

**REGULATIONS MADE UNDER SECTION 38 OF THE IMPLEMENTATION OF THE
ROME STATUTE OF THE INTERNATIONAL CRIMINAL COURT ACT, 2002 (ACT NO.
27 OF 2002), PUBLISHED IN GOVERNMENT NOTICE NO. R. 1089 OF 16 AUGUST 2002
(GOVERNMENT GAZETTE 23761)**

The Minister for Justice and Constitutional Development has, under section 38 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002), made the regulations in the Schedule.

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CHAPTER 1

GENERAL PROVISIONS

Definitions

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

'apply' means apply on motion, and 'application' has a corresponding meaning;
'court day' means any day other than a Saturday, Sunday or public holiday;

'member of the South African Police Service' means a member, as defined in section 1 of the South African Police Service Act, 1995 (Act No. 68 of 1995);

'sheriff' means a person appointed under section 2 of the Sheriffs Act, 1986 (Act No. 90 of 1986), and also a person appointed under sections 5 and 6 of that Act as an acting sheriff or a deputy sheriff, respectively; and

'the Act' means the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002).

Representation of Court

2. A request sent to the Central Authority by the Court shall, unless the contrary is proved, be deemed to constitute the authorisation of the Court to the government of the Republic to act on behalf of the Court in any proceedings under the Act.

Proof of exchange rate

3. For the purposes of section 36 of the Act an exchange rate furnished in respect of a particular day in a document purporting to be-

(a) a facsimile received from the South African Reserve Bank shall be *prima facie* proof of the exchange rate prevailing on that particular day; and

- (b) an affidavit made by a person in his or her capacity as an officer of the South African Reserve Bank shall be conclusive proof of the exchange rate prevailing on that particular day.

CHAPTER 2

OBTAINING EVIDENCE

Summons of witness

4. (1) The summons referred to in section 16(1) of the Act must substantially correspond with Form 1 of the Annexure.

(2) The summons referred to in subregulation (1), together with a copy thereof, shall be delivered to a member of the South African Police Service or to a sheriff who shall, subject to the provisions of this regulation, forthwith serve it upon the person referred to in the said summons by delivering a copy of the summons in one of the following manners:

- (a) To the said person personally; or
- (b) at the said person's residence or place of business or employment to a person apparently not less than 16 years of age and apparently residing or employed there.

(3) The member of the South African Police Service or sheriff shall, on the original summons, certify the manner in which the summons was served and forthwith return the summons to the magistrate who required service thereof.

Certificate by interpreter

5. (1) If the services of an interpreter are to be used in the examination of a witness in terms of section 16 of the Act, the magistrate shall, before examining the witness, caution the interpreter that he or she will be required to certify that he or she translated truthfully and to the best of his or her ability, and note such caution on the court record.

(2) Upon completion of the examination of a witness in terms of section 16 of the Act, the interpreter shall in writing certify under oath or affirmation that he or she translated truthfully and to the best of his or her ability, and such a certificate must substantially correspond with Form 2 of the Annexure.

Transfer of prisoner

6. The warrant for the transfer of a prisoner referred to in section 20(b) of the Act must substantially correspond with Form 3 of the Annexure.

CHAPTER 3 RESTRAINT ORDERS

Registration of restraint order

7. Whenever a certified copy of a restraint order is lodged with a registrar of a High Court in terms of section 22(1) of the Act, that registrar shall register that order by-

- (a) numbering the restraint order with a consecutive case number for the year during which it is lodged; and

- (b) recording the restraint in respect of the property specified in the order and full particulars of that property, in so far as such particulars are available,

on the case cover in which the restraint order is filed.

Notice of registration of restraint order

8. The written notice of registration of a restraint order referred to in section 22(3) of the Act shall substantially correspond with Form 4 of the Annexure, and shall contain-

- (a) the consecutive case number referred to in regulation 7(a);
- (b) the date on which the restraint order was registered;
- (c) the restraint in respect of the property specified in the order and full particulars of that property in so far as such particulars are available; and
- (d) a reference to the provisions of regulation 10.

