



GOVERNMENT GAZETTE

OF THE

REPUBLIC OF NAMIBIA

N\$3.60

WINDHOEK - 11 May 2000

No. 2327

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Government Notice

OFFICE OF THE PRIME MINISTER

No. 115	2000
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PROMULGATION OF ACT OF PARLIAMENT

The following Act which has been passed by the Parliament and signed by the President in terms of the Namibian Constitution is hereby published in terms of Article 56 of that Constitution.

No. 9 of 2000: International Co-operation in Criminal Matters Act, 2000

Act No. 9, 2000 INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS ACT, 2000

ACT

To facilitate the provision of evidence and the execution of sentences in criminal cases and the confiscation and transfer of the proceeds of crime between Namibia and foreign States; and to provide for matters connected therewith.

(Signed by the President on 19 April 2000)

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

**PART I
PRELIMINARY****Definitions**

1. In this Act, unless the context otherwise indicates -

“agreement” means an agreement in force under section 27, and includes a multilateral convention to which Namibia is a signatory or to which it has acceded and which has the same effect as such an agreement;

“appropriate government body” means any government body in a foreign State having the function of making, directing or receiving requests for assistance in criminal matters;

“compensatory order” means a compensatory order contemplated in section 13(1)(b);

“confiscation order” means a confiscation order made under the Prevention of Organised Crime Act, 2000;

“evidence” includes all books, documents and objects produced by a witness;

“foreign compensatory order” means a foreign compensatory order contemplated in section 15(1)(b);

“foreign confiscation order” means any order issued by a court or tribunal of competent jurisdiction in a foreign State, aimed at recovering the proceeds of any crime or the value of such proceeds;

“foreign restraint order” means any order issued by a court or tribunal of competent jurisdiction in a foreign State in respect of an offence under the law of that foreign State, aimed at restraining any person from dealing with any property to which such order relates;

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“foreign sentence” means a foreign sentence contemplated in section 15(1)(a);

“foreign State” means any State outside Namibia –

- (a) which is specified in Schedule 1; or
- (b) which is a party to an agreement,

and includes any territory under the sovereignty or control of such State;

“High Court” means the High Court of Namibia as defined in section 1 of the High Court Act, 1990 (Act No. 16 of 1990), and, for the purposes of sections 23 and 26, includes any judge thereof;

“letter of request” means a letter requesting assistance of the nature contemplated in sections 2, 13, 19 and 23;

“magistrate” includes an additional magistrate and an assistant magistrate;

“magistrate’s court”, in relation to -

- (a) any person against whom a foreign sentence or a foreign compensatory or confiscation order may be enforced, means the magistrate’s court of the district in which any such person -
 - (i) resides, carries on business or is employed; or
 - (ii) holds any movable or immovable property;
- (b) any corporate body against which a foreign sentence or a foreign compensatory or confiscation order may be enforced, means the magistrate’s court of the district in which the registered office or main place of business of such corporate body is situated;
- (c) any partnership against which a foreign sentence or a foreign compensatory or confiscation order may be enforced, means the magistrate’s court of the district in which -
 - (i) any place of business of such partnership is situated;
 - (ii) such partnership holds any movable or immovable property; or
 - (iii) any member thereof resides;
- (d) any foreign confiscation order dealing with any particular property, means the magistrate’s court of the district in which such property is to be found on the date of registration of any such foreign confiscation order;

“Minister” means the Minister of Justice;

“Permanent Secretary” means the Permanent Secretary: Justice;

“prescribed” means prescribed by regulation;

“presiding officer”, for the purposes of Part II, means a presiding officer as referred to in section 2(1);

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“proceedings” means criminal proceedings or any other proceedings before a court or tribunal of competent jurisdiction, instituted for the purpose of determining whether any act or omission or conduct involves or amounts to an offence by any person;

“property” means money or any other movable, immovable, corporeal or incorporeal thing, and includes any interest therein and all proceeds thereof;

“regulation” means any regulation made under section 32;

“requested State” means any foreign State to which a request for assistance in respect of any criminal matter in Namibia is directed;

“requesting State” means any foreign State from which a request for assistance in respect of any criminal matter is received;

“restraint order” means a restraint order made under the Prevention of Organised Crime Act, 2000;

“staff member” means a staff member as defined in section 1(1) of the Public Service Act, 1995 (Act No. 13 of 1995);

“this Act” includes a regulation made thereunder.

PART II MUTUAL PROVISION OF EVIDENCE

Issue of letters of request

2. (1) If, at any proceedings, it appears to a court or to the officer presiding at such proceedings (hereinafter in this Part referred to as the presiding officer) that the examination at such proceedings of a person who is in a foreign State is necessary in the interests of justice, and that the attendance of such person cannot be obtained without undue delay, expense or inconvenience, the court or presiding officer may, on application made to it or to him or her, issue a letter of request in which assistance from that foreign State is sought in obtaining such evidence as is stated in the letter of request for use at such proceedings.

(2) A judge in chambers or a magistrate may, on application made to him or her, issue a letter of request in which assistance from a foreign State is sought in obtaining such information as is stated in the letter of request for use in an investigation relating to an alleged offence, if he or she is satisfied -

- (a) that there are reasonable grounds for believing that an offence has been committed in Namibia or that it is necessary to determine whether an offence has been committed;
- (b) that an investigation in respect thereof is being conducted in Namibia; and
- (c) that for purposes of the investigation it is necessary in the interests of justice that information be obtained from a person or authority in that foreign State.

