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Government Notice

OFFICE OF THE PRIME MINISTER

No. 365

2018

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. 20 of 2018: International Co-operation in Criminal Matters Amendment Act, 2018.

**Act No. 20, 2018 INTERNATIONAL CO-OPERATION IN CRIMINAL
MATTERS AMENDMENT ACT, 2018**

EXPLANATORY NOTE:

_____	Words underlined with a solid line indicate insertions in existing provisions.
[]	Words in bold type in square brackets indicate omissions from existing provisions.

ACT

To amend the International Co-operation in Criminal Matters Act, 2000 so as to provide for a Central Authority to receive and to make requests for assistance; to make provisions for the request for assistance to conform to the domestic laws of the requested State and where possible, the request should be executed in accordance with the procedures specified in the request; to make provision for non-disclosure of requests for assistance; to provide for additional grounds for refusal of request for assistance; to provide procedures for persons detained in Namibia who are wanted as witnesses in the requesting State; to provide for the use of video conferencing technology in rendering assistance to a requesting State; and to provide for incidental matters.

(Signed by the President on 21 December 2018)

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

General Amendment of Act No. 9 of 2000

1. The International Co-operation in Criminal Matters Act, 2000 (in this Act referred to as the “principal Act”) is amended by the substitution for the phrase “Permanent Secretary” wherever it appears in the Act of the phrase “Central Authority”, except in section 1.”.

Amendment of section 1 of Act No. 9 of 2000, as amended by Act 29 of 2004

2. The principal Act is amended by the insertion after the definition of “compensatory order” of the following definition:

““Central Authority” means the Central Authority referred to in section 1A;”.

Insertion of section 1A in Act No. 9 of 2000

3. The principal Act is amended by the insertion after section 1 of the following section:

“Central Authority

1A. (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*.

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- (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.

Insertion of section 2A in Act No. 9 of 2000

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

“Non-disclosure of requests for assistance

2A. 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

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(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.”.

Amendment of section 4 of Act No. 9 of 2000

5. Section 4 of the principal Act is amended by the substitution for paragraph (a) of subsection 1 of the following paragraph:

“(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”.

Insertion of section 7A in Act No. 9 of 2000

6. The principal Act is amended by the insertion after section 7 of the following section:

“Ground for refusal

7A. (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; or
- (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.

(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.”.

Amendment of section 11 of Act No. 9 of 2000

7. Section 11 of the principal Act is amended by the substitution for subsection (2) of the following subsection:

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“(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.”.

Insertion of section 11A, 11B and 11C in Act No. 9 of 2000

8. The principal Act is amended by the insertion after section 11 of the following sections:

“Arrangement for persons to give evidence or assist in investigations

11A. (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.

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(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.

Request for attendance of persons in Namibia

11B. (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.

Use of video conferencing technology in obtaining evidence

11C. (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;

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(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.”

Short title

9. This Act is called the International Co-operation in Criminal Matters Amendment Act, 2018.
