

Namibia

## International Co-operation in Criminal Matters Act, 2000

Act 9 of 2000

Legislation as at 25 July 2023

FRBR URI: /akn/na/act/2000/9/eng@2023-07-25

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# International Co-operation in Criminal Matters Act, 2000

## Contents

Part I – PRELIMINARY .....	1
1. Definitions .....	1
1A. Central Authority .....	4
Part II – MUTUAL PROVISION OF EVIDENCE .....	5
2. Issue of letters of request .....	5
2A. Non-disclosure of requests for assistance .....	5
3. Attendance at examination .....	6
4. Record of proceedings at examination .....	6
5. Admissibility of evidence obtained by letter of request .....	7
6. Inspection of evidence obtained by letter of request .....	7
7. Foreign requests for assistance in obtaining evidence .....	7
7A. Non-disclosure of requests for assistance .....	8
8. Examination of witnesses .....	8
9. Rights and privileges of witnesses .....	9
10. Offences by witnesses .....	9
11. Attendance of witnesses in foreign States .....	10
11A. Arrangement for persons to give evidence or assist in investigations .....	10
11B. Request for attendance of persons in Namibia .....	11
11C. Use of video conferencing technology in obtaining evidence .....	11
12. Witnesses from foreign States attending court in Namibia not to be arrested in Namibia for certain matters .....	12
Part III – MUTUAL EXECUTION OF SENTENCES AND COMPENSATORY ORDERS .....	12
13. Request to foreign States for assistance in recovering fines or enforcing compensatory orders .....	12
14. Satisfaction of fines or compensatory orders .....	12
15. Registration of foreign sentences or compensatory orders .....	12
16. Minister may exercise discretion .....	13
17. Effect of registration of foreign sentence or compensatory order, and execution .....	14
18. Setting aside of registration of foreign sentence or compensatory order .....	14
Part IV – CONFISCATION AND TRANSFER OF PROCEEDS OF CRIME .....	14
19. Request to foreign States for assistance in enforcing confiscation orders .....	14
20. Registration of foreign confiscation orders .....	15
21. Effect of registration of foreign confiscation order, and execution .....	16
22. Setting aside of registration of foreign confiscation order .....	16
23. Request to foreign States for assistance in enforcing restraint orders .....	16

24. Registration of foreign restraint orders .....	16
25. Effect of registration of foreign restraint order .....	17
26. Setting aside of registration of foreign restraint order .....	17
26A. Request to foreign States for assistance in enforcing preservation or forfeiture orders .....	17
26B. Registration of foreign preservation or forfeiture orders .....	18
26C. Effect of registration of foreign preservation or forfeiture order .....	18
26D. Setting aside of registration of foreign preservation or forfeiture order .....	19
Part V – MISCELLANEOUS .....	19
27. Minister may enter into agreements .....	19
28. Delegation of powers and assignment of duties .....	19
29. Admissibility of foreign documents .....	19
30. Act not to limit provision of other assistance .....	20
31. Conversion of currencies .....	20
32. Regulations .....	20
33. Amendment of Schedule 1 .....	20
34. Rules .....	20
35. Amendment of laws .....	20
36. Short title and commencement .....	21
Schedule 1 .....	21
Schedule 2 .....	21





Republic of Namibia  
**Annotated Statutes**

# International Co-operation in Criminal Matters Act, 2000

## Act 9 of 2000

[Published in Government Gazette 2327 on 11 May 2000](#)

[Assented to on 19 April 2000](#)

[Commenced on 15 September 2001 by Commencement of International Co-operation in Criminal Matters Act, 2000](#)

[\[This is the version of this document from 25 July 2023 and includes any amendments published up to 3 May 2024.\]](#)

[\[Amended by Amendment of Schedule 1 of the International Co-operation in Criminal Matters Act, 2000 \(Government Notice 107 of 2005\) on 1 September 2005\]](#)

[\[Amended by Amendment of Schedule 1: International Co-operation in Criminal Matters Act, 2000 \(Government Notice 167 of 2006\) on 2 October 2006\]](#)

[\[Amended by Prevention of Organised Crime Act, 2004 \(Act 29 of 2004\) on 5 May 2009\]](#)

[\[Amended by International Co-operation in Criminal Matters Amendment Act, 2018 \(Act 20 of 2018\) on 31 December 2018\]](#)

