

DRUGS AND DRUG TRAFFICKING ACT NO. 140 OF 1992

CHAPTER I APPLICATION OF ACT

1. Definitions . -

(1) In this Act, unless the context indicates otherwise-
" **convert**"

, in relation to property, includes-

(a)any agreement or understanding in connection with the property, whether any such agreement or understanding is legally enforceable or not; or

(b)any other act in connection with the property, whether any such act is performed independently or in concert with other persons,

which has or is likely to have the effect-

(i) of concealing or disguising the nature, source, location, disposition or movement of the property or its ownership or any interest with respect there to; or

(ii) of enabling or assisting any person who has committed or commits, whether in the Republic or elsewhere, a drug offence or an economic offence-

(aa) to avoid prosecution; or

(bb) to remove or to diminish any property, or any part thereof, realized directly or indirectly by him as a result of the commission of the said offence, or to use it in order to obtain funds, investments or other property;

" **dangerous dependence-producing substance**"

means any substance or any plant from which a substance can be manufactured included in Part II of Schedule 2;

" **deal in**"

, in relation to a drug, includes performing any act in connection with the transshipment, importation, cultivation, collection, manufacture, supply, prescription, administration, sale, transmission or exportation of the drug;

" **declaration of forfeiture**"

means a declaration of forfeiture made in terms of section 25 (1);

" **defined crime**"

means-

(a) a drug offence; or

(b) the conversion of property, or any part thereof, which was derived directly or indirectly as a result of the commission, whether in the Republic or elsewhere, of a drug offence;

"**dependence-producing substance**"

means any substance or any plant from which a substance can be manufactured included in Part I of Schedule 2;

" **designated officer**"

means any officer referred to in section 8;

" **drug**"

means any dependence-producing substance, any dangerous dependence-producing substance or any undesirable dependence-producing substance;

" drug offence"

means-

(a) in relation to a drug offence committed in the Republic, means an offence referred to in section 13 (f);

(b) in relation to a drug offence committed outside the Republic, means any act or omission which, if it had occurred within the Republic, would have constituted an offence referred to in that section;

" economic offence"

(a) in relation to an economic offence committed in the Republic, means an offence referred to in section 14 (b);

(b) in relation to an economic offence committed outside the Republic, means any act or omission which, if it had occurred within the Republic, would have constituted an offence referred to in that section;

" financial Institution"

means-

any public company registered provisionally or finally as a deposit-taking institution in terms of the Deposit-taking Institutions Act, 1990 (Act No. 94 of 1990);

1. **s. 1 Drugs and Drug Trafficking Act, No.140 of1992 s. 1**
2. the Development Bank of Southern Africa;
3. a mutual building society as defined in section 1 (1) of the Mutual Building Societies Act, 1965 (Act No. 24 of 1965);
4. an insurer registered in terms of the Insurance Act, 1943 (Act No. 27 of 1943), and carrying on any class of long-term insurance business, other than a funeral business, within the Republic;
5. any company registered as a management company in terms of the Unit Trusts Control Act, 1981 (Act No. 54 of 1981), or any company or institution registered as a trustee in terms of that Act;

" Interest"

includes any right;

" manufacture"

, in relation to a substance, includes the preparing extraction or producing of the substance;

" medicinal purposes"

, in relation to a particular drug, means the treatment or prevention of a disease or for some other definite curative or therapeutic purpose, but does not include the satisfaction or relief of a habit or of a craving for the particular drug or for any other drug;

" Medicines Act"

means the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965);

" **Minister**"

means the Minister of Justice;

" **place of entertainment**"

includes any premises, vehicle, vessel or aircraft, or any part thereof, used for or in connection with any exhibition, show, performance, dance, amusement, game, competition or sport;

" **plant**"

includes any portion of a plant;

" **police official**"

means any member of the Force as defined in section I of the Police Act, 1958 (Act No. 7 of 1958);

" **possess**"

, in relation to a drug, includes to keep or to store the drug, or to have it in custody or under control or supervision;

" **premises**"

means land or any building, dwelling flat, room, shop, office or other structure;

" **proceeds**"

, in relation to a defined crime, means any property, or any part thereof, which was derived directly or indirectly as a result of-

1. the commission in the Republic of the defined crime; or
2. any act or omission outside the Republic which, if it had occurred in the Republic, would have constituted the defined crime,

" **property**"

means money or any other movable, immovable, corporeal or incorporeal thing;

" **record**"

includes any information contained in a computer or reproduced by a computer print-out, as the case may be;

" **scheduled substance**"

means any substance included in Part I or II of Schedule 1;

" **sell**"

, in relation to a drug, includes to offer, advertise, possess or expose the drug for sale, to dispose of it, whether for consideration or otherwise, or to exchange it;

" **undesirable dependence-producing substance**"

means any substance or any plant from which a substance can be manufactured included in Part III of Schedule 2.

(2) In this Act-

(a)

except where it is inconsistent with the context or dearly inappropriate, any reference to property shall be construed as a reference also to property which is situate outside the Republic;

ss. 1-4 Drugs and Drug Trafficking Act, No.140 of1992 ss. 1-4

(*b*)

any reference to a person practising any health service or cognate profession shall be construed as a reference to a person practising any health service or cognate profession as defined in the Medicines Act.

