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**GENERAL NOTICES • ALGEMENE KENNISGEWINGS**

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**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT****NOTICE 569 OF 2019****RULES FOR THE CONDUCT OF PROCEEDINGS IN THE SPECIAL TRIBUNALS**

In terms of section 9(1)(a) of the Special Investigating Units and Special Tribunal Act No. 74 of 1996, as amended, the Tribunal President has made the following Rules regulating the conduct of proceedings in the Special Tribunal including the process by which proceedings are brought before the Special Tribunal, and the form and content of that process, to come into operation on in the Government gazette.

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### **1. Short title**

These Rules may be cited as the Special Tribunal Rules.

### **2. Repeal of previous Rules**

All preceding Rules regulating the conduct of the proceedings before the Special Tribunal are hereby repealed.

### **3. Interpretation**

Any expression in these Rules shall bear the same meaning as that ascribed to that expression in the Special Investigating Units and Special Tribunals Act No. 74 of 1996;

Words in the singular shall, where applicable, include the plural;

References to the male gender shall include references to the female gender and to the neuter; and -

“Confidential Information” shall mean confidential information as defined in  
and Confidentiality” the Regulations;

“Summons” shall mean a summons commencing action  
proceedings with particulars of claim annexed  
thereto;

“Day”

shall mean any day other than Saturday, Sunday or Public holiday and only days that shall be included in the computation of any time expressed in days prescribed by these Rules or fixed by any order of the Tribunal. In computing the time periods provided for in terms of these Rules, the first day shall be excluded and the last day shall be included;

“Deliver”

shall mean the service of copies upon all the parties and the filing of the original with the Registrar, by way of, *inter alia*, e-mail and electronic communications;

“E-mail and Electronic Communication”

shall bear the meaning assigned thereto under the section 1 of the Electronic Communications and Transactions Act No 25 of 2002, as amended;

“High Court Rules”

shall mean the Uniform Rules of the High Court, published in Government notice R.48 of 12 January 1965, as amended;



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“Initiating Document”	shall mean a summons, whether accompanied by particulars of claim or not, in action proceedings and a notice of motion accompanied by a founding affidavit in application proceedings;
“Litigant”	shall mean the applicant or the plaintiff, as the case may be, and shall include a party with a direct and substantial interest in the civil proceedings brought before the Tribunal and, where legally represented, shall include their legal representatives, unless the context excludes them;
“Member”	shall mean an additional member of the Tribunal appointed by the President in terms of section 7 of the Act;
“Property”	shall include corporeal, incorporeal, movable or immovable property irrespective of whether it is registered or located within, or outside, the

**Republic;**

**“Public Holiday”**

shall mean a public holiday as defined in section 1 of the Public Holidays Act 36 of 1994, as amended;

**“Registrar”**

shall mean an official in the Department of Justice designated by the Minister of Justice after consultation with the Tribunal President to assist the Special Tribunal in the performance of the judicial administrative work incidental to the functions of the Special Tribunal, and shall include assistant registrar;

**“Regulations”**

shall mean the Regulations proclaimed in terms of section 11 of the Special Investigating Units and Special Tribunals Act, 1996 (Act No. 74 of 1996);

**“Rules”**

shall mean these Rules;

**“Secretary”**

shall mean an official in the Department of

Justice designated by the Minister of Justice after consultation with the Tribunal President, and appointed by the Tribunal President in terms of section 7(7)(b) of the Act, to assist the Special Tribunal in the performance of the non-judicial administrative work incidental to the functions of the Special Tribunal;

“Service”

shall mean to deliver a process or document to a person other than the Registrar by means including e-mail and electronic communication;

“Sheriff of the Court”

shall mean a person appointed in terms of section 2 of the Sheriff's Act 90 of 1986 and shall include a person appointed in terms of section 5 and section 6 of that Act as an acting sheriff and a deputy sheriff, respectively;

“Tribunal”

shall mean a Special Tribunal established in terms of section 2 of the Act;

“Tribunal President”

shall mean a person appointed in terms of section 7(2) of the Act;

