



REPUBLIC OF SOUTH AFRICA

# GOVERNMENT GAZETTE

## STAATSKOERANT

### VAN DIE REPUBLIEK VAN SUID-AFRIKA

Registered at the Post Office as a Newspaper

As 'n Nuusblad by die Poskantoor Geregistreer

VOL. 411

CAPE TOWN, 7 SEPTEMBER 1999

No. 20447

KAAPSTAD, 7 SEPTEMBER 1999

#### OFFICE OF THE PRESIDENCY

No. 1087.

7 September 1999

It is hereby notified that the Acting President has assented to the following Act which is hereby published for general information:—

No. 38 of 1999: Prevention of Organised Crime Second Amendment Act, 1999.

#### KANTOOR VAN DIE PRESIDENSIE

No. 1087.

7 September 1999

Hierby word bekend gemaak dat die Waarnemende President sy goedkeuring geheg het aan die onderstaande Wet wat hierby ter algemene inligting gepubliseer word:—

No. 38 van 1999: Tweede Wysigingswet op die Voorkoming van Georganiseerde Misdaad, 1999.

Act No. 38, 1999

PREVENTION OF ORGANISED CRIME  
SECOND AMENDMENT ACT, 1999**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.

*(English text signed by the Acting President.)  
(Assented to 6 September 1999.)*

**ACT**

To amend the Prevention of Organised Crime Act, 1998, so as to make it clear that the provisions of Chapters 3, 5 and 6 are applicable in respect of instrumentalities of offences and proceeds of unlawful activities where such offences or unlawful activities occurred before the commencement of the Act; to amend certain definitions; to further regulate the seizure of certain property and the making of orders ancillary to restraint orders and preservation of property orders; to further regulate appeals against certain orders; to further regulate the exclusion of interests in property; to further regulate transitional arrangements; and to provide for matters connected therewith.

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

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

1. Section 1 of the Prevention of Organised Crime Act, 1998 (hereinafter referred to as the principal Act), is hereby amended— 5

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

“ ‘instrumentality of an offence’ means any property which is concerned in the commission or suspected commission of an offence at any time before or after the commencement of this Act, whether committed within the Republic or elsewhere;”; 10

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

“ ‘proceeds of unlawful activities’ means any property or any service, advantage, benefit or reward which was derived, received or retained, directly or indirectly, in the Republic or elsewhere, at any time before or after the commencement of this Act, in connection with or as a result of any unlawful activity carried on by any person, [whether in the Republic or elsewhere, except for purposes of Chapter 5 where it means— 15

(a) any unlawful activity carried on by any person; or

(b) any act or omission outside the Republic which, if it had occurred in the Republic, would have constituted an unlawful activity.] 20

and includes any property representing property so derived.”;

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**ALGEMENE VERDUIDELIKENDE NOTA:**

- [ ] Woerde in vet druk tussen vierkantige hake dui skrappings uit bestaande verordenings aan.
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- \_\_\_\_\_ Woerde met 'n volstreep daaronder, dui invoegings in bestaande verordenings aan.
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*(Engelse teks deur die Waarnemende President geteken.)  
(Goedgekeur op 6 September 1999.)*

**WET**

Tot wysiging van die Wet op die Voorkoming van Georganiseerde Misdaad, 1998, ten einde dit duidelik te stel dat die bepalings van Hoofstukke 3, 5 en 6 van toepassing is ten opsigte van misdaadinstrumente en opbrengs van onregmatige aktiwiteite waar sodanige misdrywe of onregmatige aktiwiteite voor die inwerktingreding van die Wet plaasgevind het; om sekere omskrywings te wysig; om die beslaglegging op sekere eiendom en die verlening van bevele aanvullend tot inkortingsbevele en eiendomsinstandhoudingsbevele verder te reël; om appelle teen sekere bevele verder te reël; om die uitsluiting van belangte eiendom verder te reël; om oorgangsmaatreëls verder te reël; en om voorsiening te maak vir aangeleenthede wat daarmee in verband staan.

