

Namibia

Prevention of Organised Crime Act, 2004

Prevention of Organised Crime Regulations

Government Notice 78 of 2009

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Republic of Namibia
Annotated Statutes

Prevention of Organised Crime Act, 2004

Prevention of Organised Crime Regulations
Government Notice 78 of 2009

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Assented to on 5 May 2009

Commenced on 5 May 2009

**[This is the version of this document from 5 May 2009 and
includes any amendments published up to 14 May 2024.]**

Under section 100 of the Prevention of Organised Crime Act, 2004 (Act [No. 29 of 2004](#)), I have made the regulations set out in the Schedule.

P. Iivula-Ithana

Minister of Justice

1. Definitions

In these regulations any word or expression to which a meaning has been assigned in the Act has that meaning and unless the context otherwise indicates—

"Master" means the Master or Deputy Master of the High Court appointed under section 2 of the Administration of Estates Act, 1965 (Act [No. 66 of 1965](#)), who has jurisdiction in respect of the matter, property or estate concerned;

"Rules of Court" means the Rules of Court regulating matters in respect of magistrates' courts published under Government Notice No. R. 1108 of 21 June 1968;

"Rules of the High Court" means the Rules of the High Court of Namibia published under Government Notice No. 59 of 10 October 1990;

"Rules of the Supreme Court" means the Rules of the Supreme Court of Namibia published under Government Notice No. 56 of 8 October 1990; and

"the Act" means the Prevention of Organised Crime Act, 2004 (Act [No. 29 of 2004](#)).

2. Remuneration of *curator bonis*

A *curator bonis* appointed under the Act is entitled to remuneration in accordance with section 84 of the Administration of Estates Act, 1965 (Act [No. 66 of 1965](#)) as contemplated in section 92(2) and (3) of the Act.

3. Service of documents

- (1) Service of any document which is required to be served in terms of the Act or these regulations must be effected—
 - (a) in accordance with the Rules of the High Court, Rules of the Supreme Court or the Rules of Court, read with—
 - (i) the rules for the High Court regulating the proceedings contemplated in Chapters 5 and 6 of the Act; or
 - (ii) the rules for the magistrate's court regulating the proceedings or matters referred to in sections 32, 33, 62, 84, 85 and 87 of the Act, made in terms of section 90 of the Act; or
 - (b) by publishing it in the *Gazette* and in two daily newspapers of wide circulation, if the contact details of the affected persons are not known.

4. Notice to affected persons

- (1) Notice of a restraint order made pursuant to section 25(2) of the Act must be given by serving a copy of a notice, which substantially corresponds to Form 1 of the Annexure—
 - (a) upon the respondent; and
 - (b) upon any other person the Prosecutor-General considers might have an interest in the property the subject of the restraint order.
- (2) Notice of an enquiry into any benefit allegedly derived by a person referred to in section 41(1) or (2) of the Act must be given by serving a notice, signed by the registrar or clerk of the court, that substantially corresponds to Form 2 of the Annexure upon any person the court considers might have an interest—
 - (a) in any property the subject of a restraint order; or
 - (b) in other property that is liable to be treated as the realisable property of the person referred to in section 41(1) or (2) of the Act.
- (3) Any person with an interest in property affected by an inquiry conducted pursuant to section 41 of the Act and who wishes to make representations to court pursuant to subsection 41(5) of the Act must file and serve a notice that substantially corresponds to Form 3 of the Annexure.
- (4) Notice of application for the realisation of property pursuant to section 43(2) of the Act must be given by serving a notice, signed by the Registrar of the High Court, that substantially corresponds to Form 4 of the Annexure upon any person the High Court considers might have an interest—
 - (a) in any property the subject of a restraint order; or
 - (b) in other property that is liable to be treated as the realisable property of the respondent.
- (5) Notice of a preservation of property order made pursuant to section 51(2) of the Act must be given by serving a notice, which substantially corresponds to Form 5 of the Annexure—
 - (a) upon the respondents; and

