

REPUBLIC OF NAMIBIA

NATIONAL COUNCIL

**PREVENTION OF ORGANISED
CRIME AMENDMENT BILL**

(As passed by the National Assembly)

(Introduced by the Minister of Justice)

EXPLANATORY NOTE:

_____ Words underlined with a solid line indicate insertions in existing provisions.

[] Words in bold type in square brackets indicate omissions from existing provisions.

BILL

To amend the Prevention of Organised Crime Act, 2004 so as to substitute and insert new definitions; to provide for the exclusion of a conviction on a predicate offence as a ground for committing the offence of money laundering; to provide for the offences of smuggling of migrants, illicit trafficking of stolen goods, piracy and related offences; to provide for the seizure of pirate ships or aircrafts; to provide for the forfeiture of intended instrumentalities of offences and unexplained assets; to provide for condonation after cessation of impossibility to give notice; to provide for staff members to perform certain functions in relation to property; to provide for the allocation of money from the Fund to the Financial Intelligence Centre or supervisory bodies and recommendations for such allocation under the powers and functions of the Committee; to extend the investigation powers of the Inspector-General to the Director-General of the Anti-Corruption Commission; to subject banking institutions to property tracking orders; to provide for the seizure of tainted property without a warrant; to extend the police powers of requesting for information to authorised officers of the Anti-Corruption Commission and to include banking institutions as body from which information may be requested from; to provide authority for the Prosecutor-General to carry out functions as a legal practitioner as Government Attorney's office in certain cases; and to provide for incidental matters.

(Introduced by the Minister of Justice)

BE IT ENACTED as passed by the Parliament, and assented to by the President, of the Republic of Namibia as follows:

Amendment of section 1 of Act No. 29 of 2004

1. Section 1 of the Prevention of Organised Crime Act, 2004 (Act No. 29 of 2004) (hereafter referred to as “the principal Act”), is amended by -

(a) the insertion after the definition of “criminal gang” of the following definitions:

““days” means days as defined in section 4 of the Interpretation of Laws Proclamation, 1920 (Proclamation No. 37 of 1920), and “day” has a corresponding meaning;

“delivery” means to serve copies on all parties and file the original with the Registrar of the High Court and the service or filing may be by electronic means;

“Director-General” means the Director-General of the Anti-Corruption Commission appointed in terms of Article 94A(5) of the Namibian Constitution;”;

- (b) by the insertion after the definition of “enterprise” of the following definition:

““Financial Intelligence Centre” means the Financial Intelligence Centre established in terms of section 7 of the Financial Intelligence Act, 2012 (Act No. 13 of 2012);”;

- (c) by the insertion after the definition of “High Court” of the following definitions:

““Inspector-General” means the Inspector-General of Police appointed in terms of Article 32(4)(c)(bb) of the Namibian Constitution or a member of the Namibian Police, authorised in writing by the Inspector-General, to act on behalf of the Inspector-General for a specific matter in terms of this Act;”;

- (d) by the insertion after the definition of “instrumentality of an offence” of the following definition:

“intended instrumentality of an offence” means any property which is intended to be used in the commission of an offence;”;

- (e) by the insertion after the definition of “pattern of racketeering activity” of the following definition:

““pirate ship or aircraft” means a ship or aircraft that is used or intended to be used to commit the offence of piracy by the persons in dominant control of that ship or aircraft;”;

- (f) by the substitution for the definition of “property” of the following definition:

““property” means money, a virtual asset or virtual token, or any other movable, immovable, corporeal or incorporeal thing and includes any rights, privileges, claims and securities and any interest in the property and all proceeds from the property;”;

- (g) by the insertion after the definition of “property” of the following definition:

““Prosecutor-General” means the Prosecutor-General appointed in terms of Article 32(4)(a)(cc) of the Namibian Constitution or any public prosecutor, authorised in writing by the Prosecutor-General to act on behalf of the Prosecutor-General;”;

