

PRESIDENT'S OFFICE

No. 1875. 20 November 1996

**NO. 75 OF 1996: INTERNATIONAL CO-OPERATION IN CRIMINAL MATTERS ACT,
1996.**

It is hereby notified that the President has assented to the following Act which is hereby published for general information:-

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 the Republic and foreign States; and to provide for matters connected therewith.

(English text signed by the President.)

(Assented to 6 November 1996.)

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

Chapter 1

Definitions

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

(i) "agreement" includes a multilateral convention to which the Republic is a signatory or to which it has acceded and which has the same effect as an agreement referred to in section 27; (xiii)

(ii) "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; (xv)

(iii) "confiscation order" means a confiscation order made under the Proceeds of Crime Act, 1996; (viii)

(iv) "Director-General" means the Director-General: Justice; (iii)

(v) "evidence" includes all books, documents and objects produced by a witness; (v)

(vi) "foreign confiscation order" means any order issued by a court or tribunal in a foreign State aimed at recovering the proceeds of any crime or the value of such proceeds; (i)

(vii) "foreign restraint order" means any order issued by a court or tribunal in a foreign State in respect of an offence under the law of that State, aimed at restraining any person from dealing with any property; (ii)

(viii) "foreign State" means any State outside the Republic and includes any territory under the sovereignty or control of such State; (xxi)

(ix) "letter of request" means a letter requesting assistance of the nature contemplated in sections 2, 13, 19 and 23; (xvii)

(x) "magistrate" includes an additional magistrate and an assistant magistrate; (x)

(xi) "magistrate's court", in relation to-

(a) any person against whom a foreign confiscation order or a foreign sentence 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 confiscation order or foreign sentence 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 confiscation order or foreign sentence may be enforced, means the magistrate's court of the district in which-

(i) any place of business of such partnership is situate;

(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; (xi)

(xii) "Minister" means the Minister of Justice; (xii)

(xiii) "prescribed" means prescribed by regulation; (xx)

(xiv) "proceedings" means criminal proceedings and any other proceedings before a court or other tribunal, instituted for the purpose of determining whether any act or omission or conduct involves or amounts to an offence by any person; (xvi)

(xv) "property" means money or any other movable, immovable, corporeal or incorporeal thing and includes any interest therein and all proceeds thereof; (iv)

(xvi) "regulation" means any regulation made under this Act; (xiv)

(xvii) "requested State" means any foreign State to which a request for assistance in respect of any criminal matter in the Republic is directed; (xix)

(xviii) "requesting State" means any foreign State from which a request for assistance in respect of any criminal matter is received; (xviii)

(xix) "restraint order" means a restraint order made under the Proceeds of Crime Act, 1996; (ix)

(xx) "Supreme Court", in relation to-

(a) any person against whom a foreign restraint order may be enforced, means the division of the Supreme Court of the area 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 restraint order may be enforced, means the division of the Supreme Court of the area in which the registered office or main place of business of such corporate body is situate;

(c) any partnership against which a foreign restraint order or foreign sentence may be enforced, means the division of the Supreme Court of the area in which-

(i) any place of business of such partnership is situate;

(ii) such partnership holds any movable or immovable property; or

(iii) any member thereof resides;

(d) any foreign restraint order dealing with any particular property, means the division of the Supreme Court of the area in which such property is to be found on the date of registration of any such foreign restraint order; (vii)

(xxi) "this Act" includes a regulation made thereunder. (vi)

Chapter 2

Mutual provision of evidence

Issuing of letter of request

2. (1) If it appears to a court or to the officer presiding at proceedings 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 such presiding officer may issue a letter of request in which assistance from that foreign State is sought to obtain 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 to obtain such information as is stated in the letter of request for use in an investigation related 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 the Republic or that it is necessary to determine whether an offence has been committed;

(b) that an investigation in respect thereof is being conducted; 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 a foreign State.

(3) Subject to subsection (4), a letter of request shall be sent to the Director-General for transmission-

(a) to the court or tribunal specified in the letter of request; or

(b) to the appropriate government body in the requested State.

(4) (a) In a case of urgency a letter of request may be sent directly to the court or tribunal referred to in subsection (3)(a), exercising jurisdiction in the place where the evidence is to be obtained, or to the appropriate government body referred to in subsection (3)(b).

(b) The Director-General shall as soon as practicable be notified that a letter of request was sent in the manner referred to in paragraph (a) and he or she shall be furnished with a copy of such a letter of request.

