing of the application.

(6) Where a person applies to a court for an order under this subsection in respect of his interest in property against which an application for a forfeiture order or a forfeiture order has been made and the court is satisfied that—

- (a) the applicant was not in any way involved in the commission of the offence concerned; or
- (b) if the applicant acquired his interest at the time, or after the commission, of the offence, the applicant did so—
  - (i) for sufficient value; and
  - (ii) without knowing and in circumstances such as not to arouse reasonable suspicion that the property was, at the time of the acquisition, tainted property;

the court shall make an order for the transfer of the interest by the State to the applicant or for the payment by the State to the applicant of an amount equal to the value of the interest, as the court thinks fit.

(7) Subject to subsection (8), an application under subsection (2) shall be made before the expiration of a period of six months commencing on the day on which the forfeiture order is made.

(8) Where a forfeiture order is made against property, the court that made the order may, on application being made to it, grant a person claiming an interest in the property leave to apply in terms of subsection (2), after the expiration of the period referred to in subsection (7) if it is satisfied that the person's failure to make his application within that period was not due to any neglect on his part.

(9) A person who makes an application in terms of subsection (1) or (2) shall notify the Attorney-General and the Minister of the making of the application.

(10) The Attorney-General shall be a party to proceedings upon an application in terms of subsection (1) or (2) and the Minister may intervene in any such proceedings.

## 11 Discharge of forfeiture order on appeal or on quashing of conviction

(1) A forfeiture order against property shall be discharged on the quashing of the conviction upon which the forfeiture order is based.

(2) Where a forfeiture order against property is discharged in terms of subsection (1) or on an appeal against the making of the order, the Attorney-General shall—

- (a) as soon as practicable after the discharge of the order, give written notice of the discharge of the order to any person whom he has reason to believe had an interest in the property immediately before the making of the order; or
- (b) if so required by the court, publish in the *Gazette*, in such manner and within such time as the court considers appropriate, a notice of the discharge of the order.

(3) A notice referred to in subsection (2) shall specify, in accordance with subsection (4), the manner in which any person who claims an interest in the property shall apply for the transfer of the interest to the person.

(4) Where a forfeiture order is discharged in terms of subsection (1) or on appeal against the making of the order, any person who, immediately before the making of the forfeiture order, claimed an interest in the property may apply to the Minister, in writing, for the transfer of the interest to him and, on receipt of the application if he is satisfied that the person's claim is valid, the Minister shall—

- (a) where the interest is vested in the State, arrange for the transfer of the interest to the person; or (b) in any other case, pay to the person an amount equal to the value of the interest.

[Subsection amended by section 6 of Act 12 of 1997]

(4a) A person who is aggrieved by the Minister's refusal to recognize the validity of his claim to an interest in any property in terms of subsection (4) may apply to a court of competent jurisdiction for a declaration as to the validity of his claim, and the Minister shall give effect to any such declaration.

[Subsection inserted by section 6 of Act 12 of 1997]

(4b) If two or more persons make applications in terms of subsection (4) claiming competing interests in the same property, the Minister may apply to a court of competent jurisdiction for a declaration as to which of the claims is valid, and shall give effect to any such declaration.

[Subsection inserted by section 6 of Act 12 of 1997]

(5) Where the Minister is to arrange for the transfer of property to a person, he may do or authorize to be done anything necessary or convenient to effect the transfer, including the execution of any instrument and the making of an application for registration of an interest in the property.

## 12 Registered foreign forfeiture orders

(1) Where a foreign forfeiture order is registered with the High Court in terms of Part VI of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*] this Part shall apply, *mutatis mutandis*, in relation to the foreign forfeiture order.

(2) Any property in relation to which a foreign forfeiture order has been registered in terms of subsection (1) may be disposed of or otherwise be dealt with in accordance with any direction of the Attorney-General or of a person authorized by the Attorney-General in writing for that purpose.

## PART IV

### PECUNIARY PENALTY ORDERS

## 13 Application of Part IV

This Part shall apply to—

- (a) property that comes into the possession, or under the control, of a person, whether within or outside Zimbabwe and whether before or after the 1st April, 1991; and
- (b) benefits that accrued to a person whether within or outside Zimbabwe and whether before or after the 1st April, 1991.

## 14 Special provision relating to specified offences

An application for a pecuniary penalty order against a person in respect of his conviction of a specified offence shall not be granted by a court before the expiry of a period of six months commencing on the date of the conviction upon which the application is based or after the expiry of a period of twelve months from that date.

## 15 Pecuniary penalty orders

(1) Where an application is made to a court for a pecuniary penalty order in respect of benefits derived by a person from the commission of an offence and the court is satisfied that person derived benefits from the commission of the offence, the court may, in terms of section *sixteen*, assess the value of the benefits so derived and order that person to pay to the State, subject to subsections (2) and (3), a pecuniary penalty equal to the value of the benefits assessed.

(2) Where property that is the proceeds of an offence has been forfeited in terms of this Act or any other enactment or a forfeiture order is proposed to be made against property that is the proceeds of an offence, the penalty referred to in subsection (1) shall be reduced by an amount equal to the value as at the time of the making of the pecuniary penalty order of the property forfeited.

(3) Where any amount of tax, whether under the law of Zimbabwe or a foreign country, has been paid by a person and that tax is attributable in whole or in part to the benefits in respect of which the pecuniary penalty order is being made, such amount may, if the court so directs, be deductible from the penalty assessed in terms of subsection (1).

(4) The court may reduce the amount payable by a person under a pecuniary penalty order made in relation to an offence by an amount equal to the amount paid by the person by way of restitution, compensation, damages or a fine in relation to the offence.

(5) In calculating the amount payable under a pecuniary penalty order, if the court took into account a forfeiture of, or a proposed forfeiture order in respect of, property and an appeal against the forfeiture order is allowed or the proceedings for the proposed forfeiture order are terminated before the order is made, the Attorney-General may apply to the court for a variation of the pecuniary penalty order to increase the pecuniary penalty by the value of the property concerned and the court may vary the order accordingly.

(6) In calculating the amount payable under a pecuniary penalty order, if the court took into account an amount of tax paid by the person and an amount is repaid or refunded to the person in respect of that tax, the Attorney-General may apply to the court for a variation of the pecuniary penalty order to increase the pecuniary penalty by the amount repaid or refunded and the court may vary the order accordingly.

(7) Any amount payable by a person to the State in terms of a pecuniary penalty order shall be a civil debt due to the State and shall be recoverable by action in any court of competent jurisdiction.