- (h) by the insertion after the definition of “restraint order” of the following definition:

““smuggling of migrants” means the procurement, in order to obtain, directly or indirectly, a financial or other material benefit, of the illegal entry of a person who is not -

- (a) a national or a permanent resident of Namibia; or
- (b) lawfully resident in Namibia,

into Namibia or enabling such a person to remain in Namibia without complying with the law of Namibia;”;

- (i) by the substitution for the definition of “staff member” of the following definition:

““staff member” means a staff member as defined in section 1 of the Public Service Act, 1995 (Act No. 13 of 1995)[;], and includes a member of the Namibian police force, an authorised officer of the Anti-Corruption Commission or any other person who is authorised by any law to seize property in terms of that law;”;

- (j) by the insertion after the definition of “staff member” of the following definitions:

““stolen goods” means property stolen from anywhere, whether in Namibia or elsewhere, including goods originally stolen and parts of them, whether in their original state or not, and any other goods which directly or indirectly represent or have at any time represented the stolen goods in the hands of any person as being the proceeds of any disposal or realisation of the whole or part of the stolen goods or of goods representing the stolen goods;

“supervisory body” means a functionary or an institution set out in Schedule 2 of the Financial Intelligence Act, 2012 (Act No. 13 of 2012);

“unexplained assets” means property acquired by a person where an unlawful activity is reasonably suspected to have been committed -

- (a) the value of which is disproportionate to his or her known sources of income at or around the time of the commission of the unlawful activity and for which there is no satisfactory explanation;
- (b) the ownership, possession, custody or control of which cannot be satisfactorily accounted for by the person who owns, possesses or has custody or control of the property at or around the time of the commission of the unlawful activity and for which there is no satisfactory explanation; or
- (c) held by any person on behalf of another person to an extent which is disproportionate to the known sources of income of that other person and for which there is no satisfactory explanation at or around the time of the commission of the unlawful activity and for which there is no satisfactory explanation;

“unexplained wealth order” means a court order issued in terms of section 50A”; and

- (k) by the insertion after the definition of “unlawful activity” of the following definitions:

““virtual asset” means a digital representation of value -

- (a) that can be digitally transferred, stored or traded;
- (b) that uses a distribution ledger technology or similar technology; and
- (c) that can be used for payment or investment purposes,

but does not include digital representations of fiat currencies, and securities or other financial assets regulated under the securities or financial assets law of Namibia;

“virtual token” means any cryptographically secured digital representation of one or more rights provided on a digital distribution ledger platform or similar platform and issued or to be issued by a token issuer”.

Insertion of section 6A in Act No. 29 of 2004

2. The principal Act is amended by the insertion after section 6 of the following section:

“Conviction on money laundering possible without conviction on predicate offence

6A. (1) For purposes of sections 4, 5 and 6, and in respect of any person other than the person who committed a predicate offence, it is not necessary that there be a conviction for a predicate offence or for the State to prove that a particular person committed a predicate offence in relation to the prosecution of, and conviction on, the offence of money laundering.

(2) For purposes of subsection (1), “predicate offence” means any offence, which may be an offence in terms of this Act or any other law, that is committed before or in the furtherance of the offence of money laundering.”.

Insertion of section 15, 16, 16A and 16B in Act No. 29 of 2004

3. The principal Act is amended by the insertion after section 14, but in Part 2 of the following sections:

“Offence of smuggling of migrants

15. Any person who procures, participates in or who aids and abets the smuggling of migrants, as contemplated in Annex III of the Convention, by land, air or sea, in order to obtain, directly or indirectly, a financial or other material benefit, commits an offence and on conviction is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 25 years or to both such fine and such imprisonment.

Offence of illicit trafficking of stolen goods

16. Any person who knowingly receives, disposes of, attempts to dispose of, collects, imports, supplies, exports, distributes, barter or sells stolen goods, commits an offence and on conviction is liable to a fine not exceeding N\$1 000 000 or to imprisonment for a period not exceeding 25 years or to both such fine and such imprisonment.