Attendance at examination

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

(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 in terms of section 2(2), the person in charge of the investigation relating to the alleged offence may, provided that it is permitted by the law of the requested State-

(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 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 be paid by the State.

(b) Notwithstanding the fact that a presiding officer has made an order contemplated in paragraph (a), he or she may, if he or she is of the opinion 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 sending the letter of request and all proceedings to give effect thereto as he or she may reasonably deem appropriate.

Record of proceedings at examination

4. (1) The court or presiding officer issuing the letter of request shall 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; and

(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) A court or presiding officer issuing a letter of request may request that a video recording of the proceedings at the examination of a witness be made by a person designated for that purpose by the court or presiding officer or by the requested State.

(b) A video recording contemplated in paragraph (a) shall form part of the record of the proceedings at the examination and may be referred to by the court or tribunal before which the evidence obtained by the letter of request is tendered, to determine any fact regarding-

(i) the manner in which the examination was concluded; or

(ii) the conduct and demeanour of the witness while giving evidence.

Admissibility of evidence obtained by letter of request

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

(2) Evidence obtained by a letter of request prior to proceedings being instituted shall be admitted 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 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 be 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 after the institution of proceedings shall form part of the record of such proceedings and shall be admitted as evidence by the court or presiding officer which issued the letter of request in so far as it is not inadmissible at such proceedings.

Inspection of evidence obtained by letter of request

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

Foreign requests for assistance in obtaining evidence

7. (1) A request by a court or tribunal exercising jurisdiction in a foreign State or by an appropriate government body in a foreign State, for assistance in obtaining evidence in the Republic for use in such foreign State shall be submitted to the Director-General.

(2) Upon receipt of such request the Director-General shall satisfy himself or herself-

(a) that proceedings have been instituted in a court or tribunal exercising jurisdiction in the requesting State; or

(b) that there are reasonable grounds for believing that an offence has been committed in the requesting State or that it is necessary to determine whether an offence has been so committed and that an investigation in respect thereof is being conducted in the requesting State.

(3) For purposes of subsection (2) the Director-General may rely on a certificate purported to be issued by a competent authority in the State concerned, stating the facts contemplated in paragraph (a) or (b) of the said subsection.

(4) The Director-General shall, if satisfied as contemplated in subsection (2), submit the request for assistance in obtaining evidence to the Minister for his or her approval.

(5) Upon being notified of the Minister's approval the Director-General shall forward the request contemplated in subsection (1) to the magistrate within whose area of jurisdiction the witness resides.

Examination of witnesses

8. (1) The magistrate to whom a request has been forwarded in terms of section 7(5) shall cause the person whose evidence is required, to be subpoenaed to appear before him or her to give evidence or to produce any book, document or object and upon the appearance of such person the magistrate shall administer an oath to or accept an affirmation from him or her, and take the evidence of such person upon interrogatories or otherwise as requested, as if the said person was 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) A person referred to in subsection (1) shall be subpoenaed in the same manner as a person who is subpoenaed to appear as a witness in proceedings in a magistrate's court.

(3) Upon completion of the examination of the witness the magistrate taking the

evidence shall transmit to the Director-General the record of the evidence certified by him or her to be correct, together with a certificate showing the amount of expenses and costs incurred in connection with the examination of the witness.

(4) If the services of an interpreter were used at the examination of the witness, 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 documents transmitted by the magistrate to the Director-General.

Rights and privileges of witnesses

9. (1) In respect of the giving of evidence or the production of any book, document or object at an examination in terms of 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, the magistrate shall record the witness' objection and may postpone the proceedings in order to obtain from a competent authority in the requesting State an intimation as to whether or not the witness could in criminal proceedings in the requesting State be compelled to give the evidence in question.

(3) Where a witness' claim to privilege is not recognised by a competent authority in the requesting State the magistrate shall reject his or her objection and proceed to take the evidence.

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

Offences by witnesses

10. (1) Any person subpoenaed to appear to 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 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 affirmation as a witness, or having been sworn or having made affirmation, 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, 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 as contemplated in section 8(1), gives false evidence before the person taking 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 penalty prescribed by law for perjury.

Attendance of witnesses in certain States

11. (1) When a subpoena purporting to be issued by a proper officer of a competent court of law in any State mentioned in Schedule I for the attendance of any person in any proceedings before that court is received from such officer by any magistrate within whose area of jurisdiction such person resides or is, such 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 was a subpoena issued in the court of such magistrate in proceedings similar to those in connection with which it was issued.