**D**AAR WORD BEPAAL deur die Parlement van die Republiek van Suid-Afrika, soos volg:—

**Wysiging van artikel 1 van Wet 121 van 1998, soos gewysig deur artikel 3 van Wet 24 van 1999**

- 5     1. Artikel 1 van die Wet op die Voorkoming van Georganiseerde Misdaad, 1998 (hierna die Hoofwet genoem), word hierby gewysig—  
 (a) deur die omskrywing van "misdaadinstrument" in subartikel (1) deur die volgende omskrywing te vervang:  
 10     "‘misdaadinstrument’ enige eiendom wat betrokke is by die pleging of vermoedelike pleging van ‘n misdryf te eniger tyd voor of na die inwerktingreding van hierdie Wet, hetsy binne die Republiek of elders gepleeg;";  
 (b) deur die omskrywing van "opbrengs van onregmatige aktiwiteite" in subartikel (1) deur die volgende omskrywing te vervang:  
 15     "‘opbrengs van onregmatige aktiwiteite’ enige eiendom of enige diens, voordeel, nut, of beloning wat regstreeks of onregstreeks ontstaan het, ontvang of gehou is, hetsy binne die Republiek of elders, te eniger tyd voor of na die inwerktingreding van hierdie Wet, in verband met of as gevolg van enige onregmatige aktiwiteit wat te eniger tyd voor of na die inwerktingreding van hierdie Wet deur enige persoon verrig is, [hetsy binne die Republiek of elders, behalwe vir doeleinades van Hoofstuk 5 waar dit beteken—  
 (a) enige onregmatige aktiwiteit wat deur enigiemand verrig is; of  
 (b) ‘n handeling of versuim buite die Republiek wat, indien dit in die Republiek plaasgevind het, ‘n onregmatige aktiwiteit sou uitgemaak het,]  
 20     en sluit eiendom in wat eiendom, wat aldus ontstaan het, verteenwoordig;";

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- (c) by the insertion after the definition of ‘property’ of the following definition:  
 “unlawful activity means any conduct which constitutes a crime or which contravenes any law whether such conduct occurred before or after the commencement of this Act and whether such conduct occurred in the Republic or elsewhere.”; and 5
- (d) by the addition of the following subsection:
- “(5) Nothing in this Act or in any other law, shall be construed so as to exclude the application of any provision of Chapter 5 or 6 on account of the fact that—  
 (a) any offence or unlawful activity concerned occurred; or  
 (b) any proceeds of unlawful activities were derived, received or retained, before the commencement of this Act.”. 10

**Amendment of section 12 of Act 121 of 1998, as amended by section 14 of Act 24 of 1999**

2. Section 12 of the principal Act is hereby amended by the substitution for subparagraph (i) of paragraph (a) of subsection (2) of the following subparagraph: 15  
 “(i) if the estate of such person has been sequestrated, also to the [executor] trustee of his or her insolvent estate; or”.

**Insertion of section 24A in Act 121 of 1998**

3. The following section is hereby inserted after section 24 of the principal Act: 20

**“Order to remain in force pending appeal**

**24A.** A restraint order and an order authorising the seizure of the property concerned or other ancillary order which is in force at the time of any decision by the court in relation to the making of a confiscation order, shall remain in force pending the outcome of any appeal against the decision concerned.”. 25

**Amendment of section 26 of Act 121 of 1998, as amended by section 20 of Act 24 of 1999**

4. Section 26 of the principal Act is hereby amended—  
 (a) by the deletion of paragraph (b) of subsection (4); 30  
 (b) by the deletion of subsection (5);  
 (c) by the substitution for subsection (8) of the following subsection:  
 “(8) A High Court making a restraint order [may when it makes the order or at any time thereafter,] shall at the same time make an order authorising the seizure of all movable property concerned by a police official, and any other ancillary orders that the court considers appropriate for the proper, fair and effective execution of the order [, including an order authorising the seizure of the property concerned by a police official].”. 35  
 (d) by the addition of the following subsections:  
 “(10) A High Court which made a restraint order—  
 (a) may on application by a person affected by that order vary or rescind the restraint order or an order authorising the seizure of the property concerned or other ancillary order if it is satisfied—  
 (i) that the operation of the order concerned will deprive the applicant of the means to provide for his or her reasonable living expenses and cause undue hardship for the applicant; and  
 (ii) that the hardship that the applicant will suffer as a result of the 45

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- (c) deur die invoeging na die omskrywing van "onderneming" van die volgende omskrywing:
- "onregmatige aktiwiteit" enige optrede wat 'n misdryf uitmaak of wat in stryd is met enige wet hetsy sodanige optrede plaasgevind het voor of na die inwerkingtreding van hierdie Wet en of sodanige optrede plaasgevind het binne die Republiek of elders;"; en
- 5 (d) deur die volgende subartikel by te voeg:
- "(5) Geen bepaling in hierdie Wet of enige ander wet word so uitgelê dat dit die toepassing van enige bepaling van Hoofstuk 5 of 6 uitsluit vanweë die feit dat—
- 10 (a) enige betrokke misdaad of onregmatige aktiwiteit plaasgevind het; of
- (b) enige opbrengs van onregmatige aktiwiteite ontstaan het, ontvang of gehou is,  
15 voor die inwerkingtreding van hierdie Wet nie.".