2. Operation of Act with regard to Medicines Act.

-The provisions of this Act shall apply in addition to, and not in substitution for, the provisions of the Medicines Act or any regulation made thereunder.

CHAPTER II ILLEGAL ACTS

3. Manufacture and supply of scheduled substances.-No person shall manufacture any scheduled substance or supply it to any other person, knowing or suspecting that any such scheduled substance is to be used in or for the unlawful manufacture of any drug.

4. Use and possession of drugs.-No person shall use or have in his possession-

(*a*)

any dependence-producing substance; or

(*b*)

any dangerous dependence-producing substance or any undesirable dependence-producing substance,

unless-

(i) he is a patient who has acquired or bought any such substance-

(*aa*)

from a medical practitioner, dentist or practitioner acting in his professional capacity and in accordance with the requirements of the Medicines Act or any regulation made thereunder; or

(*bb*)

from a pharmacist in terms of an oral instruction or a prescription in writing of such medical practitioner, dentist or practitioner,

and uses that substance for medicinal purposes under the care or treatment of the said medical practitioner, dentist or practitioner;

(ii) he has acquired or bought any such substance for medicinal purposes-

(*aa*)

from a medical practitioner, veterinarian, dentist or practitioner acting in his professional capacity and in accordance with the requirements of the Medicines Act or any regulation made thereunder;

(*bb*)

from a pharmacist in terms of an oral instruction or a prescription in writing of such medical practitioner, veterinarian, dentist or practitioner; or

(*cc*)

from a veterinary assistant or veterinary nurse in terms of a prescription in writing of such veterinarian,

with the intent to administer that substance to a patient or animal under the care or treatment of the said medical practitioner, veterinarian, dentist or practitioner;

(iii) he is the Director-General: National Health and Population Development who has acquired or bought any such substance in accordance with the requirements of the Medicines Act or any regulation made thereunder;

(iv) he, she or it is a patient, medical practitioner, veterinarian, dentist, practitioner, nurse, midwife, nursing assistant, pharmacist, veterinary assistant, veterinary nurse, manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter, or any other person contemplated in the Medicines Act or any regulation made thereunder, who or which has acquired, bought, imported, cultivated, collected or manufactured, or uses or is in pos-

ss. 4-6 *Drugs and Drug Trafficking Act, No. 140 of 1992* ss. 4-6

session of, or intends to administer, supply, sell, transmit or export any such substance in accordance with the requirements or conditions of the said Act or regulation, or any permit issued to him, her or it under the said Act or regulation;

(v) he is an employee of a pharmacist, manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter who has acquired, bought, imported, cultivated, collected or manufactured, or uses or is in possession of, or intends to

supply, sell, transmit or export any such substance in the course of his employment and in accordance with the requirements or conditions of the Medicines Act or any regulation made thereunder, or any permit issued to such pharmacist, manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter under the said Act or regulation; or

(vi) he has otherwise come into possession of any such substance in a lawful manner.

5. Dealing in drugs.-No person shall deal in-

(a)

any dependence-producing substance; or

(b)

any dangerous dependence-producing substance or any undesirable dependence-producing substance,

unless-

(i) he has acquired or bought any such substance for medicinal purposes-

(aa)

from a medical practitioner, veterinarian, dentist or practitioner acting in his professional capacity and in accordance with the requirements of the Medicines Act or any regulation made thereunder;

(bb)

from a pharmacist in terms of an oral instruction or a prescription in writing of such medical practitioner, veterinarian, dentist or practitioner; or

(cc)

from a veterinary assistant or veterinary nurse in terms of a prescription in writing of such veterinarian,

and administers that substance to a patient or animal under the care or treatment of the said medical practitioner, veterinarian, dentist or practitioner;

(ii) he is the Director-General: National Health and Population Development who acquires, buys or sells any such substance in accordance with the requirements of the Medicines Act or any regulation made thereunder;

(iii) he, she or it is a medical practitioner, veterinarian, dentist, practitioner, nurse, midwife, nursing assistant, pharmacist, veterinary assistant, veterinary nurse, manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter, or any other person contemplated in the Medicines Act or any regulation made thereunder, who or which prescribes, administers, acquires, buys, transships, imports, cultivates, collects, manufactures, supplies, sells, transmits or exports any such substance in accordance with the requirements or conditions of the said Act or regulation, or any permit issued to him, her or it under the said Act or regulation; or (iv) he is an employee of a pharmacist, manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter who acquires, buys, transships, imports, cultivates, collects, manufactures, supplies, sells, transmits or exports any such substance in the course of his employment and in accordance with the requirements or conditions of the Medicines Act or any regulation made thereunder, or any permit issued to such pharmacist, manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter under the said Act or regulation.

Acts relating to proceeds of defined crime

6. Acquisition of proceeds of defined crime.-No person shall acquire any property, knowing that such property is the proceeds of a defined crime.

ss. 7-10 Drugs and Drug Trafficking Act, No.140 of1992 ss. 7-10

7. Conversion of proceeds of defined crime.-No person shall convert any property, while he knows or has reasonable grounds to suspect that any such property is the proceeds of a defined crime.