[\[Amended by International Co-operation in Criminal Matters Amendment Act, 2023 \(Act 12 of 2023\) on 25 July 2023\]](#)

[\[The Act is also amended by the Criminal Procedure Act 25 of 2004 \(GG 3359\). However, that Act was repealed before coming into force.\]](#)

[\[This Act was amended by section 1 of Act 20 of 2018 by the substitution for the phrase “Permanent Secretary” wherever it appeared of the phrase “Central Authority”, except in section 1.\]](#)

## 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.

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

### Part I – PRELIMINARY

#### 1. Definitions

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\(1\)\(b\)](#);

**“Central Authority”** means the Central Authority referred to in [section 1A](#);

[definition of “Central Authority” inserted by section 2 of Act 20 of 2018]

**“confiscation order”** means a confiscation or forfeiture order made under the Prevention of Organised Crime Act, 2004 (Act [No. 29 of 2004](#));

[definition of “confiscation order” substituted by Act 29 of 2004]

**“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 forfeiture order”** means an order which has been issued by a court in a foreign State to forfeit to that State any instrumentality of an offence, intended instrumentality of an offence, proceeds of unlawful activities or unexplained assets, in respect of which the order has been so issued;

[definition of “foreign forfeiture order” inserted by section 1(a) of Act 12 of 2023]

**“foreign preservation order”** means an order which has been issued by a court in a foreign State to prohibit any person, subject to such conditions and exceptions as may be specified in the order, from dealing in any manner with the instrumentality of an offence, intended instrumentality of an offence, proceeds of unlawful activities or unexplained assets;

[definition of “foreign preservation order” inserted by section 1(a) of Act 12 of 2023]

**“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;

**“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;

**“forfeiture order”** means a forfeiture property order referred to in section 1 of the Prevention of Organised Crime Act, 2004 (Act [No. 29 of 2004](#));

[definition of “forfeiture order” inserted by section 1(b) of Act 12 of 2023]

**“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;

**“instrumentality of an offence”** means instrumentality of an offence as defined in section 1 of the Prevention of Organised Crime Act, 2004 (Act [No. 29 of 2004](#));

[definition of “instrumentality of an offence” inserted by section 1(c) of Act 12 of 2023]

**“intended instrumentality of an offence”** means intended instrumentality of an offence as defined in section 1 of the Prevention of Organised Crime Act, 2004 (Act [No. 29 of 2004](#));

[definition of **“intended instrumentality of an offence”** inserted by section 1(c) of [Act 12 of 2023](#)]

**“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;

**“preservation order”** means a preservation of property order referred to in section 1 of the Prevention of Organised Crime Act, 2004 (Act [No. 29 of 2004](#));

[definition of **“preservation order”** inserted by section 1(d) of [Act 12 of 2023](#)]

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

**“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;

**“proceeds of unlawful activities”** means proceeds of unlawful activities as defined in section 1 of the Prevention of Organised Crime Act, 2004 (Act [No. 29 of 2004](#));

[definition of **“proceeds of unlawful activities”** inserted by section 1(e) of [Act 12 of 2023](#)]

**“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 or preservation of property order made under the Prevention of Organised Crime Act, 2004 (Act [No. 29 of 2004](#));

[definition of “restraint order” substituted by Act 29 of 2004]

**“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.

**“unexplained assets”** means unexplained assets as defined in section 1 of the Prevention of Organised Crime Act, 2004 (Act [No. 29 of 2004](#));

[definition of “unexplained assets” added by section 1(f) of [Act 12 of 2023](#)]

## 1A. Central Authority

- (1) For the purposes of this Act, the Central Authority is the Permanent Secretary or such other official designated by the Minister by notice in the Gazette.
- (2) The functions of the Central Authority are to -
  - (a) make and receive requests for assistance;
  - (b) execute and arrange for the execution of requests for assistance;
  - (c) certify or authenticate, or arrange for the certification and authentication of, any documents or other material supplied in response to a request for assistance;
  - (d) take practical measures to facilitate the orderly and rapid disposition of requests for assistance;
  - (e) negotiate and agree on conditions related to requests for assistance, as well as to ensure compliance with those conditions;
  - (f) make any arrangements considered necessary in order to transmit the evidentiary material gathered in response to a request for assistance to the competent authority of the requesting State or to authorise any other authority to do so; and
  - (g) carry out such other functions imposed on a Central Authority in terms of this Act or which may be necessary for effective assistance to be provided or received.
- (3) A request for assistance in terms of this Act must be made by and to the Central Authority.
- (4) Requests for assistance transmitted to other offices, ministries or agencies of Namibia must, as soon as possible, be forwarded to the Central Authority.
- (5) The fact that the Central Authority did not receive the request for assistance directly from the foreign State shall not affect the validity of a request or an action taken by the Central Authority pursuant to that request.
- (6) A court may not reject the request for assistance on the grounds that the Central Authority did not receive it directly from the foreign State.