(2) Upon service of the subpoena on the witness an amount sufficient to cover his or her reasonable expenses in connection with his or her attendance of the proceedings, shall be tendered to him or her.

(3) Any person subpoenaed under this section who, without sufficient cause, fails to attend at the time and place specified in the subpoena, shall be guilty of an offence and liable on conviction to a fine, 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 indicating that the subpoena was properly served on the person concerned, together with a certificate by the presiding officer of the court where the said person was to appear, to the effect that such person failed to appear at the time and place specified in the subpoena, shall be prima facie proof that the said person failed to appear as contemplated in that subsection.

Witnesses from foreign States attending court in Republic not to be arrested in Republic

12. No witness residing in a foreign State and who attends a court or tribunal in the Republic shall, while so attending, be liable to be arrested in the Republic on any civil warrant for debt or on a criminal charge for the commission of an offence incurred or allegedly committed in the Republic, before his or her arrival in the Republic for the purpose of his or her attendance of such court or tribunal.

Chapter 3

Mutual execution of sentences and compensatory orders

Request to foreign State for assistance in recovering fine or compensation

13. (1) If it appears to a court which has sentenced a person to the payment of a fine or made an order against him or her for the payment of compensation to another person that such person does not have sufficient property in the Republic from which the fine or compensation can be recovered but that he or she does have property in a foreign State, the court may issue a letter of request in which assistance is sought from the foreign State concerned.

(2) The letter of request may include a request for the recovery of all costs and expenses incurred in connection with the recovery of the fine or compensation and that such costs and expenses be levied against the property of the convicted person from whom the fine or compensation is recovered.

(3) A letter of request issued by a court in terms of subsection (1) shall be sent to the Director-General who shall transmit it-

(a) to a court or tribunal specified in the request, exercising jurisdiction in the place where the fine or compensation is to be recovered; or

(b) to the appropriate government body in the requested State.

Satisfaction of fines or compensation

14. Any amount recovered pursuant to a request for assistance made under section 13, less the costs of the recovery thereof, shall first be applied to satisfy or reduce the outstanding amount of the fine, and thereafter the balance shall be applied to satisfy or, if such amount is not sufficient, in reduction of the outstanding amount of the compensatory order.

Registration of foreign sentence

15. (1) When the Director-General receives a request from a foreign State for assistance in the Republic to recover a fine to which a person has been sentenced in criminal proceedings in the requesting State, or for the execution of an order for the payment of compensation for damages to any person made in such proceedings, he or she shall, if satisfied-

(a) that the sentence or order is final and not subject to review or appeal;

(b) that the court which imposed the sentence or made the order had jurisdiction;

(c) that the person on whom the sentence was imposed or against whom the order was made, had the opportunity of defending himself or herself;

(d) that the sentence or order cannot be satisfied in full in the country in which it was imposed; and

(e) that the person concerned holds property in the Republic, submit the request to the Minister for approval.

(2) Upon receiving the Minister's approval that the sentence or compensatory order may be executed in the Republic the Director-General shall lodge with the clerk of a magistrate's court a certified copy of the document evidencing the foreign sentence or order and such clerk of the court shall thereupon register the sentence or order and the amount payable thereunder as reflected in the said document.

(3) The clerk of the court shall forthwith give written notice of the registration of the sentence or order to the person on whom it was imposed or against whom it was made or who has effective control over the relevant property in the Republic and shall notify such person that he or she may within the prescribed period and in the prescribed manner lodge an application for the setting aside of the registration thereof.

Minister may exercise discretion

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

Effect of registration of sentence or compensatory order

17. (1) When a foreign sentence or compensatory order has been registered in terms of section 15, that sentence or order shall have the effect of a civil judgment of the court at which it has been registered, for the amount reflected therein in favour of the Republic as represented by the Minister.

(2) A sentence or order registered in terms of section 15 shall not be executed before the expiration of the period within which an application may be made in terms of section 15(3) for the setting aside of the registration thereof, or if such an application was made, before the final decision of such application.

(3) The Director-General shall, subject to any agreement or arrangement between the requesting State and the Republic, pay over to the requesting State any amount realised in the execution of a registered sentence or order, less all expenses incurred in connection with the execution of such sentence or order.