(3) Subject to subsection (4), a letter of request issued under this section shall be sent to the Permanent Secretary by the registrar or clerk of the court, as the case may be, for transmission -

- (a) to the court or tribunal specified in the letter of request, exercising jurisdiction in the area or place where the evidence or information is to be obtained; or

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- (b) to the appropriate government body in the requested State concerned.
- (4) (a) In a case of urgency, a letter of request issued under this section may be sent directly to the court or tribunal referred to in subsection (3)(a) or to the appropriate government body referred to in subsection (3)(b).
- (b) If a letter of request has been so dealt with, the Permanent Secretary shall without delay be notified thereof in writing by the registrar or clerk of the court, as the case may be, and be furnished with a copy of the letter of request.

Attendance at examination

3. (1) Where a letter of request has been issued under section 2(1), any party to the proceedings in question may, provided it is permitted by the law of the requested State concerned -

- (a) submit interrogatories which the court or presiding officer issuing the letter of request may attach to the letter of request; or
- (b) appear at the examination, either through a legal representative or, in the case of an accused who is not in custody or in the case of a private prosecutor, in person, and may examine, cross-examine and re-examine the witness.

(2) Where a letter of request has been issued under section 2(2), the person in charge of the investigation relating to the alleged offence may, provided it is permitted by the law of the requested State concerned -

- (a) submit interrogatories which the judge or magistrate issuing the letter of request may attach to the letter of request; or
- (b) appear at the examination and question the person concerned.
- (3) (a) Where proceedings have been instituted, and the application for a letter of request contemplated in section 2(1) is made by the State, the court or presiding officer may, as a condition of the letter of request, order that the costs of legal representation for the accused at the examination be paid by the State.
- (b) Notwithstanding the fact that a court or presiding officer has made an order contemplated in paragraph (a), the court or presiding officer may, if satisfied that a refusal by the accused to admit the evidence obtained by means of the letter of request is unreasonable and unjustifiable, at the conclusion of the proceedings make such order against the accused as to the costs of issuing and giving effect to the letter of request (including the costs of all related proceedings) as the court or presiding officer may reasonably deem appropriate.

Record of proceedings at examination

4. (1) The court or presiding officer issuing a letter of request under section 2(1), or the judge or magistrate issuing a letter of request under section 2(2), shall in such letter request -

- (a) that an accurate record of the proceedings at the examination of the witness be kept according to the procedure normally followed in the requested State concerned; and

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- (b) that the person presiding at the examination make an accurate record of the witness's refusal to answer any question or to produce any book, document or object, and of the reasons for such refusal.
- (2) (a) The court or presiding officer issuing a letter of request under section 2(1) may in such letter request that a video recording of the proceedings at the examination of the witness be made by a person designated for that purpose by the court or presiding officer or by the requested State concerned.
- (b) A video recording contemplated in paragraph (a) shall form part of the record of the proceedings at the examination of the witness and may be referred to by the court or presiding officer receiving the evidence obtained by the letter of request, but only to determine any fact regarding -
 - (i) the manner in which the examination was concluded;
 - (ii) the conduct and demeanour of the witness while giving evidence.

Admissibility of evidence obtained by letter of request

5. (1) Evidence obtained by a letter of request shall be deemed to be evidence under oath if it appears from the record that the witness was in terms of the law of the requested State concerned properly warned to tell the truth.

(2) Evidence obtained by a letter of request before proceedings have been instituted shall be admissible as evidence at any subsequent proceedings, and shall form part of the record of such proceedings, if -

- (a) each party against whom the evidence is to be adduced agrees to the admission thereof as evidence at such proceedings; or
- (b) the court, having regard to -
 - (i) the nature of the proceedings;
 - (ii) the nature of the evidence;
 - (iii) the purpose for which the evidence is tendered;
 - (iv) any prejudice to any party to the proceedings which the admission of such evidence might entail; and
 - (v) any other factor which in the opinion of the court should be taken into account,

is of the opinion that such evidence should be admitted in the interests of justice.

(3) The provisions of subsection (2) shall not render admissible any evidence which would have been inadmissible had such evidence been given at the subsequent proceedings by the witness from whom it was obtained.

(4) Evidence obtained by a letter of request issued by a court or presiding officer after proceedings have been instituted shall, in so far as such evidence is not otherwise inadmissible under the law of Namibia, be admitted by that court or presiding officer as evidence at such proceedings, and the evidence so admitted shall form part of the record of such proceedings.

Act No. 9, 2000 INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS ACT, 2000**Inspection of evidence obtained by letter of request**

6. Where a letter of request is issued after proceedings have been instituted, the evidence so obtained, together with the record of the proceedings at the examination of the witness, shall be open to inspection by the parties to such proceedings.

Foreign requests for assistance in obtaining evidence

7. (1) A request by a court or tribunal of competent jurisdiction in a foreign State, or by an appropriate government body in a foreign State, for assistance in obtaining evidence in Namibia for use in that foreign State shall be submitted to the Permanent Secretary or, in a case of urgency, directly to the magistrate's court within whose area of jurisdiction the person whose evidence is required resides or is.

