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**GENERAL NOTICES • ALGEMENE KENNISGEWINGS**

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**DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT****NOTICE 449 OF 2020****RULES FOR THE CONDUCT OF PROCEEDINGS IN THE SPECIAL TRIBUNALS**

In terms of section 9 (1) (a) of the Special Investigating Units and Special Tribunals Act No. 74 of 1996, as amended, the Tribunal President has made the following amendments to the 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 the date of publication 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All previous Rules regulating the conduct of the proceedings before the Special Tribunal are hereby repealed.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

“Act” shall mean the Special Investigating Units and Special Tribunals Act 74 of 1996;

“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 by way of physical delivery and shall include *inter alia*, e-mail and electronic communications; upon all the parties and the filing of the original with the Registrar.

“E-mail and Electronic Communication”	shall bear the meaning assigned thereto under section 1 of the Electronic Communications and Transactions Act No 25 of 2002, as amended;
“High Court”	shall mean a Court established in terms of section 166 of the Constitution of the Republic of South Africa, 1996 read with the Superior Court Act 10 of 2013, and shall also include any reference to “ a Division of the Supreme Court” wherever it appears in the Act;
“High Court Rules”	shall mean the Uniform Rules of the High Court, published in Government notice R.48 of 12 January 1965, as amended;
“Initiating Document”	shall mean either a summons, whether accompanied by particulars of claim or not, in action proceedings or a notice of motion accompanied by a founding affidavit in application proceedings;
“Litigant”	shall mean the applicant or the plaintiff; respondent or defendant 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;



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“Property”	shall include corporeal, incorporeal, movable or immovable property irrespective of whether it is registered or located within, or outside, the Republic of South Africa;
“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 physical 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(1) (b) 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; Unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon State 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); and which offences were committed in connection with the affairs of any state institution.

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

- (1) The office of the Registrar shall be situated at the Head Office of the Special Tribunal, located at  
  
Office of the 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 filing 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 or Member.
- (3) Despite provisions of Rule 4(2), either the Tribunal President or Member 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 leave of the Tribunal 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 determined in the High Court rules, 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 by
- (a) handing the document to the Registrar;
  - (b) sending a copy of the document by registered post;
  - (c) faxing the document;
  - (d) e-mail or electronic communication; or
  - (e) 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 on -
- (a) the date on which the document is handed to the Registrar;
  - (b) the date on which the document sent by registered post was received by the Registrar;
- (3) The original document must always be lodged with the Registrar. If served 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, save when the Tribunal directs otherwise.

**10. Applications**

- (1) Every application other than one brought *ex parte* must be brought on notice of motion supported by affidavit and as near as may be in accordance with Form 2 of the First Schedule of the Tribunal Rules. 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 days after delivery thereof on the respondent, when the respondent shall notify the applicant, in writing, whether the respondent intends to oppose the application;
  - (c) appoint an address within 15 kilometres of the office of the registrar, at which applicant will accept notice and service of all documents in such proceedings.

- (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 Tribunal 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 counter-applications as the context allows.
- (7) Every application brought *ex parte* must be as near as may be in accordance with Form 1 of the First Schedule and 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 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 as an opposed 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 Tribunal President or the presiding Member.

#### **11. Heads of Argument**

Subject to Rule 19, the parties shall deliver their heads of argument not later than the date designated by the Tribunal President or the presiding Member.

#### **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 the Tribunal 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 renders 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 Tribunal 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, as near as they may be to Form 3(a) of Form 3 (b), whichever may be applicable, of the First Schedule and addressed to one or more defendants informing them, *inter alia*, that if he/she or it disputes the claim and wish to defend same, he/she/it 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 the claim, which statement shall *inter alia* comply with Rule 18 of the High Court Rules.
- (3) Any party who fails to deliver a plea within the period 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*, 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 the defendant 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 further rejoinder 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 the defaulting party to deliver such pleading within five days of such notice. Any such defaulting party failing to deliver such pleading within the stipulated time or within such further period as may be ordered or 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) The Tribunal may, on good cause shown, condone any non-compliance with these Rules.
- (3) After the discharge of a Rule *nisi* by default, the Tribunal may on application revive it.

15. **Amendment of Pleadings**

- (1) 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 Tribunal 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 as may be ordered, 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 Tribunal President or the presiding Member 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 Tribunal 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**

- (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.

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- (3) The Tribunal President shall assign one or two Members to preside in any matter brought before the Tribunal and to case-manage such a matter until it is ready for hearing.
- (4) Ordinarily, the Members so assigned to a matter shall, either sitting alone or together, determine all interlocutory matters and the merits thereof.
- (5) As soon as is reasonably possible after the assignment of a matter to a Member or Members of the Tribunal, the first case management conference must be held at a time, date and place determined by both Member and Members.
- (6) 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) Summary of evidence by every witness which each party intends to call at the trial; or a statement by the witness each party intend to call; or an affidavit deposed to under oath by a witness which each party intends to call to testify at trial: Provided that in the case of delivery of an affidavit deposed to under oath by a witness, such affidavit shall be binding on the 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.
- (7) The minute of the first case management conference shall be produced by the applicant/ plaintiff or its legal representative unless otherwise directed by the Tribunal President or the Member or Members assigned to the specific matter.
- (8) Such a minute shall be signed on behalf of all the parties to the case 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.
- (9) A second case management conference shall be held where the parties shall present either an agreed list of triable issues or, absent agreement, each party's identification of the triable issues.
- (10) 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.
- (4) The witnesses at the trial of any action shall be orally examined, but the Tribunal may at any time, for sufficient reason, order that all or any of the evidence to be adduced at any trial be given on affidavit or that the affidavit of any witness be read at the hearing, on such terms and conditions as to it may seem meet: Provided that where it appears to the Tribunal that any other party reasonably requires the attendance of a witness for cross-examination, and such witness can be produced, the evidence of such witness shall not be given on affidavit.
- (5) The Tribunal may, on application on notice in any matter where it appears convenient or necessary for the purposes of justice, make an order for taking the evidence of a witness before or during the trial, before a commissioner appointed by the Tribunal, and permit any party to any such matter to use such deposition in evidence on such terms, if any, as to it seems meet, and in particular may order that such evidence shall be taken only after the close of pleadings or only after the giving of discovery or the furnishing of any particulars in the action.
- (6) Where the evidence of any person is to be taken on commission before any commissioner within the Republic, such person may be subpoenaed to appear before such commissioner to give evidence as if at the trial.
- (7) Unless the Tribunal ordering the commission directs such examination to be by interrogatories and cross-interrogatories, the evidence of any witness to be examined before the commissioner in terms of an order granted under sub-rule (5), shall be adduced upon oral examination in the presence of the parties, their advocates or attorneys, and the witness concerned may be subject to cross-examination and re-examination.