Setting aside of registration of foreign sentence

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

(a) that the sentence or order was registered contrary to a provision of this Act;

(b) that the court of the requesting State had no jurisdiction in the matter;

(c) that the sentence or order is subject to review or appeal;

(d) that the person on whom the sentence was imposed or against whom the order was made did not appear at the proceedings concerned, or did not receive notice of the said proceedings as prescribed by the law of the requesting State or, if no such notice has been prescribed, that he or she did not receive reasonable notice of such proceedings so as to enable him or her to defend him or her at the proceedings;

(e) that the enforcement of the sentence or order would be contrary to the interests of justice; or

(f) that the sentence or order has already been satisfied in any manner, including the serving 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.

Chapter 4

Confiscation and transfer of proceeds of crime

Request to foreign State for assistance in enforcing confiscation order

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

(2) The amount to be levied by such request shall be sufficient to cover, in addition to the amount of the confiscation order, all costs and expenses incurred in the issuing and the executing of the request.

(3) A letter of request contemplated in subsection (1) shall be sent to the Director-General for transmission-

(a) to the court or tribunal specified in the request; or

(b) to the appropriate government body in the requested State.

Registration of foreign confiscation order

20. (1) When the Director-General receives a request for assistance in executing a foreign confiscation order in the Republic, he or she shall, if satisfied-

(a) that the order is final and not subject to review or appeal;

(b) that the court which made the order had jurisdiction;

(c) that the person against whom the order was made, had the opportunity of defending himself or herself;

(d) that the order cannot be satisfied in full in the country in which it was imposed;

(e) that the order is enforceable in the requesting State; and

(f) that the person concerned holds property in the Republic, submit such request to the Minister for approval.

(2) Upon receiving the Minister's approval of the request contemplated in subsection (1), the Director-General shall lodge with the clerk of a magistrate's court in the Republic a certified copy of such foreign confiscation order.

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

(a) where the order was made for the payment of money, in respect of the balance of the amount payable thereunder; or

(b) where the order was made for the recovery of particular property, in respect of the property which is 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 the order has been made-

(a) that the order has been registered at the court concerned; and

(b) that the said person may, within the prescribed period and in the prescribed manner, apply to that court for the setting aside of the registration of the order.

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

(b) Where the said person is not present in the Republic, he or she shall in the prescribed manner be informed of the registration of the foreign confiscation order.

Effect of registration of foreign confiscation order

21. (1) When any 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 it has been registered in favour of the Republic as represented by the Minister.

(2) A foreign confiscation order registered in terms of section 20 shall not be executed before the expiration of the period within which an application in terms of section 20(4)(b) for the setting aside of the registration may be made, or if such application has been made, before the application has been finally decided.

(3) The Director-General shall, subject to any agreement or arrangement between the requesting State and the Republic, pay over to the requesting State any amount recovered in terms of a foreign confiscation order, less all expenses incurred in connection with the execution of such order.

Setting aside of registration of foreign confiscation order

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

(a) that the order was registered contrary to a provision of this Act;

(b) that the court of the requesting State had no jurisdiction in the matter;

(c) that the order is subject to review or appeal;

(d) that the person against whom the order was made did not appear at the proceedings concerned or did not receive notice of the said proceedings as prescribed by the law of the requesting State or, if no such notice has been prescribed, that he or she did not receive reasonable notice of such proceedings so as to enable him or her to defend him or her at the proceedings;

(e) that the enforcement of the order would be contrary to the interests of justice; or

(f) that the order has already been satisfied.

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

Request to foreign State for assistance in enforcing restraint order

23. (1) When a court or judge in the Republic makes a restraint order, such court or judge may issue a letter of request in which assistance in enforcing such order in a foreign State is sought if it appears to such court or judge that the person against whom the order has been made owns property in the foreign State concerned.

(2) A letter of request contemplated in subsection (1) shall be sent to the Director-General for transmission-

(a) to the court or tribunal specified in the request; or

(b) to the appropriate government body in the requested State.

Registration of foreign restraint order

24. (1) When the Director-General receives a request for assistance in enforcing a foreign restraint order in the Republic, he or she may lodge with the registrar of a division of the Supreme Court a certified copy of such order if he or she is satisfied that the order is not subject to any review or appeal.

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

(3) The registrar registering a foreign restraint order shall forthwith give notice in writing to the person against whom the order has been made-

(a) that the order has been registered at the division of the Supreme Court concerned; and

(b) that the said person may within the prescribed period and in terms of the rules of court apply to that court for the setting aside of the registration of the order.