**“Unlawful activities”**

shall mean acts of serious maladministration in connection with the affairs of the state or any of its organs; improper and unlawful conduct by employees of any state institution, unlawful appropriation or expenditure of public money or property; intentional or negligent loss of public money or damage to public property; unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of the public and includes offences referred to in Part 1 to 4 or sections 17, 20 or 21 of Prevention and Combating of Corrupt Activities Act No. 12 of 2004;

**“PRECCA”**

shall mean the Prevention and Combating of Corrupt Activities Act No. 12 of 2004;

**4. Office hours and address of the Registrar**

- (1) The office of the Registrar shall be situated at-

Booyens Magistrate Court  
Amanda Avenue  
Turffontein  
100-lr  
Johannesburg South  
2091

- (2) The office of the Registrar shall be open every Monday to Friday, excluding public holidays, from 08h00 to 13:00 and from 14:00 to 16h00, save that for the purpose of issuing any process or filling

documents other than notice to defend the office shall be open from 9h00 to 13h00 and from 14h00 to 15h00. The Registrar may in exceptional circumstances issue process and accept documents at any time and shall do so when directed by the Tribunal President.

- (3) Despite provisions of Rule 4(2), either the Tribunal or the Registrar may direct that any document be filed on any day and at any time.

## **5. Issuing Tribunal process and the Registrar's duties**

- (1) A party initiating any proceeding before the Tribunal, either by way of application or action, shall apply to the Registrar for a case number before service. Such an application shall be made to the Registrar in person, by email or electronic communication.
- (2) The Registrar shall ensure that every process subsequently filed in the same proceeding is marked with the same case number and that it bears the date of filing.
- (3) The Registrar shall assign consecutive case numbers to all Tribunal processes issued in terms of this Rule.
- (4) The case number thus assigned, and the date of issue shall appear clearly on the face of the said process.
- (5) The Registrar may refuse to accept any document from any party that does not comply with the provisions of this Rule.

- (6) The Registrar may request a party to correct any patent defect or error in any document and/or process prior to its filing.
- (7) If a party refuses to effect a correction in terms of sub-rule (6), the Registrar may send the said document or process to the President of the Tribunal, sitting in chambers, for direction.
- (8) The Registrar shall be the sole custodian of the Tribunal's records and files and may not permit their removal from the seat or venue of the Tribunal without the President or a member of the Tribunal, as the case may be.
- (9) A person duly authorised to make copies of any document filed with the Registrar may, on payment of a prescribed fee, and in the presence of an official duly designated by the Registrar, make such copies.

## **6. Service**

- (1) Service of any pleadings, process or document concerning any matter instituted out of, or referred to, the Tribunal may be by-
  - (a) hand at the physical address of service provided; or
  - (b) registered post to the postal address provided, and, unless the contrary is proven, it shall be presumed that effective service

was effected on the seventh day following the date of postal despatch of the document concerned; or

(c) E-mail or electronic communication to the respective addresses provided; or

(d) Through the Sheriff in terms of Rule 4(1)(a) of the High Court Rules; or

(e) By any other means authorised by the Tribunal.

(2) Service shall be proven in any one of the following ways:

(a) By an affidavit of the person who effected service by hand in terms of Rule 6 (1)(a);

(b) By an affidavit of the person who effected service in terms of Rule 6(1)(b) which shall include the certificate issued by the post office that the article thus posted contained the relevant pleadings, processes or documents;

(c) By an affidavit of the person who effected service in terms of Rule 6(1)(c) confirming that the e-mail address to which the e-mail was sent and that the whole of the transmission was completed and attaching the e-mail as proof that the e-mail was sent; or

(d) By a return of service by the Sheriff.

- (3) If the Tribunal is not satisfied that effective service has taken place in accordance with this Rule, it may make any order as to service that it deems appropriate.
- (4) Chapter III, Part 2 of the Electronic Communications and Transactions Act, 2002 (Act 25 of 2002) is applicable to service by e-mail or other electronic communication.
- (5) The provisions of Rule 4(2) – 4(15) of the High Court Rules shall apply *mutatis mutandis* to the proceedings before the Tribunal.