(2) When a request from a foreign State for assistance in obtaining evidence in Namibia is in terms of subsection (1) received –

- (a) by the Permanent Secretary, the Permanent Secretary shall forward such request to the magistrate's court within whose area of jurisdiction the person whose evidence is required resides or is;
- (b) by such magistrate's court, the Permanent Secretary shall without delay be notified thereof in writing by the clerk of the court and be furnished with a certified copy of such request.

(3) Upon receipt by a magistrate's court of a request contemplated in subsection (1), that court shall satisfy itself -

- (a) that proceedings have been instituted in a court or tribunal of competent jurisdiction in the requesting State concerned; or
- (b) that -
 - (i) there are reasonable grounds for believing that an offence has been committed in that requesting State or that it is necessary to determine whether an offence has been so committed; and
 - (ii) an investigation in respect thereof is being conducted in that requesting State.

(4) For the purposes of subsection (3), a court may rely on a certificate purporting to be issued by any competent authority of the requesting State concerned, stating the facts contemplated in paragraph (a) or (b) of that subsection.

Examination of witnesses

8. (1) When a request from a foreign State for assistance in obtaining evidence in Namibia is in terms of section 7(1) or (2)(a) received by the magistrate's court within whose area of jurisdiction the person whose evidence is required resides or is, any magistrate of that court shall, if he or she is satisfied as contemplated in section 7(3), cause the person whose evidence is required, to be subpoenaed to appear and give evidence or produce any book, document or object before him or her, and upon the appearance of such person the magistrate shall administer an oath to or accept an affirmation from him or her and take his or her evidence upon interrogatories or otherwise as requested, as if such person were a witness in a magistrate's court in proceedings similar to those in connection with which his or her evidence is required: Provided that a person who, from lack of knowledge arising from youth, defective education or other

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cause, is found to be unable to understand the nature and import of the oath or the affirmation, may be admitted to give evidence in the proceedings without taking the oath or making the affirmation: Provided further that such person shall, in lieu of the oath or affirmation, be admonished by the magistrate to speak the truth, the whole truth and nothing but the truth.

(2) Any person whose evidence is required in terms of subsection (1) shall be subpoenaed in the same manner as a person may be subpoenaed to appear as a witness in proceedings in a magistrate's court.

(3) Upon completion of the examination of a witness, the magistrate taking the evidence shall transmit to the Permanent Secretary the record of the evidence certified by him or her to be correct, together with a certificate showing the amount of all costs and expenses incurred in connection with the examination of the witness.

(4) If the services of an interpreter were used at an examination under subsection (1), the interpreter shall certify that he or she has translated truthfully and to the best of his or her ability, and such certificate shall accompany the record of the evidence referred to in subsection (3).

Rights and privileges of witnesses

9. (1) In respect of the giving of evidence or the production of any book, document or object at an examination under section 8, the law relating to privilege as applicable to a witness giving evidence or subpoenaed to produce a book, document or object in a magistrate's court in similar proceedings, shall apply.

(2) Where a witness at such an examination claims privilege on the ground that he or she could not have been compelled to give the particular evidence in criminal proceedings in the requesting State concerned, the magistrate shall record the witness's objection and may postpone the proceedings in order to obtain from any competent authority of that requesting State an intimation as to whether or not the witness could in criminal proceedings in that requesting State be compelled to give the evidence in question.

(3) Where a witness's claim to privilege contemplated in subsection (2) is not recognised by the law of the requesting State concerned, the magistrate shall reject the witness's objection and proceed to take the evidence in question.

(4) Any person required to give evidence at an examination under section 8 shall be entitled to payment of such expenses and fees as are payable to witnesses in a magistrate's court in proceedings similar to those in connection with which his or her evidence is required.

Offences by witnesses

10. (1) Any person subpoenaed in terms of section 8(1) to appear and give evidence or produce any book, document or object before a magistrate conducting an examination who, without sufficient cause, fails to attend at the time and place specified in the subpoena or to remain in attendance until the conclusion of the examination or until he or she is excused from further attendance by the magistrate conducting the examination, or refuses to be sworn or to make an affirmation as a witness, or having been sworn or having made an affirmation or having been admonished, fails to answer satisfactorily any question put to him or her, or fails to produce any book, document or object in his or her possession or custody or under his or her control, which he or she was subpoenaed to produce, shall be guilty of an offence and liable on conviction to a fine not exceeding N\$1 000 or to imprisonment for a period not exceeding three months.

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(2) Any person who, after having been sworn or having made an affirmation or having been admonished in terms of section 8(1), gives false evidence before the person conducting an examination, knowing such evidence to be false or not knowing or believing it to be true, shall be guilty of an offence and liable on conviction to the penalties prescribed by law for perjury.

Attendance of witnesses in foreign States

11. (1) When a subpoena purporting to be issued by a proper officer of a competent court of law or tribunal in any foreign State for the attendance of any person in any proceedings before that court or tribunal, is received from such officer by any magistrate within whose area of jurisdiction such person resides or is, that magistrate shall, if he or she is satisfied that the subpoena was lawfully issued, endorse it for service upon such person, whereupon it may be served as if it were a subpoena issued in the court of that magistrate in proceedings similar to those in connection with which it was issued.

(2) Upon service of a subpoena under subsection (1) on any person, an amount sufficient to cover such person's reasonable expenses in connection with his or her attendance in the proceedings shall be tendered to him or her.

(3) Any person subpoenaed under this section who, without sufficient cause, fails to attend at the time and place specified in the subpoena, shall be guilty of an offence and liable on conviction to a fine not exceeding N\$1 000 or to imprisonment for a period not exceeding three months.