CHAPTER III REPORTING OF INFORMATION, AND INVESTIGATIONS

Reporting of information

8. Designated officers.-

For the purposes of this Chapter, every commissioned officer of the South African Police assigned to the South African Narcotics Bureau shall be a designated officer.

9. Relaxation of restrictions on disclosure of information -

(1) Any person may, notwithstanding anything to the contrary contained in any law which prohibits him-

(a)

from disclosing any information relating to the affairs or business of any other person;
or

(b)

from permitting any person to have access to any registers, records or other documents which have a bearing on the said affairs or business,

disclose to any attorney-general or designated officer such information as he may consider necessary for the prevention or combating, whether in the Republic or elsewhere, of a drug offence or an economic offence, or permit any designated officer to have access to any registers, records or other documents which may in his opinion have a bearing on the latter information.

(2) The provisions of subsection (1) shall not be construed as prohibiting any Minister by whom or any other authority by which, or under the control of whom or which, any law referred to in that subsection is administered, or any board, institution or body established by or under any such law, from making any other arrangement with regard to the furnishing of information or the granting of access contemplated in that subsection, according to which the information or access shall be furnished or granted-

(a)

by, or on the authority or with the approval of, any such Minister, authority, board, institution or body or any person designated by any such Minister, authority, board, institution or body; and

(b)

subject to the conditions, if any, determined by any such Minister, authority, board, institution, body or person.

10. Obligation to report certain information to police -

(1) If the owner, occupier or manager of any place of entertainment, or any person in control of any place of entertainment or who has the supervision thereof, has reason to suspect that any person in or on such place of entertainment uses, has in his possession or deals in any drug in contravention of the provisions of this Act, he shall-

(a)

as soon as possible report his suspicion to any police official on duty at that place of entertainment or at the nearest police station, as the case may be; and

(b)

at the request of the said police official, furnish that police official with such particulars as he may have available regarding the person in respect of whom the suspicion exists.

(2) If any director, manager or executive officer of a financial institution has reason to suspect that any property acquired by the financial institution from any person in the

ordinary course of the financial institution's business is the proceeds of a defined crime, he shall-

(a)

as soon as possible report his suspicion to any designated officer; and

(b)

at the request of that designated officer, furnish the said officer with such particulars as he may have available regarding any such person.

ss. 10-11 Drugs and Drug Trafficking Act, No.140 of1992 ss.10-11

(3) If-

(a)

any stock-broker as defined in section 1 of the Stock Exchanges Control Act, 1985 (Act No. 1 of 1985), or any person contemplated in paragraph (d), (e) or (f) of section 4(1) of that Act; or

(b)

any financial instrument trader as defined in section 1 of the Financial Markets Control Act, 1989 (Act No. 55 of 1989), or any person contemplated in paragraph (f), (g) or (h) of section 5(1) of that Act,

has reason to suspect that any property acquired by him from any person in the ordinary course of his business is the proceeds of a defined crime, he shall-

(i) as soon as possible report his suspicion to any designated officer; and

(ii) at the request of that designated officer, furnish the said officer with such particulars as he may have available regarding the person from whom that property has been acquired.

(4) No obligation as to secrecy and no other restriction on the disclosure of any information as to the affairs or business of a customer or client, whether imposed by any law, the common law or any agreement, shall affect any obligation incurred by virtue of the provisions of subsection (2) or (3).

Investigations

11. Powers of police officials .-

(1) A police official may-

(a)

if he has reasonable grounds to suspect that an offence under this Act has been or is about to be committed by means or in respect of any scheduled substance, drug or property, at any time-

(i) enter or board and search any premises, vehicle, vessel or aircraft on or in which any such substance, drug or property is suspected to be found;

(ii) search any container or other thing in which any such substance, drug or property is suspected to be found;

(b)

if he has reasonable grounds to suspect that any person has committed or is about to commit an offence under this Act by means or in respect of any scheduled substance, drug or property, search or cause to be searched any such person or anything in his possession or custody or under his control: Provided that a woman shall be searched by a woman only;

(c)

if he has reasonable grounds to suspect that any article which has been or is being transmitted through the post contains any scheduled substance, drug or property by means or in respect of which an offence under this Act has been committed, notwithstanding anything to the contrary in any law contained, intercept or cause to be intercepted either during transit or otherwise any such article, and open and examine it in the presence of any suitable person;

(d)

question any person who in his opinion may be capable of furnishing any information as to any offence or alleged offence under this Act;

(e)

require from any person who has in his possession or custody or under his control any register, record or other document which in the opinion of the police official may have a bearing on any offence or alleged offence under this Act, to deliver to him then and there, or to submit to him at such time and place as may be determined by the police official, any such register, record or document;

(f)

examine any such register, record or document or make an extract therefrom or a copy thereof, and require from any person an explanation of an entry in any such register, record or document;

(g)

seize anything which in his opinion is connected with, or may provide proof of, a contravention of a provision of this Act.

ss. 11-12 *Drugs and Drug Trafficking Act, No.140 of1992* ss. 11-12

(2) A police official may in the exercise of his powers under this section-

(a)

require any vehicle, vessel or aircraft to be stopped; or

(b)

request the master, pilot or owner of any vessel or aircraft to sail or to fly any such vessel or aircraft, or to cause it to be sailed or flown, to such harbour or airport as may be indicated by the police official.

