REPUBLIC OF SOUTH AFRICA

PREVENTION OF ORGANISED CRIME AMENDMENT BILL

(As introduced in the National Assembly as a section 75 Bill)

(MINISTER OF JUSTICE)

[B 2—99]

REPUBLIEK VAN SUID-AFRIKA

WYSIGINGSWETSONTWERP OP DIE VOORKOMING VAN GEORGANISEERDE MISDAAD

(Soos ingedien in die Nasionale Vergadering as 'n artikel 75-wetsontwerp)

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GENERAL EXPLANATORY NOTE:

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

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

BILL

To amend the Prevention of Organised Crime Act, 1998, so as to effect certain textual improvements; and to provide for matters connected therewith.

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

Amendment of Index to Act 121 of 1998

1. The Index to the Prevention of Organised Crime Act, 1998 (hereinafter referred to as the principal Act), is hereby amended by the substitution for the reference to Schedules 2 and 3 of the following reference:

"SCHEDULE 2

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

SCHEDULE 3

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

Amendment of section 22 of Act 121 of 1998

2. Section 22 of the principal Act is hereby amended by the substitution in subsection (3) for the words preceding paragraph *(a)* of the following words:

"For the purposes of determining the value of a defendant's proceeds of unlawful activities in an enquiry under section **[20(1)]** 18(1)—".

Amendment of section 24 of Act 121 of 1998

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

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

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"*(a)* if the court finds that the person referred to in **[that]** subsection (1) has so benefited, make a confiscation order and the provisions of this Part shall, with the necessary changes, apply to the making of such order;"; and

(b) by the substitution for paragraph *(a)* of subsection (6) of the following paragraph:

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

Amendment of section 26 of Act 121 of 1998

4. Section 26 of the principal Act is hereby amended by the substitution for subsection (9) of the following subsection:

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

Amendment of section 30 of Act 121 of 1998

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

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

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

(b) the period determined under subsection **[(4)]** (5) has expired,".

Amendment of section 35 of Act 121 of 1998

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

"no court shall set aside the disposition of such gift under section 27 **[28]** or 29 of the Insolvency Act, 1936 (Act No. 24 of 1936)—".

Amendment of section 36 of Act 121 of 1998

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

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

Amendment of section 48 of Act 121 of 1998

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

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

Amendment of section 52 of Act 121 of 1998

9. Section 52 of the principal Act is hereby amended by the substitution for paragraph *(b)* of subsection (1) of the following paragraph:

"*(b)* by a person referred to in section **[49(4)]** 49(1),".

Amendment of section 56 of Act 121 of 1998

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

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

Amendment of section 62 of Act 121 of 1998

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

"(b) the magistrate's court regulating the proceedings referred to in section **[53]** 51.''.

Substitution of section 73 of Act 121 of 1998

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

"Sharing of information

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

Amendment of section 74 of Act 121 of 1998

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

"(c) An application for proceedings to be held behind closed doors may be brought by the National Director, the *curator bonis* referred to in section **[32 or 48]** 28 or 42 and any other person referred to in paragraph *(b)*(ii), and such application shall be heard behind closed doors.''.

Amendment of section 76 of Act 121 of 1998

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

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

Repeal of Schedule 2 to Act 121 of 1998

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

Addition of Schedule 3 to Act 121 of 1998

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

"SCHEDULE 3

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

1. The amendment of section 1 by—

(a) the substitution for the definition of ''confiscation order'' of the following definition:

'' 'confiscation order' means a confiscation or forfeiture order made under the **[Proceeds of Crime Act, 1996]** Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998);''; and

(b) the substitution for the definition of ''restraint order'' of the following definition:

'' 'restraint order' means a restraint order or preservation of property order made under the **[Proceeds of Crime Act, 1996]** Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998);''.

Short title

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

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

The object of this Bill is to effect certain textual improvements to the Prevention of Organised Crime Act, 1998 (Act No.121 of 1998).

Parliamentary procedure:

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