**Wysiging van artikel 12 van Wet 121 van 1998, soos gewysig deur artikel 14 van Wet 24 van 1999**

2. Artikel 12 van die Hoofwet word hierby gewysig deur, in die Engelse teks, subparagraph (i) van paragraaf (a) van subartikel (2) deur die volgende subparagraph te vervang:

"(i) if the estate of such person has been sequestrated, also to the [executor] trustee of his or her insolvent estate; or".

**Invoeging van artikel 24A in Wet 121 van 1998**

3. Die volgende artikel word hierby na artikel 24 van die Hoofwet ingevoeg:

25 **"Bevel bly van krag hangende appèl"**

24A. 'n Inkortingsbevel en 'n bevel waarby die beslaglegging op die betrokke eiendom gemagtig word of ander aanvullende bevel wat van krag is tydens enige beslissing van die hof met betrekking tot die verlening van 'n inbesagnemingsbevel, bly van krag hangende die uitslag van enige appèl teen die betrokke beslissing."

**Wysiging van artikel 26 van Wet 121 van 1998, soos gewysig deur artikel 20 van Wet 24 van 1999**

4. Artikel 26 van die Hoofwet word hierby gewysig—

- 35 (a) deur paragraaf (b) van subartikel (4) te skrap;
- (b) deur subartikel (5) te skrap;
- (c) deur subartikel (8) deur die volgende subartikel te vervang:

40 "(8) 'n Hoë Hof wat 'n inkortingsbevel verleen, [kan, wanneer hy die bevel verleen of te eniger tyd daarna,] moet terselfdertyd 'n bevel verleen waarby beslaglegging op alle betrokke roerende eiendom deur 'n polisiebeampte gemagtig word, sowel as enige bykomende bevele [verleen] wat die hof gepas ag vir die behoorlike, billike en doeltreffende uitvoering van die bevel [, met inbegrip van 'n bevel wat die inbesagneming van die betrokke eiendom deur 'n polisiebeampte magtig]."; en

- 45 (d) deur die volgende subartikels by te voeg:

50 "(10) 'n Hoë Hof wat 'n inkortingsbevel verleen—

(a) kan op aansoek deur 'n persoon wat deur daardie bevel geraak word, die inkortingsbevel of ander bevel waarby beslaglegging op die betrokke eiendom gemagtig word of ander aanvullende bevel, wysig of intrek indien hy tevrede is—

(i) dat die werking van die betrokke bevel die applikant sal ontnem van die middele om in sy of haar redelike lewensbehoeftes te voorsien en onbehoorlike ontbering vir die applikant sal meebring; en

(ii) dat die ontbering waaraan die applikant as gevolg van die bevel sal blootstaan, swaarder opweeg as die risiko dat die betrokke

order outweighs the risk that the property concerned may be destroyed, lost, damaged, concealed or transferred; and  
 (b) shall rescind the restraint order when the proceedings against the defendant concerned are concluded.

(11) When a court orders the rescission of an order authorising the seizure of property in terms of subsection (10)(a) the court shall make such other order as it considers appropriate for the proper, fair and effective execution of the restraint order concerned.”.

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**Insertion of section 29A in Act 121 of 1998**

**5.** The following section is hereby inserted after section 29 of the principal Act: 10

**“Variation and rescission of certain orders suspended by appeal**

**29A.** The noting of an appeal against a decision to vary or rescind any order referred to in sections 26(10), 28(3) and 29(7) shall suspend such a variation or rescission pending the outcome of the appeal.”.