Service of notice of registration of restraint order

9. (1) The notice referred to in regulation 8, together with a copy thereof, shall be delivered to a sheriff who shall, subject to the provisions of this regulation, forthwith serve it upon the person referred to in the said notice by delivering a copy of the notice in one of the following manners:

- (a) To the said person personally or to his or her duly authorised agent;
 - (b) at the said person's residence or place of business to a person apparently not less than 16 years of age and apparently residing or employed there: Provided that for the purpose of this paragraph, 'residence' means, when a building is occupied by more than one person or family, that portion of the building occupied by the person upon whom service is to be effected;
 - (c) at the said person's place of employment to a person apparently not less than 16 years of age and apparently in authority over the said person or, in the absence of such a person in authority, to a person apparently not less than 16 years of age and apparently in charge at the said person's place of employment;
 - (d) in the case of a juristic person, at its registered office or main place of business within the area of jurisdiction of the court concerned, to a director, member or a responsible employee or servant thereof; or
 - (e) in the case of a minister, deputy minister or premier in his or her official capacity, the State or a provincial government, at the Office of the State Attorney in Pretoria, or a branch of that Office which serves the area of jurisdiction of the court from which the notice has been issued.
- (2) A sheriff must, on request by the person upon whom a notice is served, exhibit to him or her the original of the notice.
- (3) Where the person upon whom a notice is to be served keeps his or her residence or place of business closed and thereby prevents the sheriff from serving the notice, it

shall be sufficient to affix a copy thereof to the outer or principal door or security gate of such residence or place of business, or to place such copy in the post box at such residence or place of business.

(4) Where the sheriff is unable after diligent search to find at the residence or place of business of the person upon whom a notice is to be served, either that person or a person referred to in subregulation (1)(b) or, in the case of a juristic person referred to in subregulation (1)(d), a director or a responsible employee or servant, it shall be sufficient to affix a copy of the notice to the outer or principal door or security gate of such residence, place of business, registered office or main place of business.

(5) Where two or more persons are to be served with the same notice, service shall be effected upon each, except-

- (a) in the case of a partnership, in which case service may be effected by delivery at the office or place of business of the partnership or, if there is no such office or place of business, then by service on any member of the partnership in any manner prescribed by this regulation;
- (b) in the case of two or more persons upon whom a notice is to be served in their capacity as trustees of an insolvent estate, liquidators of a company, executors, curators or guardians, in which case service may be effected by delivery to any one of such persons in any manner prescribed by this regulation; and
- (c) in the case of a syndicate, unincorporated company, club, society or church, in which case service may be effected by delivery at the local

office or place of business of such body or, if there be none such, by service on the chairperson or secretary or other responsible officer thereof in any manner prescribed by this regulation.

(6) The sheriff shall, on a form substantially corresponding with Form 5 of the Annexure, endorse the manner in which the copy of the notice was served, and shall attach the form to the notice and return it to the registrar of the High Court from whom he or she received such notice: Provided that where such service has been effected in the manner prescribed by subregulation (1)(b), (c), (d) or (e), the sheriff shall indicate in the return of service of the notice concerned the name of the person on whom he or she served the notice and the capacity in which that person stands in relation to the person, juristic person or institution to whom the notice is addressed, and where such service has been effected in the manner prescribed by subregulation (1)(b) or (c) the court may, if there is reason to doubt whether the notice served has come to the actual knowledge of the person on whom it is to be served, and in the absence of satisfactory evidence, treat such service as invalid.

(7) Where a court is satisfied that service cannot be effected in any manner prescribed in this regulation and that the action is within its jurisdiction, the court may on application make an order allowing service to be effected by the person and in the manner specified in such order.

(8) Any member of the South African Police Service may, if so requested by a sheriff, assist that sheriff to effect the service of a notice.

(9) (a) Where the person against whom the restraint order has been made is not present in the Republic that person shall-

- (i) be informed of the registration of the order in the manner provided for in an agreement contemplated in section 33 of the Act or any other agreement concluded with the Court; or
- (ii) in the absence of an agreement referred to in paragraph (a)(i), be informed of registration of the order by sending a copy of the written notice of registration to that person by registered mail.