**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 it is 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 or 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 notice to oppose and answering affidavit as the case may be, the Registrar may, on notice to all parties, 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. Preservation Orders**

- (1) The SIU may, by way of an *ex parte* application and in the form of a *rule nisi*, apply to the Tribunal in chambers or open hearing of the Tribunal, for a preservation order, pending the final adjudication of the main application or action proceedings, including appeals arising therefrom; prohibiting any person, subject to such conditions and exceptions as may be specified in the order, from disposing of, interfering with or dealing in any other manner with any property to which the order relates.
- (2) An application for a preservation order before the Tribunal is limited only in instances where there is a need for the preservation of evidence of the proceeds of a crime or unlawful transactions, contracts or conduct arising from any of the grounds listed in section 2 (2) of the Act;



- (3) The preservation order shall be applied for only after or simultaneous with the institution of the main application or action proceedings in the Tribunal, or where there is an application or action proceedings pending in the High Court.
- (4) The Tribunal may grant an application for a preservation order where it is proved, on a balance of probabilities that:
  - (a) A *prima facie* case is made out in the main application or action proceedings pending;
  - (b) The relief sought must be the only practicable mean of protecting the evidence;
  - (c) The evidence to be attached must be material to the applicant's main application or action proceedings;
  - (d) Reasons are provided for the belief that the evidence will be removed, disposed of or destroyed;
  - (e) The order should go no further than is strictly necessary for the preservation of the evidence sought to be preserved.
- (5) A preservation order may be made:
  - (a) in respect of such property, movable and/or immovable as specified in the preservation order held, either within or outside the territory of the Republic of South Africa, and by the person against whom the preservation order is being made;
  - (b) in respect of all realisable property held by the respondent or defendant, or in the possession of any other person regardless of title, whether specified in the preservation order or not;
  - (c) in respect of all property which, if it is transferred to such person after the making of the preservation order, would be realisable property.
- (6) The Tribunal may make a provisional preservation 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 preservation order should not be made final.
- (7) 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.

- (8) The respondent or defendant, as the case may be, may anticipate the return day for the provisional preservation order on 24-hour notice to the applicant.
- (9) A preservation order shall provide for notice to be delivered to persons affected by the order.
- (10) Without derogating from the generality of the powers conferred by sub-rule (1), a preservation order may make such provision as the Tribunal may think appropriate -
  - (a) for the reasonable living expenses of a person against whom the preservation order is being made and his or her family or household; and/or
  - (b) for the reasonable legal expenses of such person if the Tribunal is satisfied that the person whose expenses must be provided for has disclosed under oath all his interests in property subject to a preservation order and that the person cannot meet the expenses concerned out of his preserved property.
- (11) The Tribunal making a preservation 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/respondent 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 preservation order.
- (12) The Tribunal making a preservation order may at the same time make an order authorising the seizure of all movable property concerned by an SIU investigator, and any other ancillary orders that it considers appropriate for the proper, fair and effective execution of the order.
- (13) Property seized under this rule shall be dealt with in accordance with the directions of the Tribunal that granted the preservation order.
- (14) The Tribunal which granted a preservation order
  - (a) may on application by a person affected thereby vary or rescind the preservation 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) may, on application, rescind the preservation order when the proceedings against the defendant/respondent concerned are concluded.

- (15) When the Tribunal orders a rescission of an order authorising the seizure of property in terms of sub-rule (14) (a), the Tribunal may make such other order as it considers appropriate in the circumstances.

#### **24. Interdicts concerning disputed property located in the Republic of South Africa**

- (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 as may be specified in the order, from dealing in any manner with any disputed property.
- (2) The application must demonstrate that the property concerned, 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 of the Act.
- (3) The Tribunal, at the time of granting an interdict, may at the same time make an order authorising the seizure of the property concerned by an SIU official and any other ancillary orders that the Tribunal considers appropriate for the proper fair and effective execution of the prohibition order.
- (4) Property seized under this Rule shall be dealt with in accordance with the directions of the Tribunal.
- (5) Where the Tribunal orders an interdict on the use 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 referred to in 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 interdict may deliver an appearance to oppose the interdict or deliver an application for an order excluding his or her interest in the property under such order of the interdict.
  - (8) An appearance or application 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, not later than 14 days after such service; or
    - (b) any other person, not later than 14 days after the date upon which a notice referred to in sub-rule 5 (1) (b), was published in the *Gazette*.
  - (9) An appearance or application 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 delivering the application;
    - (b) the nature and extent of his or her interest in the property concerned; and
    - (c) the reasons upon which he or she intends to rely in opposing the interdict or applying for the exclusion of his or her interests from the operation thereof.

**25. Preservation and Interdict orders in respect of property located outside the Republic of South Africa**

- (1) The Tribunal may, on application by the SIU or any interested party, grant preservation and/or interdict order in respect of property located outside of the Republic of South Africa.
- (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 a letter 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) The letter of request referred to 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 structure in the foreign State.

## 26. Forfeiture Orders

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

## 27. Curator Bonis

- (1) Where the Tribunal grants a preservation or an interdict 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; and

- (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 preservation or interdict order has been granted, or any person in whose possession the property subject to the preservation or interdict order may be found, to surrender forthwith, or within such period as 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 the 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 preservation 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 also make an order for costs.
- (2) Where the Tribunal has made an award of costs, the following provisions apply:
- (a) The fees of one legal representative may be allowed between party and party, unless the Tribunal authorises the fees of additional legal representatives;
  - (b) The fees of any additional legal representative authorised in terms of paragraph (a) must not exceed one half of those of the first legal representative, unless the Tribunal directs otherwise;
  - (c) The costs between party and party allowed in terms of an order of the 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 be recovered as costs on a scale 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 assigned 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 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 legal representative; or
  - (b) 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 affected in accordance with the procedures for service and execution of judgments and orders of the High Court of South Africa, including as provided for in Rule 25 of these Rules.



