

REPUBLIC OF NAMIBIA

NATIONAL COUNCIL

**INTERNATIONAL CO-OPERATION
IN CRIMINAL MATTERS
AMENDMENT BILL**

(As passed by the National Assembly)

(Introduced by the Minister of Justice)

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.

BILL

To amend the International Co-operation in Criminal Matters Act, 2000 so as to provide for certain definitions; to provide for further grounds for refusal of foreign requests for assistance in obtaining evidence; to provide for requests for assistance in enforcing preservation and forfeiture orders; to provide for registration of foreign preservation and forfeiture orders; to provide for effects of registration of foreign preservation and forfeiture orders; to provide for the setting aside of registration of foreign preservation or forfeiture orders; and to provide for incidental matters.

(Introduced by the Minister of Justice)

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

Amendment of section 1 of Act No. 9 of 2000

1. Section 1 of the International Co-operation in Criminal Matters Act, 2000 (*in this Act referred to as “the Principal Act”*), is amended by -

(a) the insertion after the definition of “foreign confiscation order” of the following definitions:

““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;

“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;”;

(b) the insertion after the definition of “foreign State” of the following definition:

““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);”;

- (c) the insertion after the definition of “High Court” of the following definitions:

“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);

“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);”;

- (d) the insertion after the definition of “prescribed” of the following definition:

“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);”;

- (e) the insertion after the definition of “proceedings” of the following definition:

“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);”; and

- (f) the addition after the definition of “this Act” of the following definition:

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

Amendment of section 7A of Act No. 9 of 2000 as amended by Act No. 20 of 2018

2. Section 7A of the Principal Act is amended by the substitution for subsection (1) of the following subsection:

- “(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[.];
- (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.”.

Amendment of Act No. 9 of 2000

3. The Principal Act is amended by the insertion after section 26 of the following sections:

“Request to foreign States for assistance in enforcing preservation or forfeiture orders

26A. (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.

Registration of foreign preservation or forfeiture orders

26B. (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.

Effect of registration of foreign preservation or forfeiture order;

26C. 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.

Setting aside of registration of foreign preservation or forfeiture order

26D. (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.”.

Short title

4. This Act is called the International Co-operation in Criminal Matters Amendment Act, 2023.