- (b) upon any other person the Prosecutor-General reasonably believes might have an interest in the property the subject of the preservation of property order.
- (6) Any person claiming to have an interest in property the subject of a preservation of property order made pursuant to section 51 of the Act and who wishes—
 - (a) to oppose the making of a forfeiture order over the property in which they claim an interest; or
 - (b) to apply for an order to exclude that property from the operation of the preservation order, must serve a notice that substantially corresponds to Form 6 of the Annexure upon the Prosecutor-General in accordance with section 52(4) and (5) of the Act.
- (7) Notice of application by a person referred to in section 58(4)(b) of the Act for an order to be made under section 58(1) or (3) of the Act must be given by serving a copy of the application together with any affidavit material filed in support of the application upon the Prosecutor-General at least 14 days prior to any return date given to the application by the Registrar of the High Court.
- (8) Notice of application for a forfeiture order pursuant to section 59(1) of the Act must be given by serving a copy of the application upon any person who has given notice in accordance with section 52(3) of the Act and any other person who the Prosecutor-General reasonably believes might have an interest in the property the subject of the application for forfeiture order.
- (9) A notice for the purposes of section 62(3) of the Act must substantially correspond to Form 7 of the Annexure and must be served upon all persons referred to in the notice.

5. Statements relating to proceeds of offences and related criminal activities

If, pursuant to section 35(3) of the Act, the defendant disputes the correctness of any allegation contained in a statement referred to in section 35(1) of the Act, the defendant must tender to the court a statement—

- (a) in writing under oath or affirmation by him or her or any other person in connection with any matter which relates to the determination of the amount which might be realized as contemplated in section 34 of the Act;
- (b) stating the grounds on which he or she relies; and
- (c) which substantially corresponds to Form 8 of the Annexure.

6. Warrant of search and seizure of tainted property

A warrant issued pursuant to section 85(2) of the Act must correspond to Form 9 of the Annexure.

7. Procedure for certain applications

Subject to section 91(2), (3) or (4) of the Act, every application made pursuant to section 25, 43, 51, 59 or 64 of the Act, is made as follows—

- (a) it must be in writing;
- (b) a notice of application of at least 7 days must be given to the respondents to an application and to any other person upon whom an application is required to be served unless leave to serve short notice is given by the High Court; and
- (c) it must be supported by affidavit evidence, unless otherwise stated in the Act or by an order of the High Court.

8. Taxation of costs

For the purposes of section 95 of the Act the appropriate rate for the taxation of a person's legal expenses must be the current rate prescribed in the Rules of the High Court, Rules of the Supreme Court or Rules of Court.

9. Offences

A person who contravenes or fails to comply with any of these regulations commits an offence and is liable to a fine not exceeding N\$60 000 or to imprisonment not exceeding three years, or to both such fine and such imprisonment.

Annexure (Section 25(4), Regulation 4(1))

Form 1 - Notice of restraint order

To

Insert name and address of person to whom notice is given

Important – Do not ignore this document

Upon receipt of this notice you should obtain legal advice to help you understand this document and your rights and obligations under the restraint order.

Why you have received this notice

The High Court has made a restraint order over property pursuant to section 25 of the Prevention of Organised Crime Act 2004. A copy of the restraint order is attached to this notice. The order describes the property that has been restrained and may contain directions relating to the seizure or preservation of that property. It may also require the provision of information to the court.

You have received this notice because the High Court has directed that all persons affected by the restraint order should be notified of it and the Prosecutor-General considers that you might be such a person.

The restraint order has been made for the purpose of securing property in order to satisfy any confiscation order that might be made pursuant to Part 3 of Chapter 5 of the Prevention of Organised Crime Act 2004.

Warning

The restraint order prohibits any person from dealing, in any manner, with the property to which the order relates. A person who intentionally refuses or fails to comply with a court order made under this Act commits an offence punishable by a fine not exceeding N\$300,000 or to imprisonment for a period not exceeding 15 years.

Dated: _____

For Prosecutor-General

Annexure (Section 41, Regulation 4(2))**Form 2 - Notice of inquiry into criminal benefits
derived by a person who has absconded or died**

Insert Court reference No.

To

Insert name and address of person to whom notice is given

Important – Do not ignore this document

Upon receipt of this notice you should obtain legal advice to help you understand this document and the possible consequences of the inquiry.