12. Interrogation of persons under warrant of apprehension. -

(1) Whenever it appears to a magistrate from information submitted to him on oath by the attorney-general concerned, or by any public prosecutor authorized thereto in writing by that attorney-general, that there are reasonable grounds for believing that any person is withholding any information as to a drug offence, whether the drug offence has been or is likely to be committed in the Republic or elsewhere, from that attorney-general, any such public prosecutor or any police official, as the case may be, he may issue a warrant for the arrest and detention of any such person.

(2) Notwithstanding anything to the contrary in any law contained, any person arrested by virtue of a warrant under subsection (1) shall as soon as possible be taken to the place mentioned in the warrant and detained there, or at such other place as the magistrate may from time to time determine, for interrogation in accordance with the directions, if any, issued by the magistrate from time to time.

(3) Any person arrested and detained under a warrant referred to in subsection (1) shall be detained until the magistrate orders his release when satisfied that the detainee has satisfactorily replied to all questions at the interrogation or that no useful purpose will be served by his further detention: Provided that the attorney-general

concerned may at any time direct in writing that the interrogation of any particular detainee be discontinued, whereupon that detainee shall be released without delay.

(4)

(a)

Any person arrested under a warrant referred to in subsection (1) shall be brought before the magistrate within 48 hours of his arrest and thereafter not less than once every ten days.

(b)

The magistrate shall at every appearance of such person before him enquire whether he has satisfactorily replied to all questions at his interrogation and whether it will serve any useful purpose to detain him further.

(c)

Such person shall be entitled to be assisted at his appearance by his legal representative.

(5) Any person detained in terms of this section may at any time make representations in writing to the magistrate relating to his detention or release.

(6) No person, other than an official in the service of the State acting in the performance of his official duties-

(a)

shall have access to a person detained in terms of this section, except with the consent of the magistrate and subject to such conditions as he may determine: Provided that the magistrate-

(i) shall refuse such permission only if he has reason to believe that access to a person so detained will hamper any investigation by the police;

(ii) shall not refuse such permission in respect of a legal representative who visits a person so detained with a view to assisting him as contemplated in subsection (4) (c);

or

(b)

shall be entitled to any official information relating to or obtained from such detainee.

ss. 12-16 Drugs and Drug Trafficking Act, No.140 of1992 ss. 12-16

(7)

(a)

Any person detained in terms of this section shall-

(i) as soon as possible be examined by a district surgeon; and

(ii) not less than once every five days be visited in private by a district surgeon, and such a district surgeon shall as soon as possible compile a report in respect of each such visit and submit it to the magistrate.

(b)

The magistrate may, if he has reason to believe that it will not hamper any investigation by the police, furnish at the request of any particular detainee a copy of any report referred to in paragraph (a) to a person indicated by that detainee.

(8) For the purposes of this section "magistrate" includes an additional magistrate.

CHAPTER IV OFFENCES, PENALTIES, PRESUMPTIONS AND FORFEITURE

Offences and penalties

13. Offences relating to scheduled substances and drugs

-Any person who-

(a)

places any drug in the possession, or in or on the premises, vehicle, vessel or aircraft, of any other person with intent that the latter person be charged with an offence under this Act;

(b)

contravenes a provision of section 3;

(c)

contravenes a provision of section 4 (a);

(d) contravenes a provision of section 4 (b);

(e)

contravenes a .provision of section 5 (a); or

(f)

contravenes a provision of section 5 (*b*),

shall be guilty of an offence.

14. Offences relating to proceeds of defined crime.

-Any person who-

(*a*)

contravenes a provision of section 6; or

(*b*)

contravenes a provision of section 7,

shall be guilty of an offence.

15. Offences relating to reporting of information. -

(1) Any person who fails to comply with a provision of section 10 (1), (2) or (3) shall be guilty of an offence.

(2) No prosecution shall be instituted in respect of an offence referred to in subsection

(1) without the written authority of the attorney-general concerned.