**Amendment of section 38 of Act 121 of 1998**

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**6.** Section 38 of the principal Act is hereby amended by the substitution for subsection (3) of the following subsection:

“(3) A High Court making a preservation of property order [may when it makes the order or at any time thereafter] shall at the same time make an order authorising the seizure of the property concerned by a police official, and any other ancillary orders that the court considers appropriate for the proper, fair and effective execution of the order [, including an order authorising the seizure of the property concerned by a police official].”.

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**Amendment of section 42 of Act 121 of 1998**

**7.** Section 42 of the principal Act is hereby amended by the substitution for the words preceding paragraph (a) of subsection (1) of the following words: 25

“Where a High Court has made a preservation of property order, the High Court [may] shall, if it deems it appropriate, at [any] the time of the making of the order or at a later time—”.

**Amendment of section 47 of Act 121 of 1998, as amended by section 25 of Act 24 of 30 1999**

**8.** Section 47 of the principal Act is hereby amended—

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

“(1) [(a) Any person affected by a preservation of property order may at any time apply for the variation or rescission of the order.] 35

(b)] A High Court which made a preservation of property order—

[(i)][a] may [at any time] on application by a person affected by that order vary or rescind the preservation of property order or an order authorising the seizure of the property concerned or other ancillary order if it [deems it necessary in the interests of justice] is satisfied— 40

(i) that the operation of the order concerned will deprive the applicant of the means to provide for his or her reasonable living expenses and cause undue hardship for the applicant; and

(ii) that the hardship that the applicant will suffer as result of the order outweighs the risk that the property concerned may be destroyed, lost, damaged, concealed or transferred; [or] and

[(ii)][b] shall rescind the preservation of property order when the proceedings against the defendant concerned are concluded.”;

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eiendom vernietig, verloor, beskadig, versteek of oorgedra kan word; en

(b) moet die inkortingsbevel intrek wanneer die verrigtinge teen die betrokke verweerde afgehandel is.

5 (11) Wanneer 'n hof ingevolge subartikel (10)(a) die intrekking beveel van 'n bevel waarby beslaglegging op eiendom gemagtig word, maak die hof sodanige ander bevel as wat hy gepas vind vir die behoorlike, billike en doeltreffende uitvoering van die betrokke inkortingsbevel.”.

#### **Invoeging van artikel 29A in Wet 121 van 1998**

10 5. Die volgende artikel word hierby na artikel 29 van die Hoofwet ingevoeg:

**“Wysiging en intrekking van sekere bevele opgeskort deur appèl**

**29A.** Die aantekening van 'n appèl teen 'n beslissing om 'n bevel bedoel in artikels 26(10), 28(3) en 29(7) te wysig of in te trek, skort sodanige wysiging of intrekking op hangende die uitslag van die appèl.”.

#### **15 Wysiging van artikel 38 van Wet 121 van 1998**

6. Artikel 38 van die Hoofwet word hierby gewysig deur subartikel (3) deur die volgende subartikel te vervang:

20 “(3) 'n Hoë Hof wat 'n eiendomsinstandhoudingsbevel verleen, [kan, wanneer hy die bevel verleen, of te eniger tyd daarna,] moet terselfdertyd 'n bevel verleen waarby beslaglegging op alle betrokke roerende eiendom deur 'n polisiebeampte gemagtig word, sowel as enige bykomende bevele [verleen] wat die hof gepas ag vir die behoorlike, billike en doeltreffende uitvoering van die bevel [, met inbegrip van 'n bevel vir die magtiging van die beslaglegging op die betrokke eiendom deur 'n polisiebeampte].”.

#### **25 Wysiging van artikel 42 van Wet 121 van 1998**

7. Artikel 42 van die Hoofwet word hierby gewysig deur die woorde wat paragraaf (a) van subartikel (1) voorafgaan deur die volgende woorde te vervang:

30 “Waar 'n Hoë Hof 'n eiendomsinstandhoudingsbevel verleen het, [kan] moet die Hoë Hof [te eniger tyd], indien hy dit gepas vind, tydens die verlening van die bevel of op 'n later tydstip—”.

#### **Wysiging van artikel 47 van Wet 121 van 1998, soos gewysig deur artikel 25 van Wet 24 van 1999**

8. Artikel 47 van die Hoofwet word hierby gewysig—

35 (a) deur subartikel (1) deur die volgende subartikel te vervang:

“(1) [(a) Iemand wat deur 'n eiendomsinstandhoudingsbevel geraak word, kan te eniger tyd aansoek doen om die wysiging of intrekking van die bevel.