**30A Execution — general and movables**

- (1) A judgment creditor may, at his own risk, sue out of the office of the registrar one or more writs for execution thereof.
- (2) No process of execution shall issue for the levying and raising of any costs awarded by the court to any party, until they have been taxed by the taxing master or agreed to in writing by the party concerned in a fixed sum: Provided that it shall be competent to include in a writ of execution a claim for specified costs already awarded to the judgment creditor but not then taxed, subject to due taxation thereafter, provided further that if such costs shall not have been taxed and the original bill of costs, duly allocated, not lodged with the sheriff before the day of the sale, such costs shall be excluded from his account and plan of distribution.
- (3) Whenever by any process of the Tribunal the sheriff is commanded to levy and raise any sum of money upon the goods of any person, he shall forthwith himself or by his assistant proceed to the dwelling-house or place of employment or business of such person (unless the judgment creditor shall give different instructions regarding the situation of the assets to be attached), and there –
  - (a) demand satisfaction of the writ and, failing satisfaction,
  - (b) demand that so much movable and disposable property be pointed out as he may deem sufficient to satisfy the said writ, and failing such pointing out,
  - (c) search for such property.

Any such property shall be immediately inventoried and, unless the execution creditor shall otherwise have directed, and subject to the provisions of subrule (5), shall be taken into the custody of the sheriff: Provided—

- (i) that if there is any claim made by any other person to any such property seized or about to be seized by the sheriff, then, if the plaintiff gives the sheriff an indemnity to his satisfaction to save him harmless from any loss or damage by reason of the seizure thereof, the sheriff shall retain or shall seize, as the case may be, make an inventory of and keep the said property; and

- (ii) that if satisfaction of the writ was not demanded from the judgment debtor personally, the sheriff shall give to the judgment debtor written notice of the attachment and a copy of the inventory made by him, unless his whereabouts are unknown.
  
- (4) The sheriff shall file with the registrar any process with a return of what he has done thereon, and shall furnish a copy of such return and inventory to the party who caused such process to be issued.
  
- (5) Where any movable property has been attached by the sheriff, the person whose property has been so attached may, together with some person of sufficient means as surety to the satisfaction of the sheriff, undertake in writing that such property shall be produced on the day appointed for the sale thereof, unless the said attachment shall sooner have been legally removed, whereupon the sheriff shall leave the said property attached and inventoried on the premises where it was found.
  
- (6) If the judgment debtor does not, together with a surety, give an undertaking as aforesaid, then, unless the execution creditor otherwise directs, the sheriff shall remove the said goods to some convenient place of security or keep possession thereof on the premises where they were seized, the expense whereof shall be recoverable from the judgment debtor and defrayed out of the levy.
  
- (7)
  - (a) Where any movable property is attached as aforesaid the sheriff shall, where practicable, sell it by public auction to the highest bidder after due advertisement by the execution creditor in a newspaper circulating in the district in which the property has been attached and after the expiration of not less than 15 days from the time of seizure thereof.
  - (b) Where perishables are attached as aforesaid, they may with the consent of the execution debtor or upon the execution creditor indemnifying the sheriff

against any claim for damages which may arise from such sale, be sold immediately by the sheriff concerned in such manner as seems expedient.

(c) The sheriff shall not later than 15 days before the date of sale either in terms of paragraph (a) or paragraph (b), forward a notice of sale to all other sheriffs appointed in that area.

(8) If incorporeal property, whether movable or immovable, is available for attachment, it may be attached without the necessity of a prior application to court in the manner hereinafter provided:

(a) Where the property or right to be attached is a lease or a bill of exchange, promissory note, bond or other security for the payment of money, the attachment shall be complete only when—

(i) notice has been given by the sheriff to the lessor and lessee, mortgagor and mortgagee or person liable on the bill of exchange or promissory note or security as the case may be, and

(ii) the sheriff shall have taken possession of the writing (if any) evidencing the lease, or of the bill of exchange or promissory note, bond or other security as the case may be, and

(iii) in the case of a registered lease or any registered right, notice has been given to the registrar of deeds.

(b) Where movable property sought to be attached is the interest of the execution debtor in property pledged, leased or sold under a suspensive condition to or by a third person, the attachment shall be complete only when the sheriff has served on the execution debtor and on the third person notice of the attachment with a copy of the writ of execution. The sheriff may upon exhibiting the original of such writ of execution to the pledgee, lessor, lessee, purchaser or seller enter upon the premises where such property is and make an inventory and valuation of the said interest.

- (c) In the case of the attachment of all other incorporeal property or incorporeal rights in property as aforesaid,
- (i) the attachment shall only be complete when—
- (a) notice of the attachment has been given in writing by the sheriff to all interested parties and where the asset consists of incorporeal immovable property or an incorporeal right in immovable property, notice shall also have been given to the registrar of deeds in whose deeds registry the property or right is registered, and
- (b) the sheriff shall have taken possession of the writing or document evidencing the ownership of such property or right, or shall have certified that he has been unable, despite diligent search, to obtain possession of the writing or document;
- (ii) the sheriff may upon exhibiting the original of the writ of execution to the person having possession of property in which incorporeal rights exist, enter upon the premises where such property is and make an inventory and valuation of the right attached.
- (9) Attachment of property subject to a lien shall be effected *mutatis mutandis* in accordance with the provisions of sub-paragraph (b) of subrule (8).
- (10) Where property subject to a real right of any third person is sold in execution such sale shall be subject to the rights of such third person unless he otherwise agrees.
- (11) (a) (i) Subject to any hypothec existing prior to the attachment, all writs of execution lodged with any sheriff appointed for a particular area or any other sheriff before or on the day of the sale in execution shall rank *pro rata* in the distribution of proceeds of the goods sold, in the order of preference referred to in paragraph (c) of subrule (14) of rule 30B.

- (ii) The sheriff conducting the sale in execution shall not less than 10 days prior to the date of sale forward a copy of the notice of sale to all other sheriffs appointed in the district in which he has been instructed to conduct a sale in respect of the attached goods.
  - (iii) The sheriff conducting the sale shall accept from all other sheriffs appointed in that district or any other sheriff a certificate listing any attachment that has been made and showing the ranking of creditors in terms of warrants in the possession of those sheriffs.
- (b) If there should remain any surplus, the sheriff shall pay it over to the judgment debtor; and the sheriff shall make out and deliver to him an exact account, in writing of his costs and charges of the execution and sale, which shall be liable to taxation upon application by the judgment debtor, and if upon taxation any sum shall be disallowed, the sheriff shall refund such sum to the judgment debtor.
- (12)
  - (a) Whenever it is brought to the knowledge of the sheriff that there are debts which are subject to attachment, and are owing or accruing from a third person to the judgment debtor, the sheriff may, if requested thereto by the judgment creditor, attach the same, and thereupon shall serve a notice on such third person, hereinafter called the garnishee, requiring payment by him to the sheriff of so much of the debt as may be sufficient to satisfy the writ, and the sheriff may, upon any such payment, give a receipt to the garnishee which shall be a discharge, *pro tanto*, of the debt attached.
  - (b) In the event of the garnishee refusing or neglecting to comply with any such notice, the sheriff shall forthwith notify the judgment creditor and the judgment creditor may call upon the garnishee to appear before the court to show cause why she should not pay to the sheriff the debt due, or so much thereof as may be sufficient to satisfy the writ, and if the garnishee does not dispute the debt due, or claimed to be due by him to the party against whom

execution is issued, or she does not appear to answer to such notice, then the court may order execution to issue, and it may issue accordingly, without any previous writ or process, for the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the writ.