## **7. Filing of Documents**

- (1) Documents may be filed with the Registrar in any one of the following ways, namely-
  - (a) by handing the document to the Registrar;
  - (b) by sending a copy of the document by registered post;
  - (c) by faxing the document;
  - (d) by e-mail or electronic communication; or
  - (e) by cloud filing by means of such cloud services as drop box, subject to agreement between the parties and approval by the Tribunal member assigned to a case.
- (2) A document is filed with the Registrar -
  - (a) on the date on which the document is handed to the Registrar;



- (b) on the date on which the document sent by registered post was received by the Registrar;
  - (c) upon completion of the facsimile transmission if telefaxed to the Registrar;  
or
  - (d) upon completion of the email transmission if sent to the Registrar by e-mail or electronic communication.
- (3) The original document must be always lodged with the Registrar. If filed by way of a facsimile transmission, e-mail or electronic communication, the original document shall be lodged within 5 days of it being despatched by telefax, e-mail or electronic communication.

## **8. Access to, and use of, information**

- (1) Any person may, upon payment of the prescribed fee, inspect or copy any record of the Tribunal's proceedings provided that the said proceedings are-
  - (a) not confidential information; or
  - (b) if confidential, to the extent ordered, and subject to the conditions imposed either by the Tribunal or a Court.

## **9. Nature of Proceedings**

- (1) All proceedings before the Tribunal shall be civil in character.
- (2) The Rules of evidence applicable to civil proceedings shall apply to the proceedings before the Tribunal.

## 10. Applications

- (1) Every application other than one brought *ex parte* must be brought on notice of motion as near as may be in accordance with Form 2(a) of the First Schedule of the High Court Rules. True copies of the notice of motion and all annexures thereto, must be served upon every party to the application.
- (2) In a notice of motion, the applicant must -
  - (a) appoint a postal, e-mail or physical address or a facsimile number at which the applicant will accept notice and service of all documents in such proceedings;
  - (b) set forth a day not less than five after delivery thereof on the respondent, when the respondent shall notify the applicant, in writing, whether the respondent intends to oppose the application.
- (3) Where the notice of opposition is not delivered within the period referred to above, the applicant may within five days of the expiry thereof apply to the Registrar for the allocation of a date for the hearing of the application.
- (4) Where the respondent files a notice of opposition, the parties shall exchange answering and replying affidavits, including a notice to

oppose the application on a point of law setting out the points of law that he or she wishes to raise, within the dates directed by the President or presiding member at the first case management meeting held in terms of Rule 19.

- (5) Where an application cannot properly be decided on affidavit, the Tribunal may dismiss the application or make such order as it deems appropriate in order to ensure a just and expeditious disposal of the matter. In particular, but without affecting the generality of the foregoing, the Tribunal may direct that oral evidence be heard on specified issues with a view to resolving any dispute of fact and to that end may order any deponent to appear personally or grant leave for such deponent or any other person to be subpoenaed to appear and be examined and cross-examined as a witness or it may refer the matter to trial with appropriate directions as to pleadings or definition of issues, or otherwise.
- (6) The rules applicable to applications also apply to counterapplications as the context allows.
- (7) Every application brought *ex parte* must be filed with Registrar and set down, before noon on a business day but one preceding the day upon which it is to be heard.

- (8) Any person with a direct and substantial interest in an application being brought *ex parte*, may deliver notice of an application for leave to oppose, supported by an affidavit setting forth the nature of such interest and the grounds upon which such person desires to be heard, whereupon the Registrar must set such application down for hearing at the same time as the initial application.
- (9) Any person against whom an order is granted *ex parte* may anticipate the return day upon delivery of not less than twenty-four hours' notice to the applicant and, where applicable, other interested parties.
- (10) Notwithstanding the foregoing sub-rules, interlocutory and other applications incidental to pending proceedings may be brought on notice supported by such affidavits as may be necessary and set down at a time assigned by the Registrar or directed by the President of the Tribunal or the presiding member.
- (11) Rule 19 shall apply to all applications as the context allows and as determined by the President or the presiding member.

## **11. Heads of Argument**

Subject to Rule 19, the parties shall deliver their heads of argument no later than the date designated by the President or the presiding member at the first case management meeting.