## **16 Assessment of pecuniary penalty**

(1) For the purposes of a pecuniary penalty order against a person, hereinafter referred to as “the defendant”, the value of the benefits derived by the defendant from the commission of an offence shall be assessed by the court having regard to—

- (a) the amount of money or value of property that came into the possession or under the control of— (i) the defendant; or
- (ii) any other person at the request or direction of the defendant;
- by reason of the commission of the offence; and (b) the value of any other benefit gained by—
- (i) the defendant; or
- (ii) any other person at the request or direction of the defendant; by reason of the commission of the offence; and
- (c) if the offence consisted of the doing of an act or thing in relation to a narcotic substance—
- (i) the market value, at the time of the offence, of a similar or substantially similar narcotic substance; and
- (ii) the amount that was, or the range of amounts that were, ordinarily paid for doing a similar or substantially similar act or thing; and
- (d) the value of the defendant’s property before and after the commission of the offence; and (e) the defendant’s income and expenditure before and after the offence.

(2) In assessing the value of a benefit for the purposes of this section, the court may treat as the value of the benefit the value that the benefit would have had had the benefit derived at the time the valuation is being made and may have regard to any decline in the purchasing power of money between the time the benefit was derived and the time the valuation is being made.

(3) Where an application is made for a pecuniary penalty order against a person’s property in respect of a serious offence other than a specified offence—

- (a) if evidence is adduced that the value of the person’s property after the commission of the offence exceeded the value of the person’s property before the commission of the offence, the court shall, for the purposes of subsection (1) of section *fifteen* but subject to paragraph (b) and subsection (7), treat the value of the benefits derived by the person from the commission of the offences as being not less than the amount of the excess;
- (b) if, following the evidence referred to in paragraph (a), the person satisfies the court that—
- (i) the whole of the excess was due to causes unrelated to the commission of the offence, paragraph (a) shall not apply; or
- (ii) a part of the excess was due to causes unrelated to the commission of the offence, paragraph (a) shall apply only to that part of the excess which is related to the commission of the offence.

(4) Where an application is made for a pecuniary penalty order against a person’s property in respect of a specified offence or offences—

- (a) all the property of that person at the time the application is made; and (b) all the property of that person at any time—
- (i) between the day the offence, or the earliest offence, was committed and the day on which the application is made; or
- (ii) within the period of five years immediately before the day on which the application is made; whichever is the shorter; shall be deemed, unless the contrary is proved, to be property that came into the



possession or under the control of the person by reason of the commission of the specified offence or offences.

(5) A benefit shall not be taken into account for the purposes of this section if a pecuniary penalty has been imposed in respect of the benefit in terms of this Act or any other enactment.

(6) For the purposes of this section, where the property of a person has vested in a trustee by reason of the person's insolvency, the property shall be taken to continue to be the property of the person.

(7) At the hearing of an application for a pecuniary penalty order, a police officer who has experience in the investigation of narcotic offences may testify, to the best of his information, knowledge and belief— (a) as to the market value of a narcotic substance at a particular time or during a particular period;

(b) as to the price, or range of prices, paid at a particular period for the doing of an act or thing in relation to a narcotic substance; notwithstanding any law or practice relating to hearsay evidence, and the testimony shall be *prima facie* evidence of the matters testified to.

### **17 Court may lift corporate veil**

(1) In assessing the value of benefits derived by a person from the commission of any serious offence, the court may treat as property of the person any property that, in the opinion of the court, is subject to the effective control of the person whether or not the person has— (a) any legal or other interest in the property; or

(b) any right, power or privilege in connection with the property.

(2) Without limiting the generality of subsection (1), the court may have regard to—

(a) shareholdings in, debentures over or directorships of any company that has an interest, whether direct or indirect, in the property; and

(b) any trust that has a relationship to the property; and

(c) any family, domestic or business relationships between persons having an interest in the property or in any company or trust referred to in paragraph (a) or (b), and any other persons.

(3) Where a court treats particular property as a person's property in terms of subsection (1) for the purposes of making a pecuniary penalty order against that person, the court may, on application by the Attorney-General, make an order declaring that the property is available to satisfy the order.

(4) Where the Attorney-General makes an application in terms of subsection (3)—

(a) he shall give written notice of the application to the person and to any other person whom he has reason to believe may have an interest in the property; and

(b) any person referred to in paragraph (a) may appear and adduce evidence at the hearing of the application.

### **18 Amounts paid in respect of registered foreign pecuniary penalty orders**

Where a foreign pecuniary penalty order is registered with the High Court in terms of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*] any amount paid, whether in Zimbabwe or in the foreign country in which the order was made or elsewhere, in satisfaction of the foreign pecuniary penalty order shall be taken to have been paid in settlement of the debt arising by reason of the registration of the order with the High Court.

## **PART V**

### **FORFEITURE IN RESPECT OF SPECIFIED OFFENCES**

### **19 Forfeiture of interdicted property in relation to specified offences**

(1) Subject to subsection (4) of section *thirty-seven*, if at the end of a period of six months commencing on the day of conviction an interdict issued in respect of the property of a person convicted of a specified offence is still in force, the property shall be forfeited to the State.

(2) Subject to subsection (3), property forfeited to the State in terms of subsection (1) shall vest in the State.

(3) Where immovable property or other property whose ownership passes through registration is forfeited to the State, the State shall be entitled to be registered as the owner of the property and the Minister shall have power to do, or to authorize to be done, anything necessary or convenient to effect the registration of the State as the owner, including execution of any instrument required to be executed by a person transferring an interest in property of that kind.

(4) Where property is forfeited to the State in terms of this section—

(a) the property shall not, except with the leave of the court that issued the interdict and in accordance with any directions the court may make, be disposed of or otherwise dealt with by or on behalf of the State until any appeal noted in relation to the matter has been determined or the time for noting an appeal has lapsed without any appeal having been noted; and

(b) if, at the end of the period referred to in paragraph (a), the conviction has not been quashed, the property may be disposed of, or otherwise dealt with, in accordance with any direction of the Minister or of a person authorized by the Minister for the purposes of this paragraph.

(5) Any direction in terms of paragraph (b) of subsection (4) may include a direction that the property shall be disposed of in accordance with any enactment specified in the direction.

## 20 Recovery of property to which section 19 applies

(1) Where property is forfeited to the State in terms of section *nineteen*, any person who claims an interest in the property may, subject to subsections (2) and (4), apply to the court which issued the interdict for an order under subsection (6) or (7).

(2) The application referred to in subsection (1) shall, subject to subsection (3), be made before the expiry of the period of six months commencing on the day on which the property is forfeited to the State.

(3) The court may grant a person leave to apply after the expiry of the period referred to in subsection (2) if it is satisfied that the delay in making the application was not due to neglect.

(4) An application for an order under subsection (6) or (7) in relation to an interest in property shall not, except with the leave of the court, be made by a person who was given notice of the proceedings at the time of the application for the issue of the interdict.

(5) The court may grant a person leave in terms of subsection (4) if it is satisfied that his failure to have the property excluded from the interdict was not due to any neglect on his part.

(6) Where a person applies for an order in respect of an interest in property and the court is satisfied— (a) that the applicant was not in any way involved in the commission of the relevant specified offence; and

(b) where the applicant acquired the interest at the time of or after the commission of the offence, that he did so lawfully and for sufficient value; and

(c) that the property was acquired in circumstances such as would not arouse a reasonable suspicion that the property was tainted property; the court may make an order declaring the nature, extent and value of the interest of the applicant and direct the State to transfer the interest to the applicant or order the payment to the applicant by the State of an amount equal to the value of the interest.