Piracy and other offences

16A. (1) For the purpose of this Act, piracy is -

- (a) an illegal act of violence or detention, or any act of depredation, committed for private ends by the crew, including the captain of the crew, or the passengers of a private ship or a private aircraft, and directed -
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State;
- (b) an act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a ship or aircraft contemplated in subsection (1); or
- (c) an act of inciting or of intentionally facilitating an act contemplated in paragraph (a) or (b).

(2) An act of piracy, as described in subsection (1), committed by the crew of a warship or military aircraft, government ship or government aircraft which has mutinied and taken control of such ship or aircraft must, for purposes of this section, be regarded as having been committed by the crew of a private ship or aircraft.

(3) A person who commits an act of piracy as defined in subsection (1), commits an offence and on conviction is liable to a fine not exceeding N\$100 million or to imprisonment for a period not exceeding 30 years or to both such fine and such imprisonment.

(4) The Prosecutor-General may designate any court in Namibia to try the offence of piracy.

(5) Any person who has a previous conviction under subsection (3) is, on a subsequent conviction, liable to the fine or imprisonment stipulated in subsection (3) as well as an additional fine of N\$50 million or to imprisonment for an additional period not exceeding 10 years, or to both such fine and such imprisonment.

Seizure of pirate ship or aircraft

16B. (1) For the purpose of this section, “authorised officer” means a member of the Namibian Defence Force, a member of the Namibian Police, an authorised officer of the Anti-Corruption Commission, a fisheries inspector as defined in section 1 of the Marine Resources Act, 2000 (Act No. 27 of 2000), or any person authorised by any other law to seize any property within the Namibian territorial or international sea waters or airspace.

(2) An authorised officer may seize a ship, an aircraft or any property on board such ship or aircraft, and the authorised officer may arrest any person on board such ship or aircraft.

(3) Despite any provision in any other law, a ship, aircraft or property seized in terms of this section, may be dealt with in terms of the provisions of Chapter 5 or 6.”.

Amendment of section 20 of Act No. 29 of 2004

4. Section 20 of the principal Act is amended in subsection (1) by the substitution for paragraph (c) of the following paragraph:

“(c) the instrumentality of an offence or intended instrumentality of an offence attributable to the defendant.”.

Insertion of Part 1A into Act No. 29 of 2004

5. The principal Act is amended by the insertion after section 50 of the following Part:

“PART 1A

UNEXPLAINED WEALTH ORDERS

Unexplained wealth orders

50A. (1) The Prosecutor-General may apply to the High Court for an unexplained wealth order declaring the property concerned to be an unexplained asset and the court may, subject to such conditions as it considers necessary, issue an unexplained wealth order in respect of the property.

(2) For purposes of subsection (1), the unexplained wealth order must require the person who is the owner, holder, custodian or *bona fide* possessor of the unexplained asset to provide an affidavit under oath that sets out -

- (a) the nature and extent of his or her interest in the property in respect of which the order is made;
- (b) an explanation on how he or she obtained the property, including how any costs incurred in obtaining the property were met, and if the property is held on behalf of a third party, any such information pertaining to such third party in respect of such property; and

- (c) any such other information in connection with the property as may be so specified in the order or information that the person against whom the order is made considers necessary.

(3) The High Court may make an order referred to in subsection (1), without requiring that notice of the application be given to the person against whom the order is sought or the adduction of any further evidence from any person, if the application is supported by an affidavit indicating that the deponent has sufficient information that -

- (a) the property concerned is an unexplained asset;
- (b) the owner, possessor or custodian of such property was afforded a reasonable opportunity to explain the disproportion between the asset concerned and his or her known legitimate sources of income to a member of the police or an authorised officer of the Anti-Corruption Commission; and
- (c) satisfies the court that the information shows on the face of it that there are reasonable grounds for believing that the property concerned is an unexplained asset.