## **12. Urgent Relief**

- (1) An applicant seeking urgent relief must file an application which shall, as far as practicable, be in accordance with the provisions of Rule 10.
- (2) The Tribunal may, in such applications, dispense with the forms and service provided for in these Rules and may dispose of such matter at such time and place and in such manner and in accordance with such procedure as it deems appropriate.
- (3) In every affidavit filed in support of any application under this Rule, the applicant must set forth explicitly the circumstances which it avers render the matter urgent and the reasons why the applicant claims that it would not be afforded substantial redress at a hearing in due course.
- (4) The Registrar must fix a date, time and place for the hearing of the application as determined by the President or the presiding member.
- (5) As soon as the Registrar has fixed the date, place and time for the hearing of the urgent application, the applicant must serve a copy of the application, together with the information obtained from the Registrar concerning the date, place and time for the hearing of the urgent application, on the respondent.

- (6) The applicant must, at the hearing of the urgent application, satisfy the Tribunal that effective service had occurred.
- (7) Any respondent who intends opposing the urgent application or making representations to the Tribunal regarding the application, must notify the Registrar and the applicant, as soon as possible after becoming aware of the application.
- (8) The Tribunal may deal with an urgent application in any manner it deems appropriate, including but not limited to, giving directives regarding the filing of papers, case managing the matter in terms of Rule 19 and may make any order as to costs.
- (9) A person against whom an order was granted in his or her absence in an urgent application may, on notice to the applicant and/ or other interested parties, set the matter down for reconsideration of the said order.

### **13. Action Proceedings**

- (1) Action proceedings shall be commenced by issuing out a summons, addressed to one or more defendants informing them, *inter alia*, that if they dispute the claim and wish to defend same, they shall, within ten days of receipt of the summons, deliver their notice of intention to defend together with a plea (with or without a claim in reconvention) or an exception.

- (2) There shall be annexed to the summons a statement of the material facts relied upon by the plaintiff in support of her claim, which statement shall inter alia comply with Rule 18 of the High Court Rules.
- (3) Any party who fails to deliver a plea as aforesaid shall be *ipso facto* barred.
- (4) The notice of intention to defend shall therein set out the defendant's full residential or business address, postal address and where available, facsimile address and electronic mail address and shall also appoint an address, not being a post office box or poste restante, within 15 kilometres of the office of the Registrar, for the service on defendant of all documents, and service at the address so given shall be valid and effectual, except where by any order or practice of the Tribunal personal service is required.
- (5) Within ten days after the service upon him or her of a plea, the plaintiff shall, where necessary, deliver a replication to the plea and a plea to the defendant's claim in reconvention where applicable.
- (6) No replication or subsequent pleading which would be a mere joinder of issue or issues or bare denial of allegations in the previous

pleading shall be necessary, and issue or issues shall be deemed to be joined and pleadings closed.

- (7) If any party fails to deliver any other pleading within the time period laid down in these Rules or within any extended time allowed in terms thereof, any other party may by notice to the other parties, require him or her to deliver such pleading within five days of such notice. Any party failing to deliver such pleading within the stipulated time or within such further period as may be agreed shall be *ipso facto* barred.

#### **14. Extension of time, Removal of Bar and Condonation**

- (1) In the absence of agreement between the parties, the Tribunal may upon application on notice and on good cause shown, make an order extending any time prescribed by these Rules.
- (2) Any such extension may be ordered although the application therefor is not made until after expiry of the time prescribed or fixed, and the Tribunal may make any order as to it seems meet in that regard.
- (3) The Tribunal may, on good cause shown, condone any non-compliance with these Rules.
- (4) After the discharge of a Rule *nisi* by default, the Tribunal may revive it and direct that the Rule *nisi* so revived need not be served again.



## **15. Amendment of Pleadings**

Any party desiring to amend any pleading or document shall notify all the other parties of his or her intention to amend and shall furnish particulars of the amendment.