(7) Where a person applies for an order in respect of an interest in property and the court is satisfied that it would not be contrary to public interest for the interest to be transferred to the person and that there is no other reason why the interest should not be transferred to the person, the court may— (a) determine the nature, extent and value of the interest; and

(b) order that section *nineteen* shall cease to operate in relation to the interest if payment for the interest is made in terms of section *twenty-two*.

## 21 Effect of quashing of conviction

(1) Where a conviction in respect of property forfeited to the State in terms of section *nineteen* is quashed, the Attorney-General shall—

(a) as soon as practicable after the quashing of the conviction, give notice of the quashing of the conviction to any person whom the Attorney-General has reason to believe may have had an interest in the property immediately before the property was forfeited; and

(b) if ordered to do so by the court, give written notice or publish a notice in the *Gazette* to a specified person or class of persons within such time as the court may fix of the quashing of the conviction.

[Subsection amended by section 6 of Act 12 of 1997]

(2) A notice in terms of subsection (1) shall include a statement to the effect that a person claiming an interest in the property may apply in terms of subsection (3) for the transfer of the interest to the person.

(3) Any person who claims to have had an interest in property immediately before it was forfeited to the State may apply to the Minister, in writing, for the transfer of the interest to himself and on receipt of application if he is satisfied that the person's claim is valid, the Minister shall—

(a) if the interest is in respect of property which is still vested in the State, arrange for the transfer of the interest to the person; or

(b) in any other case, arrange for the payment to the person of an amount equal to the value of the interest.

(3a) A person who is aggrieved by the Minister's refusal to recognize the validity of his claim to an interest in any property in terms of subsection (3) may apply to a court of competent jurisdiction for a declaration as to the validity of his claim, and the Minister shall give effect to any such declaration.

[Subsection amended by section 6 of Act 12 of 1997]

(3b) If two or more persons make applications in terms of subsection (3) claiming competing interests in the same property, the Minister may apply to a court of competent jurisdiction for a declaration as to which of the claims is valid, and shall give effect to any such declaration.

[Subsection inserted by section 6 of Act 12 of 1997]

(4) In arranging for the transfer of any property in terms of paragraph (a) of subsection (3), the Minister shall have power to do, or authorize to be done, anything necessary or convenient to effect the transfer, including the execution of any instrument.

[Subsection inserted by section 6 of Act 12 of 1997]

## 22 Person with interest in forfeited property entitled to buy back interest

(1) Where a court makes an order in terms of subsection (6) of section *eight* in respect of an interest in property, the payment to the State of the amount specified in the order as the value of the interest shall discharge the forfeiture order to the extent to which it relates to the interest.

(2) Where a court makes an order in terms of subsection (7) of section *twenty*, and a payment to the State of an amount specified in the order as the value of the interest is made, section *nineteen* shall cease to apply in relation to the interest.

(3) The Minister shall arrange for the interests referred to subsections (1) and (2) to be transferred to the person in whom they were vested immediately before the property was forfeited to the State, and shall have power to do, or authorize to be done, anything necessary or convenient to effect the transfer, including the execution of any instrument.

### **23 Buying out other interests in forfeited property**

Where a person is, in terms of this Part, authorized to take transfer of any interest in property which is forfeited to the State, the person may, on giving notice to any other person who may have had some other interest in the property immediately before the forfeiture took place, purchase that other interest from the State:

Provided that the person served with the notice may, within twenty-one days of the receipt of the notice, lodge with the Minister a written objection to the purchase of that interest.

### **24 Forfeiture where person cannot be brought before court**

(1) Where the Attorney-General suspects on reasonable grounds that any person has acquired, holds or is dealing with tainted property and it is not possible—

- (a) for any reason to bring the person before a court on a charge for any serious offence; or
- (b) for a foreign pecuniary penalty order or a foreign forfeiture order to be made in respect of the person; he may apply to the High Court for an order declaring the property forfeited to the State.

(2) The High Court may, on an application in terms of subsection (1), if it is satisfied that the property concerned is tainted property and that it is in the interests of justice that the property be forfeited to the State, order accordingly.

## **PART VI**

### **SEARCH POWERS IN RELATION TO PROPERTY LIABLE TO CONFISCATION**

### **25 Powers of search and seizure**

(1) Subject to subsection (2), a police officer may search a person for, and seize, any property which the police officer believes, on reasonable grounds, to be tainted property.

(2) The search or seizure referred to in subsection (1) shall be made—

- (a) with the consent of the person concerned; or (b) under warrant issued in terms of section *twenty-six*; or (c) in emergencies in terms of section *twenty-eight*.

(3) Subject to subsection (2), a police officer may enter upon any land or upon or into premises, search the land or premises for tainted property and seize any property found in the course of the search which the officer believes, on reasonable grounds, to be tainted property.

(4) In conducting a search in terms of this section, a police officer may also search the clothing that is being worn by the person and any property under or apparently under the person's immediate control:

Provided that nothing contained in this section shall be construed as authorizing a police officer to carry out a search by way of an examination of body cavities.

### **26 Search warrants in relation to tainted property**

(1) Where a police officer has reasonable grounds for believing that there is tainted property of a particular kind on a person, his clothing or under his immediate control, or upon any land or upon or in any premises, he may apply to a magistrate for the issue of a search warrant for the tainted property.

(2) On an application in terms of subsection (1), a police officer shall lay before the magistrate information on oath setting out the grounds upon which the warrant is sought and the magistrate may, subject to subsection (4), issue a warrant authorizing a police officer to—

- (a) in the case of a search warrant in respect of land or premises, enter upon the land, or upon or into the premises; and
- (b) search for the tainted property; and
- (c) seize property found in the course of the search which the police officer, on reasonable grounds, believes to be tainted property.

(3) A search warrant may be issued in terms of subsection (2) in relation to tainted property whether or not information has been laid before the magistrate in respect of the relevant offence.

(4) A magistrate shall not issue a warrant in terms of this section unless he is satisfied that—

- (a) there are reasonable grounds for issuing the warrant; and
- (b) where information has not been laid before him in respect of the relevant offence at the time of the application for the warrant—
  - (i) the property is tainted property; and
  - (ii) information will be laid before him in respect of the relevant offence within forty-eight hours.