(b)] 'n Hoë Hof wat 'n eiendomsinstandhoudingsbevel verleen het—

40 [(i)](a) kan [te eniger tyd] op aansoek van 'n persoon wat deur daardie bevel geraak word die eiendomsinstandhoudingsbevel wysig of intrek indien hy [dit in belang van geregtigheid nodig ag] tevreden is—

(i) dat die werking van die betrokke bevel die applikant sal ontnem van die middele om in sy of haar redelike lewensbehoeftes te voorsien en onbehoorlike ontbering vir die applikant sal meebring; en

(ii) dat die ontbering waaraan die applikant as gevolg van die bevel sal blootstaan, swaarder opweeg as die risiko dat die betrokke eiendom vernietig, verloor, beskadig, versteek of oorgedra kan word; [of] en

50 [(ii)](b) moet die eiendomsinstandhoudingsbevel intrek [indien] wanneer die verrigtinge teen die betrokke verweerde afgehandel is.”;

(b) by the insertion after subsection (1) of the following subsection:

“(1A) When a court orders the rescission of an order authorising the seizure of property under paragraph (a) of subsection (1) the court shall make such other order as it considers appropriate for the proper, fair and effective execution of the preservation of property order concerned.”; and

(c) by the addition of the following subsection:

“(4) The noting of an appeal against a decision to vary or rescind any order referred to in this section shall suspend such a variation or rescission pending the outcome of the appeal.”.

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**Amendment of section 52 of Act 121 of 1998, as amended by section 29 of Act 24 of 1999** 10

**9.** Section 52 of the principal Act is hereby amended by the substitution for subsection (2) of the following subsections:

“(2) The High Court may make an order under subsection (1), in relation to the forfeiture of the proceeds of unlawful activities, if it finds on a balance of probabilities that the applicant for the order—

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

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(b) where the applicant had acquired the interest concerned after the commencement of this Act, that he or she neither knew nor had reasonable grounds to suspect that the property in which the interest is held is the proceeds of unlawful activities.

(2A) The High Court may make an order under subsection (1), in relation to the forfeiture of an instrumentality of an offence referred to in Schedule 1, if it finds on a balance of probabilities that the applicant for the order had acquired the interest concerned legally, and—

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(a) neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence referred to in Schedule 1; or

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(b) where the offence concerned had occurred before the commencement of this Act, the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned as an instrumentality of an offence referred to in Schedule 1.”.

**Amendment of section 54 of Act 121 of 1998, as amended by section 31 of Act 24 of 1999** 35

**10.** Section 54 of the principal Act is hereby amended by the substitution for subsection (8) of the following subsections:

“(8) The High Court may make an order under subsection (1), in relation to the forfeiture of the proceeds of unlawful activities, if it finds on a balance of probabilities that the applicant for the order—

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

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(b) where the applicant had acquired the interest concerned after the commencement of this Act, that he or she neither knew nor had reasonable grounds to suspect that the property in which the interest is held is the proceeds of unlawful activities.

(8A) The High Court may make an order under subsection (1), in relation to the forfeiture of an instrumentality of an offence referred to in Schedule 1, if it finds on a balance of probabilities that the applicant for the order had acquired the interest concerned legally, and—

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(a) neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence referred to in Schedule 1; or

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(b) where the offence concerned had occurred before the commencement of this Act, the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned as an instrumentality of an offence referred to in Schedule 1.”.

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- (b) deur die volgende subartikel in te voeg na subartikel (1):

“(1A) Wanneer 'n hof ingevolge paragraaf (a) van subartikel (1) die intrekking beveel van 'n bevel waarby beslaglegging op eiendom gemagtig word, maak die hof sodanige ander bevel as wat hy gepas vind vir die behoorlike, billike en doeltreffende uitvoering van die betrokke eiendomsinstandhoudingsbevel.”;; en

- (c) deur die volgende subartikel by te voeg:

“(4) Die aanteken van 'n appèl teen 'n beslissing om 'n bevel in hierdie artikel bedoel te wysig of in te trek, skort sodanige wysiging of intrekking op hangende die uitslag van die appèl.”.