(4) Any magistrate's court within whose area of jurisdiction the subpoena has been served or the person subpoenaed resides, shall have jurisdiction to try such person for a contravention of subsection (3).

(5) For the purposes of subsection (3), a return of service showing that the subpoena was properly served on the person concerned, together with a certificate by the presiding officer of the court or tribunal where such person was required to appear, stating that such person failed to appear at the time and place specified in the subpoena, shall be *prima facie* proof that such person failed so to appear.

Witnesses from foreign States attending court in Namibia not to be arrested in Namibia for certain matters

12. No witness residing in a foreign State and who is required to appear in any proceedings before a court in Namibia shall, while attending that court, be liable to be arrested in Namibia on any criminal charge for any offence committed or allegedly committed in Namibia before his or her entry into Namibia for the purpose of his or her attendance in such proceedings.

PART III**MUTUAL EXECUTION OF SENTENCES AND COMPENSATORY ORDERS****Request to foreign States for assistance in recovering fines or enforcing compensatory orders**

13. (1) If, on application made to it, it appears to a court –
- (a) which has sentenced a person in criminal proceedings to the payment of a fine; or

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- (b) which has made an order against a person in such proceedings for the payment of compensation for damages to another person,

that a sufficient amount of money for the recovery of such fine or compensation cannot be realised in Namibia and that the person on whom such sentence has been imposed or against whom such order has been made holds property in a foreign State, the court may issue a letter of request in which assistance from that foreign State is sought in recovering such fine or enforcing such order in that foreign State.

(2) The amount of money to be levied by such letter of request shall be sufficient to cover, in addition to the amount of the relevant fine or compensatory order, all costs and expenses incurred in connection with the issue of that letter of request and the recovery of that fine or compensation.

(3) A letter of request issued under subsection (1) shall be sent to the Permanent Secretary by the registrar or clerk of the court, as the case may be, for transmission -

- (a) to the court or tribunal specified in the letter of request, exercising jurisdiction in the area or place where the fine or compensation is to be recovered; or
- (b) to the appropriate government body in the requested State concerned.

Satisfaction of fines or compensatory orders

14. Any amount recovered pursuant to a letter of request issued under section 13, less the amount of all costs and expenses incurred in connection therewith, shall first be applied to satisfy or, if such amount is not sufficient, to reduce the outstanding amount of the relevant fine, and thereafter the balance shall be applied to satisfy or, if such amount is not sufficient, to reduce the outstanding amount of the relevant compensatory order.

Registration of foreign sentences or compensatory orders

15. (1) When the Permanent Secretary receives a request from a foreign State for assistance in Namibia -

- (a) in recovering a fine to which a person has been sentenced in criminal proceedings in that foreign State; or
- (b) in enforcing an order made against a person in such proceedings for the payment of compensation for damages to another person,

the Permanent Secretary shall, if he or she is satisfied -

- (i) that such sentence or order is final and no longer subject to review or appeal;
- (ii) that the person on whom such sentence was imposed or against whom such order was made had the opportunity to defend the proceedings in which that sentence was imposed or that order was made;
- (iii) that such sentence or order cannot be satisfied in full in the foreign State in which it was imposed or made; and
- (iv) that the person concerned holds property in Namibia,

submit the request to the Minister for his or her approval to recover such fine or to enforce such order in Namibia.

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(2) Upon receiving the Minister's approval contemplated in subsection (1), the Permanent Secretary shall lodge with the clerk of a magistrate's court in Namibia a certified copy of the document evidencing the foreign sentence or of the foreign compensatory order to which such approval relates.

(3) When a certified copy of the document evidencing a foreign sentence or of a foreign compensatory order is lodged with the clerk of a magistrate's court in Namibia, that clerk of the court shall register the foreign sentence or the foreign compensatory order in respect of the balance of the amount payable thereunder.

(4) The clerk of the court registering a foreign sentence or a foreign compensatory order shall forthwith issue a notice in writing, addressed to the person on whom such sentence has been imposed or against whom such order has been made, informing such person –

- (a) that such sentence or order has been registered at the magistrate's court concerned; and
 - (b) that such person may, within the prescribed period and in the prescribed manner, apply to that court for the setting aside of the registration of such sentence or order.
- (5) (a) Where the person on whom a foreign sentence has been imposed or against whom a foreign compensatory order has been made is present in Namibia, the notice contemplated in subsection (4) shall be served on such person in the prescribed manner.
- (b) Where the person on whom a foreign sentence has been imposed or against whom a foreign compensatory order has been made is not present in Namibia –
- (i) the notice contemplated in subsection (4) shall, in the prescribed manner, be served on any other person who has effective control over the relevant property in Namibia; or
 - (ii) where no other person has effective control over such property or the person having such control cannot be identified, the first-mentioned person shall, in the prescribed manner, be informed of the registration of the foreign sentence or the foreign compensatory order.

Minister may exercise discretion

16. Without limiting the Minister's discretion in any manner, he or she may refuse a request for the execution of a foreign pecuniary sentence or foreign compensatory order submitted to him or her in terms of section 15(1) if he or she is satisfied that the surrender of the person on whom such sentence was imposed or against whom such order was made, would not have been ordered under any law of Namibia relating to extradition, had a request for the extradition of such person been received.

