

NO. 46 OF 1995: INVESTIGATION OF SERIOUS ECONOMIC OFFENCES AMENDMENT ACT, 1995.

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

GENERAL EXPLANATORY NOTE:

Words in bold type indicate omissions from existing enactments.

Words in italics indicate insertions in existing enactments.

ACT

To amend the Investigation of Serious Economic Offences Act, 1991, so as to provide anew for the entering upon premises by the Director: Office for Serious Economic Offences; and to provide for matters connected therewith.

(English text signed by the President.)

(Assented to 20 September 1995.)

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:-

Substitution of section 6 of Act 117 of 1991\$

1. The following section is hereby substituted for section 6 of the Investigation of Serious Economic Offences Act, 1991-

"Entering upon premises by Director

6. (1) The Director or any person authorised thereto by him or her in writing may, *subject to this section*, for the purposes of an inquiry at any reasonable time and without prior notice or with such notice as he or she may deem appropriate, enter any premises on or in which anything connected with that inquiry is or is suspected to be, and may-
  - (a) inspect and search those premises, and there make such enquiries as he or she may deem necessary;
  - (b) examine any object found on or in the premises *which has a bearing or might have a bearing on the inquiry in question*, and request from the owner or person in charge of the premises or from any person in whose possession or charge that object is, information regarding that object;
  - (c) make copies of or take extracts from any book or document found on or in the premises *which has a bearing or might have a bearing on the inquiry in question*, and request from any person **whom he suspects** *suspected* of having the necessary information, an explanation of any entry therein;
  - (d) seize, against the issue of a receipt, anything on or in the premises which **in his opinion** has a bearing *or might have a bearing* on the inquiry in question, or if he or she wishes to

retain it for further examination or for safe custody.

- (2) Any entry upon or search of any premises in terms of this section shall be conducted with strict regard to decency and order, including-
  - (a) a person's right to, respect for and the protection of his or her dignity;
  - (b) the right of a person to freedom and security; and
  - (c) the right of a person to his or her personal privacy.
- (3) No evidence regarding any questions and answers contemplated in subsection (1) shall be admissible in any subsequent criminal proceedings against a person from whom information in terms of that subsection is acquired if the answers incriminate him or her, except in criminal proceedings where the person concerned stands trial on a charge contemplated in subsection (12).
- (4) Subject to subsection (10), the premises referred to in subsection (1) may only be entered, and the acts referred to in subsection (1) may only be performed, by virtue of a warrant issued in chambers by a magistrate, regional magistrate or judge of the area of jurisdiction within which the premises is situated: Provided that such a warrant may be issued by a judge in respect of premises situated in another area of jurisdiction, if he or she deems it justified.
- (5) A warrant contemplated in subsection (4) may only be issued if it appears to the magistrate, regional magistrate or judge from information on oath or affirmation, stating-
  - (a) the nature of the inquiry in terms of section 5;
  - (b) the suspicion which gave rise to the inquiry; and
  - (c) the need, in regard to the inquiry, for a search and seizure in terms of this section, that there are reasonable grounds for believing that anything referred to in subsection (1) is on or in such premises or suspected to be on or in such premises.
- (6) A warrant issued in terms of this section may be issued on any day and shall be of force until-
  - (a) it has been executed;
  - (b) it is cancelled by the person who issued it or, if such person is not available, by any person with like authority; or
  - (c) the expiry of three months from the day of its issue, whichever may occur first.
- (7) (a) Any person who acts on authority of a warrant issued in terms of this section may use such force as may be reasonably necessary to overcome any resistance against the entry and search of the premises, including the breaking of any door or window of such premises: Provided that such person shall first audibly demand admission to the premises and state the purpose for which he or she seeks to enter such premises.
  - (b) The proviso to paragraph (a) shall not apply where the person concerned is on reasonable grounds of the opinion that any object, book or document which is the subject of the search may be destroyed, tampered

with or disposed of if the provisions of the said proviso are first complied with.

(8) A warrant issued in terms of this section shall be executed by day unless the person who issues the warrant authorises the execution thereof by night at times which shall be reasonable in the circumstances.

(9) Any person executing a warrant in terms of this section shall immediately before commencing with the execution-

(a) identify himself or herself to the person in control of the premises, if such person is present, and hand to such person a copy of the warrant or, if such person is not present, affix such copy to a prominent place on the premises;

(b) supply such person at his or her request with particulars regarding his or her authority to execute such a warrant.

(10) (a) The Director or any person referred to in section 3(4)(a) may without a warrant enter upon any premises and perform the acts referred to in subsection (1)-

(i) if the person who is competent to do so consents to such entry, search, seizure and removal; or

(ii) if he or she upon reasonable grounds believes that-

(aa) the required warrant will be issued to him or her in terms of subsection (4) if he or she were to apply for such warrant; and

(bb) the delay caused by the obtaining of any such warrant would defeat the object of the entry, search, seizure and removal.

(b) Any entry and search in terms of paragraph (a) shall be executed by day, unless the execution thereof by night is justifiable and necessary.

(11) If during the execution of a warrant or the conducting of a search in terms of this section, a person claims that anything found on or in the premises concerned contains privileged information and refuses the inspection or removal of such thing, the person executing the warrant or conducting the search shall, if he or she is of the opinion that the thing contains information which is relevant to the inquiry and that such information is necessary for the inquiry, request the registrar of the Supreme Court which has jurisdiction or his or her delegate, to seize and remove that thing for safe custody until a court of law has made a ruling on the question whether the information concerned is privileged or not.

(2)(12) Any person who-

(a) obstructs or hinders the Director or any other person in the performance of his or her functions **under subsection (1)** in terms of this section;

(b) when he or she is asked in terms of subsection (1) for information or an explanation relating to a matter within his or her knowledge, refuses or fails to give that information or explanation or gives information or an explanation which is false or misleading, knowing it to be false or misleading, shall be guilty of an offence."

2. The following section is hereby substituted for section 11 of the Investigation of Serious Economic Offences Act, 1991:

"Penalties

11. Any person convicted of an offence referred to in section 5(10), 6(2)(12) or 7(2) shall be liable to a fine **not exceeding R8 000** or imprisonment for a period not exceeding **two** *five* years or both such fine and such imprisonment."

Short title

3. This Act shall be called the Investigation of Serious Economic Offences Amendment Act.