- (c) If the garnishee disputes her liability in part, the court may order execution to issue in respect of so much as may be admitted, but if none be admitted then the court may order that any issue or question necessary for determining the garnishee's liability be tried or determined in any manner *mutatis mutandis* in which any issue or question in any action may be tried or determined, or the court may make any such other order in the premises as may be just.
- (d) Nothing in these rules as to the attachment of debts in the hands of a garnishee shall affect any cession, preference, or retention claimed by any third person in respect of such debts.
- (e) The costs connected with any application for the attachment of debts, and the proceedings arising from or incidental thereto, shall be in the discretion of the court.
- (f) Where the sheriff is of opinion that applications to the Tribunal or orders with respect to a garnishee will probably cost more than the amount to be recovered thereunder, he may sell such debts, after attachment, by auction, in the same way as any other movable property, or may cede the same at the nominal amount thereof to the judgment creditor with his consent.

(g) Payment of the amount due under and in respect of any writ, and all costs and the like, incidental thereto, shall entitle the person paying to a withdrawal thereof.

(13) Neither a sheriff nor any person on behalf of the sheriff shall at any sale in execution purchase any of the property offered for sale either for himself or for any other person.

**30B Execution — Immovable Property**

(1) (a) Subject to the provisions of rule 30C, no writ of execution against the immovable property of any judgment debtor shall be issued unless —

(i) a return has been made of any process issued against the movable property of the judgment debtor from which it appears that the said person has insufficient movable property to satisfy the writ; or

(ii) such immovable property has been declared to be specially executable by the court.

(b) A writ of execution against immovable property shall contain —

(i) a full description of the nature, magisterial district and physical address of the immovable property to enable it to be traced and identified by the sheriff; and

(ii) sufficient information to enable the sheriff to give effect to subrule (3) hereof.

(2) The attachment of the immovable property shall be made by any sheriff of the district in which the property is situated, upon a writ.

(3) (a) Notice of the attachment, shall be served by the sheriff upon the owner of the immovable property and upon the registrar of deeds or other officer charged with the registration of such property, and if the property is occupied by some person other than the owner, also upon such occupier.

(b) Any notice referred to in paragraph (a) shall —

- (i) draw attention to the provisions of subrule (8)(a)(iii) below; and
  - (ii) be served according to the provisions of these Rules, except that service upon the registrar of deeds or other officer charged with the registration of immovable property may also be effected by the sheriff by means of a registered letter, duly prepaid and posted, addressed to the officer intended to be served.
- (4) (a) When effecting the attachment, the sheriff may enter buildings or structures on the immovable property in order to ascertain the improvements made to the immovable property, as well as the condition of such improvements: Provided that where the sheriff after reasonable attempts is unable to gain access onto the immovable property or into any building or structure on account of the property, building or structure being locked, the sheriff may use a locksmith to gain entry.
- (b) After attachment, any sale in execution shall take place in the district in which the attached immovable property is situated and shall be conducted by the sheriff of such district who first attached the property: Provided that the sheriff in the first instance and subject to the provisions of paragraph (d) of subrule (8) may on good cause shown authorise such sale to be conducted elsewhere and by another sheriff.
- (c) Upon receipt of written instructions from the execution creditor to proceed with such sale, the sheriff shall ascertain and record the bonds or other encumbrances which are registered against the attached immovable property together with the names and addresses of the persons in whose favour such bonds and encumbrances are so registered and shall thereupon notify the execution creditor accordingly.
- (5) Subject to rule 30C and any order made by the Tribunal, no immovable property which is subject to any claim preferent to that of the execution creditor shall be sold in execution unless —
- (a) the execution creditor has caused notice of the intended sale to be served upon —



- 
- (i) preferent creditors;
  - (ii) the local authority, if the property is rated; and
  - (iii) the body corporate, if the property is a sectional title unit, calling upon the aforesaid entities to stipulate within 10 days of a date to be stated, a reasonable reserve price or to agree in writing to a sale without reserve, and has provided proof to the sheriff that such entities have so stipulated or agreed, or
- (b) the sheriff is satisfied that it is impossible to notify any preferent creditor, in terms of this rule, of the proposed sale, or such creditor, having been notified, has failed or neglected to stipulate a reserve price or to agree in writing to a sale without reserve as provided for in paragraph (a) within the time stated in such notice.
- (6) The sheriff may by notice served upon any person require such person to deliver up to the sheriff forthwith, all documents in such person's possession or control relating to the debtor's title to the said property.
- (7) (a) The sheriff conducting the sale shall appoint a day and place for the sale of the attached immovable property, such day being, except by special leave of a magistrate or tribunal, not less than 45 days after service of the notice of attachment and shall forthwith inform all other sheriffs appointed in the district of such day and place.
- (b) (i) The execution creditor shall, after consultation with the sheriff conducting the sale, prepare a notice of sale containing a short description of the attached immovable property, its improvements, magisterial district and physical address, the time and place for the holding of the sale and the fact that the conditions may be inspected at the office of the sheriff conducting the sale.
- (ii) The execution creditor must furnish the sheriff with as many copies of the notice of sale as the sheriff may require.