(4) (a) Where the person against whom the foreign restraint order has been made is present in the Republic, the notice contemplated in subsection (3) shall be served on such person in the prescribed manner.

(b) Where the said person is not present in the Republic, he or she shall in the prescribed manner be informed of the registration of the foreign restraint order.

Effect of registration of foreign restraint order

25. When any foreign restraint order has been registered in terms of section 24, that order shall have the effect of a restraint order made by the division of the Supreme Court at which it has been registered.

Setting aside of registration of foreign restraint order

26. (1) The registration of a foreign restraint order in terms of section 24 shall, on the application of the person against whom the order has been made, be set aside if the court at which the order was registered is satisfied-

- (a) that the order was registered contrary to a provision of this Act;
- (b) that the court of the requesting State had no jurisdiction in the matter;
- (c) that the order is subject to review or appeal;
- (d) that the enforcement of the 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 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.

Chapter 5

Miscellaneous

President may enter into agreements

27. (1) The President may on such conditions as he or she may deem fit enter into any agreement with any foreign State for the provision of mutual assistance in criminal matters and may agree to any amendment of such agreement.

(2) The Minister shall as soon as practical after Parliament has agreed to the ratification of, accession to or amendment or revocation of an agreement referred to in subsection (1), give notice thereof in the Gazette.

Delegation by Minister

28. (1) The Minister may delegate to an official of the Department of Justice any function conferred upon him or her by this Act, except a function referred to in section 33.

(2) A function so delegated, when performed by the delegate, shall be deemed to have been performed by the Minister.

(3) The delegation of any function under this section shall not prevent the performance of such function by the Minister himself or herself.

Delegation by Director-General

29. (1) The Director-General may delegate to an official of the Department of Justice any function conferred upon him or her by or under this Act.

(2) A function so delegated, when performed by the delegate, shall be deemed to have been performed by the Director-General.

(3) The delegation of any function under this section shall not prevent the performance of such function by the Director-General himself or herself.

Admissibility of foreign documents

30. Any deposition, affidavit, record of any conviction or any document evidencing any order of a court, 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 the Republic; or

(b) authenticated in the manner provided for in any agreement with the foreign State concerned.

Act not to limit provision of other assistance

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

Conversion of currencies

32. If any amount-

(a) recovered in terms of section 13 or 19 in a requested State; or

(b) payable in terms of an order registered under section 15 or 20,

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

(i) which, in a case contemplated in paragraph (a), prevails on the date on which payment is made in the requested State; or

(ii) which, in a case contemplated in paragraph (b), prevailed on the date on which the order concerned was registered.

Regulations

33. (1) The Minister may make regulations-

(a) with regard to the proof of any matter for the purposes of this Act;

(b) prescribing any matter which shall or may be prescribed under this Act; and

(c) providing for any matter which he or she may consider necessary or expedient with a view to achieving the objects of this Act.

(2) Different regulations may be made in respect of different foreign States.

Amendment of Schedule 1

34. The Minister may by notice in the Gazette amend Schedule I by adding or deleting the name of any foreign State thereto or therefrom.

Rules

35. (1) Any power to make rules under the Supreme Court Act, 1959 (Act No. 59 of 1959), shall be deemed to include the power to make rules so as to give effect to 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 sections 8, 15, 18, 20 and 22 of this Act.

Amendment and repeal of laws

36. The laws mentioned in Schedule 11 are hereby amended or repealed to the extent indicated in the third column thereof.

Short title and commencement

37. This Act shall be called the *International Co-operation in Criminal Matters Act, 1996*, and shall come into operation on a date fixed by the President by proclamation in the Gazette.

Schedule I

(Section II)

The Kingdom of Lesotho

The Kingdom of Swaziland

The Republic of Botswana

The Republic of Malawi

The Republic of Namibia

The Republic of Zimbabwe

Schedule II

(Section 36)

Number and year – Short title – Extent of amendment or repeal of law

Act No. 58 of 1959 *Inquests Act, 1959*

The amendment of section 15 by the substitution for subsection (1) of the following subsection:

"(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 a commissioner to take the evidence of such witness whether within the Republic or elsewhere in regard to such matters or facts as the judicial officer may indicate, and thereupon the provisions of section 171 of the Criminal Procedure Act, 1977 (Act No. 51 of 1977), shall mutatis mutandis apply. "

Act No. 59 of 1959 *Supreme Court Act, 1959* The amendment of section 33 by the substitution for subsection (1) Act, 1959 of the following subsection:

"(1) Whenever a commission rogatoire or letter of request in connection with any civil proceedings received from any State or territory or court outside the Republic, is transmitted to the registrar of a provincial or local division by the Director-General: Justice, together with a translation in English or Afrikaans 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 such division by the agents, if any, of the parties to the action or matter, the registrar shall submit the same to a judge in chambers in order to give effect to such commission rogatoire or letter of request."