Why you have received this notice

Insert name of person who has absconded/died

Has been found to be an absconder pursuant to section 41(1) of the Act*

Was convicted of an offence but died before a confiscation order pursuant to the Act could be made against him/her*

And a court has ordered pursuant to section 41 of the Act that an inquiry should be conducted into any benefit that this person may have derived from their offence/s. A copy of these orders is attached.

If in the course of the inquiry it is found that this person has so benefited, the court may make a confiscation order against him/her* and direct a *curator bonis* (court appointed trustee) to pay the confiscation order out of their assets or estate.

You have been served with this notice because the court considers that you might have an interest in property which may be used to satisfy any confiscation order that is ultimately made.

What you can do

If you wish to make representations to the court in relation to:

- (a) the alleged benefits derived by the above person;
- (b) any proposed confiscation order against that person, or
- (c) any proposed order for the realization of property to satisfy a proposed confiscation order you should:
- (d) complete a notice in accordance with Form 3 (a copy of which is attached to this notice);
- (e) serve a copy of the notice upon the Prosecutor-General at the address referred to below no less than 7 days prior to the return date referred to in the attached orders; and
- (f) file a copy of the notice in the registry of the court referred to below no less than 7 days prior to the return date referred to in the attached orders.

If you do NOT wish to make any representations to the court on the matters referred to in paragraphs (a)-(c) above you need not do anything. However, you should be aware that if you do not appear at the inquiry the court may proceed to make orders in your absence.

Address for service of documents upon the Prosecutor-General:

Insert address and contact details

Address of the court which issued the order for an inquiry pursuant to section 41 of the Act:

Insert address of the court

Dated: _____

Registrar/Clerk of Court

Annexure (Section 41, Regulation 4(3))

Form 3 - Notice of intention to appear at inquiry into criminal benefits derived by a person who has absconded or died

Insert Court reference No.

To:

The Prosecutor-General

Insert relevant address and contact details

To:

The Registrar/Clerk of Court

Insert name and address of the relevant court

Take notice that

Insert name and address of person intending to appear at the inquiry instituted pursuant to section 41 of the Act

Claims an interest in the following property which may be affected by an inquiry conducted pursuant to Section 41 of the Act:

1. *Insert particulars of property*

2.

3.

And intends to appear at the inquiry

Address for service of documents:

Dated: _____

Interested person or legal representative

Annexure (Section 43, Regulation 4(4))

Form 4 - Notice of application for the appointment of a curator bonis to realise property for the satisfaction of a confiscation order

Insert Court reference No.

To

Insert name and address of person to whom notice is given

Important – Do not ignore this document

Upon receipt of this notice you should obtain legal advice to help you understand this document and the possible consequences of the inquiry.

Why you have received this notice

Insert name of the Defendant

Has been convicted of an offence and a confiscation order has been made against him/her* pursuant to Part 3 of Chapter 5 of the Act.

An application has been made by the Prosecutor-General for orders that a *curator bonis* appointed by the High Court should be directed to realise any realisable property of the Defendant for the purpose of satisfying the confiscation order. A copy of this application is attached to this notice.

You have been served with this notice because the High Court considers that you might have an interest in property which may be used to satisfy the confiscation order.

What you can do

If you wish to make representations to the court in relation to the orders sought in the attached application for the realisation of property you should appear, either in person or through your legal representative, at the next date set for the return of the application which is:

At _____ am/pm on the _____ day of _____ [insert month and year] At the _____ [insert address of court]

If you do NOT wish to make any representations to the court you need not do anything. However, you should be aware that if you do not appear the court may proceed to make orders in your absence.

Dated: _____

Registrar of the High Court

Annexure (Section 52(1), Regulation 4(5))

Form 5 - Notice of preservation of property order

To

Insert name and address of person to whom notice is given

Important – Do not ignore this document

Upon receipt of this notice you should obtain legal advice to help you understand this document and your rights and obligations under the preservation of property order.

Why you have received this notice

The High Court has made a preservation of property order over property pursuant to section 51 of the Prevention of Organised Crime Act 2004. A copy of the preservation of property order is attached to this notice. The order describes the property that has been preserved and may contain directions relating to the seizure of that property. It may also contain other orders that the court considers appropriate.

You have received this notice because the Prosecutor-General considers that you might have an interest in property the subject of the preservation order.