Effect of registration of foreign sentence or compensatory order, and execution

17. (1) When a foreign sentence or foreign compensatory order has been registered in terms of section 15, such sentence or order shall have the effect of a civil judgment of the court at which that sentence or order has been so registered.

(2) Notwithstanding anything to the contrary in this section or in any other law contained, a foreign sentence or foreign compensatory order registered in terms of section 15 shall not be executed before the expiration of the period within which an application

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contemplated in section 15(4)(b) may be made, or, if such application has been made, before the application has been finally decided.

(3) The Permanent Secretary shall, subject to any agreement or arrangement between the requesting State concerned and Namibia, pay over to that requesting State any amount recovered pursuant to a foreign sentence or foreign compensatory order, less all expenses incurred in connection with the execution of such sentence or order.

Setting aside of registration of foreign sentence or compensatory order

18. (1) The registration of a foreign sentence or foreign compensatory order in terms of section 15 shall, on the application of any person on whom such sentence has been imposed or against whom such order has been made, be set aside if the court at which the foreign sentence or foreign compensatory order is registered is satisfied -

- (a) that such sentence or order was registered contrary to any provision of this Act;
- (b) that the court or tribunal of the requesting State concerned had no jurisdiction in the matter;
- (c) that such sentence or order is subject to review or appeal;
- (d) that the person on whom such sentence was imposed or against whom such order was made did not receive notice of the proceedings in which that sentence was imposed or that order was made, as prescribed by the law of the requesting State concerned, or, if no such notice is so prescribed, that he or she did not receive reasonable notice of such proceedings so as to enable him or her to defend the proceedings, and did not appear at such proceedings;
- (e) that the enforcement of such sentence or order would be contrary to the interests of justice; or
- (f) that such sentence or order has been satisfied in whatever manner, including the serving of a term of imprisonment in default of payment.

(2) The court hearing an application referred to in subsection (1) may at any time postpone the hearing of the application to such date as it may determine.

PART IV**CONFISCATION AND TRANSFER OF PROCEEDS OF CRIME****Request to foreign States for assistance in enforcing confiscation orders**

19. (1) Where a court in Namibia makes a confiscation order, the court may, on application made to it, issue a letter of request in which assistance from a foreign State is sought in enforcing such order in that foreign State, if it appears to the court that a sufficient amount of money to satisfy such order cannot be realised in Namibia and that the person against whom such order has been made holds property in that foreign State.

(2) The amount of money to be levied by such letter of request shall be sufficient to cover, in addition to the amount of the relevant confiscation order, all costs and expenses incurred in connection with the issue of that letter of request and the execution of that confiscation order.

(3) A letter of request issued under subsection (1) shall be sent to the Permanent Secretary by the registrar or clerk of the court, as the case may be, for transmission -

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- (a) to the court or tribunal specified in the letter of request, exercising jurisdiction in the area or place where the confiscation order is to be enforced; or
- (b) to the appropriate government body in the requested State concerned.

Registration of foreign confiscation orders

20. (1) When the Permanent Secretary receives a request from a foreign State for assistance in enforcing a foreign confiscation order in Namibia, he or she shall, if satisfied -

- (a) that such order is final and no longer subject to review or appeal;
- (b) that the person against whom such order was made had the opportunity to defend the proceedings in which that order was made;
- (c) that such order cannot be satisfied in full in the foreign State in which it was made;
- (d) that such order is enforceable in the requesting State concerned; and
- (e) that the person concerned holds property in Namibia,

submit such request to the Minister for his or her approval to enforce such order in Namibia.

(2) Upon receipt of the Minister's approval contemplated in subsection (1), the Permanent Secretary shall lodge with the clerk of a magistrate's court in Namibia a certified copy of the foreign confiscation order to which such approval relates.

(3) When a certified copy of a foreign confiscation order is lodged with the clerk of a magistrate's court in Namibia, that clerk of the court shall register the foreign confiscation order -

- (a) where such order was made for the payment of money, in respect of the balance of the amount payable thereunder; or
- (b) where such order was made for the recovery of particular property, in respect of the property specified therein.

(4) The clerk of the court registering a foreign confiscation order shall forthwith issue a notice in writing, addressed to the person against whom such order has been made, informing such person -

- (a) that such order has been registered at the magistrate's court concerned; and
- (b) that such person may, within the prescribed period and in the prescribed manner, apply to that court for the setting aside of the registration of such order.

(5) (a) Where the person against whom a foreign confiscation order has been made is present in Namibia, the notice contemplated in subsection (4) shall be served on such person in the prescribed manner.

(b) Where the person against whom a foreign confiscation order has been made is not present in Namibia -

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- (i) the notice contemplated in subsection (4) shall, in the prescribed manner, be served on any other person who has effective control over the relevant property in Namibia; or
- (ii) where no other person has effective control over such property or the person having such control cannot be identified, the first-mentioned person shall, in the prescribed manner, be informed of the registration of the foreign confiscation order.

Effect of registration of foreign confiscation order, and execution

21. (1) When a foreign confiscation order has been registered in terms of section 20, such order shall have the effect of a civil judgment of the court at which that order has been so registered.

(2) Notwithstanding anything to the contrary in this section or in any other law contained, a foreign confiscation order registered in terms of section 20 shall not be executed before the expiration of the period within which an application contemplated in section 20(4)(b) may be made, or, if such application has been made, before the application has been finally decided.