(4) The High Court may make an order prohibiting any person from dealing in any manner with an unexplained asset subject to the provisions of subsection (1) and to any conditions and exceptions that the court may specify in the order.

(5) A person against whom the unexplained wealth order is made must, within 21 days after service of the unexplained wealth order, deliver the affidavit under subsection (2) to the Prosecutor-General.

(6) An unexplained wealth order expires 30 days after the date on which the affidavit referred to in subsection (5) has been delivered to the Prosecutor-General, except if there is an application in terms of section 51 for a preservation order pending before the High Court in respect of the property which is the subject matter of the unexplained wealth order.”.

Amendment of section 51 of Act No. 29 of 2004

6. Section 51 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) The High [c]Court must make an order referred to in subsection (1) without requiring that notice of the application be given to any other person or the adduction of any further evidence from any other person if the application is supported by an affidavit indicating that the deponent has sufficient information that the property concerned is -

- (a) an instrumentality or intended instrumentality of an offence referred to in Schedule 1; **[or]**
- (b) the proceeds of unlawful activities; or
- (c) an unexplained asset.

and the court is satisfied that that information shows on the face of it that there are reasonable grounds for that belief.”.

Amendment of section 52 of Act No. 29 of 2004

7. Section 52 of the principal Act is amended in subsection (5) by the substitution for paragraphs (d) and (e) of the following paragraphs:

- “(d) whether he or she admits or denies that the property concerned is an instrumentality of an offence, an intended instrumentality of an offence, [or] the proceeds of unlawful activities or constitutes unexplained assets; and
- (e) the -
- (i) facts on which he or she intends to rely on in opposing the making of a forfeiture order or applying for an order referred to in subparagraph (c)(ii); and
- (ii) the basis on which he or she admits or denies that the property concerned is an instrumentality or intended instrumentality of an offence or the proceeds of unlawful activities or constitutes unexplained assets.”.

Amendment of section 60 of Act No. 29 of 2004

8. Section 60 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) Any person who, [for any reason] for reasons set out under subsection (3), failed to give notice in terms of section 52(3) within the period specified in section 52(4) may, within 14 days, -

- (a) of him or her becoming aware of the existence of a preservation of property order; or
- (b) of the cessation of the impossibility to give notice,

apply to the High Court for condonation of that failure and leave to give a notice accompanied by the required information.”.

Amendment of section 61 of Act No. 29 of 2004

9. Section 61 of the principal Act is amended by the -

(a) substitution for subsection (1) of the following subsection:

“(1) The High Court must, subject to section 63, make the forfeiture order applied for under section 59(1) if the court finds on a balance of probabilities that the property concerned -

- (a) is an instrumentality or intended instrumentality of an offence referred to in Schedule 1; [or]

(b) is the proceeds of unlawful activities; or

(c) is an unexplained asset.”

(b) substitution for subsection (5) of the following subsection:

“(5) On good cause shown in an application referred to in subsection (4), the High Court may vary or rescind the order made under **[that]** subsection (1) or make some other appropriate order.”.

Amendment of section 62 of Act No. 29 of 2004

10. Section 62 of the principal Act is amended by the substitution for subsections (1), (2) and (3) of the following subsections:

“(1) A judge in chambers or a magistrate may order that a notice referred to in subsection (3) be issued on a written application by the Prosecutor-General supported by an affidavit indicating that the deponent has sufficient information which shows on the face of it that the property referred to in the application is an instrumentality of an offence or an intended instrumentality of an offence referred to in Schedule 1.

(2) The judge or magistrate must, subject to any conditions which are necessary to preserve the property, make an order referred to in subsection (1) if the judge or magistrate is satisfied that there is reason to suspect that the property concerned is an instrumentality of an offence or an intended instrumentality of an offence referred to in Schedule 1.

(3) A notice referred to in subsection (1) must be directed to a person with an interest in, or control over, the property concerned and must inform that person that there is reason to suspect that the property is an instrumentality of an offence or an intended instrumentality of an offence referred to in Schedule 1.”.