(b) The registrar of the High Court sending a copy of the notice in terms of paragraph (a)(ii) to the person against whom the restraint order has been made, shall require that proof of receipt thereof be returned to him or her by the relevant postal authority.

Application for setting aside of registration of restraint order

10. (1) A person against whom a restraint order has been made may within 20 court days from the date on which the registration of the restraint order at a High Court came to his or her knowledge and in terms of the rules of that court apply for the setting aside of the registration of the restraint order.

(2) Unless the applicant proves the contrary, it shall be presumed that where-

- (a) the written notice of registration was served on that applicant personally, he or she had knowledge of such registration on the date of service of the notice;

- (b) the written notice of registration was not served on that applicant personally, he or she had knowledge of such registration within ten days after the date of service of the notice;
- (c) the written notice of registration was sent to that applicant by registered mail, he or she had knowledge of such registration on the date of receipt thereof indicated in the proof of receipt referred to in regulation 9(9)(b);
or
- (d) that applicant was informed of such registration in any other manner, he or she had knowledge of such registration on the date which he or she was so informed.

CHAPTER 4

SENTENCES AND COMPENSATORY ORDERS

Registration of sentence or compensatory order

11. Whenever a certified copy of the document confirming the sentence or order of the Court is lodged with the clerk of the court or registrar in terms of section 25(2) of the Act, the clerk of the court or registrar shall register that sentence or order by-

- (a) numbering the sentence or order with a consecutive case number for the year during which it is lodged; and

- (b) recording in favour of the Republic, as represented by the Cabinet member responsible for the administration of justice, the balance in the currency of the Republic of the amount payable thereunder,

on the case cover in which the document confirming the sentence or compensatory order is filed.

Notice of registration of sentence or compensatory order

12. (1) The written notice of registration of a sentence or order referred to in section 25(3) of the Act shall substantially correspond with Form 6 of the Annexure, and shall contain-

- (a) the consecutive case number referred to in regulation 11(a);
- (b) the date on which the sentence or order was registered; and
- (c) the balance in the currency of the Republic of the amount payable under the sentence or order.

(2) (a) Where the person upon or against whom the sentence has been imposed or order has been made is present in the Republic, the written notice of registration of the sentence or order, together with a copy thereof, shall be delivered to a sheriff who shall serve such notice on that person in accordance with the manner provided for in regulation 9(1) to (5), and the provisions of regulation 9(6) to (8) shall, read with the changes required by the context, apply to such service.

(b) Where the person upon or against whom the sentence has been imposed or order has been made is not present in the Republic that person shall-

- (i) be informed of the registration of the sentence or order in the manner provided for in an agreement contemplated in section 33 of the Act or any other agreement concluded with the Court; or
- (ii) in the absence of an agreement referred to in paragraph (b)(i), be informed of registration of the sentence or order by sending a copy of the written notice of registration to that person by registered mail.

(c) The clerk of the court or registrar sending a copy of the notice in terms of paragraph (b)(ii) to the person upon or against whom the sentence or order has been imposed or made, shall require that proof of receipt thereof be returned to him or her by the relevant postal authority.

CHAPTER 5

CONFISCATION ORDERS

Registration of confiscation order

13. Whenever a certified copy of a confiscation order of the Court is lodged with the clerk of the court or registrar in terms of section 27(2) of the Act, such clerk of the court or registrar shall register that order by-

- (a) numbering the confiscation order with a consecutive case number for the year during which it is lodged; and
- (b) recording-
 - (i) where the order was made for the payment of money, the balance in the currency of the Republic of the amount payable thereunder; and
 - (ii) where the order was made for the recovery of particular property, full particulars of that property, in so far as such particulars are available,

in favour of the Republic as represented by the Cabinet member responsible for the administration of justice, on the case cover in which the certified copy of the confiscation order is filed.