16. Offences relating to powers of police officials.

-Any person who-

(*a*)

hinders or obstructs any police official in the exercise of his powers under section 11;

(*b*)

refuses or fails to comply to the best of his ability with any requirement or request made by any police official in the exercise of his powers under section 11;

(*c*)

refuses or fails to answer to the best of his ability any question which any police official in the exercise of his powers under section 11 has put to him; or

(*d*) wilfully furnishes to any police official information which is false or misleading, shall be guilty of an offence.

ss. 17-20 *Drugs and Drug Trafficking Act, No.140 of 1992* ss. 17-20

17. Penalties

-Any person who is convicted of an offence under this Act shall be liable-

(a)

in the case of an offence referred to in section 16, to a fine, or to imprisonment for a period not exceeding twelve months, or to both such fine and such imprisonment;

(b)

in the case of an offence referred to in section 13 (a) or (c), to such fine as the court may deem fit to impose, or to imprisonment for a period not exceeding five years, or to both such fine and such imprisonment;

(c)

in the case of an offence referred to in section 13 (e), to such fine as the court may deem fit to impose, or to imprisonment for a period not exceeding 10 years, or to both such fine and such imprisonment;

(d)

in the case of an offence referred to in section 13 (b) or (d), 14 or 15, to such fine as the court may deem fit to impose, or to imprisonment for a period not exceeding 15 years, or to both such fine and such imprisonment; and

(e)

in the case of an offence referred to in section 13 (f), to imprisonment for a period not exceeding 25 years, or to both such imprisonment and such fine as the court may deem fit to impose.

Presumptions and liability of employers and principals

18. Presumption relating to samples of substances

-If in any prosecution for an offence under this Act it is proved that a sample which was taken from any substance by means or in respect of which the offence allegedly was committed possesses particular properties, it shall be presumed, until the contrary is proved, that any such substance possesses the same properties.

19. Presumptions relating to health matters. -

(1) Whenever in any prosecution for an offence referred to in section 13 (c), (d), (e) or (f) the question arises-

(a)

whether any person is or was practising a particular health service or cognate profession, it shall be presumed, until the contrary is proved, that such person is or was not practising the particular health service or cognate profession;

(b)

whether any person is or was any manufacturer of, or wholesale dealer in, pharmaceutical products, importer or exporter, it shall be presumed, until the contrary is proved, that such person is or was not any such manufacturer, wholesale dealer, importer or exporter;

(c)

whether any drug has been acquired or bought in terms of any oral instruction or prescription in writing of a medical practitioner, veterinarian, dentist or practitioner, it shall be presumed, until the contrary is proved, that such drug has not been acquired or bought in terms of any such instruction or prescription.

(2) If in the prosecution of any person for an offence referred to in section 13 (e) or (f) it is proved that the accused was found in possession of a quantity of drugs which exceeds the quantity of such drugs which the accused could have acquired or bought for medicinal purposes in terms of a particular oral instruction or a particular prescription in writing of a medical practitioner, veterinarian, dentist or practitioner, it shall be presumed, until the contrary is proved, that the accused dealt in such drugs.

20. Presumption relating to possession of drugs

- If in the prosecution of any person for an offence under this Act it is proved that any drug was found in the immediate vicinity of the accused, it shall be presumed, until the contrary is proved, that the accused was found in possession of such drug.

ss. 21-23 Drugs and Drug Trafficking Act, No.140 of 1992 ss. 21-23

21. Presumptions relating to dealing in drugs .-

(1) If in the prosecution of any person for an offence referred to-

(a)

in section 13 (f) it is proved that the accused-

(i) was found in possession of dagga exceeding 115 grams;

(ii) was found in possession in or on any school grounds or within a distance of 100 metres from the confines of such school grounds of any dangerous dependence-producing substance; or

(iii) was found in possession of any undesirable dependence-producing substance, other than dagga, it shall be presumed, until the contrary is proved, that the accused dealt in such dagga or substance;

(*b*)

in section 13 (*f*) it is proved-

(i) that dagga plants of the existence of which plants the accused was aware or could reasonably be expected to have been aware, were found on a particular day on cultivated land; and

(ii) that the accused was on the particular day the owner, occupier, manager or person in charge of the said land,

it shall be presumed, until the contrary is proved, that the accused dealt in such dagga plants;

(*c*)

in section 13 (*e*) or (*f*) it is proved that the accused conveyed any drug, it shall be presumed, until the contrary is proved, that the accused dealt in such drug;

(*d*)

in section 13 (*e*) or (*f*) it is proved-

(i) that any drug was found on or in any animal, vehicle, vessel or aircraft; and

(ii) that the accused was on or in charge of, or that he accompanied, any such animal, vehicle, vessel or aircraft,

it shall be presumed, until the contrary is proved, that the accused dealt in such drug.

(2) For the purposes of subsection (1)(*a*) (ii)-

school" means any educational institution, except a university, a college of education or a technikon, where full-time education, including pre-primary education, is provided to pupils;

school grounds", in relation to a school, means land, whether it is contiguous or not, buildings or accommodation, sporting or other facilities used for or in connection with the activities of the school.

22. Presumption relating to acquisition of proceeds of defined crime.

-If in the prosecution of any person for an offence referred to in section 14 (*a*) it is proved that the accused was found in possession of any property which was the proceeds of a defined

crime, it shall be presumed that the accused knew at the time of the acquisition of such property that it was the proceeds of a defined crime, unless he proves-

(a)

that he acquired that property in good faith; and

(b)

that the circumstances under which he acquired that property were not of such a nature that he could reasonably have been expected to have suspected that it was the proceeds of a defined crime.