[[section 1A](#) inserted by section 3 of Act [20 of 2018](#)]

## Part II – MUTUAL PROVISION OF EVIDENCE

### 2. Issue of letters of request

- (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 Central Authority 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
  - (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 Central Authority 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.

### 2A. Non-disclosure of requests for assistance

Unless otherwise authorised by law, a person who because of his or her official capacity or office became aware of the request for assistance and has knowledge of -

- (a) the contents of the request for assistance made under this Act;
- (b) the fact that the request for assistance has been, or is about to be, made; or
- (c) the fact that the request for assistance has been granted or refused,

shall not disclose the contents or the facts of such request, except to the extent that the disclosure is necessary to execute the request for assistance from a foreign State.

[\[section 2A inserted by section 4 of Act 20 of 2018\]](#)

### 3. Attendance at examination

- (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.

### 4. Record of proceedings at examination

- (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 to the extent not contrary to the domestic law of the requested State and where possible, the request should be executed in accordance with the procedures specified in the letter of request; and

**[paragraph (a) substituted by section 5 of Act 20 of 2018]**
  - (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.

## 5. Admissibility of evidence obtained by letter of request

- (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.

## 6. Inspection of evidence obtained by letter of request

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.

## 7. Foreign requests for assistance in obtaining evidence

- (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 Central Authority 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 Central Authority, the Central Authority 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 Central Authority 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.

## 7A. Non-disclosure of requests for assistance

- (1) The magistrate's court may refuse a request referred to in [section 7](#), if-
  - (a) the request is not made in conformity with the provisions of this Act;
  - (b) the magistrate's court considers that execution of the request is likely to prejudice the sovereignty, security, public order or other essential interests of Namibia;
  - (c) the action requested would not have been lawful if the offence were committed in Namibia and the relevant functionary of the foreign State were a similar functionary of the Namibian State;
  - (d) the request relates to a political offence or an offence of a political character; or
  - (e) the request relates to an offence under military law which would not be an offence under ordinary criminal law.

**[subsection (1) substituted by section 2 of Act 12 of 2023]**

- (2) The magistrate's court may not refuse a request referred to in [section 7](#) on the grounds -
  - (a) of bank secrecy; or
  - (b) that the offence being considered involves fiscal matters only.
- (3) The magistrate's court must provide written reasons for any refusal of a request for assistance referred to in [section 7](#).

**[section 7A inserted by section 6 of Act 20 of 2018]**

## 8. Examination of witnesses

- (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 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 Central Authority 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).

## 9. Rights and privileges of witnesses

- (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.

## 10. Offences by witnesses

- (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.
- (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.

## 11. Attendance of witnesses in foreign States

- (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 -
  - (a) by the foreign State; or
  - (b) by the Government of Namibia, if Namibia and the foreign State have agreed to that effect.

**[subsection (2) substituted by section 7 of Act 20 of 2018]**

- (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.

### 11A. Arrangement for persons to give evidence or assist in investigations

- (1) Where a foreign State requests the attendance of a person in custody in Namibia for purposes of identification, giving evidence or providing assistance, the magistrate's court, within whose area of jurisdiction the person is, may issue an order and direct that the person in custody be placed in the custody of an officer authorised by the foreign State for the purpose of giving the assistance requested, if satisfied that -
  - (a) the person in custody has consented to attending; and
  - (b) the foreign State has given assurance that it will satisfy or comply with the following requirements -
    - (i) that the person shall not be detained, prosecuted, punished or be subjected to any other restriction of personal liberty or be subjected to any civil proceedings, in respect of any act or omission that occurred prior to the person's departure from Namibia;
    - (ii) that the person shall not be required, without his or her consent and the consent of the Central Authority, to assist in any investigation or proceeding other than that to which the request relates; and
    - (iii) that the person shall be returned to Namibia in accordance with the arrangements made with the Central Authority.
- (2) After the magistrate's court in terms of subsection (1) has made an order that the person in custody in Namibia be placed in the custody of an officer authorised by the foreign State, the foreign State

may not release that person from custody, unless the Central Authority notifies the foreign State that the person is entitled to be released from custody under the laws of Namibia.