Notice of registration of confiscation order

14. (1) The written notice of registration of a confiscation order contemplated in section 27(4) of the Act shall correspond substantially with Form 7 of the Annexure, and shall contain-

- (a) the consecutive case number referred to in regulation 13(a);
- (b) the date on which the confiscation order was registered;
- (c) in the case of the payment of money, the balance in the currency of the Republic of the amount payable under the confiscation order;

- (d) in the case of the recovery of particular property, full particulars of the property specified in the confiscation order in so far as such particulars are available; and
- (e) a reference to the provisions of regulation 15.

(2) (a) Where the person against whom the confiscation order has been made is present in the Republic, the written notice of registration of the confiscation order, together with a copy thereof, shall be delivered to a sheriff who shall serve such notice on that person in accordance with the manner provided for in regulation 9(1) to (5), and the provisions of regulation 9(6) to (8) shall, read with the changes required by the context, apply to such service.

(b) Where the person against whom the confiscation order has been made is not present in the Republic that person shall-

- (i) be informed of the registration of the order in the manner provided for in an agreement contemplated in section 33 of the Act or any other agreement concluded with the Court; or
- (ii) in the absence of an agreement referred to in paragraph (b)(i), be informed of such registration by sending a copy of the written notice of registration to that person by registered mail.

(c) The clerk of the court or registrar sending a copy of the notice in terms of paragraph (b)(ii) to the person against whom the confiscation order has been made,

shall require that proof of receipt thereof be returned to him or her by the relevant postal authority.

Application for setting aside of registration of confiscation order

15. (1) A person against whom the registration of a confiscation order has been made may within 20 court days from the date on which the registration of the confiscation order at a High Court or a magistrate's court came to his or her knowledge and in terms of the rules of that court apply for the setting aside of the registration of the order.

(2) Unless the applicant proves the contrary, it shall be presumed that where-

- (a) the written notice of registration was served on that applicant personally, he or she had knowledge of such registration on the date of service of the notice;
- (b) the written notice of registration was not served on that applicant personally, he or she had knowledge of such registration within ten days after the date of service of the notice;
- (c) the written notice of registration was sent to that applicant by registered mail, he or she had knowledge of such registration on the date of receipt thereof indicated in the proof of receipt contemplated in regulation 14(2)(c); or

- (d) that applicant was informed of such registration in any other manner, he or she had knowledge of such registration on the date on which he or she was so informed.

CHAPTER 6

MISCELLANEOUS PROVISIONS

Short title

16. These regulations shall be called the **Implementation of the Rome Statute of the International Criminal Court Regulations, 2002**, and shall come into operation on 16 August 2002.

**ANNEXURE
FORM 1
WITNESS SUMMONS FOR INTERNATIONAL CRIMINAL COURT
ASSISTANCE**

TO: (Witness name)		
* Work address:		
* Residential address:		
* Gender:		* Age:	
(* Complete if information is available)			

You are hereby summoned to appear in person at 09:00 before the Magistrate's Court:

For the District:	Held at:
Court:	On:

and to remain in attendance, and with regard to the matter of the International Criminal Court and, to-

*** (a) testify and declare all you know that may be of relevance to the International Criminal Court;**

*** (b) produce the following book, document or object, namely.....**

WARNING: Failure to comply with this summons is a criminal offence and may render you liable to a fine or to a term of imprisonment not exceeding five years.

* Delete whichever is not applicable

FOR OFFICIAL PURPOSES ONLY

TO the member of the South African Police or sheriff:

You are hereby commanded to-

- (a) serve a copy of this summons on the person of whom particulars appear herein, and to explain to the said person the nature and import of this summons; and
- (b) upon service of this summons, certify the manner in which it was served below.

CERTIFICATE

I, the undersigned, certify that I have served this summons upon the within-named person by-

*(a)	delivering a true copy to him/her PERSONALLY;
*(b)	delivering as he/she could not be found, a true copy to a person apparently over the age of 16 years and apparently residing or employed at the witness's place of * RESIDENCE/EMPLOYMENT/BUSINESS;

at
.....

The nature and import of this summons was explained to the recipient thereof.