23. Presumption relating to reporting of information.

-If in any prosecution for the failure to comply with a provision of subsection (1) of section 10, it is proved-

(a)

that the accused was on a particular day the owner occupier or manager of any place of entertainment to which admission is obtained by virtue of any

ss. 23-25 Drugs and Drug Trafficking Act, No.140 of1992 ss. 23-25

consideration, whether directly or indirectly, or by virtue of any contribution to any fund or for any purpose or by virtue of membership of any association of persons, or that such place of entertainment was on the particular day under the control or supervision of the accused; and

(b)

that on the particular day any other person, while he was in or on such place of entertainment, and in contravention of the provisions of this Act, used or was in possession of, or dealt in, any drug.

it shall be presumed that the accused had reason for the suspicion contemplated in that subsection, unless he proves-

(i) that he was not on the particular day aware that any person was using or had in his possession or was dealing in such drug in or on that place of entertainment; and

(ii) that the circumstances under which the proven use or possession of, or dealing in, such drug occurred were not of such a nature that he could reasonably have been expected to have been aware of it or to have suspected that a person was using or had in his possession or was dealing in such drug in or on that place of entertainment; and

(iii) if those circumstances were of such a nature that it could reasonably be expected of him to have taken precautions against the use or possession of, or dealing in, such drug in or on that place of entertainment by any person, that such precautions had been taken.

24. Liability of employers and principals .-

(1) An act or omission of an employee or agent which constitutes an offence under this Act shall be deemed to be the act or omission of his employer or principal, and that employer or principal may be convicted and sentenced in respect of it, unless it appears from the evidence-

(a)

that he did not permit or connive at such act or omission; and

(b)

that he took all reasonable steps to prevent an act or omission of the kind in question; and

(c)

that an act or omission, whether legal or illegal, of the character of the act or omission charged did not under any condition or in any circumstance fall within the course of the employment or the scope of the authority of the employee or agent concerned.

(2) For the purposes of subsection (1)(b) the fact that an employer or principal forbade an act or omission of the kind in question shall not by itself be regarded as sufficient that he took all reasonable steps to prevent such an act or omission.

(3) The provisions of subsection (1) shall not relieve the employee or agent concerned from liability to be convicted and sentenced in respect of the act or omission in question.

Forfeiture

25. Declarations of forfeiture.-

(1) Whenever any person is convicted of an offence under this Act, the court convicting him shall, in addition to any punishment which that court may impose in respect of the offence, declare-

(a)

any scheduled substance, drug or property-

(i) by means of which the offence was committed;

- (ii) which was used in the commission of the offence; or
- (iii) which was found in the possession of the convicted person;

ss. 25-26 Drugs and Drug Trafficking Act, No.140 of 1992 ss. 25-26

(b)

any animal, vehicle, vessel, aircraft, container or other article which was used-

- (i) for the purpose of or in connection with the commission of the offence; or
- (ii) for the storage, conveyance, removal or concealment of any scheduled substance, drug or property by means of which the offence was committed or which was used in the commission of the offence;

(c)

in the case of an offence referred to in section 13 (e) or (f), any immovable property which was used for the purpose of or in connection with the commission of that offence,

and which was seized under section 11 (1) (g) or is in the possession or custody or under the control of the convicted person, to be forfeited to the State.

(2) Anything forfeited under subsection (1) shall, if it was seized under section 11 (1) (g), be kept or, if it is in the possession or custody or under the control of the convicted person, be seized and kept-

(a)

for a period of 30 days from the date of the declaration of forfeiture; or

(b)

if any person referred to in section 26 (1) has within the period contemplated in paragraph (a) made an application to the court concerned regarding his interest in such thing, until a final decision has been rendered in respect of any such application.

26. Interests of third parties.-

(1) A declaration of forfeiture shall not affect any interest which any person other than the convicted person may have in the property, animal, vehicle, vessel, aircraft, container, article or immovable property in question, if he proves-

(a)

in the case of any property referred to in paragraph (a) of section 25 (I)-

- (i) that he acquired the interest in that property in good faith and for consideration, whether in cash or otherwise; and
- (ii) that the circumstances under which he acquired the interest in that property were not of such a nature that he could reasonably have been expected to have suspected that it was the proceeds of a defined crime;

(*b*)

in the case of any animal, vehicle, vessel aircraft, container, article or immovable property referred to in paragraph (*b*) or (*c*) of section 25 (1)-

- (i) that he did not know that the animal vehicle, vessel, aircraft, container or article in question was used or would be used as contemplated in the said paragraph (*b*), or that the immovable property in question was used or would be used as contemplated in the said paragraph (*c*), as the case may be; or

- (ii) that he could not prevent such use.

(2)

(*a*)

Subject to the provisions of subsection (1), the court concerned or, if the judge or judicial officer concerned is not available, any judge or judicial officer of that court may at any time within a period of three years from the date of the declaration of forfeiture, on the application of any person other than the convicted person who claims that he has any interest in the property, animal vehicle, vessel, aircraft, container, article or immovable property in question, inquire into and determine any such interest.

