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## GENERAL NOTICE

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### NOTICE 1643 OF 2001

#### DEPARTMENT OF TRADE AND INDUSTRY

#### NOTICE IN TERMS OF SECTION 16(1) OF THE CONSUMER AFFAIRS (UNFAIR BUSINESS PRACTICES) ACT, 1988

#### "ADVANCE FEE" PAYMENT SCHEMES

I, Alexander Erwin, Minister of Trade and Industry, after having considered a report by the Consumer Affairs Committee in relation to an investigation of which notice was given in Notice 1203 of 2000 in *Government Gazette* No 21133, dated 5 May 2000, which report was published in Notice 4284 of 2000 in *Government Gazette* No 21768, dated 17 November 2000, herewith make regulations in terms of section 16(1) of the Consumer Affairs (Unfair Business Practices) Act, 1988 (Act No 71 of 1988), as set out in the schedule.

#### A ERWIN

Minister of Trade and Industry

#### SCHEDULE

1. In this notice, notwithstanding anything contained in any other legislation or law
  - (1) any person who by any false pretence, and with the intent to defraud -
    - (a) obtains, from any other person, in South Africa or in any other country, for himself or any other person; or
    - (b) induces any other person, in South Africa or in any other country, to deliver to any person, any property, whether or not the property is obtained or its delivery induced through the medium of a contract induced by false pretense,is guilty of an offence.
  - (2) A person who by false pretense, and with the intent to defraud, induces any other person, in South Africa or in any other country, to confer a benefit on him or on any other person by doing or permitting a thing to be done on the understanding that the benefit has been or will be paid for, is guilty of an offence.
2. A person who -
  - (a) with intent to defraud, presents himself as capable of producing, from a

piece of paper or from any other material, any currency note by washing, dipping or otherwise treating the paper or material with or in a chemical substance or any other substance; or

- (b) with intent to defraud, represents himself as possessing the power or as capable of doubling or otherwise increasing any sum of money through scientific or any other medium of invocation of any juju or other invisible entity or anything whatsoever; or
- (c) not being registered as an authorized producer of monetary currency, makes or issues or represents as being capable of printing, making or issuing any currency note,

is guilty of an offence.

3. A person who, being the occupier or is concerned in the management of any premises, causes or knowingly permits the premises to be used for any purpose which constitutes an offence under these regulations, is guilty of an offence.
4. A person who by false pretense, and with the intent to defraud any other person, invites or otherwise induces that person or any other person to visit South Africa for any purpose connected with the commission of an offence under these regulations, is guilty of an offence.
5. (1) Where a false pretense which constitutes an offence under these regulations, is contained in a letter or other document, it shall be sufficient in the charge of an attempt to commit an offence under these regulations to prove that the letter or other document was received by the person to whom the false pretense was directed.  
  
(2) Notwithstanding anything to the contrary in any other law, every action or thing done or omitted to be done by a person to facilitate the commission by him of an offence under these regulations, shall constitute an attempt to commit the offence.  
  
(3) In these regulations "other document" includes a document transmitted through a fax or telex machine or any other electronic or electrical device or a telegraph or a computer printout.
6. A person who is in possession of a letter containing a false pretense which constitutes an offence under these regulations, is guilty of an attempt to commit an offence under these regulations if he knows or ought to know, having regard to the circumstances of the case, that the letter contains the false pretense.
7. (1) A person who conducts or attempts to conduct a financial transaction which in fact involves the proceeds of a specified unlawful activity -
  - (a) with the intent to promote the carrying on of a special unlawful activity;

or

- (b) where the transaction is designated in whole or in part -
    - (i) to conceal or disguise the nature, the location, the source the ownership or the control of the proceeds of a specific unlawful activity, or
    - (ii) to avoid a lawful transaction under South African law,
- is guilty of an offence.

(2) A person who transports or attempts to transport a monetary instrument or funds from a place inside South Africa or elsewhere or through a place outside South Africa or to a place in South Africa, from or through a place outside South Africa-,

- (a) with the intent to promote the carrying on of a specified unlawful activity; or
- (b) where the monetary instrument or funds involved in the transportation represent the proceeds of some form of unlawful activity and the transportation is designed in whole or in part -
  - (i) to conceal or disguise the nature, the location, the source, the ownership, or the control of the proceeds of a specified unlawful activity, or
  - (ii) to avoid a lawful transaction under South African law,

knows, if he knows or ought to know, having regard to the circumstances of the case, that the monetary instrument or funds involved in the transportation is the proceeds of some form of unlawful activity and the intent of the transaction,

is guilty of an offence.

8. A person who -

- (a) conspires with, aids, abets or counsels any other person to commit an offence; or
- (b) attempts to commit or is an accessory to an act or offence; or
- (c) incites, procures or induces any other person by any means whatsoever to commit an offence, under these regulations,

is guilty of an offence.

9. (1) Where an person or entity is convicted of an offence under these regulations, the property of such person or entity could be forfeited to the government.



10. (1) In addition to any other penalty prescribed under these regulations, the court could order the convicted party to make restitution to the victim of the false pretence or fraud by directing that person -

(a) where the property involved is money, to pay to the victim an amount equivalent to the loss sustained by the victim;

(b) in any other case -

- (i) to return the property to the victim or to a person designated by him, or
- (ii) to pay an amount equal to the value of the property, where the return of the property is impossible or impracticable.

(2) An order of restitution may be enforced by the victim or by the prosecutor on behalf of the victim in the same manner as a judgement in a civil action.

11. This notice shall come into operation upon the date of the publication thereof.

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