

Namibia

International Co-operation in Criminal Matters Act, 2000

Regulations for International Co-operation in Criminal Matters, 2001

Government Notice 186 of 2001

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Regulations for International Co-operation in Criminal Matters, 2001

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Republic of Namibia
Annotated Statutes

International Co-operation in Criminal Matters Act, 2000

**Regulations for International Co-
operation in Criminal Matters, 2001**

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[The word subregulation is written both with a hyphen (“sub-regulation”) and without a hyphen (“subregulation”) in these regulations.]

Part 1 – GENERAL PROVISIONS

1. Definitions

In these Regulations an expression defined in the Act has the meaning assigned to it in the Act and, unless the context otherwise indicates-

“**court day**” means any day other than a Saturday, a Sunday or a public holiday;

“**the Act**” means the International Co-operation in Criminal Matters Act, 2000 (Act [No. 9 of 2000](#)).

2. Representation of government of a foreign state

A letter of request sent to the Permanent Secretary by the appropriate government body of a foreign state shall, unless the contrary is proved, be deemed to constitute an authorization of the government of that State for the government of Namibia to act on that foreign state’s behalf in any proceedings under the Act.

Part II – PROOF OF MATTERS

3. Authentication, certification and proof of foreign documents

- (1) A deposition, an affidavit, a certificate, a record or a document, or a copy or sworn translation of it contemplated in section 29 of the Act, purporting to be authenticated in accordance with that section, shall be deemed to be duly authenticated for the purpose of that section and, if received in evidence, is *prima facie* proof of any fact stated in it.
- (2) A document purporting to be a copy of a deposition, an affidavit, a certificate or a record or other document contemplated in section 29 of the Act and purporting to be certified as a true copy by a person in his or her capacity as a judge, a magistrate or an officer of the court in question, or by or on behalf of the appropriate government body of the foreign state concerned, shall be deemed to be duly certified for the purposes of the Act and these Regulations.
- (3) A document purporting to be a translation of a deposition, an affidavit, a record or a document contemplated in section 29 of the Act and purporting to-
 - (a) be certified as a true translation by the translator concerned; and
 - (b) contain a certification by or on behalf of the appropriate government body of the foreign state concerned that the translator is an official translator of that state, the appropriate government body or a court of that state, or that the translator concerned was appointed or designated by that foreign state, appropriate government body or a court to translate the document concerned,shall be deemed to be duly translated and certified for the purposes of the Act and these Regulations.
- (4) The translation referred to in subregulation (3) must be accompanied by the original document or a copy certified as a true copy of the original document in accordance with sub-regulation (2).

4. General provisions regarding admissibility

Section 29 of the Act and regulation 3 do not affect the admission of any evidential material which is otherwise admissible.

5. Proof of exchange rate

For the purposes of the Act, an exchange rate furnished in respect of a particular day in a document purporting to be -

- (a) a facsimile received from the Bank of Namibia is *prima facie* proof of the exchange rate prevailing on that particular day; and
- (b) an affidavit made by a person in his or her capacity as an officer of the Bank of Namibia shall be conclusive proof of the exchange rate prevailing on that particular day.

Chapter III

FOREIGN SENTENCES AND FOREIGN COMPENSATORY ORDERS

6. Registration of foreign sentences and foreign compensatory orders

Whenever a certified copy of the document evidencing the foreign sentence or the foreign compensatory order is lodged with a clerk of a magistrate's court in Namibia as contemplated in section 15(2) of the Act, that clerk must register that sentence or order-

- (a) by numbering the foreign sentence or the foreign compensatory order with a consecutive civil case number for the year during which it is lodged; and
- (b) by recording in favour of Namibia as represented by the Minister the balance in the currency of Namibia of the amount payable under that sentence or order, on the case cover in which the certified copy of the document evidencing the foreign sentence or the foreign compensatory order is filed.

7. Notice of registration of a foreign sentence or a foreign compensatory order

- (1) The written notice of registration of a foreign sentence or a foreign compensatory order contemplated in section 15(4) of the Act must be in Form 1 set out in the Annexure, and must contain-
 - (a) a consecutive civil case number referred to in regulation 6(a);
 - (b) the date on which the foreign sentence or the foreign compensatory order was registered;
 - (c) the balance in the currency of Namibia of the amount payable under the foreign sentence or the foreign compensatory order; and
 - (d) a reference to regulations 8 and 9.
- (2) The written notice referred to in subregulation (1), together with its copy must be delivered to the messenger of the court of the district in which the person on whom the foreign sentence or the foreign compensatory order was imposed or against whom it was made or who has effective control over the relevant property resides.
- (3) The messenger of the court referred to in subregulation (2) must serve the notice referred to in subregulation (1) on the relevant person by delivering a copy of the notice in one of the following ways:
 - (a) To that person personally or to his or her duly authorised agent;
[The word "to" at the beginning of paragraph (a) should not be capitalised.]
 - (b) at that person's residence or place of business to a person apparently not less than 16 years of age and apparently residing or employed there: Provided that for the purpose of this paragraph, "residence" means, when a building is occupied by more than one person or family, that portion of the building occupied by the person upon whom service is to be effected;
 - (c) in the case of a juristic person, at its registered office or main place of business within the area of jurisdiction of the court concerned to a director or a responsible employee or a servant thereof; or
 - (d) in the case of a Minister or a Deputy Minister in his or her official capacity, the State or a regional government, at the office of the Government Attorney in Windhoek.
- (4) A Messenger of the Court shall, on request of the person upon whom a notice is being served, show him or her the original of the notice.