The preservation of property order has been made for the purpose of securing property in order to satisfy any forfeiture order that might be made pursuant to Part 3 of Chapter 6 of the Prevention of Organised Crime Act 2004.

Warning

The preservation of property order prohibits any person from dealing, in any manner, with the property to which the order relates. A person who intentionally refuses or fails to comply with a court order made under this Act commits an offence punishable by a fine not exceeding N\$300,000 or to imprisonment for a period not exceeding 15 years.

Dated: _____

For Prosecutor-General

Annexure (Section 52(3), Regulation 4(6))**Form 6 - Notice of intention to oppose the making of forfeiture order or application for the exclusion of property from a preservation of property order**

NOTE: Pursuant to subsection 52(4) of the Act this Notice is required to be served upon the Prosecutor-General within 21 days of being served with the Notice of Preservation of Property Order (Form 5)

Insert Court reference No.

To:

The Prosecutor-General

Insert relevant address and contact details

Take notice that:

Insert name and address of person intending to oppose the making of a forfeiture order or who intends to apply for an order excluding property from a preservation of property order

Claims an interest in the following property which is the subject of a preservation of property order made by the High Court:

1. *Insert particulars of property*

2.

3.

And intends:

1. To oppose the making of a forfeiture order over the property referred to in paragraphs *[insert paragraph numbers]* above and
2. To apply for an order excluding the property referred to in paragraphs *[insert paragraph numbers]* above from the preservation of property order pursuant to Section 65 of the Act.

*delete as appropriate

Address for service of documents:

Insert name address and telephone number, or if appearing through a legal practitioner the name address and telephone number of the legal practitioner

Attached to this notice is an affidavit prepared in accordance with Section 52(5) of the Act sworn by *[insert name of deponent]*

Dated: _____

Signature of applicant/legal representative

Annexure (Section 62, Regulation 4(9))

Form 7 - Notice that property is to be treated as an instrumentality of an offence

To:

Insert the name or names of all persons who have an interest in or control over the property the subject of the notice

Take notice that:

Insert name of the Judge or Magistrate who has made the order pursuant to s. 62

Has determined that there is reason to suspect that the property referred to in Schedule A to this notice is an instrumentality of the offence or offences referred to in schedule B to this notice

Dated: _____

Registrar/Clerk of Court

Schedule A

Insert particulars of property the subject of the notice

Schedule B

Insert particulars of Schedule 1 offence or offences of which the property referred to in Schedule A is suspected of being an instrumentality.

Important – Do not ignore this document

Upon receipt of this notice you should obtain legal advice to help you understand this document and your obligations to comply with the terms of the Act.

Why you have received this notice

The judge or magistrate referred to above has made a determination that there is reason to suspect that the property referred to in Schedule A to this notice is an instrumentality of the offence or

offences referred to in Schedule B to this notice. The issuing of a notice pursuant to section 62 of the Act has the same effect over property the subject of the notice as a preservation of property order over property pursuant to section 51 of the Prevention of Organised Crime Act 2004.

You have received this notice because you are a person who apparently has an interest in or had control over the property referred to in Schedule A to this Notice.

The Notice has been issued for the purpose of securing property in order to satisfy any forfeiture order that might be made pursuant to Part 3 of Chapter 6 of the Prevention of Organised Crime Act 2004.

Warning

A notice issued pursuant to section 62 of the Act has the same effect as a preservation of property order made pursuant to section 52 of the Act. A preservation of property order prohibits any person from dealing, in any manner, with the property to which the order relates. A person who intentionally refuses or fails to comply with a court order made under this Act commits an offence punishable by a fine not exceeding N\$300,000 or to imprisonment for a period not exceeding 15 years.

Dated: _____

Registrar

Annexure (Section 35(3), Regulation 5)**Form 8 - Notice of disputed allegations contained in a section 35(1) statement**

Insert Court reference No.