**Wysiging van artikel 52 van Wet 121 van 1998, soos gewysig deur artikel 29 van Wet 24 van 1999**

9. Artikel 52 van die Hoofwet word hierby gewysig deur subartikel (2) deur die volgende subartikels te vervang:

15     “(2) Die Hoë Hof kan, ten opsigte van die verbeuring van die opbrengs van onregmatige aktiwiteit, 'n bevel kragtens subartikel (1) verleen indien hy op 'n oorwig van waarskynlikhede bevind dat die applikant om so 'n bevel—

- (a) die betrokke belang regmatig en vir 'n teenprestasie, waarvan die waarde nie aansienlik minder as die waarde van die belang is nie, verkry het; en

- (b) waar die applikant die betrokke belang na die inwerkingtreding van hierdie Wet verkry het, dat hy of sy nog geweet het nog redelike gronde gehad het om te vermoed dat die eiendom waarin die belang gehou word die opbrengs van onregmatige aktiwiteit is.

25     (2A) Die Hoë Hof kan, ten opsigte van die verbeuring van 'n misdaadinstrument bedoel in Bylae 1, 'n bevel kragtens subartikel (1) verleen indien hy op 'n oorwig van waarskynlikhede bevind dat die applikant om so 'n bevel die betrokke belang regmatig verkry het, en—

- (a) nog geweet het nog redelike gronde gehad het om te vermoed dat die eiendom waarin die belang gehou word 'n misdaadinstrument bedoel in Bylae 1 is; of

- (b) waar die betrokke misdaad plaasgevind het voor die inwerkingtreding van hierdie Wet, die applikant sedert die inwerkingtreding van hierdie Wet alle redelike stappe gedoen het ten einde die gebruik van die betrokke eiendom as 'n misdaadinstrument bedoel in Bylae 1 te voorkom.”.

**Wysiging van artikel 54 van Wet 121 van 1998, soos gewysig deur artikel 31 van Wet 24 van 1999**

10. Artikel 54 van die Hoofwet word hierby gewysig deur subartikel (8) deur die volgende subartikels te vervang:

40     “(8) Die Hoë Hof kan, ten opsigte van die verbeuring van die opbrengs van onregmatige aktiwiteit, 'n bevel kragtens subartikel (1) verleen indien hy op 'n oorwig van waarskynlikhede bevind dat die applikant om so 'n bevel—

- (a) die betrokke belang regmatig en vir 'n teenprestasie, waarvan die waarde nie aansienlik minder as die waarde van die belang is nie, verkry het; en

- (b) waar die applikant die betrokke belang na die inwerkingtreding van hierdie Wet verkry het, dat hy of sy nog geweet het nog redelike gronde gehad het om te vermoed dat die eiendom waarin die belang gehou word die opbrengs van onregmatige aktiwiteit is.

50     (8A) Die Hoë Hof kan, ten opsigte van die verbeuring van 'n misdaadinstrument bedoel in Bylae 1, 'n bevel kragtens subartikel (1) verleen indien hy op 'n oorwig van waarskynlikhede bevind dat die applikant om so 'n bevel die betrokke belang regmatig verkry het, en—

- (a) nog geweet het nog redelike gronde gehad het om te vermoed dat die eiendom waarin die belang gehou word 'n misdaadinstrument bedoel in Bylae 1 is; of

- (b) waar die betrokke misdaad plaasgevind het voor die inwerkingtreding van hierdie Wet, die applikant sedert die inwerkingtreding van hierdie Wet alle redelike stappe gedoen het ten einde die gebruik van die betrokke eiendom as 'n misdaadinstrument bedoel in Bylae 1 te voorkom.”.

**Substitution of section 55 of Act 121 of 1998**

**11.** The following section is hereby substituted for section 55 of the principal Act:

**“Appeal against forfeiture order**

**55. Any preservation of property order and any order authorising the seizure of the property concerned or other ancillary order which is in force at the time of any decision regarding the making of a forfeiture order under section 50(1) shall remain in force pending the outcome of any appeal against the decision concerned.”.**

**Amendment of section 80 of Act 121 of 1998, as amended by section 41 of Act 24 of 1999**

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**12.** Section 80 of the principal Act is hereby amended by the addition of the following subsection:

**“(3) An investigation, or prosecution or other legal proceedings, in respect of conduct which would have constituted an offence under the Proceeds of Crime Act, 1996, and which occurred after the commencement of that Act but before the commencement of this Act, may be instituted and continued as if this Act had not been passed.”.**

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**Amendment of Preamble to Act 121 of 1998**