- (5) Where the person upon whom a notice is to be or may be served keeps his or her residence or place of business closed and thereby prevents the Messenger of the Court from serving the notice, it is sufficient to affix a copy of the notice to the outer or the principal door of the residence or the place of business.
- (6) Where the Messenger of the Court is unable after diligent search to find at the residence or the place of business of the person upon whom a notice is to be served, either that person or a person referred to in sub-regulation 3(b) or, in the case of a juristic person referred to in sub-regulation 3(c), a director or a responsible employee or a servant, it is sufficient to affix a copy of the notice to the outer or the principal door of the residence, the place of business, the registered office or the main place of business.
- (7) If it comes to the knowledge of a Messenger of the Court that the person upon whom service of a notice is to be effected has moved to a new residential address within the area allocated to him or her, he or she must effect service at that address.
- (8) Where two or more persons are to be served with the same notice, service must be effected upon each, except-
 - (a) in the case of a partnership, when service may be effected by delivery at the office or place of business of the partnership, or, if there be none such, by service on any member of the partnership in any manner prescribed in this regulation;
 - (b) in the case of two or more persons upon whom a notice is to be served in their capacity as trustees of an insolvent estate, liquidators of a company, executors, curators or guardians, when service may be effected by delivery to any one of such persons in any manner prescribed in this regulation;
 - (c) in the case of a syndicate, an unincorporated company, a club, a society or a church, when service may be effected by delivery at the local office or the place of business of that body or, if there be none such, by service on the chairperson or the secretary or other responsible officer thereof in any manner prescribed in this regulation.
- (9) The Messenger of the Court must, in Form 2 set out in the Annexure, endorse the manner in which the copy of the notice was served, and must attach the form to the original notice and return it to the clerk of the court from which he or she received the notice.
- (10) Where service of the notice referred to in subregulation (7) has been effected in the manner prescribed by subregulation (3)(b), (c) or (d), the Messenger of the Court shall indicate in the return of service of the notice concerned the name of the person on whom it has been served and the capacity in which that person stands in relation to the person, the juristic person or the institution to whom the notice is addressed.
- (11) Where service of the notice referred to in subregulation (7) has been effected in the manner prescribed by subregulation (3)(b) or (c) the court may, if there is reason to doubt whether the notice served has come to the actual knowledge of the person on whom it is to be served, and in the absence of satisfactory evidence, treat that service as invalid.
- (12) Where a court is satisfied that service cannot be effected in any manner prescribed in this regulation and that the action is within its jurisdiction, the court may make an order allowing service to be effected by the person and in the manner specified in such order.
- (13) A member of the Namibian Police as defined in section 1 of the Police Act, 1990 (Act [No. 19 of 1990](#)), may, if so requested by the Messenger of the Court, assist that Messenger of the Court to effect service of a notice.

8. Period in which an application for setting aside of the registration of foreign sentence or a compensatory order may be lodged

An application for the setting aside of the registration of a foreign sentence or a foreign compensatory order contemplated in section 18(1) of the Act must be made within 21 court days from the date of service of the notice of registration.

9. Manner in which an application for the setting aside of the registration of a foreign sentence or a foreign compensatory order may be lodged

- (1) An application for the setting aside of the registration of a foreign sentence or a foreign compensatory order must be on notice made to the court where that sentence or that order was registered, and delivered to the office of the Government Attorney not later than 20 days before the date of the hearing, in which the applicant must state-
 - (a) that an order for the setting aside of the registration of a foreign sentence or a foreign compensatory order, as the case may be, is applied for;
 - (b) the ground or grounds contemplated in section 18(1) of the Act on which the application is based; and
 - (c) the date and time when the application will be made in court.
- (2) The application referred to in subregulation (1) must be accompanied by an affidavit, made by the applicant or a person who can swear positively to the facts, in support of the ground or grounds referred to in paragraph (b).

Part IV – FOREIGN CONFISCATION ORDERS

10. Registration of foreign confiscation orders

Whenever a certified copy of a foreign confiscation order is lodged with a clerk of a magistrate's court in Namibia as contemplated in section 20(2) of the Act, that clerk shall register that order-

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

11. Notice of registration of foreign confiscation order

- (1) The written notice of registration of a foreign confiscation order contemplated in section 20(4) of the Act must be in Form 3 set out in the Annexure, and must contain-
 - (a) a consecutive civil case number referred to in regulation 10(a);
 - (b) the date on which the foreign confiscation order was registered;
 - (c) in the case of the payment of money, the balance in the currency of Namibia of the amount payable under the foreign confiscation order; and
 - (d) in the case of the recovery of particular property, full particulars of the property specified in the foreign confiscation order in so far as such particulars are available.