- (c) The execution creditor shall —
- (i) publish the notice once in a newspaper circulating daily or weekly in the district in which the attached immovable property is situated and in the *Gazette* not less than five days and not more than 15 days before the date of the sale; and
  - (ii) provide the sheriff conducting the sale, by hand, or by facsimile or electronic mail, with one satisfactory photocopy of each of the notices published in the newspaper and the *Gazette*, respectively.
- (d) Not less than 10 days prior to the date of the sale, the sheriff conducting the sale shall forward a copy of the notice of sale referred to in paragraph (b) to every execution creditor who had caused the said immovable property to be attached and to every mortgagee thereof whose address is known and shall simultaneously furnish a copy of the notice of sale to all other sheriffs appointed in that district.
- (e) Not less than 10 days prior to the date of the sale, the sheriff conducting the sale shall affix
- (i) one copy of the notice on the notice-board of the magistrate's court or Tribunal of the district in which the attached immovable property is situated, or if the said property is situated in the district where the Tribunal out of which the writ was issued is situated, then on the notice-board of such court; and
  - (ii) one copy at or as near as may be to the place where the said sale is actually to take place.
- (8) (a) (i) Not less than 35 days prior to the date of the sale, the execution creditor shall prepare the conditions of sale upon which the attached property is to be sold and shall submit such conditions to the sheriff conducting the sale, for the purposes of settling them.
- (ii) In addition to any other terms, the conditions of sale shall include any conditions ordered by the Tribunal.
- (iii) Not less than 25 days prior to the date of the sale, any interested party may submit to the sheriff, in writing, further or amended conditions of sale.

- (iv) Not less than 20 days prior to the date of the sale, the sheriff shall settle the conditions of sale.
  - (v) The sale in execution and the conditions of sale shall comply with the provisions of any law relating to auctions, in particular the Consumer Protection Act, 2008 Act No. 68 of 2008, and the Regulations promulgated thereunder.
  - (b)
    - (i) The execution creditor shall thereafter supply the said sheriff with three copies of the conditions of sale, one of which shall lie for inspection by interested parties at the office of the sheriff for 15 days prior to the date of the sale.
    - (ii) The sheriff conducting the sale shall forthwith furnish a copy of the conditions of sale to all other sheriffs appointed in that district.
  - (c) Not less than 15 days prior to the date of the sale, the sheriff shall serve one copy of the conditions of sale on the judgment debtor.
  - (d) Not less than 10 days prior to the date of the sale, any interested party may, subject to rule 30C and any order made by the court under the provisions thereof, and upon 24 hours' notice to all known affected parties, apply to the magistrate of the district in which the attached immovable property is to be sold for any modification of the conditions of sale and the magistrate may make such order thereon, including an appropriate order as to costs.
- (9) The execution creditor shall appoint a conveyancer to attend to the transfer of the attached immovable property sold in execution: Provided that the sheriff shall be entitled to appoint a new conveyancer should the conveyancer appointed by the execution creditor not proceed timeously or satisfactorily with the transfer.
- (10) Immovable property attached in execution shall be sold by the sheriff through public auction.

- (11) (a) (i) If the purchaser fails to carry out any obligations due by the purchaser under the conditions of sale, the sale may be cancelled by a judge summarily on the report of the sheriff conducting the sale, after due notice to the purchaser, and the attached and immovable property may be put up for sale again.
- (ii) The report shall be accompanied by a notice.
- (iii) If the sale is cancelled, the sheriff shall inform the judgment debtor of the cancellation.
- (b) Any loss sustained by reason of the purchaser's default may, on the application of any aggrieved creditor whose name appears on the sheriff's distribution account, be recovered from the purchaser under judgment of a judge given on a written report by the sheriff, after notice in writing has been given to the purchaser that the report will be laid before a judge for the aforesaid purpose.
- (c) If the purchaser is already in possession of the immovable property, the said sheriff may, on notice to affected persons apply to a judge for an order evicting the purchaser or any person claiming to occupy the property through the purchaser or otherwise occupying the property.
- (12) Subject to the provisions of rule 30C and subrule (5) hereof —
- (a) the sale shall be conducted upon the conditions stipulated under subrule (8); and
- (b) the immovable property shall be sold to the highest bidder.
- (13) (a) All moneys in respect of the purchase price of the immovable property sold in execution shall be paid to the sheriff and the sheriff shall retain such moneys in his or her trust account until transfer has been given to the purchaser.
- (b) The sheriff conducting the sale shall give transfer to the purchaser against payment of the purchase money and upon performance of the conditions of sale and may for that purpose do anything necessary to effect registration of transfer, and anything so done by him or her shall be as valid and effectual as if he or she were the owner of the property.

- (c) No amount of the purchase money shall be paid out until the provisions of subrule (14) have been complied with.
- (14) (a) After conclusion of the sale, but before preparation by the sheriff of a plan of distribution, the execution creditor or his or her attorney shall provide the sheriff with a certificate of all money paid by the judgment debtor to the execution creditor or his or her attorney after the issue of the writ of execution.
- (b) (i) Within 10 days after the date of registration of the transfer, the sheriff shall have prepared a plan of distribution of the proceeds in order of preference, and must forward a copy of such plan to the registrar and to all other sheriffs appointed in that district.
- (ii) Immediately thereafter the said sheriff shall give notice to all parties who have lodged writs and to the execution debtor that the plan of distribution will lie for inspection at his or her office and the office of the registrar for 15 days from a date mentioned, and unless such parties signify in writing their agreement to the plan, such plan will so lie for inspection.
- (c) After deduction from the proceeds of the costs and charges of execution, the following shall be the order of preference:
- (i) Claims of preferent creditors ranking in priority in their legal order of preference; and thereafter
- (ii) Claims of other creditors whose writs have been lodged with the sheriff in the order of preference.
- (d) Any interested person objecting to the plan must—
- (i) before the expiry of the period referred to in paragraph (b)(ii), give notice in writing to the sheriff and all other interested persons of the particulars of the objection; and
- (ii) within 10 days after the expiry of the period referred to in paragraph (b)(ii), bring such objection before a judge for review upon 10 days-notice to the sheriff and the said persons.

- (e) The judge on review shall hear and determine the matter in dispute and may amend or confirm the plan of distribution or may make such order including an order as to costs as he or she deems appropriate.
  - (f) If—
    - (i) no objection is lodged to such plan; or
    - (ii) the interested parties signify their concurrence therein; or
    - (iii) the plan is confirmed or amended on review, the sheriff shall, on production of a certificate from the conveyancer that transfer has been given to the purchaser, pay out in accordance with the plan of distribution.
- (15) Neither a sheriff nor any person on behalf of the sheriff shall at any sale in execution purchase any immovable property offered for sale either for himself or herself or for any other person.