- (2) The notice referred to above shall state that unless a written objection to the proposed amendment is delivered within five days of delivery of the notice, the amendment will be effected.
- (3) An objection to a proposed amendment shall clearly and concisely state the grounds upon which the objection is founded.
- (4) Where a proposed amendment has been objected to, the party wishing to effect the amendment may, within five days' service of the notice of objection, institute an application for leave to amend and enrol it for hearing on the date designated by the President or member.
- (5) Where no objection is delivered, the proposed amendment shall be deemed to be consented to, and the party who gave notice of the proposed amendment may, within five days of the expiration of the period mentioned above, effect the amendment by filing amended pages of the said pleading.

**16. Close of Pleadings**

- (1) Pleadings are considered closed if -
- (a) Either party has joined issue without alleging any new matter, and without adding any further pleading;
  - (b) The last day allowed for filing a replication or subsequent pleading has elapsed and it has not been filed;
  - (c) The parties agree in writing that the pleadings are closed, and such agreement is filed with the Registrar; or
  - (d) The parties are unable to agree as to the close of pleadings, and the Tribunal, upon the application of a party declares them closed.

**17. Discovery**

- (1) A document or tape recording not disclosed may not, except with the leave of the Tribunal on whatever terms the Tribunal deems appropriate, be used for any purpose at the hearing by the person who was obliged to disclose it, except that the document or tape recording may be used by a person other than the person who was obliged to disclose it.

- (2) Where the parties cannot reach agreement on discovery of documents and tape recordings, either party may apply to the Tribunal for an appropriate order, including an order as to costs.
- (3) For the purpose of this Rule, a tape recording includes a soundtrack, film, magnetic tape, record or any other material on which visual images, sound or other information can be recorded.
- (4) Subject to Rule 19, the provisions of Rule 35 of the High Court Rules relating to discovery may apply *mutatis mutandis* to proceedings brought in terms of these Rules.

## **18. Expert Witnesses**

- (1) Subject to the provisions of Rule 19, where parties to a suit wish to adduce expert evidence, they may do so only subject to the time periods determined by the President or the presiding member of the Tribunal and the experts shall:
  - (a) convene a meeting of the experts;
  - (b) file their expert reports;
  - (c) produce a joint minute setting out the issues of agreement and disagreement as between the experts and the reasons for the disagreement, if any.

- (2) The President or the presiding member may convene a meeting with the experts to curtail the issues to be determined at the trial.

#### **19. Judicial Case Management Conference**

- (1) The primary objective of these Rules is to ensure the expeditious and cost-effective disposal of matters before the Tribunal which may, in a fitting case, include the abandonment of the application of any rules of evidence in accordance with section 9(3) of the Act.
- (2) All matters in the Tribunal shall be subject to judicial case management.
- (3) The President shall assign one or two members to preside in any matter brought before the Tribunal and to case manage such a matter until its finalisation.
- (3) Ordinarily, the Member so assigned to a matter shall, either sitting alone or together, determine all interlocutory matters and the merits thereof.
- (4) As soon as is reasonably possible after the assignment of a matter to one or two Members of the Tribunal, the first case management conference must be held at a time, date and place determined by either one or both Members.

- (5) At the first case management conference, the following general matters must be canvassed:
- (a) Preliminary identification of the issues subject to further definition in the pleadings;
  - (b) The timetable for the expeditious conduct and finalisation of the proceedings, including whether the following should be delivered and the applicable timeline in regard thereto:
    - (i) Further pleadings in the case of an action or affidavits in the case of an application;
    - (ii) In the case of an action:
      - (A) Discovery;
      - (B) Witness statements by every witness which each party intends calling at the trial, which shall constitute, save with the leave of the President or the presiding member, the evidence in chief of the particular witness;
      - (C) Expert Reports;
      - (D) Hearing Bundles; and
    - (iii) The date of the second case management conference.

- (c) The appropriate electronic means of communication and the exchange and filing of documents;
  - (d) Date, estimated duration and venue of the substantive hearing;
  - (e) Any other items that a party may wish to raise at the first case management conference; and
  - (f) The estimated date for the handing down of the Tribunal's judgment which should, ordinarily, be within thirty (30) days of the substantive hearing.
- (6) The minute of the first case management conference shall be produced by the applicant/ plaintiff or its legal representative unless otherwise directed by the President or the Members assigned to the specific matter.
- (7) Such a minute shall be signed on behalf of all the parties to the cause and the following shall appear therefrom:
- (a) the date, place and duration of the case management conference and the names of all persons in attendance and their respective capacities; and
  - (b) all the procedural and substantive matters discussed at the first case management conference, agreements reached, and directives given at the conference.