(5) A warrant issued in terms of this section shall specify—

- (a) the purpose for which the warrant is issued, including the nature of the relevant offence; and

- (b) the kind of property authorized to be seized; and
  - (c) the date on which the warrant shall cease to have effect; and
  - (d) the time during which entry upon any land or premises is authorized.
- (6) If in the course of searching under a search warrant issued in terms of this section for tainted property in relation to a particular offence, a police officer finds—
- (a) property which he believes on reasonable grounds to be tainted property in relation to the offence, although not of a kind specified in the warrant; or
  - (b) tainted property in relation to another serious offence; or
  - (c) anything that the police officer believes, on reasonable grounds, will afford evidence as to the commission of a criminal offence; and the police officer believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing or continuing or repeating the offence or any other offence, the warrant shall be deemed to authorize the police officer to seize that property or thing.
- (7) A police officer acting in accordance with a warrant issued in terms of this section may require a person to remove any clothing that the person is wearing but only if the removal of the clothing is necessary and reasonable for an effective search of the person.
- (8) A person shall not be searched in terms of this section except by a person of the same sex and with strict regard to decency.

### **27 Grant of search warrant by telephone**

- (1) Where, by reason of circumstances of urgency, a police officer considers it necessary to do so, he may apply for a search warrant to a magistrate by telephone.
- (2) Before making the application referred to in subsection (1), the police officer shall prepare the information referred to in subsection (2) of section *twenty-six*.
- (3) On an application in terms of subsection (1), a magistrate may, if satisfied after considering the information referred to in subsection (2) or any other information he may receive concerning the grounds upon which the issue of the search warrant is sought, that there are reasonable grounds for issuing the warrant, he shall issue the warrant and record thereon the reasons for granting it.
- (4) Where a magistrate has issued a warrant in terms of subsection (3), he shall inform the police officer of the terms of the warrant and the date on which and the time at which it was signed and the police officer shall in turn complete a form of warrant in terms furnished by the magistrate, including the name of the magistrate.
- (5) Not later than the day next following the date of the execution of the warrant or the expiry of the warrant, whichever is the earlier, the police officer shall give the magistrate who authorized the warrant the form of the warrant completed by him and the information in connection with the warrant, duly sworn.
- (6) On receipt of the documents referred to in subsection (5) the magistrate shall attach to them the warrant signed by him and deal with the documents in the manner in which he would have dealt with them had the application been made in terms of section *twenty-six*.
- (7) A form of warrant duly completed by a police officer in accordance with subsection (4) shall be authority for any search, entry or seizure.

### **28 Search in emergencies**

A police officer may search a person for tainted property or enter upon land or upon or into premises and search for tainted property and may seize any tainted property he finds in the course of the search if—

- (a) he believes on reasonable grounds that it is necessary to do so in order to prevent the concealment, loss or destruction of the tainted property; and
- (b) the search, entry or seizure is made in circumstances of such seriousness and urgency as to require and justify immediate search, entry or seizure without the authority of an order of the court or a warrant issued in terms of this Act.

### **29 Responsibility for seized property**

Where property is seized in terms of this Part, the Commissioner of Police shall arrange for the property to be kept and shall ensure that all reasonable steps are taken to preserve it while it is so kept until it is required for the purposes of this Act or disposed of in terms of this Act.

### **30 Return of seized property**

- (1) Where property has been seized in terms of this Part and—
- (a) it appears that the property was seized otherwise than because it may afford evidence of the commission of an offence; or
  - (b) at the end of the period of forty-eight hours after its seizure, the matter has not been laid before a magistrate; or
  - (c) no forfeiture order is made in respect of the property within fourteen days after the conviction of a person in connection with the property; any person who claims an interest in the property may apply to the court for an order that the property be returned to him.

(2) Where an application for an interdict or a forfeiture order in respect of property seized in terms of this Part is refused, the Commissioner of Police shall arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the refusal of the application.

### **31 Search for and seizure of tainted property in relation to foreign offences**

(1) Where a police officer is authorized in terms of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*] to apply to a magistrate for a search warrant under this Act in relation to tainted property in respect of a foreign specified offence, the provisions of this Part shall apply, *mutatis mutandis*, in relation to the application for the search warrant.

(2) If, in the course of searching for tainted property in relation to a foreign specified offence, a police officer finds—

- (a) any property which he believes, on reasonable grounds, to be tainted property in relation to the foreign specified offence although not of the kind specified in the warrant;
- (b) any property which he believes, on reasonable grounds, to be tainted property in relation to another foreign specified offence in respect of which a search warrant is in force; or (c) anything which he believes, on reasonable grounds—
  - (i) to be relevant to criminal proceedings in the foreign country in respect of the foreign specified offence; or
  - (ii) will afford evidence as to the commission of a criminal offence;

and he believes, on reasonable grounds, that it is necessary to seize that property or thing in order to prevent its concealment, loss or destruction, or its use in committing, continuing or repeating the offence or any other offence, the warrant shall be deemed to authorize the police officer to seize that property or thing.

(3) Any person who claims an interest in property seized under a warrant issued in respect of a foreign specified offence may apply to court for an order that the property be returned to him.

(4) On an application in terms of subsection (3), if the court is satisfied that—

- (a) the person is entitled to the property; and
- (b) the property is not tainted property in relation to the foreign specified offence; the court shall order the Commissioner of Police to return the property to that person.

(5) Where property has been seized in respect of a foreign specified offence and, at the end of thirty days after the day on which the property was seized—

- (a) neither a foreign interdict nor a foreign forfeiture order in relation to the property has been registered in accordance with the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*]; and
- (b) an interim interdict has not been issued in terms of this Act in relation to the foreign specified offence; the Commissioner of Police shall arrange for the property to be returned to the person from whose possession it was seized as soon as practicable after the expiry of that period.

## **PART VII**

### **INTERDICTS**

### **32 Interpretation in Part VII**

In the Part—

“defendant” means a person convicted of a serious offence.

### **33 Interdicts**

(1) Where a person has been convicted of a serious offence or has been or is about to be charged with a serious offence, the Attorney-General may apply to the court for an interdict in terms of this Part against all or any specified property of that person including property acquired after the issue of the interdict and property of a person other than the defendant.

[Subsection amended by section 6 of Act 12 of 1997]

(2) On an application in terms of subsection (1), the court may, subject to section *thirty-four*—

- (a) order that the property specified in the application shall not be disposed of, or otherwise dealt with, by any person except in such manner and in such circumstances as are specified in the order; or
- (b) if it is satisfied that the circumstances so require, direct that the property or such part of the property as is specified in the order, be taken into the custody and control of a trustee appointed for that purpose by the court.

(3) An interdict against a person’s property may be granted subject to such conditions as the court thinks fit and may make provision for meeting out of the property—

- (a) that person’s reasonable living expenses, including the reasonable living expenses of that person’s dependants and reasonable business expenses; and
- (b) that person’s reasonable expenses in defending a criminal charge; and
- (c) a specified debt incurred by that person in good faith, being a debt to which neither paragraph (a) nor (b) applies.

(4) The court shall not make any provision referred to in subsection (3) unless it is satisfied that the defendant cannot meet the expense or debt concerned out of property that is not subject to the interdict.

[Subsection amended by section 6 of Act 12 of 1997]

(5) Where a trustee takes charge of any property in terms of this section, he may do anything that is reasonably necessary for the purpose of preserving the property, including— (a) becoming a party to any civil proceedings affecting the property; and

(b) ensuring that the property is insured; and

(c) if the property consists, in whole or in part, of a business, employing or terminating the employment of persons in the business.