- (2) Where the person against whom the order has been made is present in Namibia, the written notice contemplated in section 20(4) of the Act must, together with a copy of the notice, be delivered to a Messenger of the Court for the district in which the person against whom the order has been made resides, or in which the property to be recovered is situated, who shall serve the notice on that person in accordance with the manner provided for in regulation 7(3) to (10).
- (3) Where the person against whom the order has been made is not present in Namibia, that person shall-
 - (a) be informed of the registration of the foreign confiscation order in the manner provided for in an agreement contemplated in section 27 of the Act or any other agreement concluded with the foreign state where that person is present; or
 - (b) in the absence of an agreement referred to in paragraph (a) providing for the manner in which such a person shall be informed of the registration of the foreign confiscation order, be informed of such registration in a manner specified by the court.

12. Period in which a person may apply for the setting aside of the registration of a foreign confiscation order

An application for the setting aside of a foreign confiscation order contemplated in section 22(1) of the Act may be made within 21 court days from-

- (a) where the person against whom the order has been made is present in Namibia, the date of service of the written notice contemplated in section 20(4) of the Act; or
- (b) where the person against whom the order has been made is not present in Namibia, the date on which that person is informed of the registration of the foreign confiscation order.

13. Manner in which a person may apply for the setting aside of the registration of a foreign confiscation order

- (1) An application for the setting aside of the registration of a foreign confiscation order must be on notice made to the court where that order was registered, and delivered to the office of the Government Attorney not later than 20 days before the date of the hearing, in which the applicant must state-
 - (a) that an order for the setting aside of the registration of a foreign confiscation order is applied for;
 - (b) the ground or grounds contemplated in section 22(1) of the Act on which the application is based; and
 - (c) the time when the application will be made to the court.
- (2) The application referred to in subregulation (1) must be accompanied by an affidavit, made by the applicant or a person who can swear positively to the facts, in support of the ground or grounds referred to in paragraph (b).

Chapter V FOREIGN RESTRAINT ORDERS

14. Registration of a foreign restraint order

Whenever a certified copy of a foreign restraint order is lodged with the registrar of the High Court as contemplated in section 24(1) of the Act, the registrar must register that order -

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

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

15. Notice of registration of a foreign restraint order

- (1) The written notice of registration of a foreign restraint order contemplated in section 24(3) of the Act must be in Form 4 set out in the Annexure, and must contain-
 - (a) a consecutive civil case number referred to in regulation 14(a);
 - (b) the date on which the foreign restraint order was registered; and
 - (c) the restraint in respect of the property concerned and full particulars of that property in so far as those particulars are available.
- (2) Where the person against whom the foreign restraint order has been made is present in Namibia the written notice must, together with a copy of the restraint order, be delivered to the deputy sheriff of the district in which the person against whom the order has been made resides who must serve the notice on that person in accordance with the manner provided for in regulation 7(3) to (10).
- (3) Where the person against whom the foreign restraint order has been made is not present in Namibia, that person must-
 - (a) be informed of the registration of the foreign restraint order in the manner provided for in an agreement contemplated in section 27 of the Act or any other agreement concluded with the foreign State where that person is present; or
 - (b) in the absence of an agreement referred to in paragraph (a) providing for the manner in which such a person must be informed of the registration of the foreign restraint order, be informed of that registration in a manner specified by the High Court.

16. Period in which a person may apply for the setting aside of the registration of a foreign restraint order

An application for the setting aside of the registration of a foreign restraint order contemplated in section 26 of the Act may be made within 21 court days from-

- (a) where the person against whom the foreign restraint order has been made is present in Namibia, the date of service of the written notice contemplated in section 24(3) of the Act; or
- (b) where the person against whom the order has been made is not present in Namibia, the date on which that person is informed of the registration of the foreign restraint order.

17. Manner in which an application for the setting aside of the registration of a foreign restraint order may be lodged

- (1) An application for the setting aside of the registration of a foreign restraint order must be on notice made to the High Court, and delivered to the office of the Government Attorney not later than 20 days before the date of the hearing, in which the applicant must state -
 - (a) that an order for the setting aside of the registration of a foreign restraint order is applied for;
 - (b) the ground or grounds contemplated in section 26(1) of the Act on which the application is based; and
 - (c) the time when the application will be made to the High Court.

- (2) The application referred to in subregulation (1) must be accompanied by an affidavit, made by the applicant or a person who can swear positively to the facts, in support of the ground or grounds referred to in paragraph (b).

ANNEXURE

FORMS

[Editorial note: The forms have not been reproduced]