Time Day Month Year

Place

Signature of * sheriff/member of the South African Police Service

.....
Signature of recipient

.....
Full name

.....
Full name

.....
Capacity

*Delete whichever is not applicable

FORM 2
CERTIFICATE BY INTERPRETER FOR INTERNATIONAL CRIMINAL COURT ASSISTANCE

I, (full name)
do hereby swear/truly affirm that I did truthfully and to the best of my ability interpret from the English language to the language and vice versa as I was called upon to do in the examination of held in the Magistrate's Court of on the (date) for the purposes of granting assistance in the matter of the International Criminal Court and.....

.....
DEPONENT (interpreter)

.....
Date

For official use

I hereby certify that before administering the * oath/taking the affirmation I asked the deponent the following questions and noted * his/her answers in * his/her presence as indicated below:

- (a) Do you know and understand the contents of the above declaration?
Answer
- (b) Do you have any objection to taking the prescribed oath?
Answer
- (c) Do you consider the prescribed oath to be binding on your conscience?
Answer

I hereby certify that the deponent has acknowledged that * he/she knows and understands the contents of this declaration, which was * sworn to/affirmed before me, and the deponent's * signature/thumb print/mark was placed thereon in my presence.

Dated at this day of 20

.....

Justice of the Peace/Commissioner of Oaths

Full names

Designation

Area for which appointed

Business address

.....

* Delete whichever is not applicable

FORM 3
WARRANT FOR TRANSFER OF PRISONER FOR INTERNATIONAL
CRIMINAL COURT ASSISTANCE

To

.....

acting on behalf of the International Criminal Court established by Article 1 of the Rome Statute of the International Criminal Court.

You are hereby, in terms of section 20 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002), and in accordance with any arrangements made by the Cabinet member responsible for correctional services in the Republic of South Africa and the Registrar or Prosecutor of the International Criminal Court, authorised and commanded to-

- (a) receive into and keep in the custody of the International Criminal Court
.....
(Name of prisoner)
.....
(Description)
.....
(Age)

detained in the Republic of South Africa in the Prison, for the purposes of giving evidence or assisting in an investigation as requested by the International Criminal Court or the Prosecutor of the said Court; and

- (b) return the person to the custody of the above-mentioned prison in the Republic of South Africa without delay when the purposes of the transfer have been fulfilled, unless I notify you in writing that the above-mentioned prisoner's term of imprisonment will expire while he or she is still in custody of the International Criminal Court.

.....
* Commissioner of Correctional Services/Person

.....
Date

authorised by the Commissioner of Correctional Services

* Delete whichever is not applicable

FORM 4

IN THE HIGH COURT DIVISION

NOTICE OF REGISTRATION OF A RESTRAINT ORDER

Case No.

To

.....

(Name)

.....

.....

.....

(Residential Address)

.....

.....

.....

(Business/Employment Address)

You are hereby notified that a restraint order in respect of the property and with the effect described hereunder has, in terms of section 22(2) of the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002), been registered at the High Court (..... Division), on the day of 20.....

Particulars of the restraint and property concerned:

.....

.....

.....

.....

.....

.....
Note: (1) The registered restraint order has the effect of a restraint order made by the above-mentioned High Court under the Prevention of Organised Crime Act, 1998 (Act No. 121 of 1998).

(2) In terms of regulation 10 of the Implementation of the Rome Statute of the International Criminal Court Regulations, 2002, you may within 20 court days from the date on which the registration of the restraint order came to your knowledge, and in terms of the rules of the court, apply to the above-mentioned High Court for the setting aside of the registration of the order. If the notice was not served on you personally it is presumed that registration came to your knowledge within ten days after the date of service of the notice.

(3) Section 24 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002), sets out the grounds on which a court may set aside the registration of the restraint order.

Signed at..... on thisday of
..... 20.....

.....
REGISTRAR OF THE HIGH COURT

* Delete whichever is not applicable

FORM 5

***IN THE HIGH COURTDIVISION/
IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF**

RETURN OF SERVICE OF NOTICE

Case No.