### **34 Grounds for issuing an interdict**

(1) Subject to this section, on an application in terms of subsection (1) of section thirty-three the court shall issue an interdict against the property in respect of which the application is made, unless the court is satisfied that it is not in the public interest to do so.

[Subsection amended by section 6 of Act 12 of 1997]

(2) ....

[Subsection deleted by section 6 of Act 12 of 1997]

(3) Where the defendant has not been convicted of the offence concerned, the court shall not issue an interdict unless—

(a) the application for the interdict is supported by an affidavit of a police officer stating that he believes that the defendant committed the offence; and

(b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

(4) Where the application is made pending the charging of the defendant with the offence concerned, the court shall not issue an interdict unless it is satisfied that the defendant will be charged with the offence or a related offence within forty-eight hours.

(5) Where the offence concerned is a serious offence other than a specified offence, the court shall not issue an interdict against the property of the defendant unless—

(a) the application is supported by an affidavit of a police officer stating that he believes that—

(i) the property is tainted property in relation to the offence; or

(ii) the defendant derived a benefit, directly or indirectly, from the commission of the offence; and

(b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

(6) Where an interdict is sought against a person other than the defendant, the court shall not issue the interdict unless—

(a) the application is supported by an affidavit of a police officer stating that he believes that—

(i) the property is tainted property in relation to the offence; or

(ii) the property is subject to the effective control of the defendant who derived a benefit, directly or indirectly, from the commission of the offence; and

(b) the court is satisfied, having regard to the matters contained in the affidavit, that there are reasonable grounds for holding that belief.

(7) In determining whether there are reasonable grounds to believe that property is in the effective control of the defendant, the court may have regard to the matters referred to in subsection (2) of section *seventeen*.

(8) An interdict shall be granted in respect of property whether or not there is any risk of the property being disposed of, or otherwise dealt with, in such manner as would defeat the operation of this Act.

(9) A court may refuse to grant an interdict if the State fails to give the court such undertakings as the court considers appropriate with respect to the payment of damages or costs in relation to the granting and operation of the order.

(10) An affidavit made by a police officer for the purposes of this section shall set out the grounds on which the officer holds any particular belief.

### **35 Notice of application for interdict**

(1) Subject to subsection (2), the Attorney-General shall give written notice of an application for an interdict against property to—

(a) the owner of the property; and

(b) any other person whom he has reason to believe may have an interest in the property.

(2) The court may grant an interdict notwithstanding that no notice of the application has been given in terms of subsection (1) if it is satisfied that—

(a) circumstances of urgency require the granting of the order; or

(b) it would be contrary to the public interest to give notice of the application; but, subject to subsection (3), an interdict granted in terms of this subsection shall cease to have effect at the end of such period, not exceeding fourteen days, as may be specified by the court.

(3) The court may, on application by the Attorney-General before the expiry of the period referred to in subsection (2), extend the period of operation of the interdict granted in terms of that subsection if the court is satisfied that there are circumstances justifying the extension and the owner of the property or any other person who may have an interest in the property shall be notified in writing of the application in terms of this subsection.

(4) The court may at any time before the final determination of an application for an interdict or an extension of the period of operation of an interdict, direct the Attorney-General to give or publish notice of the application to a specified person or class of persons, in such manner and within such time as the court may fix.

### **36 Persons who may appear and adduce evidence**

Where the Attorney-General has, in terms of section *thirty-five*, given notice of an application for an interdict or for the extension of the period of operation of an interdict, any person who claims an interest in the property may appear and adduce evidence at the hearing of the application.

### **37 Court may make further orders**

(1) Where a court grants an interdict, it may, at the time it makes the order or at any later time, make any ancillary order which it may consider necessary, including—

- (a) an order varying the property to which the interdict relates; or
- (b) an order varying any condition to which the interdict is subject; or
- (c) an order for the examination on oath of the person, in this section called the “respondent”, whose property is subject to the interdict or any other person concerning the affairs of the respondent including the nature and location of the property of the respondent; or
- (d) an order for the carrying out of any undertaking given by the State in relation to the payment of damages or costs arising from the granting of the interdict; or
- (e) where the property is in the custody or under the control of a trustee—
  - (i) an order directing the manner in which the trustee may exercise his powers or perform his duties in relation to the property; or
  - (ii) an order determining any question relating to the property including any question relating to the liabilities of the respondent; or
  - (iii) an order directing the respondent to furnish the trustee, within a specified period, with a statement setting out such particulars of the property as the court may think proper.

(2) An order under subsection (1) may be made on application by— (a) the Attorney-General; or

- (b) the respondent; or
- (c) the trustee; or

(d) with the leave of the court, any other person; and every person with an interest in the matter shall be notified by the applicant, in writing, of the application.

(3) Any person having an interest in property which is the subject of an interdict may apply to court for the variation of the interdict to exclude the person’s interest from the order and the court shall grant such application—

- (a) if the offence concerned is not a specified offence and the interest is not tainted property; or
- (b) where the offence concerned is a specified offence, if it is satisfied that—
  - (i) the applicant was not in any way involved in the commission of the offence; and
  - (ii) the interest in the property was acquired for sufficient value, without knowledge, and in circumstances such as not to arouse a reasonable suspicion that the property was tainted property.

(4) An application in terms of subsection (3) may be granted by the court if the court is satisfied that it is in the public interest to do so having regard to all the circumstances of the case including—

- (a) any financial hardship or other consequence of the interest remaining subject to the interdict; and
- (b) the seriousness of the offence; and
- (c) the likelihood that the interest may be subject to a forfeiture order or to section *nineteen* or be required to satisfy a pecuniary penalty order.

(5) A person who has been convicted of or has been charged or is about to be charged with, a specified offence and whose property is subject to an interdict may apply to court for the exclusion of any property from the interdict and the court shall grant such application if it is satisfied that—

- (a) the property was not used in, or in connection with, the commission of the offence; and (b) the interest in the property was lawfully acquired.

(6) Where a person is examined before a court pursuant to an order under subsection (1), the person shall not be excused from answering any question on the ground that the answer might tend to incriminate him or make him liable to a penalty.

(7) Where a person, other than a person against whom charges have been or are to be laid, is examined before a court pursuant to an order under subsection (1), a statement or disclosure made by that person in answer to a question put in the course of the examination, and any information, document or thing obtained as a direct or indirect consequence of the statement or disclosure, shall not be admissible against him in any criminal proceedings except proceedings for giving false testimony in the course of the examination.

(8) For the purposes of subsection (7), proceedings on an application for an interdict, a forfeiture order or a pecuniary penalty order shall not be regarded as criminal proceedings.

(9) Where the Attorney-General applies to court for an order under subsection (1), a witness shall not be required to answer a question or to produce a document if the court is satisfied that the answering of the question or production of the document may prejudice the investigation of, or the prosecution of any person for, an offence.