Act No. 80 of 1962 *Foreign Courts Evidence Act, 1962* 1. The substitution for section 2 of the following section:

"Supreme Court may order examination of witness in Republic in connection with civil proceedings pending in foreign court

2. (1) If upon an application in any provincial or local division of the Supreme Court of South Africa, it appears to the court or any judge that a court of law of competent jurisdiction outside the Republic, before which any civil or criminal proceedings are pending, is desirous of obtaining the evidence in relation to such proceedings of any witness within the jurisdiction of such division, the court or judge hearing the application may grant an order for the examination of such witness before a person named in such order who, in the case of criminal proceedings, shall be a magistrate.

(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 General Law Amendment Act, 1974 or of the Protection of Businesses Act, 1978 (Act No. 19 of 1978), or is in connection with criminal proceedings of a political character or that the witness is an accused person in the proceedings concerned."

2. The amendment of section 4 by the deletion of subsection (3).

3. The amendment of section 7 by the substitution for subsection (1) of the following subsection:

"(1) Whenever a subpoena purporting to be issued by the proper officer of a competent court of law in any territory mentioned in the Second Schedule for the attendance in any civil or criminal proceedings before that court of any person, is received from such officer by any magistrate within whose area of jurisdiction such person resides or is, such 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 such magistrate in proceedings similar to those in connection with which it was issued.

4. The repeal of section 12.

Act No. 51 of 1977 Criminal Procedure Act, 1977 1. The amendment of section 171.-

(a) by the substitution for paragraph (a) of subsection (1) of the following paragraph:

"(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 the Republic is necessary in the interests of justice and that the attendance of such witness cannot be obtained without undue delay, expense or inconvenience or, in the case of a witness who is resident outside the Republic, that the attendance of such witness cannot be obtained the court may dispense with such attendance and issue a commission-

(i) to any magistrate where such witness is resident within the Republic; or

(ii) to any competent person where such witness is resident outside the Republic.";

(b) by the substitution for paragraphs (a) and (b) of subsection (2) of the following paragraphs, respectively:

"(a) The magistrate or other person 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).

(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 there to be subscribed by him or her and the magistrate or other person concerned."; and

(c) by the deletion of paragraph (c) in subsection (2).

2. The substitution for section 172 of the following section:

"Parties may examine witness

172. Any party to proceedings in which a commission is issued under section 171, may-

(a) transmit interrogatories in writing which the court issuing the commission may think relevant to the issue, and the magistrate or other person to whom the commission is issued, shall examine the witness upon such interrogatories; or

(b) appear before such magistrate or other person, 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."

3. The substitution for section 173 of the following section:

"Evidence on commission part of court record

173. The Magistrate or other person, as the case may be 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 and be received in evidence at any subsequent stage of the case upon its mere production before any other court."

1978 substituting for subsection (1) the following subsection:

"(1) Notwithstanding anything to the contrary contained in any law or other legal rule, and except with the permission of the Minister of Economic Affairs-

(a) no judgment, order, direction, arbitration award, interrogatory, commission rogatoire, letters of request or any other request delivered, given or issued or

emanating from outside the Republic in connection with any civil proceedings and arising from any act or transaction contemplated in subsection (3), shall be enforced in the Republic;

(b) no person shall in compliance with or in response to any order, direction, interrogatory, commission rogatoire, letters of request or any other request issued or emanating from outside the Republic in connection with any civil proceedings, furnish any information as to any business whether carried on in or outside the Republic."

Act No. 32 of 1988 *Enforcement of Foreign Civil Judgments Act, 1988* The amendment of section 1 by the substitution for the definition of "judgment" of the following definition:

" '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 or in respect of compensation or damages to any aggrieved party in any criminal 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 by 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;".

Act No. 140 of 1992 *Drugs and Drug Trafficking Act, 1992* 1. The repeal of Chapter VI.2. The repeal of section 65.