- (3) The appropriate authority of the foreign State may make arrangements with the Central Authority for the purpose of the attendance of that person in the foreign State, his return to Namibia and other relevant matters.
- (4) The magistrate's court may also require the requesting State to give the assurances set forth in subsection 1(b) in case of a person who is not in custody.

[\[section 11A inserted by section 8 of Act 20 of 2018\]](#)

### **11B. Request for attendance of persons in Namibia**

- (1) The Central Authority may request the appropriate authority of a foreign State to assist in arranging for the attendance in Namibia of a person in the foreign State for the purpose of giving any evidence or assistance if the Central Authority is satisfied that -
  - (a) there are reasonable grounds to believe that the person is capable of giving such evidence or assistance relevant to a criminal matter involving a serious offence; and
  - (b) the person consents to travel to Namibia for the purpose of giving such evidence or assistance.
- (2) The Central Authority may make arrangements with the appropriate authority of the foreign State for the purpose of the attendance of that person in Namibia, his or her return to the foreign State and other relevant matters.
- (3) A person who is in Namibia in terms of a request made under subsection (1) shall not -
  - (a) be detained, prosecuted or punished in Namibia for any offence that is alleged to have been committed, or that was committed, before his or her departure from the foreign State following the request;
  - (b) be subjected to any civil suit in respect of any act or omission that is alleged to have occurred, or that has occurred, before his or her departure from the foreign State following the request; or
  - (c) be required to give evidence or assistance in relation to any criminal matter in Namibia other than the criminal matter to which the request relates.

[\[section 11B inserted by section 8 of Act 20 of 2018\]](#)

### **11C. Use of video conferencing technology in obtaining evidence**

- (1) The magistrate's court within whose area of jurisdiction a person resides or is may issue an order that the testimony or statement, the identification of a person or thing or any other form of assistance be provided by use of video or audio transmission technology.
- (2) An order issued under subsection (1) shall order the person -
  - (a) to attend at a time and place fixed by a magistrate to give a statement, testify or otherwise provide assistance by videoconference and to remain in attendance until excused by the authorities of the foreign State;
  - (b) to answer any questions raised by the authorities of the foreign State or persons authorised by those authorities, in accordance with the law that applies to that foreign State;
  - (c) to produce or show to those authorities at the time and place fixed by a magistrate any item, including any document, or copy and may include any other appropriate conditions.

- (3) The costs of establishing a video or telephone link and costs related to the servicing of a video or telephone link in Namibia shall be borne by the requesting State, unless otherwise agreed by the parties.

[\[section 11C inserted by section 8 of Act 20 of 2018\]](#)

## **12. Witnesses from foreign States attending court in Namibia not to be arrested in Namibia for certain matters**

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**

### **13. Request to foreign States for assistance in recovering fines or enforcing compensatory orders**

- (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
  - (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 Central Authority 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.

### **14. Satisfaction of fines or compensatory orders**

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.

### **15. Registration of foreign sentences or compensatory orders**

- (1) When the Central Authority 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 Central Authority 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.
- (2) Upon receiving the Minister's approval contemplated in subsection (1), the Central Authority 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.

## 16. Minister may exercise discretion

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.

**17. Effect of registration of foreign sentence or compensatory order, and execution**

- (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 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 Central Authority 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.

**18. Setting aside of registration of foreign sentence or compensatory order**

- (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****19. Request to foreign States for assistance in enforcing confiscation orders**

- (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 Central Authority 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 confiscation order is to be enforced; or
  - (b) to the appropriate government body in the requested State concerned.

## 20. Registration of foreign confiscation orders

- (1) When the Central Authority 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 Central Authority 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 -
    - (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.

**21. Effect of registration of foreign confiscation order, and execution**

- (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 Central Authority 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.

**22. Setting aside of registration of foreign confiscation order**

- (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.

**23. Request to foreign States for assistance in enforcing restraint orders**

- (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 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 Central Authority 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.

**24. Registration of foreign restraint orders**

- (1) When the Central Authority 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.