### **30C Execution against Residential Immovable Property**

- (1) This rule applies whenever an execution creditor seeks to execute against the residential immovable property of a judgment debtor.
- (2) (a) A Tribunal considering an application under this rule must —
- (i) establish whether the immovable property which the execution creditor intends to execute against is the primary residence of the judgment debtor; and
  - (ii) consider alternative means by the judgment debtor of satisfying the judgment debt, other than execution against the judgment debtor's primary residence.
- (b) The Tribunal shall not authorise execution against immovable property which is the primary residence of a judgment debtor unless the Tribunal, having considered all relevant factors, considers that execution against such property is warranted.
- (c) The registrar shall not issue a writ of execution against the residential immovable property of any judgment debtor unless the Tribunal has ordered execution against such property.

- (3) Every notice of application to declare residential immovable property executable shall be —
- (a) substantially in accordance with Form 2A of Schedule 1 of the High Court Rules;
  - (b) on notice to the judgment debtor and to any other party who may be affected by the sale in execution: Provided that the Tribunal may order service on any other party it considers necessary;
  - (c) supported by affidavit which shall set out the reasons for the application and the grounds on which it is based; and
  - (d) served by the sheriff on the judgment debtor personally: Provided that the Tribunal may order service in any other manner.
- (4) (a) The applicant shall in the notice of application —
- (i) state the date on which the application is to be heard;
  - (ii) inform every respondent cited therein that if the respondent intends to oppose the application or make submissions to the Tribunal, the respondent must do so on affidavit within 10 days of service of the application and appear in court on the date on which the application is to be heard;
  - (iii) appoint a physical address at which the applicant will accept service of all documents in these proceedings; and
  - (iv) state the applicant's postal, facsimile or electronic mail address where available.
- (b) The application shall not be set down for hearing on a date less than five days after expiry of the period referred to in paragraph (a)(ii).
- (5) Every application shall be supported by the following documents, where applicable, evidencing:
- (a) the market value of the immovable property;
  - (b) the local authority valuation of the immovable property;
  - (c) the amounts owing on mortgage bonds registered over the immovable property;
  - (d) the amount owing to the local authority as rates and other dues;
  - (e) the amounts owing to a body corporate as levies; and
  - (f) any other factor which may be necessary to enable the Tribunal to give effect to subrule (8):

Provided that the Tribunal may call for any other document which it considers necessary.

- (6) (a) A respondent, upon service of an application referred to in subrule (3), may —
- (i) oppose the application; or
  - (ii) oppose the application and make submissions which are relevant to the making of an appropriate order by the Tribunal; or
  - (iii) without opposing the application, make submissions which are relevant to the making of an appropriate order by the Tribunal.
- (b) A respondent referred to in paragraph (a)(i) and (ii) shall
- (i) admit or deny the allegations made by the applicant in the applicant's founding affidavit; and
  - (ii) set out the reasons for opposing the application and the grounds on which the application is opposed.
- (c) Every opposition or submission referred to in paragraphs (a) and (b) shall be set out in an affidavit.
- (d) A respondent opposing an application or making submissions shall, within 10 days of service of the application —
- (i) deliver the affidavit referred to in paragraph (c);
  - (ii) appoint a physical address at which documents may be served upon such respondent; and
  - (iii) state the respondent's postal, facsimile or electronic mail address where available.
- (7) The registrar shall place the matter on the roll for hearing by the Tribunal on the date stated in the notice of application.
- (8) The Tribunal considering an application under this rule may —
- (a) of its own accord or on the application of any affected party, order the inclusion in the conditions of sale, of any condition which it may consider appropriate;
  - (b) order the furnishing by —



- (i) a municipality of rates due to it by the judgment debtor; or
  - (ii) a body corporate of levies due to it by the judgment debtor;
  - (c) on good cause shown, condone —
    - (i) failure to provide any document referred to in subrule (5); or
    - (ii) delivery of an affidavit outside the period prescribed in subrule (6)(d);
  - (d) order execution against the primary residence of a judgment debtor if there is no other satisfactory means of satisfying the judgment debt;
  - (e) set a reserve price;
  - (f) postpone the application on such terms as it may consider appropriate;
  - (g) refuse the application if it has no merit;
  - (h) make an appropriate order as to costs, including a punitive order against a party who delays the finalisation of an application under this rule; or
  - (i) make any other appropriate order.
- (9) (a) In an application under this rule, or upon submissions made by a respondent, the Tribunal must consider whether a reserve price is to be set.
- (b) In deciding whether to set a reserve price and the amount at which the reserve is to be set, the Tribunal shall take into account—
- (i) the market value of the immovable property;
  - (ii) the amounts owing as rates or levies;
  - (iii) the amounts owing on registered mortgage bonds;
  - (iv) any equity which may be realised between the reserve price and the market value of the property;
  - (v) reduction of the judgment debtor's indebtedness on the judgment debt and as contemplated in subrule (5)(a) to (e), whether or not equity may be found in the immovable property, as referred to in subparagraph (iv);
  - (vi) whether the immovable property is occupied, the persons occupying the property and the circumstances of such occupation;

- (vii) the likelihood of the reserve price not being realised and the likelihood of the immovable property not being sold;
  - (viii) any prejudice which any party may suffer if the reserve price is not achieved; and
  - (ix) any other factor which in the opinion of the Tribunal is necessary for the protection of the interests of the execution creditor and the judgment debtor.
- (c) If the reserve price is not achieved at a sale in execution, the Tribunal must, on a reconsideration of the factors in paragraph (b) and its powers under this rule, order how execution is to proceed.
- (d) Where the reserve price is not achieved at a sale in execution, the sheriff must submit a report to the Tribunal, within 5 days of the date of the auction, which report shall contain—
- (i) the date, time and place at which the auction sale was conducted;
  - (ii) the names, identity numbers and contact details of the persons who participated in the auction;
  - (iii) the highest bid or offer made; and
  - (iv) Any other relevant factor which may assist the court in performing its function in paragraph (c).
- (e) The Tribunal may, after considering the factors in paragraph (d) and any other relevant factor, order that the property be sold to the person who made the highest offer or bid.

### **30D Forms of Writs, Notices and Schedules for execution of property**

All Forms of Writs, Notices and Schedules required for the execution of property in rules 30A; 30B and 30C shall be as near as possible to the corresponding Forms of Writs, Notices and Schedules stated as attachments to rules 45; 46 and 46A of the rules of the High Court.

