# PROCEDURE TO BE FOLLOWED BEFORE A REGISTRAR MAY ISSUE A WARRANT OF EXECUTION AGAINST PROPERTY OF THE STATE

The Registrar should not issue a warrant of execution against property against the State unless the Registrar has satisfied herself that the following steps have first been followed:

1. The judgment creditor's attorney, as matter of practice, must include a covering letter requesting the Registrar to issue the warrant;

2. The judgment creditor's attorney, as a matter of practice, must include an affidavit which addresses his compliance with the provisions of Section 3 of the State Liability Act no. 20 of 1957. The affidavit must, among other things, address/state the following pre-requisites of Section 3:

2.1 that the warrant is in respect of a final court order;

2.2 that the court order is one for the payment of money;

2.3 that the State attorney (or any other attorney who represents the State) has been given written notice of the final court order; or that such State's attorney was present at the time of the delivery of the final court order;

2.4 that a period of 30 days has elapsed from the date of the final court order; or that the date of payment that was agreed-to with that Department's accounting officer has passed. The details of this agreement, if any, should be specified;

2.5 If the writ is in respect of a costs order that requires taxation, the bill must first be taxed. Unless the State's attorney was present at the taxation, the State's attorney must be given written notice of the taxed amount, and a period of 30 days must first elapse;

2.6 that no payment has been received from the State, and no acceptable arrangements have been made by the State for the settlement of the amount;

2.7 Only if the final court order was taken against the State by default, then the judgment creditor's attorney must allege that he has taken the following additional steps:

2.7.1 That he served the court order by the sheriff of the court upon the following people:

(i) The executive authority of that Department;

(*The executive authority is either the Cabinet member or the MEC, depending on whether the State has been sued on a National level or Provincial level.*)

(ii) The accounting officer of that Department;

(*The Head of a Department is usually the accounting officer of that Department.*)

(iii) The relevant treasury pertaining to that Department; and

(*The relevant treasury will be either the National treasury, or the Provincial treasury, depending on whether the State has been sued at a National level or a Provincial level.*)

(iv) The State's attorney.

2.7.2 That the relevant sheriff's Returns of service have been attached to the affidavit;

2.7.3 That a period of fourteen (14) days has elapsed since the dates of the service of the court order; and

2.7.4 That no payment nor any acceptable arrangements for the payment of the court order have been made by that State Department.

2.8 All supporting documents that corroborate compliance with the pre-requisites of Section 3 of the State Liability Act such as letters, notices, taxing master's

allocator, sheriff's Returns of service, etcetera should be attached to the attorney's affidavit.

3. If the Registrar is satisfied with the contents of the affidavit, she may then issue the writ against the State. If she is not satisfied with the contents of the affidavit, she may raise queries with the judgment creditor's attorney, alternatively she may refuse to issue the writ until she is satisfied that all of the pre-requisites in the Act have been complied with. If the Registrar issues the writ, it may **only** be in respect of **movable** property, and the Registrar **must not endorse** that the attached property may be removed immediately by the sheriff.

**THE MAGISTRATE**

**REGIONAL COURT**

**27 SEPTEMBER 2017**