- (8) A second case management conference shall be held at which the parties shall present either an agreed list of triable issues or, absent agreement, each party's identification of the triable issues.
- (9) All interlocutory matters, if any, shall be dealt with at the second case management conference or at any postponed date thereof, such interlocutory matters to include a determination on the triable issues, absent agreement between the parties in regard thereto.

## **20. Subpoena of Witnesses**

- (1) Any party desiring the attendance of any person to give evidence at a trial may issue out from the office of the Registrar one or more subpoenas for that purpose, each of which shall contain the names of not more than four persons, and service thereof upon any person therein named shall be effected in the manner prescribed by Rule 5.
- (2) Any witness who has been required to produce any deed, document, writing or tape recording at the hearing shall physically hand it to the Registrar as soon as is reasonably possible.
- (3) Thereafter, the parties may inspect such deed, document, writing or tape recording and make copies or transcripts thereof, after which the witness would be entitled to its return.

**21. Withdrawals, Postponements and Settlements**

- (1) A party seeking to withdraw the proceedings must deliver a notice of withdrawal in which it tenders the costs of suit as soon as soon as possible.
- (2) If costs are not tendered any other party may apply, on notice, for the costs of suit.
- (3) Where the parties reach a settlement, the applicant of plaintiff as the case may be must notify the Registrar of the settlement as soon as possible.
- (4) Where the parties agree on a postponement of the trial, the party at whose instance the postponement is sought shall bear the costs occasioned thereby, unless the Tribunal orders otherwise, and shall notify the Registrar thereof as soon as is reasonably practicable.

**22. Default Judgments**

- (1) Where the defendant or the respondent, as the case may be, remains in default of filing of a plea or the answering affidavit as the case may be, the Registrar must, on notice to the applicant or respondent, enrol the matter for judgment by default.



- (2) Sub-Rule (1) would not apply in a case where the applicant or plaintiff, as the case may be, informs the Registrar not to enrol the matter for judgment by default.

## **23. Restraint Orders**

- (1) Any interested person or party including the SIU may, by way of an *ex parte* application, apply to a Tribunal for an order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property to which the order relates.
- (2) A restraint order may be made:
- (a) in respect of such realisable property as specified in the restraint order held, either within or outside the territory of the Republic of South Africa, and by the person against whom the restraint order is being made;
  - (b) in respect of all realisable property held by such person, whether specified in the restraint order or not;
  - (c) in respect of all property which, if it is transferred to such person after the making of the restraint order, would be realisable property.

- (3) The Tribunal may make a provisional restraint order having immediate effect and may simultaneously grant a Rule *nisi* calling upon the defendant/respondent on a day mentioned in the Rule to appear and to show cause why the restraint order should not be made final.
- (4) Where the respondent or defendant, as the case may be, has been absent during a period of 21 days from his or her usual place of residence and from his or her business, if any, within the Republic, the Tribunal may direct that the Rule nisi be served by affixing it to or near the outer door of the buildings where the Tribunal sits and published in the Gazette, or may direct some other mode of service.
- (5) The respondent or defendant, as the case may be, may anticipate the return day for the provisional restraint order if on 24-hour notice to the applicant.
- (6) A restraint order shall provide for notice to be given to persons affected by the order.
- (7) Without derogating from the generality of the powers conferred by sub-Rule (1), a restraint order may make such provision as the Tribunal may think appropriate -

- (a) for the reasonable living expenses of a person against whom the restraint order is being made and his or her family or household; and
  - (b) for the reasonable legal expenses of such person in connection with any proceedings instituted against him or her in terms of section 26 of the PRECCA or any criminal proceedings to which such proceedings may relate, if the Tribunal is satisfied that the person whose expenses must be provided for has disclosed under oath all his or her interests in property subject to a restraint order and that the person cannot meet the expenses concerned out of his or her unrestrained property.
- (8) The Tribunal making a restraint order may also make such further order in respect of the discovery of any facts including facts relating to any property over which the defendant may have effective control and the location of such property as the Tribunal may consider necessary or expedient with a view to achieving the objects of the restraint order.
- (9) The Tribunal making a restraint order 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 it considers appropriate for the proper, fair and effective execution of the order.