Amendment of section 63 of Act No. 29 of 2004

11. Section 63 of the principal Act is amended by the substitution for subsections (3), (4), (5) and (6) of the following subsections:

“(3) The High Court may make an order under subsection (1), in relation to the forfeiture of an instrumentality of an offence or an intended instrumentality of an offence referred to in Schedule 1, if it finds on a balance of probabilities that the applicant for the order had acquired the interest concerned legally, and -

(a) neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence or an intended instrumentality of an offence referred to in Schedule 1; or

(b) where the offence concerned had occurred before the commencement of this Act, the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned as an instrumentality of an offence or an intended instrumentality of an offence referred to in Schedule 1.

(4) If an applicant for an order under subsection (1) adduces evidence to show that he or she did not know or did not have reasonable grounds to suspect that the property in which the interest is held, is an instrumentality of an offence or an intended instrumentality of an offence referred to in Schedule 1, the State may submit a return of the service on the applicant of a notice issued under section 62(4) in rebuttal of that evidence in respect of the period since the date of the service.

(5) If the State submits a return of the service on the applicant of a notice issued under section 62(4) as contemplated in subsection (4), the applicant for an order under subsection (1) must, in addition to the facts referred to in subsection (3), also prove on a balance of probabilities that, since that service, he or she has taken all reasonable steps to prevent the further use of the property concerned as an instrumentality of an offence or an intended instrumentality of an offence referred to in Schedule 1.

(6) The High Court when making an order for the exclusion of an interest in property under subsection (1) may, in the interest of the administration of justice or in the public interest, make that order on the conditions that the court deems appropriate including a condition requiring the person who applied for the exclusion to take all reasonable steps, within a period that the court may determine, to prevent the future use of the property as an instrumentality of an offence or an intended instrumentality of an offence referred to in Schedule 1.”.

Amendment of section 65 of Act No. 29 of 2004

12. Section 65 of the principal Act is amended by the substitution for subsection (9) of the following subsection:

“(9) The High Court may make an order under subsection (1), in relation to the forfeiture of an instrumentality of an offence or an intended instrumentality of an offence referred to in Schedule 1, if it finds on a balance of probabilities that the applicant for the order had acquired the interest concerned legally, and -

- (a) neither knew nor had reasonable grounds to suspect that the property in which the interest is held is an instrumentality of an offence or an intended instrumentality of an offence referred to in Schedule 1; or
- (b) where the offence concerned had occurred before the commencement of this Act, the applicant has since the commencement of this Act taken all reasonable steps to prevent the use of the property concerned as an instrumentality of an offence or an intended instrumentality of an offence referred to in Schedule 1.”.

Amendment of section 76 of Act No. 29 of 2004

13. Section 76 of the principal Act is amended by -

- (a) the substitution for subsection (1) of the following subsection:

“(1) The property and money allocated to, or standing to the credit of the Fund, may be utilised by Cabinet after considering the recommendations of the Committee, for -

- (a) the allocation of property and amounts of money from the Fund to specific law enforcement agencies;
- (b) the allocation of property and amounts of money from the Fund to any institution, organisation or fund contemplated in section **[81(c)] 80(c)** of this Act; **[and]**
- (c) the administration of the Fund~~]; and~~
- ~~(d) the allocation of property and amounts of money from the Fund to the Financial Intelligence Centre or supervisory bodies, as defined in section 1.~~

only in as far as such property and money is allocated in accordance with the objectives of this Act.

(b) the substitution for subsection (3) of the following subsection:

“(3) Whenever Cabinet allocates property or money under subsection (1) to a specific law enforcement agency or to an institution, organisation or fund contemplated in section **[81(c)] 80(c)**, Cabinet must indicate the specific purpose for which that property or money is to be utilised.”