I,, certify
that I have-

*(a) delivered a copy of the notice to.....
.....personally [regulation
9(1)(a)];

(or)

*(b) delivered a copy of the notice to
....., the duly authorised agent of
..... [regulation 9(1)(a)];

(or)

*(c) delivered a copy of the notice to
....., a person
apparently not less than 16 years of age and apparently residing or employed at the
*residence/or place of business of.....
....., in his or
her capacity as of.....
[regulation 9(1)(b)];

(or)

*(d) delivered a copy of the notice to a person
apparently not less than 16 years of age and who is apparently in authority over or in

charge at the place of employment of, in his or her capacity as.....of [regulation 9(1)(c)];

(or)

*(e) delivered a copy of the notice to....., a * director/responsible employee/servant of at the latter's *registered office/main place of business [regulation 9(1)(d)];

(or)

*(f) delivered a copy of the notice to the State Attorney in, in his or her capacity as of [regulation 9(1)(e)];

(or)

*(g) * affixed/placed a copy of the notice * to/in the * outer/principal door/security gate/postbox of the * residence/place of business of, because he or she prevented the service of the notice by keeping the residence/place of business closed [regulation 9(3)];

(or)

*(h) affixed a copy of the notice to the outer/principal door of the * residence/place of business/registered office/main place of business of, as he or she or a person apparently not less than 16 years of age or a director, responsible employee or servant could not be found after a diligent search of the * residence/place of business of the person whom notice is to be served [regulation 9(4)];

(or)

*(i) served a copy of the notice in the manner ordered by court [regulation 9(7)].

Time..... Day..... Month..... 20.....

Place.....

.....
SIGNATURE OF SHERIFF

* Delete whichever is not applicable

FORM 6

***IN THE HIGH COURT DIVISION/
IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF**

**NOTICE OF REGISTRATION OF A SENTENCE OR COMPENSATORY
ORDER**

Case No.

To

.....

(Name)

.....

.....

.....

(Residential Address)

.....

.....

.....

(Business/Employment Address)

You are hereby notified that, in terms of section 25(2) of the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002), a * sentence/order for the payment of the amount of has been registered at the * High Court Division/Magistrate's Court for the district of on the day of 20.....

Notification is given to you since you are the person * on whom the said sentence was imposed/against whom the said order was made/who has effective control over relevant property in the Republic of South Africa.

Note: The registered * sentence/order has the effect of a civil judgment of the above-mentioned * High Court/Magistrate's Court, for the amount reflected in favour of the Republic of South Africa as represented by the Cabinet member responsible for the administration of justice.

Signed at..... on this day of 20

.....
*Clerk of the Court/Registrar

* Delete whichever is not applicable

FORM 7

***IN THE HIGH COURT.....DIVISION/
IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF**

NOTICE OF REGISTRATION OF A CONFISCATION ORDER

Case No.

To

.....

(Name)

.....

.....

.....

(Residential Address)

.....

.....

.....

(Business/Employment Address)

You are hereby notified that, in terms of section 27(3) of the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002), a confiscation order * in respect of the property described hereunder/for the payment of the amount of has been registered at the *High Court Division/Magistrate's Court for the District of on the day of 20

Description of property:

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

Note: (1) The registered confiscation order has the effect of a civil judgment of the above-mentioned * High Court/Magistrate's Court in favour of the Republic of South Africa as represented by the Cabinet member responsible for the administration of justice.

(2) In terms of regulation 15 of the Implementation of the Rome Statute of the International Criminal Court Regulations, 2002, you may within 20 court days from the date on which the registration of the confiscation order came to your knowledge, and in terms of the rules of the court, apply for the setting aside of the registration of the order to the above-mentioned * High Court/Magistrate's Court. If the notice was not served on you personally it is presumed that registration came to your knowledge within ten days after the date of service of the notice.

(3) Section 29 of the Implementation of the Rome Statute of the International Criminal Court Act, 2002 (Act No. 27 of 2002), sets out the grounds on which a court may set aside the registration of a confiscation order.

Signed at on thisday of20.....

.....

* Clerk of the Court/Registrar

* Delete whichever is not applicable