- (10) Property seized under this rule shall be dealt with in accordance with the directions of the Tribunal that granted the restraint order.
- (11) The Tribunal which granted a restraint order
- (a) may on application by a person affected thereby 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 stands potentially to suffer as a result of the 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.
- (12) When the Tribunal orders a rescission of an order authorising the seizure of property in terms of sub-rule (11) (a), the Tribunal may make such other order as it considers appropriate for the proper, fair and effective execution of the restraint order concerned.

- (13) The provisions of Chapter 5, Part 3 of PRECCA apply *mutatis mutandis* to proceedings under this Rule.

**24. Preservation of Property Orders**

- (1) Any interested person or party including the SIU may by way of an *ex parte* application apply to the Tribunal for an order prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with any property.
- (2) The application must demonstrate that the property concerned:
- (a) is or has been instrumentality of an offence referred to in schedule 1 of PRECCA; or
  - (b) constitutes the proceeds of unlawful activities emanating from the findings of an investigation conducted by SIU, pursuant to a proclamation made by the President relevant to that investigation, in terms of section 2(1) of the Act.
- (3) The Tribunal at the time of granting a preservation order may 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 Tribunal considers appropriate for the proper fair and effective execution of the preservation order.

- (4) Property seized under this Rule shall be dealt with in accordance with the directions of the Tribunal.
- (5) Where the Tribunal orders preservation of a property, the SIU shall, as soon as is practicable after granting the order-
  - (a) give notice of the order to all persons known to the SIU to have an interest in property which is subject to the order; and
  - (b) publish a notice of the order in the *Gazette*.
- (6) A notice under this sub-Rule 5 shall be served in the manner provided for in these Rules.
- (7) Any person who has an interest in the property which is subject to the preservation order may enter an appearance to apply for an order excluding his or her interest in the property concerned from the operation thereof.
- (8) An appearance under this Rule shall be delivered to the SIU and in the case of—
  - (a) a person upon whom a notice has been served under sub-Rule 5, 14 days after such service; or
  - (b) any other person, 14 days after the date upon which a notice under subsection (1) (b) was published in the *Gazette*.

(9) An appearance under sub-Rule 5 shall contain full particulars of the chosen address for the delivery of documents concerning further proceedings and shall be accompanied by an affidavit stating—

- (a) full particulars of the identity of the person entering the appearance;
- (b) the nature and extent of his or her interest in the property concerned; and
- (c) the basis of the defence upon which he or she intends to rely in opposing a forfeiture order or applying for the exclusion of his or her interests from the operation thereof.

## **25. Restraint and Preservation Orders (Property outside the Republic)**

- (1) The Tribunal may, on application by the SIU or any interested party, grant a restraint and/or preservation order in respect of property situated outside of the Republic.
- (2) The said order may prohibit the removal and/ or disposal of the implicated asset/s before the finalisation of proceedings against respondent.
- (3) The Tribunal may simultaneously therewith, if it appears to the Tribunal that the person against whom the order has been made

owns property in the foreign State concerned, issue letters rogatory (letters of request) as contemplated in section 23 of the International Cooperation in Criminal Matters Act 75 of 1996 requesting assistance in enforcing such an order in a foreign State.

(4) Letters rogatory contemplated in sub-Rule (3) shall be sent to the Director-General of the Department of Justice for transmission to:

(a) the court or Tribunal specified in the request; or

(b) the appropriate government body in the requested State.

## **26. Forfeiture Orders**

(1) At the conclusion of the proceedings and on final determination of the dispute, depending on the outcomes on the unlawful activities of the respondent or the defendant, as the case may be, the Tribunal shall make a final order for forfeiture to the State of the property held under a restraint order or property preservation order where a respondent has been found to have partook in unlawful activities.