(c) the substitution for subsection (5) of the following subsection:

“(5) An allocation of property or money must not be made under subsection (1) to an institution, organisation or fund contemplated in section **[81(c)] 80(c)**, unless an accounting officer for that institution, organisation or fund is appointed or designated for that institution, organisation or fund.”

Amendment of section 81 of Act No. 29 of 2004

14. Section 81 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) The Committee may make -

- (a) recommendations to Cabinet with regard to the policy to be adopted concerning the confiscation, forfeiture and realisation of property and the transfer of that property to the Fund in terms of this Act or any other Act;
- (b) recommendations to Cabinet with regard to the allocation of property and moneys from the Fund to specific law enforcement agencies;
- (c) recommendations to Cabinet with regard to the allocation of property and moneys from the Fund to any institution, organisation or fund contemplated in section 80(c); **[and]**

- (d) recommendations to Cabinet regarding the allocation of moneys for the administration of the Fund[.]; and
- (e) recommendations to Cabinet with regard to the allocation of property and money from the Fund to the Financial Intelligence Centre or a supervisory body,

only in as far as such property and money cannot constitute a replacement for any existing budgetary expenses.”.

Amendment of section 83 of Act No. 29 of 2004

15. The principal Act is amended by the substitution for section 83 of the following section:

“83. (1) Whenever the Inspector-General of Police or the Director-General of the Anti-Corruption Commission has reason to believe that any person may be in possession of information relevant to the commission or intended commission of an alleged offence in terms of this Act, or any person or enterprise may be in possession, custody or control of any documentary material relevant to that alleged offence, he or she may, prior to the institution of any civil or criminal proceeding, under written authority, direct a particular member of the police or an authorised officer of the Anti-Corruption Commission to investigate a specific offence.

(2) The authorised member of the police or an authorised officer of the Anti-Corruption Commission authorised in terms of subsection (1), or any other authorised member of the police or an authorised officer of the Anti-Corruption Commission may -

- (a) exercise any power under any law relating to the investigation of crime and the obtaining of information in the course of an investigation, for the purpose of enabling the Prosecutor-General to institute and conduct proceedings in terms of Chapter 5 and 6 of this Act; and
- (b) serve any document for which service is required in terms of this Act.”.

Amendment of section 84 of Act No. 29 of 2004

16. Section 84 of the principal Act is amended in subsection (1) by the substitution for paragraph (b) of the following paragraph:

- “(b) that a financial institution, as defined in the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001), or a banking institution as defined in the Banking Institutions Act, 1998 (Act No. 2 of 1998) or any other person or institution immediately produce to a member of the police or an authorised officer of the Anti-Corruption Commission all information obtained by the person or institution about any transaction conducted by that person or institution during any period before or after the date of the order.”.

Amendment of section 85 of Act No. 29 of 2004

17. Section 85 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) For the purposes of this section, and sections 86 and 86A “tainted property” means -

- (a) the instrumentality or intended instrumentality of an offence referred to in Schedule 1; **[or]**
- (b) the proceeds of an offence referred to in Schedule 1[.]; or
- (c) an unexplained asset.”.

Insertion of section 86A in Act No. 29 of 2004

18. The principal Act is amended by the insertion after section 86 of the following section:

“Seizure of tainted property without a warrant

86A. (1) Where there are reasonable grounds for believing that there is tainted property on any site, premises, building, vehicle, vessel, train, aircraft, an authorised member of the police or an authorised officer of the Anti-Corruption Commission may, without warrant, enter and search any such site, premises, building, vehicle, vessel, train or aircraft if the delay in obtaining a warrant will defeat the object of the search, provided that -

- (a) the person in charge of such site, premises, building, vehicle, vessel, train or aircraft is informed of the object of the search; and
- (b) such authorised member of the police or an authorised officer of the Anti-Corruption Commission may seize anything found upon or at or in such site, premises, building, vehicle, vessel, train or aircraft which he or she believes, on reasonable grounds, to be tainted.