(3) The Permanent Secretary shall, subject to any agreement or arrangement between the requesting State concerned and Namibia, pay over to that requesting State any amount recovered pursuant to a foreign confiscation order, less all expenses incurred in connection with the execution of such order.

Setting aside of registration of foreign confiscation order

22. (1) The registration of a foreign confiscation order in terms of section 20 shall, on the application of any person against whom such order has been made, be set aside if the court at which the foreign confiscation order is registered is satisfied -

- (a) that such order was registered contrary to any provision of this Act;
- (b) that the court or tribunal of the requesting State concerned had no jurisdiction in the matter;
- (c) that such order is subject to review or appeal;
- (d) that the person against whom such order was made did not receive notice of the proceedings in which that order was made, as prescribed by the law of the requesting State concerned, or, if no such notice is so prescribed, that he or she did not receive reasonable notice of such proceedings so as to enable him or her to defend the proceedings, and did not appear at such proceedings;
- (e) that the enforcement of such order would be contrary to the interests of justice; or
- (f) that such order has been satisfied in full.

(2) The court hearing an application referred to in subsection (1) may at any time postpone the hearing of the application to such date as it may determine.

Request to foreign States for assistance in enforcing restraint orders

23. (1) Where the High Court makes a restraint order, the High Court may, on application made to it, issue a letter of request in which assistance from a foreign

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State is sought in enforcing such order in that foreign State, if it appears to the High Court that the person against whom such order has been made holds property in that foreign State.

(2) A letter of request issued under subsection (1) shall be sent to the Permanent Secretary by the registrar of the High Court for transmission -

- (a) to the court or tribunal specified in the letter of request, exercising jurisdiction in the area or place where the restraint order is to be enforced; or
- (b) to the appropriate government body in the requested State concerned.

Registration of foreign restraint orders

24. (1) When the Permanent Secretary receives a request from a foreign State for assistance in enforcing a foreign restraint order in Namibia, he or she shall, if satisfied that such order is final and no longer subject to review or appeal, lodge a certified copy of such order with the registrar of the High Court.

(2) When a certified copy of a foreign restraint order is lodged with the registrar of the High Court in terms of subsection (1), that registrar shall register such order in respect of the property specified therein.

(3) Upon registering a foreign restraint order, the registrar of the High Court shall forthwith issue a notice in writing, addressed to the person against whom such order has been made, informing such person -

- (a) that such order has been registered at the High Court; and
 - (b) that such person may, within the prescribed period and in terms of the rules of court, apply to the High Court for the setting aside of the registration of such order.
- (4) (a) Where the person against whom a foreign restraint order has been made is present in Namibia, the notice contemplated in subsection (3) shall be served on such person in the prescribed manner.
- (b) Where the person against whom a foreign restraint order has been made is not present in Namibia -
- (i) the notice contemplated in subsection (3) shall, in the prescribed manner, be served on any other person who has effective control over the relevant property in Namibia; or
 - (ii) where no other person has effective control over such property or the person having such control cannot be identified, the first-mentioned person shall, in the prescribed manner, be informed of the registration of the foreign restraint order.

Effect of registration of foreign restraint order

25. When a foreign restraint order has been registered in terms of section 24, such order shall have the effect of a restraint order made by the High Court.

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26. (1) The registration of a foreign restraint order in terms of section 24 shall, on the application of any person against whom such order has been made, be set aside if the High Court is satisfied -

- (a) that such order was registered contrary to any provision of this Act;
- (b) that the court or tribunal of the requesting State concerned had no jurisdiction in the matter;
- (c) that such order is subject to review or appeal;
- (d) that the enforcement of such order would be contrary to the interests of justice; or
- (e) that the sentence or order in support of which the foreign restraint order was made, has been satisfied in full.

(2) The High Court hearing an application referred to in subsection (1) may at any time postpone the hearing of the application to such date as it may determine.

**PART V
MISCELLANEOUS**

Minister may enter into agreements

27. (1) Subject to the provisions of Article 32(3)(e) of the Namibian Constitution, the Minister may, on such conditions as he or she may deem fit, enter into an agreement with any State (other than a State mentioned in Schedule 1) outside Namibia for the provision of mutual assistance in criminal matters, and may likewise agree to any amendment or revocation of such an agreement.

(2) No agreement referred to in subsection (1), or any amendment or revocation thereof, shall be of any force or effect until the ratification of, or accession to, or amendment or revocation of such an agreement has been agreed to by the National Assembly.

(3) The Minister shall as soon as practicable after the National Assembly has agreed to the ratification of, or accession to, or amendment or revocation of an agreement referred to in subsection (1), give notice thereof in the *Gazette*.

Delegation of powers and assignment of duties

28. (1) The Minister may, subject to such conditions as he or she may determine, delegate any power, excluding the power to enter into agreements under section 27 or to make regulations under section 32, or assign any duty entrusted to him or her by or under this Act to any staff member of the Ministry of Justice.

(2) Any power exercised or duty performed in terms of a delegation or an assignment under subsection (1) shall be deemed to have been exercised or performed by the Minister.

(3) A delegation or an assignment under subsection (1) shall not divest or relieve the Minister of the power or duty so delegated or assigned.

Act No. 9, 2000 INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS ACT, 2000**Admissibility of foreign documents**

29. Any deposition, affidavit, certificate or record of any conviction, or any document evidencing any order of a court or tribunal, issued in a foreign State, or any copy or sworn translation thereof, may be received in evidence at any proceedings in terms of a provision of this Act if it is -

- (a) authenticated in the manner in which foreign documents are authenticated to enable them to be produced in any court in Namibia; or
- (b) authenticated in the manner provided for in any agreement entered into with the foreign State concerned.