## **27. Curator Bonis**

(1) Where the Tribunal grants a restraint or a preservation order, the Tribunal may at any time appoint a *curator bonis* who shall, after the issuing of letters of curatorship:



- (a) assume control of the property and take such property into his or her custody;
  - (b) take care of the said property;
  - (c) administer the said property;
  - (d) and to do any necessary act for that purpose;
  - (e) where the said property is a business or undertaking, carry on, with due regard to any law which may be applicable, the said business or undertaking.
- (2) The Tribunal may order the person against whom the restraint or preservation order has been granted or any person holding property subject to the restraint or preservation order, to surrender forthwith, or within such period as that the Tribunal may determine, any such property into the custody of the *curator bonis*.
- (3) Any person affected by an order contemplated in this Rule may at any time apply to a Tribunal for:
  - (a) variation or rescission of the order; and
  - (b) for variation of the terms of the appointment of *curator bonis* concerned or for the discharge of that *curator bonis*.
- (4) The Tribunal which made an order contemplated in this Rule may at any time:
  - (a) vary or rescind the order; or

- (b) vary the terms of the appointment of the *curator bonis* concerned or discharge that *curator bonis*; or
- (c) shall rescind the order and discharge the *curator bonis* concerned if the relevant restraint order is rescinded; and
- (d) may make, such an order relating to the fees and expenditure of the *curator bonis* as it deems appropriate, including an order for the payment of the fees of the *curator bonis* by the State.

## **28. Procedures Not Provided for in the Rules**

- (1) If a situation for which these Rules do not provide arises in proceedings or contemplated proceedings, the Tribunal may adopt any procedure that it deems appropriate in the circumstances, including the invocation of the High Court Rules.
- (2) The Tribunal may, in the exercise of its powers and in the performance of its functions, or in any incidental matter, take any steps in relation to the hearing of a matter before it which may lead to the expeditious and cost-saving disposal of the matter, including the abandonment of the application of any rule of evidence in order to achieve the objects of the Act.

## **29. Orders, Costs and Taxation**

- (1) Upon making an order, the Tribunal may make an order for costs.

- (2) Where the Tribunal has made an award of costs, the following provisions apply:
- (a) The fees of one representative may be allowed between party and party, unless the Tribunal authorises the fees of additional representatives;
  - (b) The fees of any additional representative authorised in terms of paragraph (a) must not exceed one half of those of the first representative, unless the Special Tribunal directs otherwise;
  - (c) The costs between party and party allowed in terms of an order of the Special Tribunal, or any agreement between the parties, must be calculated and taxed by the taxing master at the tariff determined by the order or agreement, but if no tariff has been determined, the tariff applicable in the High Court will apply; and
  - (d) Qualifying fees for expert witnesses may not be recovered as costs between party and party unless otherwise directed by the Tribunal during the proceedings.
- (3) The Registrar may perform the functions and duties of a taxing master or appoint any person as taxing master who in the Registrar's opinion is appropriate to perform the functions and duties signed to or imposed on a taxing master by these Rules.

- (4) The taxing master is empowered to tax any bill of costs for services actually rendered in connection with proceedings in the Special Tribunal.
- (5) At the taxation of any bill of costs, the taxing master may call for any book, document, paper or account that in the taxing master's opinion is necessary to determine properly any matter arising from the taxation.
- (6) The taxing master must not proceed to the taxation of any bill of costs unless the taxing master has been satisfied by the party requesting the taxation (if that party is not the party liable to pay the bill) that the party liable to pay the bill has received due notice as to the time and place of the taxation and of that party's entitlement to be present at the taxation.
- (7) Despite sub-Rule 6, notice need not be given to a party:
  - (a) who failed to appear at the hearing either in person or through a representative; or  
  
who consented in writing to the taxation taking place in that party's absence.

**30. Service and enforcement of Tribunal Orders**

Service and execution of the Tribunal's judgments and orders shall be effected in accordance with the procedures for service and execution of judgments and orders of the High Court of South Africa.

**31. Delegation of powers and functions**

The Tribunal President may delegate in writing, any functions to the Secretary by this Rules, to any other appropriately qualified official.

Issued on 17 October 2019 for publication

  
Justice GM Makhanya

**Special Tribunal President**





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