### **38 Trustee to discharge pecuniary penalty order**

(1) Where a court has made a pecuniary penalty order against a person whose property is in the custody or under the control of a trustee, the court may direct the trustee to pay to the State an amount equal to the penalty amount out of the property held by him.

(2) The court may, for the purposes of subsection (1), direct the trustee to sell or otherwise dispose of any of the property in his custody or under his control and authorize him to execute any deed or instrument in the name of the person who owns or has an interest or right in the property.

(3) The trustee shall not apply any money in terms of subsection (1) or dispose of any property in terms of subsection (2) until any appeal noted in relation to the matter has been determined or the time for noting any appeal has lapsed without any appeal having been noted.

### **39 Registration of interdicts**

Where an interdict has been granted in respect of immovable property or any property or interest in property that is subject to registration, the Attorney-General shall apply to the appropriate registrar for a recording in the register of the particulars of the interdict.

### **40 Contravention of interdicts**

(1) Any person who disposes of, or otherwise deals with, property which is subject to an interdict shall be guilty of an offence and liable to—

- (a) in the case of an individual, a fine not exceeding level twelve or the value of the property, whichever is the greater, or to imprisonment for a period not exceeding ten years, or to both such fine and such imprisonment; or
- (b) in the case of a body corporate, to a fine not exceeding level fourteen or three times the value of the property, whichever is the greater.

[Subsection amended by Act 22 of 2001]

(2) Any unauthorized dealing with property which is subject to an interdict may be set aside by the court at the instance of the Attorney-General.

### **41 Duties of trustee**

(1) If, after a trustee has been directed to pay a pecuniary penalty out of the property of a person, the trustee is given notice in writing of proceedings in terms of the Insolvency Act [*Chapter 6:04*] against the person, he shall not take any action to sell or otherwise dispose of any property or pay the State any money until the proceedings have been disposed of.

(2) Where a person whose property is in the custody or under the control of a trustee becomes insolvent, the property shall be deemed to be in the possession or under the control of the trustee as, or on behalf of, the trustee of the estate of the insolvent person.

### **42 Protection of trustee from personal liability**

(1) A trustee shall not be personally liable for—

- (a) any loss or damage arising from his having taken custody or control of the property which is sustained by any person claiming the property or an interest in the property unless the court in which the claim is made is of the opinion that the trustee is guilty of negligence in respect of the taking of custody or control of the property; or
- (b) the cost of proceedings instituted to establish a claim to the property or an interest in the property.

(2) A trustee shall not be personally liable for any rate or tax due under any enactment in respect of property which is in his custody or under his control.

### **43 Remuneration and expenses of trustee**

(1) A trustee shall be entitled to remuneration and expenses in respect of the performance of his duties in relation to property in his custody or under his control.

(2) Regulations shall make provision for or in respect of the remuneration and expenses of a trustee in relation to the performance of his duties under this Act.

### **44 Court may revoke interdicts**

(1) A court may, on application by a person against whom an interdict has been issued, revoke the interdict if the person gives security to the satisfaction of the court for the payment of any pecuniary penalty that may be imposed upon him.

(2) A person who makes an application in terms of subsection (1) shall notify the Attorney-General and, where the property is in the custody or under the control of a trustee, the trustee.



#### **45 When interdict ceases to have effect**

(1) An interdict shall cease to have effect if the charge against the person in relation to whom the interdict was issued is withdrawn or if the person is acquitted.

(2) Where a court has made a confiscation order, an interdict shall cease to have effect once the confiscation order is satisfied or otherwise discharged.

#### **46 Interim interdict in respect of foreign offence**

(1) Where the Attorney-General is authorized under the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*] to obtain the issue of an interdict in terms of this Act in respect of a foreign specified offence, the provisions of this Part relating to the application for an interdict shall apply, *mutatis mutandis*, in relation to the application for an interdict in respect of the foreign specified offence.

(2) An interdict granted in respect of a foreign specified offence shall cease to have effect on the expiry of a period of thirty days commencing on the day on which the interdict was granted.

(3) On application by the Attorney-General before the expiry of the period referred to in subsection (2), a court may extend the period of operation of the interdict.

(4) Where a foreign interdict is not registered with the High Court in terms of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*] before the expiry of the period referred to in subsection (2) or (3), the interdict referred to in subsection (1) shall cease to have effect.

#### **47 Registered foreign interdicts**

Where a foreign interdict has been registered with the High Court in terms of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*] provisions of this Part relating to interdicts shall apply, *mutatis mutandis*, subject to sections *forty-eight* and *forty-nine*, in relation to registered foreign interdicts.

#### **48 Trustee to take control of property in relation to registered foreign interdict**

(1) Where a foreign interdict has been registered in Zimbabwe, the court may, upon application by the Attorney-General, direct that the property, or any part of the property, be taken into the custody of or under the control of a trustee appointed by the court.

(2) The owner of the property or any other person whom the Attorney-General has reason to believe may have an interest in the property shall be notified in writing of any application in terms of subsection (1).

(3) The court may, before making a direction in terms of subsection (1), direct the Attorney-General to give or publish notice of the application to a specified person or class of persons, in such manner and within such time as the court considers appropriate.

(4) Any person who claims an interest in property in respect of which an application in terms of subsection (1) has been made may appear and adduce evidence at the hearing of the application.

(5) Where a direction in terms of subsection (1) has been made, the court may at any time make any one or more of the following orders—

- (a) an order regulating the manner in which the trustee may exercise his powers or perform his duties; or
- (b) an order determining any question relating to that property; or
- (c) an order directing the owner of the property to furnish the trustee with such particulars relating to the property as the court thinks fit.

(6) A trustee may do anything that is reasonably necessary for the purpose of preserving the property, including—

- (a) becoming a party to any civil proceedings relating to or affecting the property; and
- (b) ensuring that the property is insured; and
- (c) if the property consists, in whole or in part, of a business, employing or terminating the employment of persons in the business.

#### **49 Undertaking by the Attorney-General**

The court may, on application by any person claiming an interest in property which is subject to a foreign interdict and which is in the custody of or under the control of a trustee, make an order requiring the Attorney-General to give or carry out an undertaking with respect to the payment of damages or costs in relation to that foreign interdict.

#### **50 Discharge of registered foreign pecuniary penalty**

(1) Where—

- (a) a foreign interdict is registered in Zimbabwe against the property of a person convicted of, or alleged to have committed, a foreign specified offence; and
- (b) a foreign pecuniary penalty order against the person is registered in Zimbabwe in relation to the matter; and
- (c) the property is in the custody, or under the control, of a trustee; the court in which the foreign pecuniary penalty order is registered may direct the trustee to pay to the State an amount equal to the penalty amount out of that property.

(2) For the purposes of subsection (1), the court may—

- (a) direct the trustee to sell or otherwise dispose of such of the property under his control as the court may specify; and
- (b) authorize the trustee to execute any deed or instrument; in the name of the person who owns or has an interest or right in the property.