Act not to limit provision of other assistance

30. Nothing in this Act contained shall be construed so as to prevent or abrogate or derogate from any arrangement or practice for the provision or obtaining of international co-operation in criminal matters otherwise than in the manner provided for by this Act.

Conversion of currencies

31. If any amount -

- (a) recovered in terms of section 13 or 19 in a requested State; or
- (b) payable in terms of a foreign sentence or foreign compensatory order registered under section 15 or a foreign confiscation order registered under section 20,

is expressed in a currency other than that of Namibia, such amount shall be converted into the currency of Namibia on the basis of the exchange rate -

- (i) which, in the case of an amount recovered as contemplated in paragraph (a), prevails on the date on which payment is made in the requested State; or
- (ii) which, in the case of an amount payable as contemplated in paragraph (b), prevailed on the date on which the foreign sentence or the foreign compensatory or confiscation order in question was so registered.

Regulations

32. (1) The Minister may make regulations not inconsistent with the provisions of this Act -

- (a) with regard to the proof of any matter for the purposes of this Act;
 - (b) prescribing any matter which is required or permitted to be prescribed under this Act; and
 - (c) providing, generally, for any matter in respect of which the Minister considers it necessary or expedient to make regulations with a view to achieving the objects of this Act.
- (2) Different regulations may be made in respect of different foreign States.

Act No. 9, 2000 INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS ACT, 2000**Amendment of Schedule 1**

33. The Minister may by notice in the *Gazette* amend Schedule 1 by the inclusion therein or the deletion therefrom of any foreign State.

Rules

34. (1) Any power to make rules under the Supreme Court Act, 1990 (Act No. 15 of 1990), or the High Court Act, 1990 (Act No. 16 of 1990), shall be deemed to include the power to make rules so as to give effect to the provisions of sections 24 and 26 of this Act.

(2) Any power to make rules under the Magistrates' Courts Act, 1944 (Act No. 32 of 1944), shall be deemed to include the power to make rules so as to give effect to the provisions of sections 8, 15, 18, 20 and 22 of this Act.

Amendment of laws

35. The laws mentioned in Schedule 2 are hereby amended to the extent indicated in the third column thereof.

Short title and commencement

36. This Act shall be called the International Co-operation in Criminal Matters Act, 2000, and shall come into operation on a date to be fixed by the Minister by notice in the *Gazette*.

Act No. 9, 2000 INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS ACT, 2000**SCHEDULE 1****CERTAIN FOREIGN STATES IN RESPECT OF WHICH ACT APPLIES**

Democratic Republic of Congo
Kingdom of Lesotho
Kingdom of Swaziland
Republic of Angola
Republic of Botswana
Republic of Malawi
Republic of Mauritius
Republic of Mozambique
Republic of Seychelles
Republic of South Africa
Republic of Zambia
Republic of Zimbabwe
United Republic of Tanzania

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SCHEDULE 2
(Section 35)

LAWS AMENDED

Number and year of law	Short title	Extent of amendment
Act No. 94 of 1974	Second General Law Amendment Act, 1974	<p>The substitution for section 2 of the following section:</p> <p>“Prohibition of furnishing of information as to business carried on in or outside Namibia, in compliance with order, direction or letters of request issued or emanating from outside Namibia</p> <p>2. (1) Notwithstanding anything to the contrary contained in any law or other legal rule, and except with the permission of the Minister of Trade and Industry, no person shall in compliance with any order, direction or letters of request issued or emanating from outside Namibia in connection with any civil proceedings, furnish any information as to any business, whether carried on in or outside Namibia.</p> <p>(2) The permission contemplated in subsection (1) may –</p> <p>(a) be granted either by notice in the <i>Gazette</i> or by written authority addressed to a particular person;</p> <p>(b) be granted subject to such conditions as the said Minister may deem fit;</p> <p>(c) relate only to specified goods or businesses or classes of goods or businesses or to orders, directions or letters of request issued in a specified country;</p> <p>(d) if it is granted by notice in the <i>Gazette</i>, relate only to specified persons or classes of persons.</p> <p>(3) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and on conviction liable to a fine not exceeding N\$8 000 or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.”</p>
Act No. 51 of 1977	Criminal Procedure Act, 1977	<p>1. The amendment of Section 171 -</p> <p>(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:</p> <p>“(a) Whenever criminal proceedings are pending before any court and it appears to such court on application made to it that the examination of any witness who is resident in Namibia is necessary in the interests of justice and that the attendance of such witness cannot be obtained without undue delay, expense or inconvenience, the court may dispense with such attendance and issue a commission to any magistrate.”;</p>