(2) The authorised member of the police or authorised officer of the Anti-Corruption Commission, referred to in subsection (1), may use -

- (a) assistants as may be reasonable in the circumstances for the purpose of the entry, search and seizure of property that he or she believes, on reasonable grounds to be tainted property; and
- (b) force as is reasonable in the circumstances for the purpose of effecting entry and for breaking open anything in or on the place or thing to be searched.

(3) A person called on to assist, the authorised member of the police or an authorised officer of the Anti-Corruption Commission as referred to in subsection (2)(a), to carry out the search and seizure contemplated in subsection (1) has the power described in subsection (2)(b).

(4) In so far as this section provides for a limitation on the fundamental rights contemplated in Sub-Article (1) of Article 13 of the Namibian Constitution, in that it authorises interference with the privacy of a person's home, correspondence or communication, that limitation is enacted on the authority of that Article."

Amendment of section 87 of Act No. 29 of 2004

19. Section 87 of the principal Act is amended by the substitution for subsection (1) of the following subsection:

“(1) An authorised member of the police or authorised officer of the Anti-Corruption Commission may request any person employed in or associated with an agency, office or ministry as defined in the Public Service Act, 1995 (Act No. 13 of 1995) or], a statutory body, a banking institution as defined in the Banking Institutions Act, 1998 (Act No. 2 of 1998), a financial institution as defined in the Namibia Financial Institutions Supervisory Authority Act, 2001 (Act No. 3 of 2001) or any other person or institution to furnish him or her free of charge and within a period specified in that request, with all information that may reasonably be required for any investigation in terms of this Act and that person must, notwithstanding anything to the contrary contained in any law which prohibits or precludes him or her -

- (a) from disclosing any information relating to the activities, affairs or business of any other person; or
- (b) from permitting any person to have access to any registers, records or other documents, or electronic data which have a bearing on those activities, affairs or business,

furnish the authorised member of the police with that information and permit the authorised member of the police to have access to any registers, records, documents, and electronic data, which may contain the information.”

Amendment of section 89 of Act No. 29 of 2004

20. Section 89 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

“(2) A person who intentionally refuses or fails to comply with an order of court, excluding an unexplained wealth order, made in terms of this Act, commits an offence.”

Amendment of section 91 of Act No. 29 of 2004

21. Section 91 of the principal Act is amended by the substitution for subsections (1) and (2) of the following subsections:

“(1) Every application under sections 25, 43, 50A, 51, 59 and 64 must be made in the prescribed manner.

(2) The Prosecutor-General may, in cases of urgency, apply to the High Court to dispense with any requirements prescribed for an application made under section 25, ~~[or]~~ 50A or 51.”.

Amendment of section 93 of Act No. 29 of 2004

22. The principal Act is amended by the substitution for section 93 of the following section:

“Staff member may take care of property or function as curator bonis

“93. Where a court may appoint a *curator bonis* in terms of this Act, the court may dispense with such an appointment and direct instead that a staff member will, subject to the directions of the court, take care of the property concerned[.] and perform any function that may be assigned to a *curator bonis* in terms of this Act.”.

Insertion of section 96A in Act No. 29 of 2004

23. The principal Act is amended by the insertion after section 96 of the following section:

“Prosecutor-General may perform function as Government Attorney’s Office

96A. The Prosecutor-General or a public prosecutor, who is admitted and entitled to practise as a legal practitioner in Namibia in terms of section 3 of the Legal Practitioners Act, 1995 (Act No. 15 of 1995), may perform any functions in terms of Chapter 5, Chapter 6 or Chapter 9 as may be performed by the Government Attorney’s office in terms of section 4 of the Government Attorney Proclamation R. 161 of 1982.”.

Short title and commencement

24. (1) This Act is called the Prevention of Organised Crime Amendment Act, 2023 and comes into operation on a date to be determined by the Minister by notice in the *Gazette*.

(2) Different dates may be determined under subsection (1) in respect of different provisions of this Act.