(*b*)

If a court referred to in paragraph (*a*) finds-

- (i) that the property, animal, vehicle, vessel, aircraft, container, article or immovable property is wholly owned by the application, the court shall set aside the declaration of forfeiture in question and direct that the property, animal, vehicle, vessel, aircraft, container, article or immovable property, as the case may be, be returned to the applicant or, if the State has disposed of it, direct that the applicant be compensated by the State to the extent to which the State has been enriched by the disposal;

ss.26-28 Drugs and Drug Trafficking Act, No.140 of1992 ss.26-28

(ii) that the applicant has an interest in the property, animal, vehicle, vessel, aircraft, container, article or immovable property

(aa)

the court shall direct that the property, animal, vehicle, vessel, aircraft, container, article or immovable property, as the case may be, be sold by public auction and that the applicant be paid out of the proceeds of the sale an amount equal to the value of his interest therein, but not exceeding the proceeds of the sale; or

(bb)

if the State has disposed of the property, animal, vehicle, vessel, aircraft, container, article or immovable property in question, the court shall direct that the applicant be compensated by the State in an amount equal to the value of his interest therein, but not exceeding the enrichment of the State by the disposal.

(3) Any person aggrieved by a determination made by the court under subsection (2), may appeal against the determination as if it were a conviction by the court making the determination, and such appeal may be heard either separately or jointly with an appeal against the conviction as a result of which the declaration of forfeiture was made, or against a sentence imposed as a result of such conviction.

27. Evidence in respect of declarations of forfeiture and certain interests

-In order to make a declaration of forfeiture or to determine any interest under section 26 (2), the court may refer to the evidence and proceedings at the trial or hear such further evidence, either orally or by affidavit, as it may deem fit.

CHAPTER V PROCEEDS OF DRUG TRAFFICKING

Application of chapter

28. Definitions. -

(1) In this Chapter, unless the context indicates otherwise-"affected gift" means any gift-

(a)

made by the defendant in question not more than five years before the fixed date; or

(b)

made by the defendant in question at any time, if it was a gift-

(i) of property received by that defendant in connection with drug trafficking carried on by him or any other person; or

(ii) of property, or any part thereof, which directly or indirectly represented in that defendant's hands property received by him in that connection, whether any such gift was made before or after the commencement of this Act; confiscation order" means an order referred to in section 35 (1); defendant" means a person against whom a prosecution for an offence referred to in section 13 (f) or 14 (b) has been instituted, irrespective of whether he has been convicted or not, and includes a person referred to in section 41 (1) (b); drug trafficking" includes-

(a)

any act in the Republic which constitutes a drug offence or an economic offence; or

(b)

any act or omission outside the Republic which, if it had occurred in the Republic, would have constituted a drug offence or an economic offence,

or to be concerned in any such act or omission;

fixed date", in relation to a defendant-

(a)

if a prosecution for an offence referred to in section 13 (f) or 14 (b) has been instituted against the defendant, means the date on which such prosecution has been instituted; or

ss. 28-32 Drugs and Drug Trafficking Act, No.140 of1992 ss. 28-32

(b)

if a restraint order has been or is being made against the defendant, means the date of such restraint order,

whichever is the earlier date;

restraint order" means an order referred to in section 42 (1);

superior court" means a provincial or local division of the Supreme Court of South Africa, and includes, for the purposes of sections 41 to 45, any judge thereof.

(2) In this Chapter, except where it is inconsistent with the context or clearly in appropriate, any reference-

(a)

to a person who holds property shall be construed as a reference to a person who has any interest in the property, and

(i) if the estate of such person has been sequestrated, also to the executor of his insolvent estate; or

(ii) if such person is a company or other juristic person which is being wound up, also to the liquidator thereof;

(b)

to a person who transfers property to any other person shall be construed as a reference to a person who transfers or grants to any other person any interest in the property;

(c)

to anything received in connection with drug trafficking shall be construed as a reference also to anything received both in that connection and in some other connection.

29. Persons who have benefited from drug trafficking.

-For the purposes of this Chapter, a person has benefited from drug trafficking if he has at any time, whether before or after the commencement of this Act, received any payment or other reward in connection with drug trafficking carried on by him or any other person.

30. Proceeds of drug trafficking.

-For the purposes of this Chapter, any payment or other reward received by a defendant at any time, whether before or after the commencement of this Act, in connection with drug trafficking carried on by him or any other person shall be his proceeds of drug trafficking

31. Realizable property. -

(1) Subject to the provisions of subsection (2), the following property shall be realizable in terms of the provisions of this Chapter, namely-

(a)

any property held by the defendant in question; and

(b)

any property held by a person to whom that defendant has directly or indirectly made any affected gift.

(2) Property shall not be realizable property if a declaration of forfeiture is in force in respect of the property.

32. Value of property .-

(1) For the purposes of this Chapter, the value of property, excluding any money, in relation to any person holding the property-

(a)

where any other person holds an interest in the property, shall be-

(i) the market value of the property; less

(ii) the amount required to discharge any encumbrance on the property; and

(b)

where no other person holds an interest in the property, the market value of the property.

ss. 32-35 *Drugs and Drug Trafficking Act, No.140 of1992* ss. 32-35

(2) Notwithstanding the provisions of subsection (1), any reference in this Chapter to the value at a particular time of a payment or reward, shall be construed as a reference to-

(a)

the value of the payment or reward at the time when the recipient received it as adjusted to take into account subsequent fluctuations in the value of money; or

(b)

where subsection (3) applies, the value mentioned in that subsection, which-ever is the greater value.