### **31. Delegation of powers and functions**

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

**32. Appeals**

- (1) Any party may appeal against a ruling, decision or order of the Tribunal, to the Provincial Division of the High Court which has jurisdiction in terms of section 8 (7) of the Special Investigating Units and Special Tribunals Act 74 of 1996 as amended. Such appeal shall be deemed to be an appeal to the Full Court of that Provincial Division.
- (2) No appeal shall lie against any ruling, decision or order of the Tribunal which, if made by the High Court would not be subject to appeal.
- (3) A party intending to appeal a judgment and order of the Tribunal shall first apply for leave to appeal. The application shall set out the grounds of appeal. An application for such leave shall be delivered within 10 days of the delivery of the judgment or order: Provided that when the reasons or the full reasons of the Tribunal's order are given on a later date than at the time of the delivery of the judgment or order, such application may be made within 10 days after the delivery of the reasons or full reasons of the order.
- (4) Where the Tribunal in giving an order declares that the reasons for the order will be furnished to any of the parties on request, such request shall be in a form of a simple notice, delivered within seven days of the date of delivery of the order.
- (5) The application for leave to appeal shall be set down on a date arranged by the Registrar who shall give written notice thereof to the parties. Such application shall be heard by the Member who presided at the hearing or, if such Member is not available, by any other Member assigned by the Tribunal President to hear the application.
- (6) If leave to appeal to the Full Court of the High Court having jurisdiction is granted, the order to appeal shall be delivered to all the parties within ten days after the date upon which leave was granted or within such longer period as may upon good cause shown, be permitted.

- (7) A party seeking to note a cross-appeal, shall do so by delivery of a notice of cross-appeal within seven days after delivery of the notice to appeal or within such longer period as may upon good cause shown, be permitted. The provision of these Rules with regard to appeals shall *mutatis mutandis* apply to cross-appeals.
- (8) Every notice of appeal and cross-appeal shall state-
- (a) what part of the judgment or order is appealed against; and
  - (b) the grounds upon which such appeal relies.
- (9) The appellant shall, at own costs, apply to the Registrar for copies of the transcript of the proceedings, including all documents, exhibits and any other evidence filed of record during the proceedings, for lodging with the Registrar of Appeals in the relevant High Court.
- (10) The provisions of Rule 49 of the Uniform Rules of the High Court relating to Civil Appeals to the Full Court shall apply *mutatis mutandis* to the appeal proceedings from the Tribunal.

### **33. Non-compliance with rules**

- (a) Where a party fails to comply with these Rules or with a request made or notice given pursuant thereto, any other party may notify the defaulting party that he or she intends, after the lapse of 10 days, to apply for an order that such rule, notice or request be complied with or that the claim or defence be struck out.
- (b) Failing compliance within 10 days, application may on notice be made to the court and the court may make such order thereon as to it seems meet.

**FIRST SCHEDULE**

**Case No** .....

**FORM 1**

**NOTICE OF MOTION**

**IN THE SPECIAL TRIBUNAL OF SOUTH AFRICA  
HELD AT .....**

In the *ex parte* application of:

Applicant

TAKE NOTICE that an *ex parte* application will be made on behalf of the above –named application on the..... day of ..... At 10:00 or as soon thereafter as counsel may be heard for an order in the following

Terms:

- (a).....
- (b).....
- (c).....

and that the affidavit of ..... Annexed hereto will be used in support thereof.

Kindly place the matter on the roll hearing according.

Dated at .....

.....  
Applicant's Attorney

To the Registrar

**FORM 2**

Case No .....

**NOTICE OF MOTION**

**IN THE SPECIAL TRIBUNAL OF SOUTH AFRICA  
HELD AT.....**

In the matter between:  
and

Applicant

Respondent

TAKE NOTICE that ..... (hereinafter called the applicant)  
intends to make application to this Tribunal for an order in the following terms:

- (a).....
- (b)..... (c).....

and that the accompanying affidavit of .....  
will be used in support thereof .

TAKE NOTICE FURTHER that the applicant has appointed ..... of the following  
address.....  
at which he will accept notice and service of all processes in these proceedings.

TAKE NOTICE FURTHER that if you intend opposing this application you are required (a) to notify  
the applicant's attorney in writing on or before the ..... and

(c) further that you are required to appoint in such notification an address at which you will accept  
notice and service of all documents in these proceedings.

(d) If no such notice of intention to oppose be given, the application will be made on the  
..... at ..... (time).

Dated at .....this ..... Day of .....20.....  
.....  
Applicant or his/her Attorney

- To:
- (1) CD  
(Address),  
RESPONDENT.
  - (2) The Registrar of the Tribunal,

**FORM 3 (a)**

**SUMMONS**

**IN THE SPECIAL TRIBUNAL SOUTH AFRICA  
HELD AT .....**

**Case No .....**

In the matter between

Plaintiff

and

Defendant

To the sheriff:

INFORM A.B., of ..... (state identity and address of the litigant).....  
(hereinafter called the defendant , that C.D. , of (state identity and address of the litigant).....  
(hereinafter called the plaintiff),hereby institutes action against him in which action the plaintiff  
claims:

(Here set out in concise terms plaintiff's cause of action)

INFORM THE DEFENDANT further that if he disputes the claim and wishes to defend the action he shall within ..... days of the service upon him of this summons files with the registrar of this court at ..... (here set out the address of the registrar's office ) notice of his intention to defend t and serve a copy thereof on the plaintiff's attorney ,which notice shall give an address (not being a post office box or paste restante ) referred to in rule 19(3) for the service upon the defendant of all notice and documents in the action.

INFORM the defendant further that if he fails to file and serve notice as aforesaid, judgement as claimed may be given against him without further notice to him.

And immediately thereafter serve on the defendant a copy of this summons and return the same to the registrar with whatsoever you have done thereupon.

DATED at ..... this ..... day of .....19.....

.....  
Registrar of the Special Tribunal

.....  
Plaintiff's Attorney  
(Address)

.....  
.....

**FORM 3 (b)**

**COMBINED SUMMONS**

**IN THE SPECIAL TRIBUNAL COURT OF SOUTH AFRICA  
HELD AT .....**

Case No:.....

In the matter between:

and

Plaintiff  
Defendant

To the sheriff:

INFORM A.B., of ..... ( and occupation) .....  
(hereinafter called the defendant ,that C.D., of hereby institutes action against him in which action the plaintiff claims the relief and on the grounds set out in the particulars annexed hereto.