**13.** The Preamble to the principal Act is hereby amended by the substitution for the ninth paragraph thereof of the following paragraphs:

20

**“AND WHEREAS no person convicted of an offence should benefit from the fruits of that or any related offence, whether such offence took place before or after the commencement of this Act, legislation is necessary to provide for a civil remedy for the restraint and seizure, and confiscation of property which forms the benefits derived from such offence;”.**

25

**AND WHEREAS [persons] no person should [not] benefit from the fruits of [organised crime and money laundering] unlawful activities, nor is any person entitled to use property for the commission of an offence, whether such activities or offence took place before or after the commencement of this Act, legislation is necessary to provide for a civil remedy for the preservation and seizure, and forfeiture of property which is derived from unlawful activities or is concerned in the commission or suspected commission of an offence;”.**

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**Amendment of Index to Act 121 of 1998**

**14.** The Index to the principal Act is hereby amended by the insertion, in Part 3, of the following items:

35

**“24A. Order to remain in force pending an appeal  
29A. Variation and rescission of certain orders suspended by appeal”.**

**Short title**

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

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**Vervanging van artikel 55 van Wet 121 van 1998**

**11.** Artikel 55 van die Hoofwet word hierby deur die volgende artikel vervang:

**“Appèl teen verbeurdverklaringsbevel**

5       **55.** ’n Eiendomsinstandhoudingsbevel en enige bevel waarby die beslaglegging op die betrokke eiendom gemagtig word of ander aanvul-  
lende bevel wat van krag is tydens enige beslissing rakende die verlening  
van ’n verbeurdverklaringsbevel kragtens artikel 50(1) bly van krag  
hangende die uitslag van ’n appèl teen die betrokke beslissing.”.

**Wysiging van artikel 80 van Wet 121 van 1998, soos gewysig deur artikel 41 van  
10 Wet 24 van 1999**

**12.** Artikel 80 van die Hoofwet word hierby gewysig deur die volgende subartikel by te voeg:

15       “(3) ’n Ondersoek, of vervolging of ander geregtelike verrigtinge, ten opsigte van gedrag wat ’n misdryf sou uitmaak kragtens die Wet op die Opbrengs van Misdaad, 1996, en wat na die inwerkingtreding van daardie Wet maar voor die inwerkingtreding van hierdie Wet plaasgevind het, kan ingestel en voortgesit word asof hierdie Wet nie aangeneem is nie.”.

**Wysiging van Aanhef tot Wet 121 van 1998**

**13.** Die Aanhef tot die Hoofwet word hierby gewysig deur die negende paragraaf 20 daarvan deur die volgende paragrawe te vervang:

25       “EN NADEMAAL niemand wat aan ’n misdaad skuldig bevind is uit daardie of enige verwante misdaad voordeel moet trek nie, ongeag of so ’n misdaad voor of na die inwerkingtreding van hierdie Wet plaasgevind het, is wetgewing nodig om voorsiening te maak vir ’n siviele regsmiddel vir die inkorting en beslaglegging, en inbeslagname van eiendom wat die voordele van so ’n misdaad verteenwoor-  
dig;

30       EN NADEMAAL [personen nie van] niemand deur die opbrengs van [georgani- seerde misdaad en geldwassery] onregmatige aktiwiteite bevoordeel behoort te word nie, en niemand geregtig is om eiendom vir die pleging van ’n misdaad te gebruik nie, ongeag of sodanige aktiwiteite of misdaad voor of na die inwer- kingtreding van hierdie Wet plaasgevind het, is wetgewing nodig om voorsiening te maak vir ’n siviele regsmiddel vir die instandhouding en beslaglegging, en verbeurdverklaring van eiendom wat vanuit onregmatige aktiwiteite ontstaan het of wat betrokke is in die pleging van, of vermoedelike pleging van, ’n misdaad;”.

**35 Wysiging van Inhoudsopgawe tot Wet 121 van 1998**

**14.** Die Inhoudsopgawe van die Hoofwet word hierby gewysig deur die invoeging van die volgende items in Deel 3:

“24A. Bevel bly van krag hangende appèl

29A. Wysiging en intrekking van sekere bevele opgeskort deur appèl”.

**40 Kort titel**

**15.** Hierdie Wet heet die Tweede Wysigingswet op die Voorkoming van Georganiseerde Misdaad, 1999.