## PART VIII

### INFORMATION GATHERING POWERS

#### 51 Production orders

(1) In this section—

“bankers’ books” means any accounting records used in the ordinary business of banking and includes ledgers, day-books, cash-books and account books.

(2) Where a person has been convicted of, or is reasonably suspected of having committed, of a serious offence and a police officer has reasonable grounds for suspecting that any person has possession or control of any property-tracking document in relation to that offence, he may apply to a judge for an order directing the person, subject to subsection (5), to produce to a police officer any document described in the order which is in that person’s possession or control.

(3) An application in terms of subsection (2) shall be supported by an affidavit setting out the grounds upon which the suspicion is based.

(4) Where, in an application for an order in terms of subsection (2), a police officer includes in the affidavit referred to in subsection (3) information that he has reasonable grounds to believe that the person concerned derived a benefit, directly or indirectly, from the commission of the offence and that the property specified in the affidavit is subject to the effective control of the person, the judge may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence for the purposes of this section.

(5) In determining in terms of subsection (4) whether to treat a document as a property-tracking document in relation to an offence, a judge may have regard to matters referred to in subsection (2) of section *seventeen*.

(6) An order for the production of documents shall not be made—

- (a) in respect of bankers’ books; or
- (b) unless the judge is satisfied that there are reasonable grounds for making the order.

(7) Where a document is produced to a police officer, the police officer may—

- (a) inspect the document; or
- (b) take extracts from the document; or
- (c) make copies of the document; or
- (d) retain the document if, and for as long as, retention of the document is reasonably necessary for purposes of this Act.

(8) A police officer referred to in subsection (7) shall, at the request of the person to whom the order was addressed—

- (a) give the person a copy of the document certified by the police officer in writing to be a true copy of the document; or
- (b) permit the person to—
  - (i) inspect the document; or
  - (ii) take extracts from the document; or (iii) make copies of the document.

(9) A person shall not be excused from producing a document on the ground that the production thereof— (a) might tend to incriminate him or make him liable to a penalty; or

(b) would be in breach of any obligation or privilege not to disclose the existence or contents of the document.

(10) The production of a document in terms of this section or any information, document or thing obtained as a direct or indirect consequence of the production of the document, shall not be admissible against any person, other than the person against whom charges have or are to be laid, in any criminal proceedings except proceedings relating to—

- (a) a contravention of the order of the court; or
- (b) the production of a document known to the person to be false or misleading in a material particular.

(11) For the purposes of subsection (10), proceedings on an application for an interdict, a forfeiture order or a pecuniary penalty order shall not be regarded as criminal proceedings.

#### 52 Variation of production order

Where a court makes a production order requiring a person to produce a document to a police officer, that person may apply to the court for a variation of the order and if the court is satisfied that the document is essential to the business activities of the person, it may vary the production order so as to require the person to make the document available to the police officer for inspection.

### **53 Production orders in relation to foreign offences**

(1) Where a police officer is authorized in terms of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*] to apply to court relation to for a production order under this Act in respect of a foreign specified offence, he may apply for the order and sections *fifty-one* and *fifty-two* shall apply, *mutatis mutandis*, in respect of the foreign specified offence.

(2) Where a police officer takes possession of a document under a production order made in respect of a foreign specified offence, he may retain the document for a period of one month pending a written direction from the Attorney-General as to the manner in which the document is to be dealt with, which may include a direction that the document be sent to an authority of the foreign country which requested the obtaining of the production order.

### **54 Powers to search for property-tracking document**

(1) A police officer may enter upon any land or upon or into any premises and—

- (a) search the land or premises for any property-tracking document in relation to a serious offence; and
- (b) seize any document found in the course of the search which he believes, on reasonable grounds, to be a property-tracking document in relation to the serious offence.

(2) Entry by a police officer shall be made with the consent of the occupier of the land or premises or under a warrant issued in terms of section *fifty-five*.

### **55 Search warrant for property-tracking document**

(1) Where a person has been convicted of, or is reasonably suspected of having committed, a serious offence, and a police officer has reasonable grounds for suspecting that there is upon any land or upon or in any premises, a property-tracking document in relation to the offence, that police officer may apply to a judge for a search warrant in respect of the land or premises and the judge may, subject to subsection (5), issue a search warrant authorizing a police officer, with such assistance as is necessary—

- (a) to enter upon the land or into premises specified in the warrant to search for documents described in the warrant; and
- (b) to seize any document found in the course of the search that the police officer believes, on reasonable grounds, to be a property-tracking document.

(2) An application in terms of subsection (1) shall be supported by an affidavit setting out the grounds upon which the suspicion is based.

(3) Where, in an application for a warrant in terms of subsection (1), a police officer includes in the affidavit referred to in subsection (2) information that he has reasonable grounds to believe that the person concerned derived a benefit, directly or indirectly, from the commission of the offence and that the property specified in the affidavit is subject to the effective control of the person, the judge may treat any document relevant to identifying, locating or quantifying that property as a property-tracking document in relation to the offence for the purposes of this section.

(4) In determining, in terms of subsection (3), whether to treat a document as a property-tracking document in relation to an offence, the judge may have regard to the matters referred to in subsection (2) of section *seventeen*.

(5) A search warrant shall not be issued in terms of this section unless the judge is satisfied that—

- (a) the document concerned cannot be identified or described with sufficient particularity for the purposes of obtaining a production order; and
- (b) a production order has been given in respect of the document and has not been complied with; and (c) a production order is unlikely to be complied with; and
- (d) the investigation for the purposes of which the search warrant is sought might be seriously prejudiced if the police officer does not gain immediate access to the document without notice to any person; and (e) there are reasonable grounds for issuing the warrant.

(6) The search warrant shall state—

- (a) the purpose for which it has been issued, including the nature of the serious offence which has been or is believed to have been committed; and
- (b) the time during which entry is authorized; and
- (c) a description of the kind of documents authorized to be seized; and
- (d) a date, being not later than thirty days after the date of issue of the warrant, on which the warrant shall cease to have effect.

(7) If, in the course of searching for a particular document in relation to an offence, a police officer finds—

- (a) another document which is not of the kind described in the warrant but which he believes, on reasonable grounds, to be a property-tracking document in relation to the offence concerned or a property-tracking document in relation to another serious offence; or
- (b) anything that he believes, on reasonable grounds, will afford evidence as to the commission of an offence; he may, if he believes on reasonable grounds that it is necessary to seize the document or thing in order to prevent its concealment, loss or destruction, seize the document or thing.

## 56 Search warrants in relation to foreign offences

(1) Where a police officer is authorized in terms of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*] to apply to the High Court for a search warrant under this Act for a property-tracking document in respect of a foreign specified offence, the police officer may apply for the warrant and section *fifty-five* shall apply, *mutatis mutandis*, in respect of the application.

(2) Where a police officer takes possession of a document under a warrant in respect of a foreign specified offence, he may retain it for a period not exceeding thirty days pending a written direction from the Attorney-General as to the manner in which the document is to be dealt with, which may include a direction that the document is to be sent to an authority of the foreign country that requested the issue of the warrant.