INFORM the defendant further that if he disputes the claim and wishes to defend the action he shall

- (I) Within ..... days of the service upon him of this summons (set out the address of the of registrar) notice of his intention to defend and serve a copy thereof on the plaintiff's attorney ,which notice shall an address (not being a post office box or paste restante) referred to in rule 19(3)for the service upon the defendant of all notices and documents in the action;
- (II) thereafter ,and within 20 days after filling and serving notice of intention to defend as aforesaid ,file with the registrar and serve upon the plaintiff a plea, exception, notice to strike out ,with or without a counterclaim.

INFORM the defendant further that if he fails to file and serve notice as aforesaid judgment as claimed may be given against him without further notice to him, or if having filed and served such notice ,he fails to plead ,except ,make application to strike out or counter –claim, judgment may be given against him. And immediately registrar with whatsoever you have done thereupon.

DATED AT ..... this .....day of ..... 20.....  
.....

Registrar of the Special Tribunal

**ANNEXURE  
Particulars of Plaintiff's Claim**

.....  
.....  
.....

.....  
Plaintiff's Attorney

Address of Plaintiff 's Attorney  
.....

.....  
Plaintiff's Advocate



**FORMS 4**

**Discovery –form of affidavit**

**IN THE SPECIAL TRIBUNAL OF SOUTH AFRICA  
HELD AT .....**

Case No:.....

In the matter between:

A.B.

Plaintiff

and

C.D.

Defendant

I C.D., the above- name defendant, make oath and say;

- (1) I have in my possession or power the documents relating to the matters in question in this cause set forth in the first and second parts of the First Schedule hereto.
- (2) I object to produce the said documents set forth in the second part of the said schedule hereto.
- (3) I do so for the reason that ..... (here state upon what grounds the objection is made, and verify the fact as far as may be).
- (4) I have had, but have not now in my possessions or power ,the documents relating to the matters in question in this action ,set forth in the Second Schedule hereto.
- (5) The last mentioned documents were last in my possession or power..... (state when).
- (6) The ..... (here state what has become of the last-mentioned documents ,and in whose possession they are now).
- (7) According to the best of my knowledge and belief, I have not now ,and never had in my possession, custody, or power ,or in the possession, custody ,power of my attorney ,or agent ,or any other person on my behalf ,any document ,or copy of ,or extract from any document, relating to any matter in question in this cause , other that documents set forth in the First and Second Schedule hereto.

DATED at ..... this ..... Day of ..... 20.....

.....  
Defendant

**FORM 5**

**Notice in terms of Rule 35(5)**

**IN THE SPECIAL TRIBUNAL OF SOUTH AFRICA  
HELD AT.....**

Case No.....

In the matter between:

A.B

Plaintiff

And

C.D

Defendant

To .....

Please take notice that the above named plaintiff requires you within 15 days to deliver to the under-mentioned address a written statement setting out what documents of the following nature you have presently or had previously in your possession:

- (a) .....
- (b) .....
- (c) .....
- (d) .....

In such statement you must specify in detail which documents are still in your possession. If you no longer have any such documents which were previously in your possession you must state in whose possession they now are.

If you fail to deliver the statement within the time aforesaid, application will be made to the Tribunal for an order compelling you to do so and directing you to pay the cost of such application.

.....  
Plaintiff's Attorney  
(Address)

**FORM 6**

**Discovery –notice to produce**

**IN THE SPECIAL TRIBUNAL OF SOUTH AFRICA  
HELD AT .....**

Case No: .....

In the matter between:

Plaintiff  
Defendant

TAKE NOTICE that the .....(plaintiff or defendant ) requires you to produce within five days for his inspection the following documents referred to in your affidavit , dated the ..... day of ..... 19.....  
(Describe documents required)

DATED at ..... This ..... Day of ..... 20.....

E

.....  
Attorney for .....  
(Address)

To:

.....  
Attorney for the .....  
(Address)

**FORM 7**

**Discovery—Notice to Inspect Documents**

**IN THE SPECIAL TRIBUNAL OF SOUTH AFRICA  
HELD AT.....**

In the matter between:	Case No.....
	Plaintiff
	Defendant

Take Notice that you may inspect the documents mentioned in your notice of the ..... day of..... 19 ....., at my office, or at ..... and between the hours of ..... and on the following days.

(or)

That the (plaintiff or defendant) objects to giving you inspection of the documents mentioned in your notice of the ..... day of ..... 20....., on the grounds that  
(State the grounds)

Dated at..... this .....day of .....19....

Attorney for.....  
(Address)

To:  
.....  
Attorney for the.....  
(Address)

**FORM 8**

**SUBPOENA**

**IN THE SPECIAL TRIBUNAL OF SOUTH AFRICA  
HELD AT.....**

In the matter between:

Case No.....

Plaintiff

Defendant

To the sheriff  
INFORM:

(1)

.....

(2)

.....

(3)

.....

(4)

.....

(State names, sex, occupation and place of business or residence of each witness)

That each of such persons is hereby required to appear in person before the above Tribunal at ..... on the ..... day of ..... 20..... at..... (time) and thereafter to remain in attendance until excused by the said Tribunal, in order to testify on behalf of the above-named plaintiff/defendant in regard to all matters within his knowledge relating to an action now pending in the said Tribunal and wherein the plaintiff claims

(1)

.....

(2)

.....

(3)

.....

..... from the defendant.

And inform each of the said persons further that he should on no account neglect to comply with this subpoena as he may thereby render himself liable to a fine of R300, or to imprisonment for three months.

Dated at..... This ..... day of..... 20.....

Registrar of the Tribunal

Plaintiff/Defendant/Attorney

**FORM 9**

**WRIT OF EXECUTION**

**IN THE SPECIAL TRIBUNAL OF SOUTH AFRICA  
HELD AT.....**

Case No.....

In the matter between:

Plaintiff

Defendant

To the sheriff

For the district of .....

You are hereby directed to attach and take into execution the movable goods of ....., the above-mentioned defendant of..... (Address) ....., and of the same to cause to be realized by public auction the sum of ..... together with interest thereon at the rate of .....per centum per annum from the day of..... 20....., and the sum of .....for the taxed costs and charges of the said ....., which he recovered by judgment of this Tribunal dated the .....day of ..... 20....., in the above-mentioned case, and also all other costs and charges of the plaintiff in the said case to be hereafter duly taxed according to law, besides all your costs thereby incurred. Further pay to the said .....or his attorney the sum or sums due to him with costs as above-mentioned, and for your so doing this shall be your warrant.

And return you this writ with what you have done thereupon.

Dated at .....this.....day of .....20....

.....  
Registrar of the Tribunal

.....  
Plaintiff's Attorney

(Address)



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