## 25. Effect of registration of foreign restraint order

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.

## 26. Setting aside of registration of foreign restraint order

- (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.

## 26A. Request to foreign States for assistance in enforcing preservation or forfeiture orders

- (1) Where the High Court makes-
  - (a) a preservation order: or
  - (b) a forfeiture order,the High 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 High Court

that the person against whom such order has been made holds the instrumentality of an offence, intended instrumentality of an offence, proceeds of unlawful activities or unexplained assets, in that foreign State.

- (2) A letter of request issued under subsection (1) shall be sent to the Executive Director 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 preservation or forfeiture order is to be enforced; or
  - (b) to the appropriate government body in the requested State concerned.

[section 26A inserted by section 3 of [Act 12 of 2023](#)]

## **26B. Registration of foreign preservation or forfeiture orders**

- (1) When the Executive Director receives a request from a foreign State for assistance in enforcing a foreign preservation or forfeiture 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 preservation or forfeiture 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 instrumentality of an offence, intended instrumentality of an offence, proceeds of unlawful activities or unexplained assets, specified therein.
- (3) Upon registering a foreign preservation or forfeiture, 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 preservation or forfeiture 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 preservation or forfeiture 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 instrumentality of an offence, intended instrumentality of an offence, proceeds of unlawful activities or unexplained assets, in Namibia; or
    - (ii) where no other person has effective control over such instrumentality of an offence, intended instrumentality of an offence, proceeds of unlawful activities or unexplained assets, 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 preservation or forfeiture order.

[section 26B inserted by section 3 of [Act 12 of 2023](#)]

## **26C. Effect of registration of foreign preservation or forfeiture order**

When a foreign preservation or forfeiture order has been registered in terms of [section 26B](#), such order shall have the effect of a preservation or forfeiture order made by the High Court.

[section 26C inserted by section 3 of [Act 12 of 2023](#)]

**26D. Setting aside of registration of foreign preservation or forfeiture order**

- (1) The registration of a foreign preservation or forfeiture order in terms of [section 26B](#) 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 preservation or forfeiture 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.

[section 26D inserted by section 3 of [Act 12 of 2023](#)]

**Part V – MISCELLANEOUS****27. Minister may enter into agreements**

- (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.

**28. Delegation of powers and assignment of duties**

- (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.

**29. Admissibility of foreign documents**

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.

### 30. Act not to limit provision of other assistance

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.

### 31. Conversion of currencies

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.

### 32. Regulations

- (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.

### 33. Amendment of Schedule 1

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

### 34. Rules

- (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.

### 35. Amendment of laws

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

### 36. Short title and commencement

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.

## Schedule 1

### CERTAIN FOREIGN STATES IN RESPECT OF WHICH ACT APPLIES

Cyprus  
Democratic Republic of Congo  
Federal Republic of Germany  
Isle of Man  
Italy  
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  
Switzerland  
United Kingdom of Great Britain and Northern Ireland  
United Republic of Tanzania  
United States of America

[Federal Republic of Germany inserted into Schedule 1 by [Government Notice 107/2005](#);  
United Kingdom of Great Britain and Northern Ireland; Isle of Man; Cyprus; United States  
of America; Switzerland; and Italy inserted into Schedule 1 by [Government Notice 167/2006](#)]

## Schedule 2

### LAWS AMENDED

*(Section 35)*

Number and year of law	Short title	Extent of amendment
Act <a href="#">No. 94 of 1974</a>	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 Gazette 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 Gazette, 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</p>

		to both such fine and such imprisonment.”.
Act <a href="#">No. 51 of 1977</a>	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> <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>
Act <a href="#">No. 16 of 1990</a>	High Court Act, 1990	<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</p>

		to such commission rogatoire or letter of request.”.
Act <a href="#">No. 6 of 1993</a>	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 <a href="#">No. 51 of 1977</a>), shall with the necessary changes apply.”.</p>
Act <a href="#">No. 28 of 1994</a>	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 <a href="#">No. 2 of 1995</a>	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 <a href="#">No. 94 of 1974</a>).”.</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> <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>
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(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](#));

**[The Maintenance Act 23 of 1963 has been replaced by the Maintenance Act 9 of 2003.]**

(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](#));

**[The Companies Act 61 of 1973 has been replaced by the Companies Act 28 of 2004.]**

(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](#)),

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.”.
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