## 57 Monitoring orders

(1) A police officer may apply to a judge for a monitoring order directing a financial institution to give information to the Commissioner of Police about financial transactions conducted through an account held by a particular person with that financial institution.

(2) A monitoring order shall apply in relation to financial transactions conducted during a period specified in the order.

(3) A judge shall not make a monitoring order unless he is satisfied that there are reasonable grounds for suspecting that the person in respect of whose account the information is sought—

- (a) has committed or is reasonably suspected of having committed a specified offence; or
- (b) was involved in the commission of, or is reasonably suspected of having been involved in the commission of, a specified offence; or
- (c) has benefited, directly or indirectly, from the commission of a specified offence.

(4) A monitoring order shall specify the name or names in which the account is believed to be held and the type of information that the financial institution is required to give.

(5) Any financial institution which contravenes a monitoring order or provides false or misleading information shall be guilty of an offence and liable to a fine not exceeding level fourteen.

[Subsection amended by Act 22 of 2001]

## 58 Existence of monitoring order not to be disclosed

(1) A financial institution that is or has been subject to a monitoring order shall not disclose the fact to any person except a legal practitioner for the purpose of obtaining legal advice or representation in relation to the order.

(2) The Commissioner of Police shall not disclose to any person other than a member of the Police Force in the performance of his duties, the existence of a monitoring order.

(3) The Commissioner of Police shall not be required by any court to disclose the existence of a monitoring order.

(4) Any person who contravenes this section shall be guilty of an offence and liable to—

- (a) in the case of an individual, a fine not exceeding level twelve or to imprisonment for a period not exceeding ten years or to both such fine and such imprisonment;
- (b) in the case of a body corporate, to a fine not exceeding level fourteen.

[Subsection amended by Act 22 of 2001]

## 59 Monitoring orders in relation to foreign offences

(1) Where a police officer is authorized in terms of the Criminal Matters (Mutual Assistance) Act [*Chapter 9:06*] to apply to a judge for a monitoring order under this Act in respect of a foreign specified offence, section *fifty-eight* shall apply, *mutatis mutandis*, in respect of the foreign specified offence.

(2) Where the Commissioner of Police is given information pursuant to a monitoring order made in relation to a foreign specified offence, he shall forthwith pass the information on to the Attorney-General.

## PART IX

### OBLIGATIONS OF FINANCIAL INSTITUTIONS

## 60 Retention of records by financial institutions

(1) Subject to section *sixty-one*, every financial institution shall retain, for such period as may be prescribed, such documents relating to financial transactions as may be prescribed.

(2) Documents prescribed for the purposes of subsection (1) shall be retained in their original form or in such other form as may be prescribed.

(3) Any financial institution which contravenes this section shall be guilty of an offence and liable to a fine not exceeding level six.

[Subsection amended by Act 22 of 2001]

(4) This section shall not be construed as limiting any other obligation of a financial institution in terms of any other enactment to retain documents.

## 61 Register of original documents

(1) Where a financial institution is required by any enactment to release a document referred to in subsection (1) of section *sixty* before the period prescribed for the purposes of that subsection has elapsed, the institution shall retain a copy of the document.

(2) A financial institution shall maintain a register of documents released in terms of subsection (1).

(3) Any financial institution which contravenes this section shall be guilty of an offence and liable to a fine not exceeding level six.

[Subsection amended by Act 22 of 2001]

## 62 Communication of information to police

(1) Where a financial institution has reasonable grounds for believing that information about an account held with it may be relevant to an investigation of, or the prosecution of a person for, an offence, the institution may give the information to a police officer.

(2) No action shall lie against a financial institution or a director, officer, employee or agent of the financial institution acting in the course of his employment in relation to any action taken by that institution or person in terms of subsection (1).

## PART X

### OFFENCES AND GENERAL

## 63 Money-laundering

(1) A person shall be guilty of money-laundering if he—

- (a) engages, directly or indirectly, in a transaction, whether in or outside Zimbabwe, which involves the removal into or from Zimbabwe, of money or other property which is the proceeds of crime; or
- (b) receives, possesses, conceals, disposes of, brings into or removes from Zimbabwe, any money or other property which is the proceeds of crime;

and he knows or ought to have reasonably known that the money or other property was derived or realised, directly or indirectly, from the commission of an offence.

(2) Any person guilty of money-laundering shall be liable—

- (a) in the case of an individual, to a fine not exceeding level twelve or twice the value of the property, whichever is the greater, or to imprisonment for a period not exceeding fifteen years or to both such fine and such imprisonment;
- (b) in the case of a body corporate, to a fine not exceeding level fourteen or three times the value of the property, whichever is the greater.

[Subsection amended by Act 22 of 2001 and section 9 of Act 6 of 2005]

## 64 Prohibition in dealing in tainted property

(1) No person shall acquire, hold or in any way deal in any tainted property.

(2) Any tainted property in relation to a foreign specified offence acquired, held or dealt in contravention of subsection (1) shall be liable to be forfeited to the State by order of the High Court on application by the Attorney General.

## 65 Conduct of directors, officers, employees or agents

(1) For the purposes of this Act, where it is necessary to establish the state of mind of a body corporate in respect of conduct engaged in or deemed, in terms of subsection (2), to have been engaged in, by the body corporate, it shall be sufficient to show that a director, officer, employee or agent of the body corporate, being a director, employee or agent by whom the conduct was engaged in the course of his employment, had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate by—

- (a) a director, officer, employee or agent of the corporate body in the course of his employment; or
- (b) any other person at the direction or with the consent, whether express or implied, of a director, employee or agent of the body corporate, where the giving of the direction or consent is within the scope of authority of the director, officer, employee or agent; shall, for the purposes of this Act, be deemed to have been engaged in by the body corporate.

(3) Any conduct engaged in on behalf of a person other than a body corporate by— (a) an employee or agent of the person within the scope of his authority; or

(b) any other person at the direction or with the consent whether express or implied, of an employee or agent of the first-mentioned person, where the giving of the direction or consent is within the scope of authority of the employee or agent; shall, for the purposes of this Act, be deemed to have been engaged in by the first-mentioned person.

(4) Where it is necessary to establish the state of mind of a person in relation to conduct deemed in terms of subsection (3) to have been engaged in by that person, it shall be sufficient to show that the employee or agent of that person, being an employee or agent by whom the conduct was engaged in within the scope of his authority, had that state of mind.

(5) Any reference in this section to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of that person and that person's reasons for that intention, opinion, belief or purpose.

#### **66 Operation of other laws not affected**

Nothing contained in this Act shall be construed as limiting—

- (a) the operation of any other enactment providing for the forfeiture of property or the imposition of fines; or
- (b) the remedies available in terms of any other law for the enforcement of the rights of the State and the protection of its interests.

#### **67 Regulations**

The Minister may make regulations prescribing matters which are—

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.