TAKE NOTICE THAT:

To the Prosecutor-General

Insert name of the Defendant

Disputes the correctness of the following allegations contained in the statement issued by the Office of the Prosecutor-General pursuant to Section 35(1) of the Act and dated: *[insert date]*

- 1(a) *[insert particulars of the allegation that is disputed]*
- 1(b) *[insert the fully particularised grounds upon which the defendant relies in disputing the allegation]*
- 2(a) *[insert as many additional paragraphs as are required to identify and provide particulars of all disputed allegations]*

2(b)

I [insert full name] of [insert address], [insert occupation] make oath/affirmation* and say as follows:

1. I am the Defendant in proceeding number [insert proceeding number]

2. The Office of the Prosecutor-General has prepared a statement pursuant to section 35(1) of the Act, dated [insert date], directed to the assessment of value of the proceeds allegedly derived by me from the offence/s* with which I have been charged or alleged related criminal activities ['the Prosecutor-General's Statement'].

3. I dispute the correctness of certain allegations contained in the Prosecutor-General's Statement. Particulars of the allegations which are disputed and the grounds upon which each allegation is disputed are set out at paragraphs 1-[insert last paragraph number] inclusive above.

4. I have read paragraphs 1-[insert last paragraph number] inclusive above and say that the information contained in them is true and correct in every particular.

5. Apart from the allegations referred to in paragraphs 1-[insert last paragraph number] inclusive above, I do not dispute any other allegations contained in the Prosecutor-General's Statement.

[Insert appropriate jurat for affidavit/affirmation]

*delete as appropriate

Prepared on behalf of the Defendant by:

[Insert name address and telephone numbers of Defendant's legal representatives]

Annexure (Section 85, Regulation 6)

Form 9 - Warrant of search and seizure of tainted property

Insert Court reference No.

This warrant is issued for the purpose of searching for and seizing property that is tainted property for the purposes of section 85 of the Act.

Description of property which may be seized

[insert description of property]

Relevant offences with which a person has been or will be charged

[insert particulars of the relevant offences (the offences which cause the property authorised to be seized to become tainted property)]

Premises which may be searched for tainted property

[Insert particulars of site, vehicle, vessel or aircraft which may be searched]

Reasons for issue of the warrant

The court, being satisfied that there are reasonable grounds for believing that the property described above is located at the premises referred to above and that a person has been/will be within the next 48 hours* charged with the relevant offence/s referred to above.

*delete as appropriate

Special conditions attached to the warrant

[Insert particulars of any conditions specified by the court. If there are none insert 'nil']

This warrant is addressed to the following person/s

[insert the name of the member of the police force; the group of members of the police force or, if the warrant authorizes any member of the police force, insert 'All members of the Police Force']

This warrant authorises the person(s) named above, with the aid of any assistants considered reasonably necessary to achieve the purpose for which the warrant was issued, to—

- Enter the premises described above at any time of the day or night (subject to any conditions specified above)
- Break open any receptacle in or on the premises described above for the purposes of the search and seizure of the property described above, if it is reasonably necessary to do so
- Search for and seize the property described above

If in the course of the execution of this warrant property is found that is reasonably believed to be tainted property in respect of an offence other than the offence/s referred to above or to be tainted property, other than property described above, in relation to an offence referred to above, this warrant is sufficient authority to seize that property if the member of the police who finds the property believes on reasonable grounds that seizure of the property is necessary to prevent the loss, destruction or concealment of the property.

This warrant ceases to have effect if it is recalled or cancelled by the court which issued it. If it is not recalled or cancelled this warrant ceases to have effect at the end of one month after its issue or whenever it is executed, whichever occurs first.

The person who executes this warrant must announce that he or she is authorized by the warrant to enter the premises and must give any person at the premises an opportunity to allow entry to the premises before force is used to enter.

If the occupier is present at the premises where this warrant is being executed, the person executing the warrant must identify himself or herself to the occupier and give the occupier a copy of the warrant. If the occupier is not

present at the premises where this warrant is being executed, the person executing the warrant must identify himself or herself to any other person at the premises and give that person a copy of the warrant.

If the person who executes this warrant believes that no person is present at the premises or has given a copy of the warrant to a person at the premises other than the occupier, the person who executes the warrant must give the occupier a copy of the warrant as soon as practicable, but not more than 14 days after the warrant is executed.

This warrant is issued under section 85 of the Prevention of Organised Crime Act 2004.

Issued at ____ am/pm on [date] at _____ by [court]

Judge/Magistrate