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Act No. 16 of 1990	High Court Act, 1990	<p>(b) by the substitution for paragraphs (a) and (b) of subsection (2) of the following paragraphs, respectively:</p> <p>“(a) The magistrate to whom the commission is issued, shall proceed to the place where the witness is or shall summon the witness before him or her, and take down the evidence in the manner set out in paragraph (b).</p> <p>(b) The witness shall give his or her evidence upon oath or affirmation, and such evidence shall be recorded and read over to the witness, and, if he or she adheres thereto, be subscribed by him or her and the magistrate concerned.”; and</p> <p>(c) by the deletion of paragraph (c) of subsection (2).</p> <p>2. The substitution for section 172 of the following section:</p> <p>“Parties may examine witness</p> <p>172. Any party to proceedings in which a commission is issued under section 171, may -</p> <p>(a) transmit interrogatories in writing which the court issuing the commission may think relevant to the issue, and the magistrate to whom the commission is issued, shall examine the witness upon such interrogatories; or</p> <p>(b) appear before such magistrate, either by a legal representative or, in the case of an accused who is not in custody or in the case of a private prosecutor, in person, and examine the witness.”.</p> <p>3. The substitution for section 173 of the following section :</p> <p>“Evidence on commission part of court record</p> <p>173. The Magistrate shall return the evidence in question to the court which issued the commission, and such evidence shall be open to the inspection of the parties to the proceedings and shall, in so far as it is admissible as evidence in such proceedings, form part of the record of such court.”.</p> <p>The amendment of section 29 by the substitution for subsection (1) of the following subsection:</p> <p>“(1) Whenever a commission rogatoire or letter of request in connection with any civil proceedings received from any State or territory or court outside Namibia, is transmitted to the registrar by the Permanent Secretary: Justice, together with a translation in English, if the original is in any other language, and an intimation that the Minister considers it desirable that effect should be given thereto without requiring an application to be made to the High Court by the agents, if any, of the parties to the action or matter, the registrar shall submit the same to a judge in chambers in order to give effect to such commission rogatoire or letter of request.”.</p>
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Act No. 6 of 1993	Inquests Act, 1993	<p>The amendment of section 17 by the substitution for subsection (1) of the following subsection :</p> <p>“(1) Whenever in the course of any inquest proceedings it appears to the judicial officer holding the inquest that the examination of a witness is necessary and that the attendance of such witness cannot be procured without such delay, expense or inconvenience as would in the circumstances be unreasonable, the judicial officer may dispense with such attendance and may appoint a person to be commissioner to take the evidence of such witness in regard to such matters or facts as the judicial officer may indicate, and thereupon the provisions of section 171 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall with the necessary changes apply.”.</p>
Act No. 28 of 1994	Enforcement of Foreign Civil Judgments Act, 1994	<p>The amendment of section 1 by the substitution for the definition of “judgment” of the following definition :</p> <p>“‘judgment’ means any final judgment or order for the payment of money, given or made before or after the commencement of this Act by any court in any civil proceedings, and which is enforceable by execution in the country in which it was given or made, but does not include any judgment or order given or made by any court on appeal from a judgment or order of a court other than a court as defined in this Act, or for the payment of any tax or charge of a like nature or of any fine or other penalty, or for the periodical payment of sums of money towards the maintenance of any person;”.</p>
Act No. 2 of 1995	Foreign Courts Evidence Act, 1995	<p>1. The substitution for section 2 of the following section:</p> <p>“High Court may order examination of witness in Namibia in connection with civil proceedings pending in a foreign court</p> <p>2. (1) If upon an application in the High Court of Namibia, it appears to the court or any judge that a court of law of competent jurisdiction outside Namibia, before which any civil proceedings are pending, is desirous of obtaining the evidence in relation to such proceedings of any witness within the High Court’s jurisdiction, the court or judge hearing the application may grant an order for the examination of such witness before a person named in such order.</p> <p>(2) Such an order shall not be granted if it appears to the court or judge that the evidence required is the furnishing of information in contravention of the provisions of section 2 of the Second General Law Amendment Act, 1974 (Act No. 94 of 1974).”.</p> <p>2. The amendment of section 4 by the deletion of subsection (3).</p> <p>3. The amendment of section 7 by the substitution for subsection (1) of the following subsection:</p>

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		<p>“(1) Whenever a subpoena purporting to be issued by the proper officer of a competent court of law in any country mentioned in the Second Schedule is received from any such officer by any magistrate within whose area of jurisdiction the person named in such subpoena resides or is, or is alleged to be residing, for the attendance of such person to give evidence or to produce any book, paper or document in his or her possession or custody or under his or her control in such country –</p> <ul style="list-style-type: none">(a) in any civil proceedings before a competent court of law;(b) at a bail application;(c) at any meeting of creditors to be held in terms of a law of any such country similar to section 40 of the Insolvency Act, 1936 (Act No. 24 of 1936);(d) before a commission of inquiry to which the provisions of a law of any such country similar to the provisions of the Commissions Act, 1947 (Act No. 8 of 1947), apply;(e) at an inquest;(f) at a maintenance inquiry held in terms of a law of any such country similar to the Maintenance Act, 1963 (Act No. 23 of 1963);(g) at a meeting of creditors, members or contributories to be held in terms of a law of any such country similar to section 412 of the Companies Act, 1973 (Act No. 61 of 1973), or sections 66 and 78 of the Close Corporations Act, 1988 (Act No. 26 of 1988);(h) for purposes of an examination held in any such country similar to an examination contemplated in section 205 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977); or(i) at an inquiry held in terms of a law of any such country similar to section 13 or 30 of the Abuse of Dependence-producing Substances and Rehabilitation Centres Act, 1971 (Act No. 41 of 1971), <p>such magistrate shall, if he or she is satisfied that the subpoena was lawfully issued, endorse it for service upon such person as if it were a subpoena duly issued in proceedings similar to those in connection with which it was issued.”</p>
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