(3) If at the particular time the recipient holds-

(a)

the property, other than cash, which he received, the value in question shall be the value of the property at the particular time; or

(b)

property, or any part thereof, which directly or indirectly represents in his hands the property which he received, the value in question shall be the value of the property, in so far as it represents the property which he received, at the relevant time.

33. Gifts. -

(1) For the purposes of this Chapter, a defendant shall be deemed to have made a gift if he has transferred any property to any other person directly or indirectly for a consideration the value of which is significantly less than the value of the consideration supplied by the defendant.

(2) For the purposes of section 37 (2), such a defendant shall be deemed to have made a gift of that share in the property which bears to the property as a whole the same proportion as the difference between the values referred to in subsection (1) bears to the value of the consideration supplied by that defendant.

34. Conclusion of proceedings against defendant.

-For the purposes of this Chapter, the proceedings against a defendant shall be concluded when-

(a)

the defendant is acquitted or found not guilty of an offence referred to in section 13 (f) or 14 (b);

(b)

the court convicting the defendant of such an offence, sentences the defendant without making a confiscation order against him;

(c)

the conviction in respect of such an offence is set aside on review or appeal; or

(d)

the defendant satisfies the confiscation order made against him

Confiscation orders

35. Confiscation orders. -

(1) Whenever a defendant is convicted of an offence referred to in section 13(f) or 14(b), the court convicting the defendant may, on the application of the public prosecutor, enquire into any benefit which the defendant may have derived from the drug trafficking and, if that court finds that the defendant has benefited from drug trafficking, that court may, in addition to any punishment which that court may impose in respect of the offence, make an order against the defendant for the payment to the State of such amount as that court may consider appropriate, which amount -

(a) shall not exceed the value of the defendant's proceeds of drug trafficking as determined by that court in accordance with the provisions of this Chapter; or

(*b*) if that court is satisfied that the amount which might be realized as contemplated in section 37 (1) is less than the value referred to in paragraph (*a*), shall not exceed an amount which in the opinion of that court might be so realized.

(2) No application referred to in subsection (1) shall be made without the written authority of the attorney-general concerned.

(3) A court before which proceedings under this section are pending may-

(*a*) in order to make a confiscation order-

(i) refer to the evidence and proceedings at the trial;

(ii) bear such further oral evidence as the court may deem fit;

(iii) direct the public prosecutor to tender to the court a statement referred to in subsection (1) (*a*) of section 38; or

(iv) direct a defendant to tender to the court a statement referred to in subsection (3) (*a*) of that section;

(*b*) subject to subsection (1) (*b*) or subsection (3) (*b*) of the said section, adjourn such proceedings to any day on such conditions not inconsistent with a provision of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), and as the court may deem fit.

(4) Notwithstanding anything to the contrary in this section contained, the court which made a confiscation order shall take the confiscation order into account in determining the fine which it may impose in respect of the offence in question.

36. Value of proceeds of drug trafficking

- (1) Subject to the provisions of subsection (2), the value of a defendant's proceeds of drug trafficking shall be the sum of the values of the payments or other rewards received by him at any time, whether before or after the commencement of this Act, in connection with drug trafficking carried on by him or any other person.

(2) In determining the value of a defendant's proceeds of drug trafficking the court shall-

(*a*) where the court has made a declaration of forfeiture or where a declaration of forfeiture has previously been made in respect of property which is proved to the satisfaction of the court-

(i) to have been the property which the defendant received in connection with drug trafficking carried on by him or any other person; or

(ii) to have been property, or any part thereof, which directly or indirectly represented in the defendant's hands the property which he received in that connection, leave the property out of account;

(*b*) where a confiscation order has previously been made against the defendant, leave out of account those proceeds of drug trafficking which are proved to the satisfaction of the court to have been taken into account in determining the amount to be recovered under that confiscation order.

37. Amounts which might be realized .-

(1) For the purposes of section 35 (1) (*b*) or 38 (3) (*a*), the amount which might be realized at the time of the making of a confiscation order against a defendant shall be the amount equal to-

(*a*) the sum of-

(i) the values at that time of all realizable property held by the defendant; and

(ii) the values at that time of all affected gifts made by the defendant; less

(*b*) if there are obligations having priority at that time, the sum of all amounts payable in pursuance of such obligations.

(2) Notwithstanding the provisions of section 32 (1) but subject to the provisions of section 33 (2), the value of an affected gift at the time of the making of the relevant confiscation order shall be-

(*a*) the value of the affected gift at the time when the recipient received it as adjusted to take into account subsequent fluctuations in the value of money; or

(*b*) where subsection (3) applies, the value mentioned in that subsection,

whichever is the greater value.

(3) If at the time of the making of the relevant confiscation order the recipient holds-

(*a*) the property, other than cash, which he received, the value in question shall be the value of the property at that time; or

(*b*) property, or any part thereof