

REGULATIONS MADE IN TERMS OF

Prevention of Organised Crime Act 29 of 2004

section 100

Prevention of Organised Crime Regulations

Government Notice 78 of 2009

([GG 4254](https://www.lac.org.na/laws/2009/4254.pdf))

came into force on date of publication: 5 May 2009

as amended by

Government Notice 228 of 2023 ([GG 8157](https://www.lac.org.na/laws/2023/8157.pdf))

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**Definitions**

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

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

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

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

[The Rules of the High Court referred to above have been replaced by   
Rules of the High Court in GN 4/2014, as amended, with effect from 16 April 2014.]

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

“the Act” means the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004).

**Remuneration of curator bonis**

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

**Service of documents**

**3.** (1) Service of any document which is required to be served in terms of the Act or these regulations must be effected -

(a) in accordance with the Rules of the High Court, Rules of the Supreme Court or the Rules of Court, read with -

(i) the rules for the High Court regulating the proceedings contemplated in Chapters 5 and 6 of the Act; or

(ii) the rules for the magistrate’s court regulating the proceedings or matters referred to in sections 32, 33, 62, 84, 85 and 87 of the Act, made in terms of section 90 of the Act; or

(b) by publishing it in the *Gazette* and in two daily newspapers of wide circulation, if the contact details of the affected persons are not known.

**Notice to affected persons**

**4.** (1) Notice of a restraint order made pursuant to section 25(2) of the Act must be given by serving a copy of a notice, which substantially corresponds to Form 1 of the Annexure -

(a) upon the respondent; and

(b) upon any other person the Prosecutor-General considers might have an interest in the property the subject of the restraint order.

[Some words appear to have been omitted in paragraph (b); the closing phrase may have been intended to read “the property that is the subject of the restraint order”.]

(2) Notice of an enquiry into any benefit allegedly derived by a person referred to in section 41(1) or (2) of the Act must be given by serving a notice, signed by the registrar or clerk of the court, that substantially corresponds to Form 2 of the Annexure upon any person the court considers might have an interest -

(a) in any property the subject of a restraint order; or

[Some words appear to have been omitted in paragraph (a); it may have been   
intended to refer to “any property that is the subject of a restraint order”.]

(b) in other property that is liable to be treated as the realisable property of the person referred to in section 41(1) or (2) of the Act.

(3) Any person with an interest in property affected by an inquiry conducted pursuant to section 41 of the Act and who wishes to make representations to court pursuant to subsection 41(5) of the Act must file and serve a notice that substantially corresponds to Form 3 of the Annexure.

(4) Notice of application for the realisation of property pursuant to section 43(2) of the Act must be given by serving a notice, signed by the Registrar of the High Court, that substantially corresponds to Form 4 of the Annexure upon any person the High Court considers might have an interest -

(a) in any property the subject of a restraint order; or

[Some words appear to have been omitted in paragraph (a); it may have been   
intended to refer to “any property that is the subject of a restraint order”.]

(b) in other property that is liable to be treated as the realisable property of the respondent.

(4A) Notice of an unexplained wealth order made pursuant to section 50A(1) of the Act must be given by serving a notice, which substantially corresponds to Form 4A of the Annexure, on the owner, holder, custodian or *bona fide* possessor of an unexplained asset.

[Subregulation (4A) is inserted by GN 228/2023.]

(4B) If the owner, holder, custodian or *bona fide* possessor of an unexplained asset who is served with the notice under subregulation (4A) delivers an affidavit to the Prosecutor-General in terms of section 50A(5) of the Act within 21 days of being served such notice, the Prosecutor-General may if he or she is -

(a) satisfied with the explanation set out in that affidavit, let the unexplained wealth order expire as contemplated in section 50A(6) of the Act; or

(b) not satisfied with the explanation set out in that affidavit, within 30 days of delivery of such affidavit, make an application in terms of section 51 of the Act for a preservation order as contemplated in section 50A(6) of the Act.

[Subregulation (4B) is inserted by GN 228/2023.]

(4C) If the owner, holder, custodian or *bona fide* possessor of an unexplained asset who is served with the notice under subregulation (4A) fails to deliver an affidavit within 21 days of such service of the notice as provided for in section 50A(2) and (5) of the Act, the Prosecutor-General may, within 30 days after the expiry of the 21 day period, make an application in terms of section 51 of the Act for a preservation order.

[Subregulation (4C) is inserted by GN 228/2023.]

(5) Notice of a preservation of property order made pursuant to section 51(2) of the Act must be given by serving a notice, which substantially corresponds to Form 5 of the Annexure -

(a) upon the respondents; and

(b) upon any other person the Prosecutor-General reasonably believes might have an interest in the property the subject of the preservation of property order.

[Some words appear to have been omitted in paragraph (b); the closing phrase may have been intended to read “the property that is the subject of the preservation of property order”.]

(6) Any person claiming to have an interest in property the subject of a preservation of property order made pursuant to section 51 of the Act and who wishes -

[Some words appear to have been omitted in the introductory phrase; it may have been intended to refer to “property that is the subject of a preservation of property order”.]

(a) to oppose the making of a forfeiture order over the property in which they claim an interest; or

(b) to apply for an order to exclude that property from the operation of the preservation order, must serve a notice that substantially corresponds to Form 6 of the Annexure upon the Prosecutor-General in accordance with section 52(4) and (5) of the Act.

(7) Notice of application by a person referred to in section 58(4)(b) of the Act for an order to be made under section 58(1) or (3) of the Act must be given by serving a copy of the application together with any affidavit material filed in support of the application upon the Prosecutor-General at least 14 days prior to any return date given to the application by the Registrar of the High Court.

(8) Notice of application for a forfeiture order pursuant to section 59(1) of the Act must be given by serving a copy of the application upon any person who has given notice in accordance with section 52(3) of the Act and any other person who the Prosecutor-General reasonably believes might have an interest in the property the subject of the application for forfeiture order.

[Some words appear to have been omitted in the closing phrase of subregulation (8); it may have been intended to read “the property that is the subject of the application for forfeiture order”.]

(9) A notice for the purposes of section 62(3) of the Act must substantially correspond to Form 7 of the Annexure and must be served upon all persons referred to in the notice.

**Statements relating to proceeds of offences and related criminal activities**

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

(a) in writing under oath or affirmation by him or her or any other person in connection with any matter which relates to the determination of the amount which might be realized as contemplated in section 34 of the Act;

(b) stating the grounds on which he or she relies; and

(c) which substantially corresponds to Form 8 of the Annexure.

**Warrant of search and seizure of tainted property**

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

**Procedure for certain applications**

**7.** Subject to section 91(2), (3) or (4) of the Act, every application made pursuant to section 25, 43, 50A, 51, 59 or 64 of the Act, is made as follows -

(a) it must be in writing;

(b) where notice is required in terms of the Act and a notice period is not provided, a notice of the application of at least seven days must be given to the respondents to an application and to any other person upon whom an application is required to be served unless leave to serve short notice is given by the High Court; and

(c) it must be supported by affidavit evidence, unless otherwise stated in the Act or by an order of the High Court.

[Regulation 7 is substituted by GN 228/2023.]

**Taxation of costs**

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

**Offences**

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

ANNEXURE

Forms

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[Form 4A is inserted by GN 228/2023.]





